

Operation Kentia

A report concerning matters related to the
Metropolitan Police Service's Operation
Midland and Operation Vincente

October 2019

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This report contains information of a graphic nature, which some people might find upsetting.

> About the IOPC

1. The Independent Office for Police Conduct (IOPC) carries out its own independent investigations into complaints and incidents involving the police, HM Revenue and Customs (HMRC), the National Crime Agency (NCA) and Home Office immigration and enforcement staff.
2. We are completely independent of the police and the government. All investigations are undertaken on behalf of the Director General (DG). Staff taking decisions on behalf of the DG are referred to as DG delegates, or decision makers. They provide strategic direction and scrutinise the investigation undertaken by IOPC investigators.
3. We operate under legal powers given to us under the *Police Reform Act 2002* and associated secondary legislation.
4. The IOPC receives approximately 4,000 referrals from police forces each year. These relate to the most serious complaints and allegations of misconduct against the police. We conduct 600–700 independent investigations each year.
5. The organisation began life as the Independent Police Complaints Commission (IPCC) on 1 April 2004. The IPCC's body corporate was made up of a number of commissioners, some of whom made operational decisions, and were engaged in the governance of the organisation. When the organisation became the IOPC on 8 January 2018, the membership of the organisation changed. A DG was appointed to have sole operational responsibility for the organisation's work, with all operational decisions made by him or on his behalf. The governance of the organisation was passed from the Commission to a Unitary Board, chaired by the DG, but with majority non-executive directorship. Two commissioners became Regional Directors within the new organisation, as did other senior staff. The remaining commissioners left the organisation either on or before 8 January 2018.
6. Operation Kentia began when the IPCC was in existence and ended within the IOPC era. We indicate in the remainder of this document what decision making took place during the IPCC era and what took place when the organisation had become the IOPC.

> **Conducting independent investigations**

7. At the outset of an investigation, a lead investigator will be appointed, who is responsible for the day-to-day running of the investigation. This may involve taking witness statements, interviewing subjects of the investigation, analysing CCTV footage, reviewing documents, obtaining forensic and other expert evidence, as well as liaison with the Crown Prosecution Service (CPS) and other agencies.
8. The lead investigator is supported by a team including other investigators, supervisors, lawyers, subject matter networks (who provide expertise in particular fields), policy advisors as well as other specialist staff if required.
9. Throughout the investigation, updates are provided to interested persons at regular intervals. Each investigation is the subject of a series of reviews and quality checks.
10. The IOPC investigator often makes early contact with the CPS in cases of potential criminality and is sometimes provided with investigative advice during the course of the investigation. Any such advice will usually be provided confidentially.

> **Investigation reports and post-report assessment and proceedings**

11. Once the investigator has gathered all the relevant evidence, they must prepare a report. The report must summarise and analyse the evidence and refer to or attach any relevant documents.
12. The report must then be given to the decision maker in the case, who will then make the necessary post-investigation assessments, which vary depending on the type of investigation. Where there are potential misconduct or performance issues, the IOPC decision maker will provide provisional opinions along with the final report to the relevant police force, who will consider these opinions and reach their own determinations. If the IOPC disagrees with these determinations, it can recommend, and if necessary, direct that misconduct or performance proceedings are brought by the police force against their officers.
13. In relation to potential criminality, the IOPC decision maker will independently decide if a criminal offence may have been committed by any of the subjects of the investigation and whether it is appropriate to refer the case to the CPS for a charging decision.

14. The decision maker will also decide whether to make individual force-specific recommendations or wider national recommendations to the police.

> Publishing the report

15. After all criminal proceedings relating to the investigation have concluded, and at a time when the IOPC is satisfied that any other misconduct or inquest proceedings will not be prejudiced by publication, the IOPC may publish its investigation report or, more usually, a summary of this.
16. Redactions might be made to the report at this stage to ensure, for example, that individuals' personal data is sufficiently protected.

> Executive summary

> The purpose of this report

1. The Independent Office for Police Conduct (IOPC) would like at the outset to acknowledge the significant trauma and distress caused to Lord Edwin Bramall, Mr Harvey Proctor, Lord Leon Brittan and their respective families by false allegations made against them by Carl Beech (referred to in the accompanying documents as 'Nick') and the subsequent investigation by the Metropolitan Police Service (MPS).
2. This report has been produced to provide an overarching summary of the various investigations the Independent Police Complaints Commission (IPCC – our predecessor organisation¹) and IOPC have undertaken since November 2016 in relation to Operation Kentia² and associated matters. It summarises the investigative actions we have taken, the conclusions we have reached, and the learning we have identified as a result of our work.
3. Published alongside this summary are a series of reports that explain the detailed investigative work and decision making that has been undertaken in relation to our investigations (Appendices 1 to 8), as well as a full learning report outlining recommendations arising from our investigations for the police service, other organisations, and ourselves.

> Background

4. In 2016, Sir Richard Henriques was commissioned by the MPS to review the force's handling of a number of investigations including (i) Operation Midland, which investigated a series of allegations that high-profile individuals had been involved in the sexual abuse and deaths of boys in the 1970s and 1980s and (ii) Operation Vincente – an allegation of rape made against Lord Brittan. A summary of Sir Richard's findings was published by the MPS on 31 October 2016.
5. In the review, Sir Richard made a number of criticisms in relation to how the MPS handled these investigations. These included highly critical conclusions of both the decision to apply for, and the accuracy of, search

¹ On 8 January 2018, the Independent Police Complaints Commission (IPCC) became the Independent Office for Police Conduct (IOPC).

² Operation Kentia was the IOPC's operational name for the independent investigation into referrals arising from the Sir Richard Henriques review.

warrant applications for properties owned by Lord Brittan, Lord Bramall and Mr Proctor³.

6. As a result of Sir Richard's findings, in November 2016, the MPS referred the conduct of five officers to the then IPCC.

> The MPS referral

7. The five officers referred to the IPCC by the MPS were as follows:
 - Deputy Assistant Commissioner (DAC) Steve Rodhouse
 - Detective Superintendent (DSU) Kenny McDonald
 - Detective Sergeant (DS) Eric Sword
 - Detective Inspector (DI) Alison Hepworth
 - Detective Chief Inspector (DCI) Diane Tudway
8. The allegations considered were:
 - Allegation 1: That DAC Rodhouse, DSU McDonald and DCI Tudway were alleged to have failed to properly investigate allegations made by 'Nick', which led to an extended investigation, causing prolonged and undue stress to those under suspicion.
 - Allegation 2: That DAC Rodhouse and DSU McDonald made misleading statements to the media and provided information to 'Nick', which led to breaching anonymity.
 - Allegation 3: That all officers were alleged to have failed to present all relevant information to a district judge when applying for search warrants, and that there were alleged to be irregularities in the seizure of exhibits from searched properties.
 - Allegation 4: That DAC Rodhouse was alleged to have reviewed and reinvestigated allegations against Lord Brittan that had previously been closed, without new grounds to do so.
9. The MPS referred allegations 1, 3 and 4 as potential misconduct matters for consideration. Allegation 2 was referenced within the referral material, but not characterised as potential misconduct by the MPS, nevertheless, we assessed all four allegations, for completeness.
10. It is important to note at the outset, that we did not have the mandate to conduct the more wide-ranging review undertaken by Sir Richard. Our work was confined to the matters referred to us and our remit is different and specified in legislation.

³ *An Independent Review of the Metropolitan Police Service's handling of non-recent sexual offence investigations alleged against persons of public prominence*, paragraph 2.3.8.59.

11. We announced publicly that we would carry out an independent investigation shortly after receiving the referrals in November 2016. IPCC Deputy Chair Rachel Cerfontyne said, *“I have decided the allegations about the conduct of these officers should be subject to an independent investigation by the IPCC. We have requested a schedule of the documentation Sir Richard Henriques considered in writing his report. While Sir Richard drew his own conclusions, the IPCC will conduct its own investigation into the conduct of these officers and reach its own findings.”*

> Scope of investigation

12. Between November 2016 and March 2017, an IPCC Investigator conducted a detailed assessment of the available evidence to assess whether any of the allegations could be considered a potential breach of the standards of professional behaviour, and therefore fell within our remit to investigate. Material available for that scoping exercise included Sir Richard’s full unredacted review, copies of the responses made to Sir Richard on behalf of the officers, the full Operation Midland HOLMES account (the system used by the police for managing major enquiries) containing over 2,000 documents, and the Crime Report for Operation Vincente.
13. As the investigation progressed, the Investigator formed the view, based on the available evidence, that there was no indication of misconduct in relation to some of the named officers and matters referred. The investigator therefore concluded, that there was a basis for discontinuing the investigation of a number of the allegations that had been referred to the IPCC. It would have been an abuse of investigatory procedures as set out in the Police (Complaints and Misconduct) Regulations 2012 to continue these investigations. Therefore, continuing the investigation of these allegations fell outside of our remit. The Investigator prepared a number of reports setting out his assessment of these matters. The contents of the reports can be found at Appendices 4, 5, 6 and 7. In summary, the Investigator’s views were as follows.

Allegation 1 – Failure to investigate

14. This was an allegation that officers did not conduct enquiries quickly enough to establish ‘Nick’s’ credibility. In coming to his views, the Investigator interrogated the HOLMES document management system that had been operated by the MPS Investigation team, along with case management meeting records and investigative policy decisions (essentially the key decisions documented in relation to the investigation).
15. The Investigator considered whether there were any conduct issues identified. While it was clear that some lines of enquiry could have been

prioritised or completed sooner, there was evidence to indicate that officers went to great lengths to investigate the allegations. There was also a significant amount of material for the MPS to consider: on HOLMES there were 1,464 nominals, 369 statements, 443 messages and 1,838 documents. It is understood that there was further documentation that had not been uploaded onto the HOLMES system to consider.

16. Indeed, a senior officer involved told Sir Richard as part of his review that there was immense pressure to do the right thing, the motivation was to find the truth, and decisions were brave and taken in good faith. Sir Richard acknowledged himself, in his review conclusion, that officers had conducted the investigation “*in a conscientious manner and with propriety and honesty*”⁴. The Investigator considered it highly unlikely that the officers would have gone to such lengths to investigate these allegations and conduct so many enquiries had it not been with the intention of maintaining public confidence, particularly in view of the damaging impact of the Jimmy Savile and other high-profile cases at the time.
17. Based on the evidence reviewed, the Investigator did not find an indication that any officer had breached the standards of professional behaviour in relation to this allegation. The Investigator expressed this in his detailed assessment report at appendix 4.

Allegation 2 – Media statements

18. Allegation 2 was not a formal conduct matter referral because the MPS assessed it as organisational learning. As detailed in the ‘Assessment of Conduct – Allegation 2’⁵, the Investigator carried out his own assessment of this allegation to determine whether or not he agreed with the MPS position. In order to inform his view, the Investigator considered a range of evidence, including Sir Richard’s review, DAC Rodhouse’s decision log, the responses made on behalf of DAC Rodhouse, DSU McDonald and DCI Tudway to Sir Richard and DAC Rodhouse’s presentation delivered to Sir Richard.
19. Having considered the evidence, the Investigator concluded that the provision of information to the media was a judgement call made in good faith and did not provide an indication of a criminal offence or behaviour that would justify the bringing of misconduct proceedings. The Investigator concluded that this was for the MPS to take forward as appropriate and to consider whether there was any organisational learning arising from this area. The investigator set this out in his assessment report at appendix 5.

⁴ *An Independent Review of the Metropolitan Police Service’s handling of non-recent sexual offence investigations alleged against persons of public prominence*, paragraph 2.3.8.64.

⁵ Appendix 5 refers.

Allegation 3 – Search warrants

20. The allegations referred in relation to the search warrants were twofold. Firstly, officers were alleged to have failed to present all of the relevant information to a district judge when applying for the search warrants for properties owned by Lord Brittan, Lord Bramall and Mr Proctor. Secondly, it was alleged that there had been irregularities in the seizure of exhibits from the searched properties. All five of the officers referred to us (and named in paragraph 7 above) were considered as part of the initial scoping exercise.
21. The Investigator considered the role of the various officers in relation to the first part of this allegation (the information contained within the search warrants) and reviewed all of the available evidence relating to the inconsistency in 'Nick's' accounts. This included all of the decision-making and associated consideration given by officers to the search warrant applications, all responses officers provided in relation to Sir Richard's criticism of them and any briefings/accounts relating to the conduct of the searches subject to criticism.
22. The evidence indicated that DAC Rodhouse and DSU McDonald approved the decision to apply for the search warrants. The applications were not personally prepared by either senior officer, and neither DAC Rodhouse nor DSU McDonald approved the wording of the supporting information in the warrant application forms. In his report, Sir Richard accepted this was the case, but regarded it as a serious failure that they had not done so⁶. The Investigator saw evidence that suggested that the approval of the decision to apply for warrants was not taken lightly, and that further clarification and assurances were requested in respect of 'Nick's' credibility amongst other matters. The Investigator concluded that those two officers not personally reviewing the content of the applications did not provide an indication that either officer may have breached the standards of professional behaviour. The search warrants had been prepared and reviewed by experienced officers with significant knowledge of the case. The Investigator formed the view that there was no legal basis to conduct any form of investigation into DAC Rodhouse or DSU McDonald in relation to this matter and expressed this in his detailed assessment report at Appendix 6.
23. The Investigator did consider that there was an indication that the remaining officers (DS Sword, DI Hepworth and DCI Tudway) may have breached the standards of professional behaviour and, as such, considered that they should be subject to a full investigation.
24. The second search warrant matter referred related to alleged irregularities in the seizure of exhibits from the searched properties. The Investigator was of the view that it was outside the remit of the IPCC to determine if the seizure of items was unlawful. However, in considering whether there was

⁶ *An Independent Review of the Metropolitan Police Service's handling of non-recent sexual offence investigations alleged against persons of public prominence*, paragraph 2.4.54.

an indication that any of the officers may have behaved in a way that would justify disciplinary proceedings, consideration was given to the general powers of seizure provided by Section 19 of PACE and took into account that no attempt was made to hide the seizure of particular items nor did officers argue within their statements that the warrant covered all of the items taken. The available evidence suggested that the items seized were necessary for the purposes of investigating the allegations that had been made. The Investigator did not therefore find an indication that any officer may have breached the standards of professional behaviour. This view was expressed by the Investigator in his assessment report at Appendix 6.

Allegation 4 – Lord Brittan

25. This referral related to the decision to continue the investigation of allegations against Lord Brittan.
26. The Investigator considered the material in relation to this matter, which included Sir Richard's report, responses from officers who were subject to criticism by Sir Richard, relevant decision logs and communication between the MPS and CPS. The Investigator also considered the review undertaken by Dorset Police, which had been commissioned in October 2015 to review the MPS investigation into the allegation of rape made against Lord Brittan (the final report was provided to the MPS on 13 January 2016). It was clear that, on review, DAC Rodhouse decided that all original lines of enquiry as part of the investigation into Lord Brittan had not been completed to his satisfaction and therefore the investigation was continued in order for those further enquiries to be carried out.
27. Lord Brittan remained under investigation for 16 months after the original decision. While we completely understand the very damaging impact of these decisions on Lord Brittan and his family, the Investigator was of the view that the various judgement calls that the officers made were in accordance with the relevant legislation and investigative procedure. This view accords with the conclusions of Dorset Police in relation to these matters that found that the MPS's enquiries were "*launched in good faith, against a credible account provided by a compelling witness and was undertaken with integrity. Enquiries were proportionate to the matters in hand and remained objective throughout*"⁷. The Investigator did, however, conclude that there may be learning/performance matters for the officers involved as a result of actions they took which delayed the conclusion of this investigation.
28. Context was also an important factor here. This was a high-profile case at a time when there was significant public concern and media reporting about the police response to handling such allegations against prominent people.

⁷ Dorset Police Crime Review – Review of Operation Vincente, 13 January 2016 (page 35).

29. Guidance available at the time to assist policing in dealing with allegations of this nature, included that from Her Majesty's Inspectorate of Policing (HMIC) and the MPS. This matter is further considered in our learning report (paragraphs 39–47), 'The culture of belief'.
30. Although mistakes were made and some of the judgements in hindsight can possibly be challenged today, the Investigator concluded that the evidence suggests that, at the time, there was proper motivation for pursuing the further lines of enquiry. Consequently, in relation to this matter, the Investigator found that there was no indication that any officer may have breached the standards of professional behaviour.

Discontinuance decision

31. In accordance with the delegation scheme then in place within the IPCC, a decision to discontinue an investigation or part of an investigation could only be formally taken by a commissioner. As the originally appointed Commissioner was not available, Commissioner Gumsley was asked to consider the Investigator's assessment reports (dated February 2017). This he did, together with various items of associated documentation. After doing so, and discussing the case with the Investigator and the IPCC legal team, the Commissioner concluded that the Investigator's recommendations should be followed. The Commissioner's rationale for this can be found at Appendix 8.
32. In summary, the Commissioner was of the view that, on the information available to him at that time, in respect of the various matters highlighted by the Investigator, the available evidence revealed no indications of misconduct against the individual officers. He concluded that to continue to investigate these matters when they had fallen outside the IPCC's statutory remit would be an abuse of investigative procedures (one of the grounds for discontinuing an investigation set out in the Police (Complaints and Misconduct) Regulations 2012). The Commissioner emphasised in his rationale, however, that, if further relevant information should come to light, this decision may need further consideration.
33. Therefore the following decision was made:
 - Allegation 1 was discontinued in its entirety.
 - All elements of allegation 3 were discontinued, apart from the allegation against DS Sword, DI Hepworth and DCI Tudway in relation to the accuracy of the information in the search warrant applications.
 - Allegation 4 was discontinued in its entirety.
34. In relation to allegation 3, the Commissioner agreed with the Investigator's view that the investigation should continue in respect of the conduct of DS Sword, DI Hepworth and DCI Tudway in relation to the content of the search warrant applications, but noted that, "*... It is not necessary or appropriate for me to consider their respective positions at this stage. However, I should perhaps stress that the fact that there has been no*

submission for the case to be discontinued against these officers should not be taken as any determination of the allegations relating to them which will be considered as part of the independent investigation. The test to be applied at this stage is only, based on the information currently available, whether or not there is an indication that the officers may have behaved in a manner that would justify disciplinary proceedings.” [See paragraph 24 of the discontinuance decision-making document in Appendix 8].

35. Shortly after the discontinuance decision was made, responsibility for the investigation and for the decisions made at its conclusion was passed to the IPCC’s Directorate of Major Investigations, in accordance with preparations for the transition from the IPCC to the IOPC, which occurred on 8 January 2018.

> The investigation

What is the IOPC’s role in a ‘conduct matter’/‘misconduct’ investigation?

Where there is an indication of misconduct that would justify the bringing of disciplinary proceedings then the IOPC must carry out a severity assessment and serve notices of investigation on the officers, advising them whether their alleged misconduct may justify dismissal (‘gross misconduct’) or not (‘misconduct’). It must also advise officers if they are under criminal investigation.

IOPC investigators have the powers of a constable and will keep under review whether there are indications of criminality and misconduct as the evidential picture develops during the investigation.

Once the investigator has gathered the evidence, which may include taking statements, interviewing witnesses and misconduct subjects and analysing relevant background documentation, they must then prepare a report. The report must summarise and analyse the evidence and refer to or attach any relevant documents. The report must then be given to an IOPC decision maker who will decide if there is an indication that a criminal offence may have been committed by any of the subjects of the investigation, and whether it is appropriate to refer the case to the CPS for a charging decision. The decision maker must also consider making determinations about misconduct.

Operation Kentia concerned whether the officers being investigated had breached the ‘Duties and Responsibilities’ standard of professional behaviour. This requires that they are diligent in the exercise of their duties and responsibilities: that they carry out their duties and obligations to the best of their ability, take full responsibility for, and are prepared to explain and justify, their actions and decisions, and to keep themselves up to date on their role and responsibilities⁸.

⁸ College of Policing Code of Ethics 6.1.

Few professionals, however diligent, go through their careers without making mistakes and misjudgements, sometimes serious ones. Where there was no intention to do wrong, then a mistake may not be serious enough to justify a misconduct hearing or meeting⁹. Case law¹⁰, reflected in the College of Policing's outcomes guidance¹¹, says that a breach will only be serious enough if the conduct is culpable or morally blameworthy to a degree it should be condemned.

Recent and pending legislative amendments to the police disciplinary system are intended to make it more proportionate with a focus on learning and improvement; concentrating on 'serious misconduct', so that lower level misconduct may be dealt with professionally outside of disciplinary proceedings. The National Police Chiefs' Council and the IOPC have committed to applying the ethos and spirit of those changes¹².

A breach of the standard which does not justify bringing disciplinary proceedings can be dealt with by supervisors taking management action and/or through performance procedures. Even though a breach does not justify disciplinary proceedings, a person who suffered harm or loss as a result may still be entitled to compensation.

In cases where officers subject to investigation are no longer serving, the statutory scheme is different depending on whether (i) the officers ceased serving **before** 15 December 2017, in which case the IOPC can assess case to answer for misconduct, but the matter can go no further; or (ii) the officers ceased serving **on or after** 15 December 2017, in which case officers under **gross** misconduct notice, and where a case to answer for gross misconduct is found, can face a gross misconduct hearing after they have left the police force. Officers who ceased serving when under a misconduct only notice fall outside the statutory scheme.

The IOPC also considers, through the course of its investigations, whether there is any learning arising for the police service, either locally or nationally. If learning is identified, formal learning recommendations can be made under the legislation.

36. As detailed above, the IPCC determined in March 2017 that there was an indication that DS Sword, DI Hepworth and DCI Tudway may have breached the standards of professional behaviour in relation to the application for search warrants. They were subject to a full investigation. All three officers were served with investigation notices, with an assessment of 'misconduct'. None of the officers were investigated criminally because there was no evidence that a criminal offence may have been committed.

⁹ S12 *Police Reform Act 2002*.

¹⁰ *R (On the Application of Shaw) v General Osteopathic Council* [2015] EWHC 2721 (Admin).

¹¹ Guidance on Outcomes in Police Misconduct Proceedings – paragraph 4.10.

¹² Letter dated 25 April 2019 from the IOPC and National Police Chiefs' Council to Heads of Professional Standards.

37. It should be noted that, at the point of notices being served, DS Sword and DI Hepworth were no longer serving officers. DCI Tudway was still serving, but retired prior to the conclusion of the investigation.
38. The terms of reference for the investigation were as follows:
“To investigate the accuracy of the search warrant applications made on 27 February 2015 relating to properties linked to Lord Brittan, Mr Proctor and Lord Bramall, including:
a) The decision to apply for search warrants.
b) The accuracy of the information provided to the court”.
39. The investigation primarily concerned whether the officers being investigated had breached the ‘Duties and Responsibilities’ standard of professional behaviour, which requires that they are diligent in the exercise of their duties and responsibilities. The College of Policing Code of Ethics¹³ states the following:
“According to this standard you must:
 - *carry out your duties and obligations to the best of your ability*
 - *take full responsibility for, and be prepared to explain and justify, your actions and decisions*
 - *use all information, training, equipment and management support you are provided with to keep yourself up to date on your role and responsibilities.”*
40. The investigation team looked extensively at the records of investigation and made detailed enquiries of the subject officers. Following a review of over 1,800 documents and over 300 statements held by Operation Midland, the investigation team determined that 248 documents and statements were directly relevant to our investigation. The investigation team also gathered 14 independent witness accounts, in addition to gaining accounts from the three officers subject to misconduct notices. We created 62 documents, including two substantial research documents.

> Investigation findings

41. Following receipt of the investigation report (see Appendix 1), the decision maker, Sarah-Louise Davis, determined that there was no case to answer for misconduct for DS Sword and DI Hepworth – as per the statutory scheme for former officers who ceased serving before 15 December 2017 – (see Appendix 2). DCI Tudway, who was also under a misconduct notice, ceased serving prior to the conclusion of the investigation. Therefore, as

¹³ College of Policing Code of Ethics – A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales – July 2014.

per the statutory scheme, we were not required to reach a formal case-to-answer assessment, but indicated that, had we been required to make such an assessment, it would have been that there was also no case to answer for DCI Tudway.

42. There were undoubtedly mistakes and misjudgements made by the officers under investigation, influenced by the prevailing organisational culture and policing guidance (see learning report) of ‘believing victims’, which resulted in the search warrant applications not being as considered as they could have been. However, no evidence has been found which contradicts Sir Richard’s view about these three officers’ propriety and honesty.
43. It is for these reasons that the decision maker determined that, even if the officers had still been serving, these mistakes and misjudgements should result in organisational learning rather than misconduct procedures. This is in line with proposed changes to reform the police complaints and disciplinary systems, which are designed to ‘refocus’ the system towards individual and corporate learning, while ensuring that there remains accountability of the police for use of their powers, and for meeting their duties under Article 2 of the European Convention on Human Rights.
44. It has not been possible to publish the full investigation and associated reports before now due to ‘Nick’s’ trial and the subsequent requirement to go through a comprehensive redaction process (which is necessary for all investigation reports prior to publication in order to ensure that information rights are safeguarded). We recognise that, following the publication of our findings at the conclusion of ‘Nick’s’ trial in August 2019, a number of questions have been raised about our investigation and its findings. These have been difficult to respond to publicly in the absence of our final report/supporting documents being published and released into the public domain. We hope that the suite of documents accompanying this summary will now provide the necessary detail, including the scale of the investigations we conducted as well as the rationales behind our decision making.
45. For ease of reference, this report focuses on some of the key themes and areas of concern:

> Criminality

46. In his review, Sir Richard concluded that the search warrant applications were inaccurate and misleading and, that being so, considered they were almost certainly “*unlawful*”.¹⁴

¹⁴ *An Independent Review of the Metropolitan Police Service’s handling of non-recent sexual offence investigations alleged against persons of public prominence*, paragraph 2.4.54.

47. However, in the absence of evidence that the applications were intentionally misleading, it is our view that there was no suspicion of criminality and that no offence was committed by any particular officer.
48. The investigation found no evidence of an intention to mislead the court, nor did it find any information to suggest that the officers willfully neglected their duties. It is clear that there was a great deal of information available to the investigation at the time of the warrant applications, including the information relating to the Wiltshire investigation. However, all available information suggests that the officers had not, at the time of the warrant applications, identified concerns in relation to 'Nicks' credibility and inconsistencies in his accounts.
49. There is no evidence to suggest that the officers doubted 'Nick's credibility at this point, and although there were inconsistencies identified later on in the investigation, which resulted in charges being brought against 'Nick' for perverting the course of justice, it is important to note that at the time of the warrant applications, there is no evidence to suggest that this was something the officers believed to be the case.
50. The officers referenced the absence of evidence in relation to the murder offences within the warrant applications, which points away from any deliberate attempt to mislead. Therefore, there was no suspicion that the officers had committed a criminal offence and no requirement to refer the case to the CPS. In our view, this is consistent with Sir Richard's assessment in the concluding chapter of his review, when he states:
*"... that, notwithstanding the many mistakes I have enumerated above, the officers had conducted this investigation in a conscientious manner and with propriety and honesty."*¹⁵

> The decision to apply for search warrants

51. The purpose of seeking search warrants is to retrieve evidence which is likely to be of value to an investigation, or to preserve evidence that may otherwise be lost due to the passage of time and/or because there is a risk that a suspect may destroy evidence once they are aware of an investigation.
52. There are undoubtedly some cases in which it may be appropriate to search addresses at an early stage before steps have been taken to test the credibility of an allegation or to seek corroboration for it (as referenced in the Director of Public Prosecution's (DPP) guidance set out at paragraph 57 of our final investigation report in Appendix 1). When considering if an officer has been diligent in carrying out an investigation, it must be acknowledged that there is often a range of priorities and investigative decisions that require a judgement call by those investigating at the time.

¹⁵ *An Independent Review of the Metropolitan Police Service's handling of non-recent sexual offence investigations alleged against persons of public prominence*, paragraph 2.3.8.64.

Where the decision is considered reasonable, it is not for the IOPC to find fault with this.

53. Sir Richard criticised the decision to seek warrants because, although he agreed that 'Nick's' allegations required an investigation, his view was that it should have been restricted in the first place to analysing 'Nick's' credibility.
54. DAC Rodhouse, who approved the decision to apply for the warrants, had requested further enquiries were conducted before providing his approval. These included asking for further information on 'Nick's' counsellor's view that he was credible and what weight could be placed on this. The results of those enquiries, the DPP guidance and the evidence from [a clinical psychologist] supported the warrants being sought.
55. Sir Richard also suggested that DAC Rodhouse and DSU McDonald should have had a better understanding of the evidence and should have supervised the operational officers more intensively. However, as detailed above, our investigation established that not personally reviewing the content of the applications did not provide an indication that either officer may have breached the standards of professional behaviour. It was on this basis that this part of our investigation was discontinued.
56. Sir Richard identified that a major contributing factor in the decision to seek the warrants was a culture where 'victims' must be believed. Even at the time Sir Richard was preparing his report, the College of Policing reaffirmed guidance that, when an allegation is received, police should believe this account (at the recording stage)¹⁶. In correspondence to all forces in relation to this matter, the College of Policing also referenced relevant guidance for senior investigating officers (SIOs), which specifically stated that, "*The focus of the investigation is on proving or disproving the allegation against the suspect, and not on the credibility of the victim. Investigators will need to consider issues relative to the victim's credibility but this should not be the primary focus of the investigation...*" It cannot be a breach of the standards of professional behaviour, even for senior police officers, to act in accordance with this policy guidance. Indeed, so far as it was an instruction, they were required to do so. If the policy guidance and overarching culture that had developed was wrong, then it is for the organisation to learn from it and not to seek to blame individuals.
57. At the time of Operation Midland, the MPS was also concerned to address public concerns over the 'cover-up' of potential offences committed by persons of public prominence. The MPS policy stated that officers should accept allegations made by the victim in the first instance as being truthful and that an allegation will only be considered as falling short of a substantiated allegation after a full and thorough investigation.

¹⁶ Letter to all Chief Constables from the College of Policing dated March 2016: www.college.police.uk/News/College-news/Pages/College_comments_on_belief_of_victims_.aspx

> The accuracy of the information provided to the court

58. Sir Richard identified three inaccuracies in the applications, namely:
- referring to premises as being owned by Lord Brittan, who was in fact deceased
 - that 'Nick' had "contacted Police in late 2014"
 - that Nick had been consistent

Referring to premises as being owned by Lord Brittan, who was in fact deceased

59. The warrant application expressly stated that Lord Brittan had died. Referring to the property as belonging to him rather than to his estate was an error, but it had no material impact. There was no evidence that this error was in any way intended to mislead the judge or that it did so. Indeed, Senior District Judge Riddle, who considered the application made reference to the fact that he knew Lord Brittan was deceased.

That 'Nick' had "*contacted Police in late 2014*"

60. Sir Richard's review highlights an error in the search warrant applications in that they made reference to the MPS contacting 'Nick' in 2014, rather than the other way around. The sequence of events was as follows:
- 'Nick' contacted the MPS in 2012 and was referred to Wiltshire Police because Wiltshire was where the offences were alleged to have taken place.
 - Wiltshire Police interviewed him regarding allegations of serious sexual abuse and this investigation concluded with no criminal charges being brought against any individuals.
 - Following the conclusion of the Wiltshire Police investigation and a media report describing the alleged abuse suffered by 'Nick', the MPS contacted the media report's news outlet as part of Operation Fairbank. Officers left their contact details, and via the news outlet, 'Nick' then contacted the MPS in late 2014.
61. This does of course highlight that the reference in the warrant applications to 'Nick' contacting the MPS in 2014, was out of context. Specifically, and importantly, the Senior District Judge was not given the full background and, in consequence, there was nothing to alert the Senior District Judge to

the Wiltshire Police investigation that had previously taken place¹⁷. Had there been, he may have asked questions about that investigation, which may have led to questions about 'Nick's' credibility.

62. However, it should be noted that, before the warrant applications were made, the officers did not believe that the accounts given by 'Nick' raised questions about his credibility. A full forensic review to assess credibility had not yet been completed at the time of the warrant applications; as explained above the order in which to carry out these investigative actions is a matter of discretion for the investigator. They believed the accounts to be 'developing' rather than inconsistent.
63. In the IOPC's view the officers should have included more context regarding the background of 'Nick's' involvement with the police. This would have given the Senior District Judge as complete a picture as possible to inform his assessment as to whether there were reasonable grounds for believing that an indictable offence had been committed¹⁸. However, in the wider context of the MPS investigation and the investigative culture at the time, we did not consider this lack of background and context in the warrant applications to be a lack of diligence constituting a case to answer for breach of the standards of professional behaviour in relation to any individual officer, but rather an issue for organisational learning.
64. In deciding there was no case to answer, the decision maker took into account that there was no evidence that DS Sword or DI Hepworth had fully reviewed the Wiltshire Police material, or completed any forensic analysis to identify inconsistencies. Nor was there evidence to suggest that inquiries pre warrant application were focused on fully testing the credibility of 'Nick's' accounts. There is no evidence to suggest that the officers had concluded or recognised that at this stage 'Nick' was not a credible witness. There is evidence that DCI Tudway had read the Wiltshire Police material to identify if Lord Brittan, Lord Bramall or Mr Proctor had been mentioned in it and she noted that they had not.
65. As stated above, in our view, it would have been appropriate to make reference to the Wiltshire Police investigation, not least to provide the Senior District Judge with the full history of allegations made by 'Nick'. However, it should be noted that corroboration of 'Nick's' account in such circumstances was considered prior to the search warrant applications. This was not a reflection of any concerns the officers had in relation to 'Nick's' credibility at the time, but rather formed part of the questions asked by DAC Rodhouse prior to supporting the decision to apply for the warrants. In supporting this decision, the DAC considered DPP guidance, the weight that could be placed on 'Nick's' counsellor's assessment of his credibility and the potential risk to the integrity of the investigation if searches to locate

¹⁷ In 2012, 'Nick' made allegations of serious sexual abuse against his stepfather and others. Those mentioned in 2014 to the MPS, who became the suspects of 'Nick's' allegations, were not named in 2012.

¹⁸ Section 8(1)(a) PACE.

potential evidence to corroborate or discredit the allegations were not to be carried out.

66. Following extensive enquiries, the IOPC investigation found nothing to contradict Sir Richard's view that all three officers had conducted the investigation in a conscientious manner, with propriety and honesty. In support of this view, the application did contain other information which potentially undermined the credibility of 'Nick' (the failure to identify any victims of the murders he described). Senior District Judge Riddle, who granted the search warrants, was also satisfied that the investigation, and the need for the warrants, was overseen by a Deputy Assistant Commissioner. Based on the available evidence, the IOPC decision maker decided that there was no evidence of an intention to mislead the Senior District Judge. The omission of reference to the information relating to the Wiltshire Police investigation was regarded as a learning issue – although performance procedures could not in practice be considered for any of the individual officers, as they had retired.

That 'Nick' had been consistent

67. Describing a complainant as 'consistent' does not mean that different accounts given by them are identical or have been corroborated by other evidence. Honest witnesses can describe the same events differently at different times. Accounts given by complainants about historic offences often develop, helped by questioning from interviewers adopting 'Achieving Best Evidence' practices. This is the basis on which the officers justified their use of the word 'consistent' in the applications. It was also the officers' belief that this was a developing account and we saw no evidence during our investigation to suggest this was not the officers' honest belief at the time. In response to Sir Richard's review, senior officers highlighted that they recognised (and did so throughout Operation Midland), that inconsistencies can be a reflection of untruthfulness, but it could also be considered to be a reflection of the passage of time, human frailty, trauma, confusion and other similar factors.
68. As already set out above, applying for the warrants before fully testing 'Nick's' credibility was not considered to be misconduct. However, if the officers had undertaken the exercise, as Sir Richard did, of analysing 'Nick's' accounts, then they may well have described the consistency of his account in a more nuanced and qualified manner. This in turn may have led them to providing further information in box 8 'Duty of Disclosure' in the search warrant application. The IOPC has investigated the officers' assertions that they had not, in fact, analysed 'Nick's' accounts for inconsistency before seeking the warrants. In particular, we investigated whether D243, the rolling log of inconsistencies prepared for the CPS, may have been in existence at the time the warrants were applied for in March 2015. However, there is no evidence of its existence before August 2015.

> Learning

69. Importantly, we have identified a number of areas of learning as a result of our Operation Kentia investigation. To inform that, we wrote to those directly affected and offered to meet them (Lord Bramall, Lady Brittan and Mr Proctor) to get their feedback, as well discussing opportunities for learning with the MPS and our own staff. As a result, in addition to identifying learning for police forces and wider police-system stakeholders, we have also identified learning for ourselves.
70. The specific areas of learning identified are as follows:
- completion of search warrants
 - duty of disclosure
 - communication about searches
 - the use of the HOLMES system
71. In addition to the formal areas of learning, we have identified a number of areas of wider debate where we would invite police forces and policing stakeholders to reflect and consider whether further action needs to be taken. These areas are as follows:
- the culture of belief
 - media management and handling
 - closing statements at the conclusion of an investigation
 - communication with suspects
72. Our learning report provides further detail about each area, along with specific recommendations where appropriate.
73. We have had initial discussions in relation to our recommendations with the relevant organisations to whom they are addressed and we have also started discussions in relation to the broader issues outlined above and look forward to continuing these over the coming months. We will be seeking a response from the named organisations to our formal recommendations, as required under the legislation. In light of the public interest in Operation Midland, we would strongly encourage named organisations to provide a written response to the additional recommendations. Providing the public with reassurance that the lessons learnt are accepted, and that actions are being taken or have been considered, is critical to our remit of ensuring public confidence in policing.

> Learning report

What is the IOPC's role in identifying learning?

We use what we have learnt during our investigations and appeals work to improve policing practice, and to prevent similar incidents happening again. Learning recommendations can include:

- improving practice
- updating policy
- changes to training

We make learning recommendations in the course of, or at the end, of our investigations. We can also make recommendations after making decisions on certain types of appeals.

Recommendations can be made to police forces (one or a number) or police and crime commissioners. In certain circumstances, we can also make recommendations for other organisations that are relevant to our investigations.

We have two legal powers to make recommendations. Under paragraph 28A, Schedule 3 of the *Police Reform Act* we can make a recommendation in relation to any matter dealt with in the investigation report or appeal. These recommendations can be made to police forces (one or a number) or police and crime commissioners. We can also, in certain circumstances, make recommendations for other organisations that are relevant to the investigation or appeal.

Where we make a recommendation under paragraph 28A, the force or organisation we make a recommendation to must provide us with their response within 56 days, unless there are valid reasons not to. They can also request that we extend the time they have to respond. Both the recommendation and the response must be published.

Section 10 of the *Police Reform Act* gives us a slightly different power to make recommendations. This allows us to make recommendations more broadly about police practice that appear, from the carrying out of our functions, to be necessary or desirable. This does not carry the same legal requirement for the recipient of the recommendation to respond, or for the recommendation or any response to be published.

1. We have identified a number of areas of learning as a result of our Operation Kentia investigation and associated matters. To inform that, we wrote to those directly affected and offered to meet them (Lord Bramall, Lady Brittan and Mr Proctor) to get their feedback, as well as discussing learning with the Metropolitan Police Service (MPS) and our own staff. As a

result, as well as identification of learning for police forces and wider police system stakeholders, we have also identified learning for ourselves.

2. Our learning covers a range of areas, which are set out below. The following recommendations are made under paragraph 28A, Schedule 3 of the *Police Reform Act*.

> Search warrants

3. We have identified a number of areas of learning in relation to search warrants.

Completion of search warrants

4. Although our investigation did not find a case to answer for misconduct by anyone in relation to the application process for search warrants, we did find areas where the warrant applications could have been improved. To ensure these errors are not replicated in future enquiries conducted by the MPS, we recommend:
5. **Recommendation 1 – The MPS should take immediate steps to assure itself that appropriate measures (for example, training, guidance and oversight) are in place to ensure that warrants applied for by the MPS are consistently completed to a high standard.**
6. We are aware that, in 2015, the National Crime Agency (NCA) carried out an internal review of its use of warrants and production orders following deficiencies identified in two high-profile cases. Following the initial review, the NCA took actions such as reviewing operational practices, establishing a dedicated group of search warrant applicants and carrying out awareness training for authorising officers.
7. There was a follow-up joint inspection of the NCA's warrant processes in 2017/18 by Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) and Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI)¹⁹. Overall, the joint inspection found that, although some deficiencies were identified, search warrants were generally being completed to a good standard. It found the NCA had set a high standard for the oversight of warrants and orders and had achieved the improvements sought following the initial review.
8. There is clearly some good practice here which could be adopted within policing.

¹⁹ www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/a-joint-inspection-of-search-application-and-production-order-processes.pdf

9. **Recommendation 2 – The National Police Chiefs’ Council and College of Policing should work together to consider what steps can be taken to ensure that warrants applied for by the police service are consistently completed to a high standard. In doing this they should consider learning and action taken from an internal review of search warrants carried out by the NCA and subsequent inspection to determine whether any of this learning is transferrable to the police service. They should then determine who the appropriate lead to take forward any appropriate actions is.**

Court consideration of search warrant applications

10. The current process for applying for search warrants involves a police officer completing an application form, which includes providing information under the following headings:
 - the offence under investigation
 - the investigation
 - material sought
 - premises to be searched which can be specified
 - premises to be searched which cannot be specified
 - search on more than one occasion
 - search with additional persons
 - duty of disclosure
 - declaration
 - authorisation
11. The application form and guidance for completion can be found at the following website:
www.justice.gov.uk/courts/procedure-rules/criminal/forms#Anchor11
12. The decision by the Magistrate or District Judge as to whether to grant the application is recorded at the end of the application form. In this section of the form there is space for the court clerk or Magistrate/District Judge to record whether the applicant gave additional oral information and a summary of what that was.
13. Most applications for search warrants are not carried out in public court rooms, but in Magistrate Court Buildings’ retiring rooms (i.e. court offices). Applications out of hours can also be made at Magistrates’ home addresses. Although the space on the form to record additional information provided during the oral application provides some evidence of anything said in the hearing, it does not provide a complete record, in the way an audio recording of the making of the application would do. Section 9 of the *Contempt of Court Act 1981* and Part 6.9 of the Criminal Procedure Rules

2015 (commencing October 2015), make provisions which would permit the recording of applications. However, this is not routine and the IOPC understands it is rare, if ever, that applications for search warrants are recorded.

14. In relation to this case, the Senior District Judge did include reference in the 'decision' section to the discussion that took place between him and the officers during the making of application – and we have no reason to doubt the completeness of that record. However, there was no audio recording, and we received feedback from an interested party that the absence of an audio recording or transcript of the application meant that there was not full transparency of the discussions that took place during the making of the application.
15. We have spoken with representatives of Her Majesty's Courts and Tribunal Service and we understand they are moving towards all search warrant applications being made by telephone. Making applications exclusively by telephone may allow for making audio recordings easier compared with the current system of face-to-face applications. However, we acknowledge that, with at least 30,000 applications for search warrants being made a year, the benefits of recording would need to be weighed against the associated costs. In our view, recording of the search warrant application process would increase public confidence by improving transparency and providing a clear audit trail. We are aware that, in order to implement such a change, the support of the Lord Chief Justice would be required. In our view, the first step is for Her Majesty's Court and Tribunal Service to consider the merits of our recommendation.
16. **Recommendation 3 – Her Majesty's Courts and Tribunal Service should consider the costs and benefits of implementing audio recording of search warrant application hearings and whether this should form part of the hearing process.**

Role of counter signatory/authoriser

17. Section 10 of a search warrant requires an authorisation – effectively the counter-signing, senior person who authorises the application to go ahead. In order to ensure that there is a record of the authorising officer having considered specific issues, this section could be updated.
18. It is important to emphasise that the counter signatory's role to the search warrant should be undertaken with seriousness and diligence, and to indicate what is meant by the word 'review' in the context of authorising the application.
19. **Recommendation 4 – The Criminal Procedure Rule Committee should consider whether additions can be made to the 'Notes for Guidance' relating to section 10 (authorisation) of the search warrant, and to section 10 itself, to include a checklist which requires the authorising officer to confirm:**

- i. **that all relevant information is contained within the warrant to the best of their knowledge and belief, and**
- ii. **that the possibility there may be evidence, intelligence or other matters that might reasonably be considered capable of undermining the application has been considered, and relevant assurances have been sought from the applicant.**

Section 8 of search warrant – Duty of disclosure

20. The inclusion of 'N/A' in section 8 of the search warrant application form suggested that there was nothing that could undermine any of the grounds of the application. In the Operation Midland investigation, the individual completing the application thought this was already covered in section 2 and wanted to avoid unnecessary repetition. Additional elements could have been included within section 8 of the application form, for example outstanding lines of enquiry. It is particularly important that the investigator makes full disclosure in search warrant applications as the person whose property is subject of the application is not able to contest the application.
21. In summer 2018, the Law Commission carried out a consultation²⁰ in relation to search warrants. One of the issues this consultation considered is the duty of disclosure, as this is a frequent ground of challenge. In its consultation, the Law Commission asked for views on making this duty more accessible and comprehensible to ensure that investigators comply with the legal duty. This included considering whether there should be a list of the information which must always, if it exists, be disclosed. The IOPC fully supports any changes that will help ensure investigators properly understand and complete this part of the application. We await with interest the publication of the Law Commission's final report. We will feed in the learning from this and any other relevant IOPC cases to inform any future work on this area.
22. **Recommendation 5 – The MPS should issue an urgent reminder to officers of the requirements of this duty of disclosure and how high the onus is on them to make full disclosure in a search warrant application.**
23. **Recommendation 6 – The Home Office's Police and Criminal Evidence (PACE) Strategy Board should amend Code B of PACE to provide guidance to make the duty of disclosure clearer to investigators and assist them to comply with this duty.**

Communication about searches

24. As part of wider considerations about the searches undertaken, we are aware of concerns linked to communication about the searches. Firstly, there was not a clear explanation given to those affected as to why items

²⁰ www.lawcom.gov.uk/project/search-warrants/

that were not detailed on the warrant were seized. Secondly, it was not made clear that some of the property being recovered may have related to the investigation of allegations of criminality by others, not just the occupant (or former occupant) of the property.

25. **Recommendation 7 – The MPS should issue an urgent reminder to officers of their responsibilities for notifications relating to searches under PACE.**
26. **Recommendation 8 – In the next review of PACE, the Home Office PACE Strategy Board should review requirements for notification relating to searches including looking at any inconsistencies in requirements under different PACE powers. The review should consider whether there should be a specific requirement in all searches that a list of property seized is provided, detailing under which powers it was seized, and explaining how individuals may seek its return or be allowed to have copies/access to it. The IOPC will be happy to provide input to consultation around such a review based on this and other case experience.**

Conduct of the search

27. Concerns have been raised about an alleged conflict of interest in the team that conducted a search of one of the properties given that 'Nick's' family liaison officer was one of the officers present. Although there may have been good reason for this, it fueled suspicion and raised concerns of the search team being biased towards the complainant.
28. **Recommendation 9 – The MPS should take steps to ensure that consideration of potential conflict of interests, whether real or perceived, inform decisions about which officers are deployed to undertake a search. This should include a responsibility on those making the decision as well as an expectation that officers will self-declare any potential conflict of interest. It is acknowledged that there may be circumstances where the benefit of a particular individual being present outweighs a potential conflict of interest. In these circumstances, decisions should be fully considered and managed appropriately.**

> The use of the HOLMES system

29. The Home Office Large Major Enquiry System (HOLMES), is a case management system/database used by police forces and other law enforcement agencies in the management and investigation of major enquiries.

30. Our investigation found that, although HOLMES was used to assist with the management of this investigation, at its conclusion not all of the 2,757 documents in the possession of the MPS had been registered onto the system, graphically read and had all relevant investigative actions logged. While the documents that were not registered on HOLMES were available to the IOPC investigation team for assessment, this did require manual searches and was inefficient.
31. When used to its full capacity, HOLMES is a valuable investigative tool that can assist an inquiry. However, when all HOLMES roles are allocated in accordance with Major Incident Room Standard Administration Procedures (MIRSAP) guidance, this can be resource intensive. This sometimes leads to the partial use of HOLMES and/or backlogs of investigative material building up. This risks an assumption that HOLMES will properly record and link relevant information at each stage of the investigation to allow the senior investigating officer to establish priorities.
32. The MPS should engage with the National HOLMES working group to understand how other police forces are innovating around the use of HOLMES and to see if there is any best practice that can be adopted.
33. **Recommendation 10 – The MPS should define the benefits of using HOLMES to ensure that those benefits are maximised with reference to, but not bound by, Major Incident Room Standard Administration Procedures. The MPS should also ensure that it has a clear policy for its staff, requiring a decision to be made and articulated in relation to how HOLMES will be utilised to enhance the quality of the investigation, which should include associated resources and role allocation. Particular consideration should be given to:**
 - **Using the full functionality of HOLMES to support an investigation (with the appropriate associated resourcing requirement to avoid a backlog of investigative material being added).**
 - **Using HOLMES as defined by the needs of the enquiry (known as HOLMES-lite), in which case clear direction and policy decisions must be provided in relation to what roles will be allocated, or**
 - **Not using HOLMES at all in the specific circumstances.**
34. In the case of Operation Midland, the rolling log of key consistencies and inconsistencies in ‘Nick’s’ evidence was a key document. Attempts to establish when and how the document was updated were critical to our enquiries. These were hampered by the lack of version control or a clear audit trail for the document. Clear document management systems and control can assist with accountability and public confidence and enable police officers and staff to account for their actions.
35. **Recommendation 11 – The MPS should consider how it can best reinforce with its officers and staff the importance of good-quality document management and take appropriate steps to act on this. This could, for example, be achieved by embedding it in policy or training**

and ensuring there is a process for checking that the procedure is being followed properly.

> Periodic review of large investigations

36. It is important, especially in relation to high-profile, complex, serious and organised major crime investigations, that regular periodic reviews of the investigation are carried out. While a review of Operation Midland began after six months (DSU Sweeney's review began in early April, with the written review completed in August 2015) and a further review was conducted after 12 months (the evidential scrutiny panel), the investigation may have benefited from more regular periodic reviews.

37. **Recommendation 12 – For investigations, especially of the type described above, the MPS should seek to undertake regular periodic reviews to provide the necessary advice and support to the overall strategic management of the investigation and to ensure they are conducted within the level of quality and strategic oversight required by the chief officer. Reference should be made to the relevant College of Policing advice in this area²¹.**

> Areas for further consideration and recommendation

38. In addition to the formal areas of learning detailed above, we have identified a number of areas of wider debate where we would invite forces and policing stakeholders to reflect on and consider whether further action needs to be taken. Recommendations made in this section are made under Section 10 of the *Police Reform Act*.

The culture of belief

39. Operation Midland occurred at a time when there was a highly charged atmosphere in relation to allegations of child sexual abuse against people of public prominence. Considerable pressure had built up to bring prosecutions against prominent persons accused of sexual abuse, and this was reinforced by significant media reporting in this area at the time.

40. More importantly, there was various guidance available at the time which tried to assist policing with regards to dealing with allegations of this nature. The aim of these was rightly to ensure that victims felt able to come forward and be taken seriously. This included:

²¹ <https://profdev.college.police.uk/professional-profile/strategic-investigator-pip-4/>

41. Her Majesty's Inspectorate of Constabulary recommending in 2014 that *"the presumption that the victim should always be believed should be institutionalised."*²²
42. The CoP reaffirming in 2016 its guidance that *"when an allegation is received, police should believe this account... to start an investigation from a position of doubt is unlikely to encourage victims to come forward."*²³
43. The MPS policy stating that *"officers should 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"*.²⁴
44. An instruction to believe victims, in our view, should not be at the expense of investigating cases objectively and thoroughly. In this case, it appears that the belief in the victim at the recording stage blurred into the investigation of allegations and concern about challenging victims. There should have been better efforts to corroborate facts, probe any inconsistencies²⁵ and consider any previous relevant investigations. Reviewing the contents of 'Nick's' computer, email accounts, seeking an interview with 'Nick's' ex-wife and his mother, as well as conducting earlier assessments of previous accounts in earlier inquiries may have led to a more objective assessment of 'Nick's' allegations.
45. Clearly we are not suggesting that victims should not be believed, nor should their accounts not be taken seriously, but rather that the evidence obtained should be reviewed constantly to ensure the allegations are founded.
46. **Recommendation 13 – While acknowledging there is a fine balance to be struck, we would invite the police service to reflect carefully on and renew their efforts to balance the culture of belief at the time an allegation is recorded with the clear need to objectively investigate the allegations thereafter.**

²² Her Majesty's Inspectorate of Constabulary, Crime-recording: Making the victim Count, November 2014. Recommendation 11, page 98.

²³ Letter to all Chief Constables from the College of Policing dated March 2016 www.college.police.uk/News/College-news/Pages/College_comments_on_belief_of_victims_.aspx

²⁴ MPS investigation of rape and serious sexual assault Standard Operating Procedure, December 2007, pages 3–4.

²⁵ We acknowledge that probing inconsistencies with a victim would have to be undertaken in a careful manner, as detailed in paragraphs 3.67–3.68 of the Ministry of Justice 'Achieving Best Evidence in Criminal Proceedings – Guidance on interviewing victims and witnesses, and guidance on using special measures'.

Media management and handling

47. In Operation Midland the cumulative effect of MPS media statements may have contributed to the identification of one of the interested parties. The phrase “*a man in his 90s from [a location related to the MPS investigation] was today interviewed under caution*”, potentially led the public to identify the interested person because there was only one individual in that location who met that description. This can result in significant distress to the suspect, their family and friends.
48. Since this case, the College of Policing has issued Authorised Professional Practice (APP) on media relations²⁶. This covers both respecting suspects’ right to anonymity and naming on arrest. In respect of naming on arrest the APP says that, “*When someone is arrested, the police can proactively release the person’s gender, age, where they live (i.e. the town or city), the nature, date and general location of the alleged offence, the date of the arrest, whether they are in custody or have been bailed, and the subsequent bail date, or if they were released without bail or with no further action being taken.*” It was also made clear that this should not apply in cases where, although not directly naming an arrested person, this information would nevertheless have the effect of confirming their identity.
49. The existence of this APP is a positive step. Police forces should assure themselves that any media strategy relating to an investigation includes careful consideration of the potential for an individual to be identified through the information released about them.
50. **Recommendation 14 – The MPS should review its media handling procedures to ensure alignment with current APP. Police forces should assure themselves that any media strategy relating to an investigation includes careful consideration of the potential for an individual to be identified through the information released about them. Naming a suspect before charge is a major step and should only be undertaken in exceptional circumstances and for a clear policing purpose.**

Closing statement at the conclusion of an investigation

51. We have heard from those affected by Operation Midland of real concerns that they felt the police service did not do enough at the end of the investigation to clarify the reasons for the investigation being stopped. Given the high level of press and public interest in Operation Midland and the effect it had on those involved, public acknowledgement of the reasons for ending the investigation would have had a significant impact for those involved. In that context, the language used in media statements is important.

²⁶ www.app.college.police.uk/app-content/engagement-and-communication/media-relations/

52. **Recommendation 15 – While we appreciate that the police cannot control what the media reports, police forces should take careful steps – particularly where an investigation has demonstrated that allegations have been made falsely or in bad faith – to ensure that a fair and balanced summary of the reasons for taking no further action is put out into the public domain.**

Communication with suspects

53. Concerns have been raised about communication from the MPS with the affected parties throughout the investigation. Some felt that a lack of information from the MPS indicated a culture of defensiveness and secrecy. Despite their status as suspects, some of those affected had an expectation that they should have been better informed of the progress of the case throughout, and of the indicative overall timescale of the investigation. In our view, suspects should expect openness, transparency and candour throughout the course of the investigation, where appropriate.
54. **Recommendation 16 – Suspects should receive regular open and candid communication from the MPS throughout the progress of their case, including an indicative timescale for the investigation. It is accepted it will not be possible or appropriate to give them details of the precise nature of enquiries being undertaken.**

> IOPC-specific learning

55. Through internal discussions with those members of staff who have been involved in the IOPC investigation and with external parties, the following areas have been identified for the IOPC to consider and take action on going forward:

Timeliness

56. We have already acknowledged publicly that our investigations into these matters took too long. Although there have been delays in publishing at the end of the investigations process due to restrictions arising from 'Nick's' trial, there is no doubt that the actual investigations and subsequent decision-making processes should have been completed quicker.
57. Timeliness of investigations more broadly has been a major focus for the IOPC since we came into being in January 2018 and continues to be. We are making some real progress in this area with around 80% of our investigations now being closed within 12 months in 2018/19, and a third being completed within six months. This represents a near 20% improvement on the previous year and is the best we have ever performed.

58. We will ensure that this remains an area of focus for us as we recognise the impact that lengthy investigations can have on those directly affected by our work, as well as public confidence more widely.

Communication with those directly affected by our investigations

59. In accordance with legislation, we aim to provide updates to interested parties to our investigations every 28 days. This includes officers under investigation, complainants and anyone else directly affected.
60. We received feedback that, although we provided monthly written updates, individuals did not always consider that their concerns were being listened to. There will, of course, be times where we are unable to act upon particular issues being raised by those affected or where we will be unable to share information due to the ongoing investigative proceedings. That should not, however, stop us from listening carefully to the views of relevant individuals and taking the time to provide a response and explain our position accordingly.
61. We recognise the importance of good communication with all parties throughout the course of our investigations, and the impact that this can have on confidence in our investigation if we fail to communicate effectively. Earlier this year, we published a set of service standards²⁷ that all of our service users can expect us to adhere to. We are also managing a much broader programme of work intended to improve our service user focus. This includes work to fully embed these standards, review our support for families and vulnerable service users, to improve our service user documentation and to achieve an externally recognised customer service excellence accreditation.

Disclosure of relevant documentation at an earlier stage

62. Published alongside the report today are the detailed discontinuance reports and the related decision-making document, which ultimately determined which aspects of the original MPS referral were not being taken forward to full investigation, and the reasons for that (Appendices 3 to 8). These have not been published before now and feedback has suggested that it would have been helpful to have published them previously to assist those directly affected, as well as the wider public, to understand the limited scope of our investigation and the reasoning for that.
63. We do consider, throughout the course of an investigation, what information we are able to release and the associated timing of this, and are very aware of any impact that release of information could have on an ongoing investigation or future disciplinary/criminal/coronial proceedings. We will, however, ensure that we remain aware of the fine balance in this area between not prejudicing any proceedings while also considering the need to

²⁷ www.policeconduct.gov.uk/who-we-are/accountability-and-performance/our-service-standards

provide those affected by our investigations, and the wider public, with information at an earlier stage.

> Conclusion

64. Under the legislation, where we make a formal recommendation under paragraph 28A, Schedule 3 of the *Police Reform Act*, the force or organisation to whom we are directing the recommendation must provide a response within 56 days, unless there are valid reasons why they cannot do so. In light of the public interest in Operation Midland, we would strongly encourage named organisations to provide a written response to the additional recommendations we have made under section 10 of the *Police Reform Act*.
65. We look forward to receiving these responses and providing an update on progress in due course.

> Appendix 1: Glossary

Term	Definition
ABE	Achieving best evidence. ABE interviews are specialist interviews which assist in obtaining as much information as possible about an incident. They are usually used when interviewing vulnerable or intimidated people
AC	Assistant Commissioner
ACPO	Association of Chief Police Officers
APP	Authorised Professional Practice
CEOP	Child Exploitation and Online Protection Command
CICA	Criminal Injuries Compensation Authority
CoP	College of Policing
CPS	Crown Prosecution Service
CSA	Child sexual abuse
CSM	Crime scene manager
DAC	Deputy Assistant Commissioner
DC	Detective Constable
DCC	Deputy Chief Constable
DCI	Detective Chief Inspector
DCS	Detective Chief Superintendent
DI	Detective Inspector
Dickens' dossier	A secret file dossier said to contain the names of paedophiles with links to the British establishment assembled by MP Geoffrey Dickens and handed over to the then-Home Secretary, Leon Brittan, in 1984.

Appendix 1: Glossary

DMC	Directorate of Media and Communications, expert department within the MPS on media matters
DPP	Director of Public Prosecutions
DS	Detective Sergeant
DSU or D/Supt or Det Supt	Detective Superintendent
EB	Lord Bramall
ERO	Evidential Review Officer
Full code test	A two-stage test, under the Code for Crown Prosecutions, applied by a prosecutor when determining whether an offender is to be charged with an offence
HMCPSI	Her Majesty's Crown Prosecution Service Inspectorate
HMIC	Her Majesty's Inspectorate of Constabulary
HMICFRS	Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services
HOLMES	Home Office Large Major Enquiry System
HP	Harvey Proctor
IOPC	Independent Office for Police Conduct
IPCC	Independent Police Complaints Commission
LB	Lord Brittan
LPP	Legal professional privilege
'Maxwellisation' process	A process whereby those subject to criticism in a public report are given an opportunity to respond to such criticism prior to publication of the report
MG3	Form used by the police to request advice from the Crown Prosecution Service (CPS) and by the CPS to provide it
MM1	Misconduct form used by the police
MOI	Mode of investigation

Appendix 1: Glossary

MP	Member of Parliament
MPS	Metropolitan Police Service
N/A	Not applicable
NCA	National Crime Agency
NFA	No further action
NPCC	National Police Chiefs' Council
OIC	Officer In Charge
PACE	Police and Criminal Evidence Act 1984
PCMR	Police (Complaints and Misconduct) Regulations 2012
POLSA	Police Search Advisor
PRA	Police Reform Act 2002
PS	Police Sergeant
SIC	Used after spelling or grammatical errors in quotes to show the words are quoted verbatim.
SIO	Senior Investigating Officer
Special Notice 11/2002	A special notice issued by the Metropolitan Police Service saying it was force policy to accept allegations made by victims in the first instance as being truthful, and that allegations would only be considered as falling short of a substantial allegation after a full and thorough investigation

> Appendix 2: Operation Kentia – Investigation report

1. On 3 October 2012 ITV broadcast a documentary detailing the scale of alleged abuse carried out by Mr Jimmy Savile. Following this coverage, a man contacted the Metropolitan Police Service (MPS) Operation Yewtree, a police operation into allegations about child sexual abuse by Mr Savile, to make allegations about being abused by Mr Savile, his deceased stepfather and other un-named men from Wiltshire. The case was referred to Wiltshire Police and the man was given the pseudonym 'Nick'. Following an investigation by Wiltshire Police, unrelated to persons of public prominence, the matter was closed in 2013.
2. On 3 December 2018, the Judge at Newcastle Crown Court lifted the legal restrictions on naming 'Nick'. However, this report will continue to refer to him as 'Nick' to reflect the documentation the IOPC has obtained.
3. On receipt of a large amount of information from the office of Tom Watson MP, who raised a Parliamentary Question alleging that there was a paedophile ring within Westminster stretching back to the Edward Heath and Margaret Thatcher administrations, Operation Fairbank was established by the MPS. 'Nick' was initially introduced to Operation Fairbank by the news outlet Exaro News in May 2014.
4. The decision to formally investigate the allegations made by 'Nick' was taken on 11 November 2014 by Deputy Assistant Commissioner (DAC) Rodhouse following a discussion with Officer 10 and Detective Chief Superintendent (DCS) Niven, and Operation Midland commenced. At this point 'Nick' had been interviewed as part of Operation Fairbank, where he had made a number of allegations of historic sexual abuse and murder against a number of people of public prominence, including Lord Edwin Bramall, Lord Leon Brittan and Mr Harvey Proctor.
5. Following the conclusion of the investigation, where no action was taken against the accused, Sir Bernard Hogan Howe, the then MPS Commissioner, requested an independent review, which was conducted by Sir Richard Henriques. This was due to several concerns that had been raised.
6. The finalised report by Sir Richard was sent to Assistant Commissioner (AC) Helen King. AC King tasked Detective Superintendent (DSU) Ashwood to review the report with the aim of establishing if the findings made by Sir Richard would indicate a breach of the Standards of Professional Behaviour amounting to misconduct.

7. As a result, DSU Ashwood documented his formal assessment, which reported the alleged breaches as follows:
 - “Allegation 1 – A failure to properly investigate allegations made by complainant ‘Nick’ which lead [sic] to an avoidable extended investigation which caused prolonged and undue stress to those suspected
 - Allegation 2 – Misleading statements to the media and providing information to complainant ‘Nick’ which lead to breaching anonymity
 - Allegation 3 – The enquiry team failed to present all relevant information to a Judge when applying for search warrants. Parts of the searches were not conducted lawfully and some exhibits were seized otherwise than in accordance with the warrants.”
8. Allegations 1 and 3 were initially assessed by DSU Ashwood as amounting to gross misconduct (if proven) for the officers concerned and Allegation 2 was considered to be a matter of organisational learning.
9. This assessment was then passed to DAC Taylor to evaluate whether the assessment of conduct was balanced and proportionate, which she agreed it was.
10. These alleged failings were referred to the IOPC as a voluntary conduct referral on 8 November 2016. Following consideration of the three allegations listed above by the IOPC, independent investigations into allegations 1 and part of 3 were discontinued, but the first part of allegation 3 remained an independent investigation.
11. Allegation 2 was determined to not meet the threshold for referral by the IOPC.
12. One theme addressed during the previous public scrutiny of this investigation was the credibility of ‘Nick’. This investigation will not seek to make a determination on this matter and will only cover the matters included in the Terms of Reference below.

> Terms of reference

13. The terms of reference for this investigation were:

1. To investigate the accuracy of the search warrant applications made on 27 February 2015 relating to properties linked to Lord Brittan, Mr Proctor and Lord Bramall, including:
 - a) The decision to apply for search warrants
 - b) The accuracy of the information provided to the court

> Subjects

Name and role	Brief description of alleged conduct/breach of Standards of Professional Behaviour	Severity	Date notified
Detective Inspector (DI) Alison Hepworth (retired)	It is alleged that deficiencies in the evidence provided to support the application for search warrants for the properties of Lord Bramall, Lord Brittan and Mr Proctor meant they were inaccurate or misleading to the District Judge. DI Hepworth signed the warrant applications before they were submitted to the court.	Misconduct	29 March 2017
Detective Sergeant (DS) Eric Sword (retired)	It is alleged that deficiencies in the evidence provided to support the application for search warrants for the properties of Lord Bramall, Lord Brittan and Mr Proctor meant they were inaccurate or misleading to the District Judge. DS Sword drafted the warrant applications and attended the court to answer any questions under oath.	Misconduct	29 March 2017
Detective Chief Inspector	It is alleged that deficiencies in the evidence provided to support the application for search warrants for the properties of Lord Bramall, Lord Brittan and Mr Proctor meant they were inaccurate or misleading to the District Judge. As the Senior	Misconduct	22 March 2017

(DCI) Diane Tudway ²⁸	Investigating Officer (SIO) for Operation Midland, DCI Tudway reviewed the warrant applications before they were submitted to the Magistrate and attended the court to answer any questions.		
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14. Both DS Sword and DI Hepworth were retired at the time the IOPC investigation began, and were therefore not obliged to co-operate. Regulation 16 notices were returned unsigned from both former officers. However, they have assisted the IOPC investigation by providing written statements. DCI Tudway was a serving officer at the time of the IOPC investigation. She attended interview, provided a prepared statement, and answered questions put to her.

> Summary and analysis of evidence

Timeline of events

	Approx. time/date	Event
15.	3 October 2012	'Nick' contacted the MPS Operation Yewtree following an ITV documentary detailing the scale of alleged abuse carried out by Jimmy Savile. He made a complaint regarding historic child abuse committed against him. As the alleged incidents were said to have occurred in Wiltshire, he was referred to Wiltshire Police.
16.	6 December 2012	'Nick' was interviewed using the Achieving Best Evidence (ABE) methodology by officers from Wiltshire Police. ABE interviews are specialist interviews which assist in obtaining as much information as possible about an incident and are usually used when interviewing vulnerable or intimidated people. During this interview, 'Nick' made multiple allegations of historic sexual assault by his stepfather and several other individuals. He named Jimmy Savile and his stepfather as abusers, but no other persons of public prominence were named at that time, although they were referred to as being perpetrators, as well as a senior military officer and foreign diplomats, who were also unnamed.
17.	16 April 2013	'Nick's' mother was interviewed by Wiltshire Police. She was not aware of, or suspected, any sexual abuse against 'Nick'.

²⁸ DCI Tudway has subsequently been promoted to Superintendent but will be referred to as DCI throughout this report as this was her substantive rank at the time.

18.	27 June 2013	Following investigation, a closing report was written, and the matter was concluded as “Undetected” by Wiltshire Police. Nothing of evidential value was found to either support or refute the allegations that had been made.
19.	May 2014	The MPS was approached by Exaro News and introduced to ‘Nick’. Initial enquiries began.
20.	13 October 2014	Wiltshire Police provided the MPS with a case summary report of the Wiltshire investigation into ‘Nick’s’ allegations.
21.	22–23 October 2014	‘Nick’ was ABE interviewed by Operation Fairbank officers. During this interview, Lord Bramall was named by ‘Nick’ as well as several other individuals.
22.	3 November 2014	‘Nick’ was ABE interviewed by Operation Fairbank officers from the MPS again. During this interview, Lord Bramall, Lord Brittan and Mr Proctor were named by ‘Nick’ along with several other individuals regarding historic sexual offences. ‘Nick’ also made allegations of three child murders, one of which related specifically to Mr Proctor.
23.	11 November 2014	Following the interviews with ‘Nick’, the decision to formally investigate the allegations of three possible homicides and historic sexual abuse was made by the MPS, and Operation Midland was opened.
24.	5 January 2015	‘Nick’ was ABE interviewed by officers from the MPS for the third time. During this interview, ‘Nick’ referred to the disappearance of Person C. Person C went missing in 1979, his disappearance has never been solved but received a lot of publicity which is still available online.
25.	21 January 2015	Lord Brittan died.
26.	16 February 2015	DCI Tudway recorded a decision log entry regarding the decision to apply for s.8 PACE search warrants for Lord Bramall, Lord Brittan and Mr Proctor.
27.	24 February 2015	DAC Rodhouse requested additional information from DCI Tudway and DSU McDonald before providing his support in applying for s.8 PACE search warrants.
28.	26 February 2015	DAC Rodhouse documented his support on the Gold Group decision log that applications should be made for s.8 PACE search warrants to authorise the searches of locations occupied or controlled by Lord Bramall, Lord Brittan and Mr Proctor. A Gold Group is a group of individuals who provide strategic oversight and support to an operation or investigation.

29.	26 February 2015	██████████ (Clinical Psychologist) was requested to submit a report to the MPS regarding the credibility of 'Nick's' counsellor, ██████████.
30.	27 February 2015	s.8 PACE search warrant application forms were completed by DS Sword, countersigned by DI Hepworth.
31.	2 March 2015	S.8 PACE search warrants were issued by Mr Riddle, Senior District Judge (the Chief Magistrate) at Westminster Magistrates' Court.
32.	04 March 2015	Searches were conducted by MPS officers at premises occupied or controlled by Lord Bramall, Lord Brittan and Mr Proctor.
33.	10 March 2015	The decision was taken to suspend operational activity until Acting Commissioner ²⁹ (AC) Patricia Gallan could be briefed on the investigation. This involved the postponement of scheduled interviews with Lord Bramall and Mr Proctor.
34.	Late March/Early April 2015	[A clinical psychologist] was commissioned by Operation Midland to write a report advising on the credibility of 'Nick'.
35.	27 April 2015	'Nick' was ABE interviewed by the MPS for the fourth time. During this interview, MPS officers spoke to 'Nick' focusing on the 'drive-around' of relevant locations they conducted with him.
36.	20 May 2015	Nick's mother was interviewed by the MPS.
37.	25 May 2015	[The clinical psychologist's] report was submitted to the MPS regarding the credibility of 'Nick'. This report did not raise any issues regarding 'Nick's' credibility and recommended an investigation be undertaken.
38.	16 October 2015	'Nick's' [stepsiblings] were interviewed by the MPS.
39.	19 October 2015	DSU Scott took over responsibility for Operation Midland from DSU McDonald.
40.	11 January 2016	'Nick' was ABE interviewed by officers from the MPS for the fifth time. Nick was unable to add anything significant which either corroborated his account or added lines of enquiry.
41.	14 January 2016	It was determined by DAC Rodhouse that the case did not meet the Full Code Test because of deficiencies in the evidence, and that the investigation into Lord Bramall should be

²⁹ The reference to 'Acting Commissioner' is an error and should read 'Assistant Commissioner'.

		discontinued. A Full Code Test was not conducted for the Lord Brittan element of the investigation as he had died by the time the investigation had got to the appropriate stage.
42.	February 2016	Sir Richard Henriques was commissioned by Commissioner Sir Bernard Hogan Howe to undertake a review to establish what lessons could be learned from managing such enquiries in the future.
43.	18 March 2016	It was determined by DAC Rodhouse that the case in relation to Mr Proctor did not meet the Full Code Test because of deficiencies in the evidence, and that the investigation should be discontinued.
44.	31 October 2016	Report by Sir Richard Henriques was published.

> ToR1a: The decision to apply for search warrants

45. Section 8 (s.8) PACE search warrants provide the power for authority to be granted for the entry and search of a premises if, on an application made by a constable, a Justice of the Peace is satisfied that there are reasonable grounds for believing:
- that an indictable offence has been committed; and
 - that there is material on the premises which is likely to be of substantive value to the investigation
46. DCI Tudway’s decision log first included the consideration to apply for a search warrant for Lord Brittan on 23 January 2015. This log entry included reference to Lord Brittan’s death on 22 January 2015.
47. DCI Tudway wrote that:
- “Whilst he has now passed away, he remains a suspect for the purpose of this enquiry. Had he not passed away he would have been subject to a decision to arrest. Whilst arrest will now not happen I have grounds to believe that there were indictable offences committed, that there is material at those premises which will be of substantive value to the investigation either by way of a record of events, photographs or videos. There may also be evidence of association or information which may identify other victims and witnesses. Careful consideration will be given in the tactical plan to avoid and negate the risks in relation to LPP. I understand this is a time of mourning for LB’s [Lord Brittan’s] family, this plan will be HR compliant.”*
48. DCI Tudway’s decision log number 20, dated 16 February 2015 reflects the decision to apply for s.8 PACE search warrants for properties relating to Lord Bramall, Lord Brittan and Mr Proctor.

49. This decision log entry includes a consideration of issues relating to safeguarding and risk. It outlined that the primary information sought was “*photographs, videos, diaries or accounts*” that would prove or disprove the allegations made.
50. This decision log entry also documents the rationale that Lord Brittan was alive at the time the allegations were made but had recently passed away. DCI Tudway wrote that, in her view, as Lord Brittan had died so recently, the opportunities to recover information and evidence relevant to the allegations was a more realistic proposition than to consider him in the same tranche as other suspects who were already deceased at the beginning of the investigation.
51. The entry also outlined the intention was that the premises be searched, and requests made to the suspects for their co-operation to attend a voluntary interview at a time after the information from the search could be assessed. The rationale for this was to reduce the time required in detention or waiting for interview.
52. DAC Rodhouse provided his support for the operational activity of applying for the s.8 PACE search warrants. This was recorded in the Gold Decision Log 10, dated 24 February 2015. It is outlined that the purpose of the searches would be to locate and secure any evidence to “*corroborate (or discredit)*” the allegations made by ‘Nick’.
53. During the consideration of his decision, he wrote that, despite the lack of corroboration, the investigation had not revealed any cause to disbelieve ‘Nick’. DAC Rodhouse recorded that ‘Nick’ had remained consistent and detailed in his accounts and that he had been told that the inquiry team and ‘Nick’s’ counsellor believed him to be credible.
54. Prior to providing this decision, DAC Rodhouse had requested further information from DCI Tudway on four key points:
 - What credibility could he place on ‘Nick’s’ counsellor. He requested clarification on what her qualifications were and what expert advice Child Exploitation and Online Protection Command (CEOP) could provide on the strength of the counsellor’s expertise to make the assessment she had made.
 - An update on the status of any other current enquiries into the named individuals.
 - Whether the Director of Public Prosecution (DPP) Guidance on the investigation of rape provided any expert guidance on the issue of taking operational action following an allegation with little or no corroboration.
 - To review the Senior Investigating Officer’s (SIO) proposal to offer a voluntary interview to Lord Bramall and Mr Proctor rather than to arrest.
55. Regarding bullet point 1 above, DCI Tudway was provided a report by [a clinical psychologist] and consultant to the CEOP Command of the National

Crime Agency (NCA). The report gave an expert opinion that ‘Nick’s’ counsellor was likely to be able to make an accurate judgement of ‘Nick’s’ credibility and communicate it accurately. The information used by [the clinical psychologist] to make this assessment was provided by [Nick’s counsellor].

56. In answer to bullet point 2 of paragraph 54 above, DSU Kenny McDonald provided an email update to DAC Rodhouse.
57. In relation to point 3, Officer 10 identified the relevant paragraph within the DPP guidance. Paragraph 53³⁰ states:

“Prosecutors should also have regard to whether there is any credible third party evidence to suggest that the complainant has malicious intent to make a false allegation. Prosecutors should, however, guard against looking for ‘corroboration’ of the victim’s account or using the lack of ‘corroboration’ as a reason in itself not to proceed with a case.”
58. This DPP Guidance was provided to DAC Rodhouse via DCI Tudway and DSU McDonald.
59. In bullet point 4 of paragraph 54 above, DCI Tudway forwarded copies of her arrest strategy. This strategy documented that DCI Tudway was satisfied that a search warrant, authorised by the courts and conducted without notice, mitigated the risks of non-arrest and provided the least intrusive way in which the investigation could progress and achieve its objectives.
60. Following a review of additional information provided to DAC Rodhouse by DCI Tudway, he recorded that he was content for them to progress with the applications for s.8 PACE search warrants.
61. The rationale for this decision acknowledged the possible impact on the reputation of the named individuals and the potential distress should this police activity come into the public domain. However, it is also noted that DAC Rodhouse remained convinced that this operational activity was necessary and proportionate to achieving the aims of Operation Midland. This decision was recorded in the Gold Decision Log entry 11 on 26 February 2015. DAC Rodhouse confirmed this rationale in interview with the IOPC³¹.
62. DAC Rodhouse also outlined in interview that, while he provided his support for the operational activity of applying for s.8 PACE search warrants, he did not contribute to, or view any drafts of, or the completed application forms.

³⁰ This text corresponds to paragraph 55 of the current DPP guidance, *Child Sexual Abuse: Guidelines on Prosecuting Cases of Child Sexual Abuse*.

³¹ DAC Rodhouse was interviewed by IOPC investigators as a witness.

> **ToR1b: The accuracy of the information provided to the court**

63. The Notes for Guidance section of the Application for Search Warrant form contains the following guidance:

“Information that might undermine any of the grounds of the application must be included in the application, or the court’s authority for the search may be ineffective. The court will not necessarily refuse to issue a warrant in every case in which there is information that undermines the grounds of the application

The applicant must explain why information is thought to be credible where it comes from a source that cannot be tested (for example, a report from an anonymous informant).

The applicant must inform the court if there is anything else that might influence the court’s decision to issue a warrant. This may include whether the premises have been searched before, and with what outcome, or whether there is any unusual feature of the investigation or of any potential prosecution.”

64. It is also contained within the declaration, which DS Sword signed, that:

“To the best of my knowledge and belief:

- i. this application discloses all the information that is material to what the court must decide, that might reasonably be considered capable of undermining any of the grounds of the application, and*
- ii. the content of this application is true”*

65. The s.8 PACE search warrant applications for properties associated with Lord Bramall, Lord Brittan and Mr Proctor were completed by DS Sword, authorised by DI Hepworth and reviewed by DCI Tudway. The completed applications were signed and dated on 27 February 2015.
66. DS Sword and DCI Tudway attended Westminster Magistrates Court on 2 March 2015 and presented the s.8 PACE search warrant application forms to Senior District Judge, Mr Riddle. In statements provided to the IOPC, both officers stated they attended the Court prepared to supply Mr Riddle with further documentation or verbal verification if asked, but none was sought.
67. Mr Riddle provided a statement to the IOPC which stated that a s.8 PACE search warrant application must be a standalone document and he would have noted any additional information provided in the relevant part of the form. This section of the search warrant was completed as “N/A”.
68. Mr Riddle signed and authorised the applications on 2 March 2015.

69. In his statement provided to this investigation, Mr Riddle commented that the content of the s.8 PACE search warrant applications was identical for each of the three individuals.

> Section 2 of the s.8 PACE search warrant application

70. Section 2 of the s.8 PACE search warrant application form provides an opportunity for officers to outline what they are investigating and is titled 'Investigation Information Section'.
71. On the application forms for Lord Bramall, Lord Brittan and Mr Proctor, it was stated that:

"The victim in this investigation contacted police in late 2014 detailing allegations of serious historical sexual assaults."
72. 'Nick' had initially contacted the MPS in October 2012 and had been referred to Wiltshire Police as the alleged offences occurred within this area and was interviewed by them on 6 December 2012.
73. The MPS contacted Exaro News in July 2014 following a media report that described the abuse that 'Nick' had suffered. The officers left their details and, through Exaro, invited 'Nick' to contact them. In October 2014 'Nick' contacted MPS officers and agreed to meet with them.
74. Section 2 of the application form also provides an opportunity for the officer to state why they believe the offence(s) under investigation has been committed. This report will detail each element individually.
75. In this section, it was stated by DS Sword that:

"the victim in this matter has been interviewed at length by experienced officers from the child abuse investigation team. His account has remained consistent and he is felt to be a credible witness who is telling the truth."
76. DI Hepworth, who had authorised the applications for s.8 PACE search warrants that had been placed before the District Judge on 2 March 2015, also stated on each application form that 'Nick' had been consistent.
77. During the investigation, the MPS maintained a rolling log of the key consistencies and inconsistencies in 'Nick's' evidence. It has remained unclear when this log formally began to be documented.
78. This document, dated 27 October 2015, was sent to the Crown Prosecution Service (CPS) by DI Hepworth following a meeting held on 3 November 2015. At that point there was a total of 12 inconsistencies. Previous versions are not available as this is a Microsoft Word document that has been amended over time. Evidence indicates this document was created on 18 August 2015. However, this is not fully auditable and the IOPC has been unable to identify the access controls of this document. Therefore, it is unclear which inconsistencies were known to the investigation team at any specific time.

79. The inconsistencies were listed, including:
- *“Describing the rank and epaulets of Lord Bramall incorrectly*
 - *There is a discrepancy in Nick’s account 1st rape*
 - *Collected from school: Discrepancy of his recollection of how he would be collected from school*
 - *Teacher: Discrepancy of his recollection of what the teachers would tell him*
 - *Videos: In the Wiltshire account, Nick is asked whether he ever saw anything that was filmed. To which he responded No, No. When asked by the MPS he responded with ‘I was aware of the video cameras but not really sure what it meant until having to watch yourself being hurt that’s difficult’*
 - *[Person B] [Person B was named by Nick as a potential witness] – Discrepancy between his original account, has now changed the account. [Person B] spoken to with a negative result*
 - *First disclosure: He states he told his mother in 1989/1990, when he was 21/22. Nick’s mother recalls that that it was the mid-1980s possibly 1986”*
80. These inconsistencies were not drawn to the attention of the District Judge when submitting the s.8 PACE search warrant application forms. However, eight of the 12 points are inconsistencies between the interview of ‘Nick’ by Wiltshire (6 December 2012) and the first interview of ‘Nick’ by the MPS (22 October 2014). Consequently, these had the potential to be identified by the investigation team before applying for the s.8 PACE search warrants in March 2015.
81. However, in response to the IOPC, DI Hepworth detailed that:
- “I signed the warrants as Authorising Officer and in this capacity, I would check the way in which the warrant was drafted and make sure it is correct. In this case the decision to apply for the warrant was not made by me but at a higher level. Based on my knowledge of the investigation at the time, the application seemed in proper order. I read the warrant’s information, ensuring it was correctly completed and in line with the SIO strategy. I had an extensive knowledge of the investigation up to this point, but now with the passage of time I cannot remember all the details that were known to me at that specific point, or when I learned things subsequently, or indeed, have learned things even more recently as a result of the Henriques Review.”*
82. It is therefore unclear when the MPS officers responsible for drafting and reviewing the s.8 PACE search warrants had sight of the material from the Wiltshire investigation.
83. The IOPC investigation has found no evidence to suggest that the members of the Gold Group were aware of these inconsistencies when submitting the

s.8 PACE search warrant application forms. As outlined in paragraphs 86, 87 and 88 below, the investigations team were conscious of the importance of the credibility of 'Nick's' account, which was discussed on numerous occasions at the Gold Group meetings.

84. HOLMES (Home Office Large Major Enquiry System) is an information technology system that is predominantly used by UK police forces to manage the investigation of major incidents.
85. According to the HOLMES account, at the point the s.8 PACE search warrant application forms were drafted, the MPS was in possession of 2,757 registered documents. However, this is not a complete figure and the IOPC investigation has been unable to establish whether all of these documents had been registered, read and had all relevant actions raised. The IOPC is aware that some documents could not be logged onto HOLMES by the investigation team at the time the application forms were being drafted.
86. In light of the above, and the wider context of the investigation as a whole, DAC Rodhouse wrote in his decision log that due to,
- *“The high degree of public interest*
 - *The allegations, and the named subjects were already well known to the media*
 - *Nick himself having direct access to the media*
 - *A perceived failure to investigate ‘Nick’s’ allegations being damaging to the MPS and the confidence of further victims”,*

the need for the recovery of any potential evidence, based on the information the MPS had within their possession at that time, was determined to justify the application for the search warrants at an early stage.

87. It was also stated in Section 2 of the application form that:
- “Investigations into allegations of sexual abuse often involve an account by the victim with no viable means of cooperation [sic] particularly in the case of historic allegations. Enquiries made relating to the victim find nothing to suggest any links to those that he accuses suggesting his allegations are malicious. The victim is not known to police and is in full time employment at a managerial level.”*
88. In the Gold Group meeting held on 18 November 2014, when DAC Rodhouse reiterated the need for the investigation team to be fully committed to the investigation, DCI Tudway is noted to have said:
- “The liaison officer for Nick has a good rapport with him. They have already had some robust conversations around credibility.”*
89. An exercise to review the MPS ABE interviews with 'Nick', detailing occasions where each suspect had been named was conducted by DCI Tudway and written up on 16 February 2015 (11 days prior to the

application being written). However, there is no evidence to suggest DCI Tudway had reviewed the Wiltshire material at this time to enable her to identify the inconsistencies highlighted later.

90. Additionally, in the Gold Group meeting held on 22 January 2015, DCI Tudway is noted during an update on 'Nick', as saying:
"There are no concerns regarding the veracity of his account".
91. 'Nick' had repeatedly told officers he was in contact with someone who had been abused at the same time as him, by the same people. This person was known to the investigation by the pseudonym of 'Fred'.
92. As outlined in paragraphs 57 and 58 above, the DPP guidance used by the investigating officers in this case, states that prosecutors should guard against looking for corroboration of the victim's account or using the lack of corroboration as a reason in itself not to proceed with a case.
93. It is documented in the Gold Group Minutes from 18 November 2014 that a strategy to speak to 'Nick's' friend was being formulated. This opportunity could have provided corroboration of 'Nick's' account.
94. [A clinical psychologist] with the Child Exploitation and Online Protection Command (CEOP) which is a part of the National Crime Agency (NCA) was approached by the MPS to provide advice on how to approach contacting 'Fred'.
95. In interview with the IOPC, [the clinical psychologist] outlined her approach and rationale regarding 'Fred'. She stated that she took the approach of treating 'Fred' as if he was a real person although she was aware of the possibility that he might not be.
96. She explained the approach that was taken was to send 'Fred' an email which they sent, via 'Nick' on 30 April 2015 (after the s.8 PACE search warrants were applied for and implemented). This email was sent, acknowledged his "*apparent ambivalence*" and provided him with sufficient detail to enable him to make an informed decision regarding engaging with the investigation.
97. This approach was based on [the clinical psychologist's] previous experience of working with people who fit 'Fred's' profile; i.e. people who have spoken to people about past abuse but not to the police. It was written in a way to avoid placing him under any pressure to engage with the investigation.
98. 'Fred' did not directly engage with the investigation as a result of this contact, although the investigation did receive a response from 'Fred', via 'Nick'. However, this was after the s.8 PACE search warrant application had been made.
99. This potential corroboration opportunity was not highlighted to the District Judge when applying for the search s.8 PACE warrants, although the

enquiries and attempts to engage with 'Fred' continued for the majority of the life of the investigation.

100. Section 2 of the application form also states that:

“Prior to police involvement these allegations were detailed to an independent counsellor by the victim who also supports his account as being credible. At the request of the police, a qualified consultant [the clinical psychologist] was asked to give an opinion if the counsellor was able to make an accurate judgement of the victim’s credibility. [The clinical psychologist’s] views were that she felt the counsellor was able to make an accurate judgement of the victim’s credibility.”

101. [The clinical psychologist’s] report dated 26 February 2015, states:

“All in all this leads me to the view that [Nick’s counsellor] is likely to be able to make an accurate judgement of Nick’s credibility, and communicate it accurately.”

102. Both DI Hepworth and DS Sword detail in their statements that the word “likely” was not deliberately missed out from the assessment referred to in paragraph 93 and they sought to ensure the “application was as comprehensive and fair as possible.”

103. [The clinical psychologist] was asked to write an additional report for the MPS following the execution of the s.8 PACE search warrants. The report was requested by the MPS in late March–early April 2015 and was submitted on 25 May 2015. During interview with the IOPC, [the clinical psychologist] outlined the scope of this report as follows.

104. She stated that it was her understanding that this assessment was a brief assessment regarding the credibility of the account 'Nick' had provided to the MPS, which was to be used to inform a part of the officers' general decision making at an early stage of the investigation.

105. In order to complete this brief assessment, [the clinical psychologist] was given the transcripts for the interviews with 'Nick' that had been conducted, up until that point, by the MPS; i.e. the ABE interviews held on 22 and 23 October 2014. [The clinical psychologist] stated that she did not recall being aware of the previous Wiltshire investigation material.

106. The conclusion of [the clinical psychologist’s] report outlined that:

“The results taken together indicate that Nick’s account of the abuse he alleges is credible. I did not find anything that raised doubts about credibility. In my view it is right that such an account triggers a methodical and thorough investigation.”

107. [The clinical psychologist’s] report does highlight two limitations of her approach, namely:

1. Due to the length of the interviews, she had not been able to read all of the transcripts and had not had sight of the video interviews which, she

explained, would have enabled her to have sight of any non-verbal cues in regard to ‘honesty or deception’

2. She had not applied a standardised assessment of credibility. She outlined that, while such an assessment exists for children, currently there is no equivalent for adults alleging historical sexual abuse.
108. On 13 December 2015, an additional review of ‘Nick’s’ credibility and the qualifications of ‘Nick’s’ counsellor was received by the MPS from Professor [REDACTED]. This request was made by the MPS following an unsolicited approach from a medical professional following media coverage of the investigation. This individual disputed [the clinical psychologist’s] conclusions.
109. Professor [REDACTED] stated in her report that:
- “In summary, ‘Nick’s’ accounts contain numerous inconsistencies, and appear to be based largely on the contents of his dreams and flashbacks. He has been reliant on a friend of unknown provenance to piece them together, and his counsellor has used practices that raise the risk of producing false memories. Unquestioning acceptance of his allegations by police and journalists could have further entrenched his beliefs in the reality of his inner mental experiences. In the absence of corroboration, the scientific evidence in the area of memory processes and influences leads me to conclude that there must be serious doubt about the reliability of these memories.”*
110. However, the MPS was not in possession of this assessment at the time of applying for the s.8 PACE search warrants, therefore this information could not form a part of their consideration at the time.
111. Section 2 of the application forms contain information regarding ‘Victim 1’, ‘Victim 2’ and ‘Victim 3’. These refer to allegations of murder made by ‘Nick’.
112. The allegations made in relation to ‘Victim 1’ involved the alleged murder of a boy named [Person A] in 1979. ‘Nick’ stated his friend was run over and killed following multiple warnings given to ‘Nick’ by Michael Hanley (deceased – former head of MI5) that he should not be friends with anyone.
113. It is highlighted on s.8 PACE search warrant application forms that no record of [Person A] or the incident that had been described by ‘Nick’, had been identified by the investigation at the time of submitting the application to the District Judge.
114. It is unclear why this allegation was included in Section 2 of the s.8 PACE search warrant application form, as this allegation does not include a direct reference to Lord Bramall, Lord Brittan or Mr Proctor.
115. The allegations made in relation to ‘Victim 2’ involved the alleged murder of a young boy by Mr Proctor in 1980. It is unclear why this allegation was

included in Section 2 of the s.8 PACE search warrant application forms for Lord Bramall and Lord Brittan as this allegation relates only to Mr Proctor.

116. The allegations made in relation to ‘Victim 3’ involved the alleged murder of another young boy by Mr Proctor. The date of this alleged murder is not known.

117. It is unclear why this allegation was included in Section 2 of the s.8 PACE warrant application forms for Lord Bramall and Lord Brittan as the murder allegation relates only to Mr Proctor. Part of the narrative of this allegation does refer to Lord Brittan being present. However, he was not accused of partaking in the murder itself and no evidence was presented to the investigation to substantiate his involvement. Lord Bramall was not implicated in this allegation at all.

118. Although it is unclear why allegations unrelated to the individuals named on the s.8 PACE search warrant applications were included on the forms, DCI Tudway and DI Hepworth were asked why specific items relating to each premises’ owner were not included on s.8 PACE search warrant application. Neither response addressed the similarity in the content.

119. In their responses to the IOPC, the officers indicated the s.8 PACE search warrant application forms gave the District Judge an appraisal of their investigation to date, and were identical for each of the three individuals.

120. In his statement to the IOPC, Mr Riddle does note:

“The written applications were the same in each case and more detailed than many I have seen over the years. The list of items sought was appropriate and proportionate to the investigation.”

> Section 8 of s.8 PACE search warrant application

121. In the applications submitted by DS Sword, Section 8 of the s.8 PACE search warrant application (Duty of disclosure), to which the guidance relates, contained “N/A”.

122. This could have indicated to the District Judge that there was nothing that might reasonably be considered capable of undermining any of the grounds for the application which might affect the court’s decision.

123. DS Sword detailed in his statement provided to the IOPC on 21 February 2018 that he could have added details of anything that might reasonably be considered capable of undermining any of the grounds of the application into section eight but, it was his belief that this information was already contained within section 2, consequently *“such repetition seemed unnecessary.”*

124. DI Hepworth wrote in her statement provided to the IOPC on 20 February 2018 that she signed the application forms as the Authorising Officer. She further noted, *“I would check the way in which the warrant was drafted and make sure it was correct... Based on my knowledge of the investigation at the time, the warrant seemed in proper order. I read the warrant’s information, ensuring it was correctly completed and in line with the SIO strategy”*.
125. It may be considered that documentation reviewed by the IOPC suggests there may have been elements within the investigation at that time that could have been included in this section of the application form. This would have provided the District Judge with a more detailed outline of the status of the investigation.
126. For example, the actions to interview ‘Nick’s’ mother and [stepsiblings] were outstanding on the actions log at the time of application. In the report sent to Operation Yewtree by Wiltshire Police (referred to in paragraph 18, dated 27 June 2013), it was written that:
- *“[‘Nick’s’ mother] was entirely unaware / unsuspecting of any sexual abuse but did recall physical abuse by the suspect [‘Nick’s’ stepfather] against her during their relationship.”*
 - *“There are some aspects of what [‘Nick’] reports which are extremely sinister and shadowy in nature, in that the suspects seemed able to follow [‘Nick’] around from house to house, school to school and home to home from the ages of 8/9 to his mid to late teens, pick him up from school regularly at will and remove him from classes with no questions asked and without ever raising the suspicions or coming to the attention of the [‘Nick’s’] mother.”*
 - *“The IP’s mother was able to provide a school report which did not give any indication of abuse or significant absence during the school term.”*
 - *“[‘Nick’] had step siblings but none of them had anything at all to do with [‘Nick’] shortly after he and his mother left Wilton after [‘Nick’s’ stepfather] physically assaulted [‘Nick’s’ mother]. Therefore they were in the end not contacted as it was considered that they would only be able to offer information relating to [‘Nick’s’ stepfather] during the time they lived with [‘Nick’], and this was largely before the gang abuse against [‘Nick’] took hold. Given the fact that [‘Nick’s’ stepfather] is deceased this avenue was not likely to take the investigation further forward.”*
 - *“[‘Nick’s’ mother] reports that she was not aware or suspecting of any sexual abuse by [‘Nick’s’ stepfather] on the children and when [‘Nick’] was growing up she was not aware or suspecting of anyone else sexually abusing him. She did recall [‘Nick’] disclosing to her that he had been sexually abused by [‘Nick’s’ stepfather] some years later, when he was in adulthood. In discussion she confirmed that she had no idea about any gang related sexual abuse and stated she was not aware of any significant school absences or of [‘Nick’] being taken out of class without her knowledge or permission.”*

127. It is unclear if and when this report was provided to Operation Midland by Operation Yewtree as there was no auditable process for this.

128. Additionally, Officer 8 (Wiltshire Police) emailed the Operation Yewtree investigation on 7 May 2013 regarding an unrelated outstanding line of enquiry for Operation Yewtree. Officer 8 outlines 'Nick's' allegations in summary and describes the difficulties he has experienced in investigating 'Nick's' allegations.

129. In this email to Operation Yewtree, Officer 8 states:

“However, that being said if such things were possible then it would probably have needed the know how and influence of senior military and diplomatic/government officials. However, I can't help but think this all sounds a bit 'Spooks' but ['Nick'] has given me nothing that gives me an evidential reason to disprove his account.”

130. This statement could be interpreted in several ways, including:

- An officer expressing doubts of 'Nick's' credibility and should therefore, arguably, have been included in Section 8 of the applications for the s.8 PACE search warrants, or
- An officer indicating his belief that individuals of the position and rank of the accused may have been able to conduct themselves with an appropriate level of secrecy.

131. No clarification of this comment is documented to have been sought by the MPS. However, in the report provided to the MPS by Wiltshire Police, it is written that:

“The degree of confidence and capabilities of this gang are staggering but I must stress that this is not to say that these matters are beyond the realms of possibility – especially in a different era.”

132. Officer 8 also describes 'Nick' in the report as follows:

“He is also intelligent and articulate and I believe he is of good character.”

133. DI Hepworth detailed in her statement:

“Every aspect of Nick's account was examined, tested and supervised by ACPO [Association of Chief Police Officers, now the NPCC (National Police Chief's Council)] officers during the investigation and although I was aware of inconsistencies apparently between accounts in the Wiltshire and MPS ABE interviews, the investigation proceeded on the basis of staged disclosure and it was clear that this type of historical disclosure was going to be a lengthy process.” She further stated that, while she had extensive knowledge of the investigation at the time, she is now unable to say when she became aware of specific pieces of information, due to the passage of time.

134. When interviewed as part of Operation Kentia, Mr Riddle stated that:

“I discussed with the officer [DS Sword] whether the entry requirements in section 8 (3) were met. Had he provided any new material of significance I would have recorded this on the application form. DS Sword satisfied me that the question had been considered by police, and that the warrants were necessary.

I was satisfied that the police understood the need for the warrants to be executed sensitively, and that the investigation and the need for warrants was overseen by a Deputy Assistant Commissioner [DAC Rodhouse].”

135. As outlined at paragraph 60, DAC Rodhouse stated he provided his support for them to progress with the applications for s.8 PACE search warrants. Both DS Sword and DI Hepworth indicated in their statements that they were of the understanding that the decisions being taken regarding Op Midland were *“taken at a higher level.”*

136. This suggests the decision relating to proportionality, necessity and reasonableness to apply for the s.8 PACE search warrants was taken by DAC Rodhouse, as detailed in his decision log.

137. However, during his interview with the IOPC, DAC Rodhouse stated that, while he approved the operational activity of applying for the s.8 PACE search warrants, he did not see the applications themselves, either in draft or completed form.

138. It is to be noted that responsibility for the accuracy of the information provided on the s.8 PACE search warrant application form lies with DS Sword and DI Hepworth.

139. As outlined at paragraph 25, Lord Brittan died on 21 January 2015. This was before the decision to apply for s.8 PACE search warrants was made. However, Lord Brittan was named on the s. 8 PACE search warrant application and warrant itself.

140. Mr Riddle stated to the IOPC that:

“It is clear from the applications that Lord Brittan was no longer alive. The warrants were not for individuals but to search properties for evidence.”

141. This is corroborated by Lord Brittan’s address being identified on the application form, not Lord Brittan by name.

142. DS Sword detailed in his statement his rationale for naming Lord Brittan:

“It is noted in the warrant that he [Lord Brittan] was deceased, and the Senior District Judge made it clear that he appreciated that he was deceased. I was not able to say at that stage whether the properties being searched were still part of his estate, and technically would still be in his name.”

143. On the basis of the submitted application forms, the s.8 PACE search warrants were granted by Mr Riddle.

> Criminal offences

144. On receipt of the report, the decision maker must decide if there is an indication that a criminal offence may have been committed by any person to whose conduct the investigation related.

145. If they decide that there is such an indication, they must decide whether it is appropriate to refer the matter to the CPS.

146. I have not identified any offences for the decision maker to consider.

Report finalised on 9 May 2019

> Appendix 3: Operation Kentia – Decision-making document

1. I set out my opinion below as to whether any subject to the investigation has a case to answer in respect of misconduct or gross misconduct, or no case to answer. I have also recorded my opinion in respect of the form any proceedings should take, and unsatisfactory performance for each individual who has been identified as a subject in the investigation.
2. I have formulated these opinions for the following individuals:
 - DI Alison Hepworth (retired)
 - DS Eric Sword (retired)

> DI Alison Hepworth (retired)

> Allegations

3. It is alleged that DI Hepworth may have breached the standard of professional behaviour Duty and Responsibility as follows:
4. It is alleged that deficiencies in the evidence provided to support the application for search warrants for the properties of Lord Bramall, Lord Brittan and Mr Proctor meant they were inaccurate or misleading to the District Judge. DI Hepworth signed and authorised the warrant applications before they were submitted to the court.

Decision maker's opinion: no case to answer

> Decision maker's rationale

5. A final report has been submitted to me following an independent investigation in respect of a conduct matter, referred by the Metropolitan Police Service (MPS). The referral related to the content and accuracy of the applications made for search warrants for the properties of Lord Bramall, Lord Brittan and Mr Proctor in the course of Operation Midland in relation to allegations made by 'Nick'. The relevant warrants were applied for and granted by Senior District Judge Riddle (now retired) on 2 March 2015.

6. I am delegated by the Director General as the decision maker for this investigation and I am required to decide whether there is sufficient evidence upon which a reasonable tribunal, properly directed, could find on the balance of probabilities that the actions of DI Hepworth amount to misconduct or gross misconduct. This decision is further to my decision made on 9 May 2019, in relation to whether a referral should be made to the DPP in relation to any potential criminal offences being committed by the subjects of this investigation.
7. I have reviewed the final report and a considerable number of the underlying documents referred to therein. I have had particular regard for the Notes for Guidance section of the Application for Search Warrant form, the Application for Search Warrant forms, documents containing relevant police policy decisions and a document produced by officers containing inconsistencies identified within 'Nick's' accounts. Evidence indicates that this document was a rolling log maintained by MPS officers. This document, dated 27 October 2015, was sent to the CPS by DI Hepworth following a meeting held on 3 November 2015. Both the meeting and CPS submission, were some months after the warrants had been authorised and searches carried out. The investigation has not been able to establish exactly when this document was created, who had access to it or any further audit trail relating to it.
8. My assessment of the evidence is that the officers were operating at a time where there was intense public scrutiny around the police handling of childhood sexual abuse (CSA) in connection with people of public prominence. The rationale underpinning the decision to apply for the search warrants is clearly recorded in the evidence considered as part of this investigation. This decision was supported by ACPO level officers. DI Hepworth had responsibility for reviewing the applications submitted to her by DS Sword and acted as the authorising officer with responsibility for signing the application. DI Hepworth describes herself as the authorising officer with responsibility for checking the way in which the warrant was drafted and ensuring it was correct. She indicates that she had an extensive knowledge of the case at the time, however, due to the passage of time, cannot now remember what specific details were known to her at the time of signing.
9. There is evidence that the account given by Nick over the course of his police interviews and to others had not been entirely consistent and/or was potentially undermined by other evidence (such as that of his mother in her interview with Wiltshire police). There is also evidence that at least some of this evidence was in the possession of the MPS at the time the applications were drafted and that this was not wholly reflected in the applications (the warrant applications specifically stated "*the victim in this matter has been interviewed at length by experienced officers from the child abuse investigation team. His account has remained consistent and he is felt to be a credible witness who is telling the truth.*")

10. However, the investigation has been unable to establish with any clarity or certainty which specific documents each subject officer had had sight of and knowledge of at what time, some of which raise questions regarding the credibility of Nick's account. Specifically, the investigation has not been able to establish, if at the time of signing the warrant application, DI Hepworth was aware of, or had specifically identified the inconsistencies in Nick's accounts.
11. It is notable that, at the time the warrants were signed off by DI Hepworth, there had been a vast amount of material generated and it could be considered unrealistic to expect DI Hepworth to have known the full detail of this material. I also note the views of the officers that, while it is possible to highlight inconsistencies with the benefit of hindsight, at the time the decision was taken to apply for the warrants, it was not unreasonable to view 'Nick's' account as a developing one. It is also notable that the opinion of the interviewing officers and of 'Nick's' counsellor was that he was credible.
12. The policy logs indicate that the MPS was conscious of the issue of credibility, and the evidence indicates that specific efforts were made (as a pre-condition of authorising the application for the warrants), to independently confirm that 'Nick's' counsellor was in a position to make this judgement. [a Clinical Psychologist with the Child Exploitation and Online Protection Command (CEOP)], was asked to provide an independent view. [the clinical psychologist's] view at the time of the warrant applications was that she felt that 'Nick's' counsellor was likely to be able to make an accurate judgement of his credibility. It is noted that [the clinical psychologist's] view was referred to in the warrant application but without the arguably qualifying word "*likely*". The accounts given by the officers were that this omission was not deliberate, and there is no evidence available to me to suggest otherwise.
13. The available evidence indicates that DI Hepworth made the decision to sign the applications based on the information that, so far as the investigation has been able to ascertain, was available to her at the time. The investigation has revealed no evidence to indicate that this decision was made in bad faith. It is notable that the warrant application did refer to the absence of evidence relating to Nick's allegations of murder, which points away from any deliberate attempt to skew the evidential picture in favour of obtaining the warrant. The investigation has found no evidence that DI Hepworth deliberately withheld evidence from the applications with the intention of misleading the District Judge. Nor is there sufficient evidence that she breached her duties and responsibilities in failing to ensure that the warrant application was accurate.
14. I therefore consider that, had DI Hepworth still been serving, there would be insufficient evidence on which a reasonable tribunal, properly directed, could make a finding of misconduct or gross misconduct in respect of DI Hepworth. Accordingly, I find no case to answer. The views of the Appropriate Authority are not sought in this respect.

> DS Eric Sword (retired)

> Allegations

15. It is alleged that DS Sword may have breached the standard of professional behaviour Duty and Responsibility as follows:
16. It is alleged that deficiencies in the evidence provided to support the application for search warrants for the properties of Lord Bramall, Lord Brittan and Mr Proctor meant they were inaccurate or misleading to the District Judge. DS Sword drafted the warrant applications and attended the court to answer any questions under oath.

Decision maker's opinion: no case to answer

> Decision maker's rationale

17. A final report has been submitted to me following an independent investigation in respect of a conduct matter, referred by the Metropolitan Police Service (MPS). The referral related to the content and accuracy of the applications made for search warrants for the properties of Lord Bramall, Lord Brittan and Mr Proctor in the course of Operation Midland in relation to allegations made by Nick. The relevant warrants were applied for and granted by Senior District Judge Riddle (now retired) on 2 March 2015.
18. I am delegated by the Director General as the decision maker for this investigation and I am required to decide whether there is sufficient evidence upon which a reasonable tribunal, properly directed, could find on the balance of probabilities that the actions of DS Sword amount to misconduct or gross misconduct. This decision is further to my decision made on 9 May 2019, in relation to whether a referral should be made to the DPP in relation to any potential criminal offences being committed by the subjects of this investigation.
19. I have reviewed the final report and a considerable number of the underlying documents referred to therein. I have had particular regard for the Notes for Guidance section of the Application for Search Warrant form, the Application for Search Warrant forms, documents containing relevant police policy decisions and a document produced by officers containing inconsistencies identified within 'Nick's' accounts. Evidence indicates that this document was a rolling log maintained by MPS officers. This document, dated 27 October 2015, was sent to the CPS by DI Hepworth following a meeting held on 3 November 2015. Both the meeting and CPS submission were some months after the warrants had been authorised and searches carried out. The investigation has not been able to establish exactly when

this document was created, who had access to it or any further audit trail relating to it.

20. My assessment of the evidence is that the officers were operating at a time where there was intense public scrutiny around the police handling of CSA in connection with people of public prominence. The rationale underpinning the decision to apply for the search warrants is clearly recorded in the evidence considered as part of this investigation. This decision was supported by ACPO level officers. DS Sword had responsibility for preparing the applications and reviewing relevant information before submission to DI Hepworth. DS Sword also attended court in order to answer questions in relation to the applications, but was not asked to provide any further information to the District Judge. DS Sword describes drafting the warrants and indicates that he had been provided with a summary of the content of 'Nick's' interviews with Wiltshire Police at the time of drafting. It is accepted that this could have highlighted inconsistencies in 'Nick's' account to DS Sword. However, he specifically stated that he did not read the summaries³² and understood there to be further analytical actions to be completed in relation to them. DS Sword also stated that he "cannot begin to recall with any clarity specifically what information was available when the drafting of the warrant application took place.
21. There is evidence that the account given by 'Nick' over the course of his police interviews and to others had not been entirely consistent and/or was potentially undermined by other evidence (such as that of his mother in her interview with Wiltshire Police). There is also evidence that at least some of this evidence was in the possession of the MPS at the time the applications were drafted, and that this was not wholly reflected in the applications (the warrant applications specifically stated, "*the victim in this matter has been interviewed at length by experienced officers from the child abuse investigation team. His account has remained consistent and he is felt to be a credible witness who is telling the truth.*")
22. However, the investigation has been unable to establish with any clarity or certainty which specific documents each subject officer had had sight of and knowledge of at what time, some of which raise questions regarding the credibility of 'Nick's' account. Specifically, the investigation has not been able to establish if, at the time of drafting the warrant application, DS Sword was aware of, or had specifically identified, the inconsistencies in 'Nick's' accounts.
23. It is notable that, at the time the warrants were drafted by DS Sword, there had been a vast amount of material generated and it could be considered unrealistic to expect DS Sword to have known the full detail of this material. I also note the views of the officers that, while it is possible to highlight inconsistencies with the benefit of hindsight, at the time the decision was taken to apply for the warrants, it was not unreasonable to view 'Nick's'

³² The word 'summaries' should read 'transcripts'.

account as a developing one. It is also notable that the opinion of the interviewing officers and of ‘Nick’s’ counsellor was that he was credible.

24. The policy logs indicate that the MPS was conscious of the issue of credibility and the evidence indicates that specific efforts were made (as a pre-condition of authorising the application for the warrants), to independently confirm that ‘Nick’s’ counsellor was in a position to make this judgement. [a clinical psychologist] with the Child Exploitation and Online Protection Command (CEOP), was asked to provide an independent view. [The clinical psychologist’s] view at the time of the warrant applications was that she felt that ‘Nick’s’ counsellor was likely to be able to make an accurate judgement of his credibility. It is noted that [the clinical psychologist’s] view was referred to in the warrant application but without the arguably qualifying word “*likely*.” The accounts given by the officers is that this omission was not deliberate, and there is no evidence available to me to suggest otherwise.
25. The available evidence indicates that DS Sword drafted the applications based on the information that, so far as the investigation has been able to ascertain, was available to him at the time. The investigation has revealed no evidence to indicate that this decision was made in bad faith. It is notable that the warrant application did refer to the absence of evidence relating to ‘Nick’s’ allegations of murder, which points away from any deliberate attempt to skew the evidential picture in favour of obtaining the warrant. The investigation has found no evidence that DS Sword deliberately withheld evidence from the applications with the intention of misleading the District Judge. Nor is there sufficient evidence that he breached his duties and responsibilities in failing to ensure that the warrant application was drafted accurately.
26. I therefore consider that, had DS Sword still been serving, there would be insufficient evidence on which a reasonable tribunal, properly directed, could make a finding of misconduct or gross misconduct in respect of DS Sword. Accordingly, I find no case to answer. The views of the Appropriate Authority are not sought in this respect.

Sarah-Louise Davis

9 May 2019

> Appendix 4: Assessment of conduct – Allegation 1

1. This assessment relates to allegation 1, recorded on the Metropolitan Police Service (MPS) referral document as:

“A failure to properly investigate allegations made by complainant ‘Nick’ which led to an avoidable extended investigation which caused prolonged and undue stress to those suspected – DAC Rodhouse, D/Supt Kenny McDonald, DCI (SIO) Diane Tudway.”

2. In essence this relates to not conducting enquiries quickly enough to establish ‘Nick’s’ credibility.
3. Sir Henriques [Sir Richard] sets out the initial inconsistencies and areas that were implausible as:
 - Inconsistency between the Metropolitan Police Service (MPS) and Wiltshire Police interviews.
 - Officer 8 from Wiltshire Police’s description of ‘Nick’s’ account as *“it all sounds a bit ‘Spooks’”* and *“it’s all a bit odd”*.
 - ‘Nick’s’ allegation that he was regularly taken out of school without his mother’s knowledge and school’s concurrence (agreement?) is highly implausible.
 - ‘Nick’s’ allegations that he was regularly injured, [REDACTED] [REDACTED] [describes alleged abuse] (blog on 19/06/14) was inconsistent with his mother’s evidence to Wiltshire Police.
 - ‘Nick’s’ assertion that he could be gone from anywhere from a few hours to a few days (blog 18/08/14) is highly implausible and inconsistent with his mother’s evidence.
 - ‘Nick’s’ assertion that he voluntarily continued to make himself available for torture, violence and sexual abuse over an eight-year period is highly implausible.
 - The ability of his abusers to trace ‘Nick’ from Wilton, to Bicester, then Kingston is most implausible (as Wiltshire Police concluded).

- The first alleged anal rape as described by ‘Nick’ to Wiltshire Police was by the unnamed Lieutenant Colonel, but to the MPS it was his stepfather.
 - The likelihood of a former Prime Minister, a future Home Secretary, former heads of MI5 and MI6, a serving Field Marshal, a future Field Marshal, a retired General, a Labour MP, and Conservative MP and a DJ conspiring together to commit rape and child murder is highly implausible.
 - The account of the first child murder asserting that ‘Nick’ was abducted and stabbed immediately after the running down, with the matter never being mentioned again by anyone is highly implausible.
4. Sir Henriques [Sir Richard] suggests initial enquiries should have been:
- Statement from ‘Nick’s’ mother to verify the various things he alleged, including tracing [Person B] and [Person A]. He noted that this statement was not obtained until 20 May 2015 and [Person B] was not traced and interviewed until October 2015.
 - The qualifications and competence of ‘Nick’s’ counsellor should have been immediately ascertained.
 - Enquiries should have been made to establish whether a road traffic accident had taken place outside, or close to, [the primary school] in 1978 or 1979.
 - Enquiries should have been made at [the primary school] to establish whether or not a boy with the first name [of Person A] had been killed or injured in a road traffic accident close to the school in 1978 or 1979.
 - An enquiry should have been made to the Criminal Injuries Compensation Authority (CICA) to ascertain whether ‘Nick’ had made a claim for compensation – such enquiries are advised by Operation Hydrant, particularly in high-profile cases.
 - Attempts should have been made to trace [Person B], [Person A], ‘Fred’ and [Person D].
 - ‘Nick’s’ medical records should have been obtained.
 - ‘Nick’ should have been asked to consent to a medical examination.
 - ‘Nick’ should have been asked for his mobile phone and computer.
5. The officers’ responses to the above points were:
- They already had a statement from ‘Nick’s’ mother.

- They had details of ‘Nick’s’ counsellor’s qualifications prior to applying for search warrants.
 - These enquiries were concluded by May 2015.
 - Their enquiries were concluded by May 2015
 - They learned of the CICA claim in Feb 2015.
 - Actions were raised to trace [Person B], [Person A], ‘Fred’ and [Person D] between 2 and 5 December 2014.
 - Medical records were obtained in May 2014.
 - A decision was made not to immediately ask ‘Nick’ to consent to a medical examination: “...*the focus at the early stage was not predominately on ‘Nick’s’ credibility but on securing evidence of the offending.*”
 - The decision not to ask to examine ‘Nick’s’ computer and mobile phone was a judgement call reached after anxious consideration.
6. There is much more detail in the report about opportunities for further action to be taken and lines of enquiry to be pursued that Sir Henriques [Sir Richard] suggests. There is also a lot of evidence from the officers either from case management meetings, policy file entries or interviews with Sir Henriques [Sir Richard] about the decisions and priorities that were made.
7. This allegation either falls under:
- Duties and Responsibilities – police officers are diligent in the exercise of their duties and responsibilities.
 - Police officers behave in a manner which does not discredit the police service or undermine public confidence in it.

Duties and responsibilities

8. It is clear that some lines of enquiry could have been prioritised or completed sooner. However, it is also clear that a vast amount of work was conducted and many enquiries that, in fact, Sir Henriques [Sir Richard] states were excessive/disproportionate.
9. According to DAC Rodhouse, on Holmes there were: 1464 nominals, 369 statements, 443 messages, 1838 documents and 1698 actions. I understand there were also many documents not registered before the operation was closed down.
10. Rationales for the majority of the enquiries and decisions have already been provided by the officers during the review. In my view many of these were a

judgement call and the MPS/NPCC policy regarding victims, as well as the intense public scrutiny at the time, has to be taken into consideration.

Discreditable conduct

11. I think it highly unlikely that the officers would have gone to such lengths to investigate these allegations and conduct so many enquiries had it not been with the intention to maintain public confidence due to the damaging impact from Savile and other high-profile external factors at the time.
12. DAC Rodhouse told Sir Henriques [Sir Richard] that officers were under immense pressure to do the right thing, the motivation was to find the truth and decisions were brave and taken in good faith. I think it is highly relevant that Sir Henriques [Sir Richard] states, *“at the conclusion of my interview with the officers on 16/17 August 2016, I formed the view that, notwithstanding the many mistakes I have enumerated above, the officers had conducted this investigation in a conscientious manner and with propriety and honesty.”*

February 2017

IPCC

> Appendix 5: Assessment of conduct – Allegation 2

1. This assessment relates to allegation 2, recorded on the Metropolitan Police Service (MPS) referral document as:

“Misleading statements to the media and providing information to complainant ‘Nick’, which led to breaching anonymity.”

> The matter referred by the MPS

2. The MM1 form dated 6 November 2016 set out that the MPS does not consider that allegation 2 amounts to misconduct. The following was recorded on the MM1:

“Sir Richard sets out perceived failings in the paragraphs below (pages 339–348) relating to media releases and public messaging.

(x) MPS statements regarding confirming belief in ‘Nick’

(xxi) MPS media lines confirming locality of police activity

(xxxiv) MPS statement about age of a suspect

(xiii) MPS statement about ‘Nick’s’ statement

3. *Sir Richard makes it clear that the D/Supt and DAC’s approach to media statements about the investigation stating that they believed ‘Nick’ should not have taken place. This stemmed from a policy decision by the DAC to do so, even though the words gave a ‘misleading impression of the evidence’ (p173). Sir Richard does not doubt that the officers believed Nick at the time, but Sir Richard states that the media statements were ‘inappropriate, prejudicial and misleading to the public’ (p173).*

Assessment of misconduct

4. *To assess whether this is likely to be misconduct a variety of factors should be considered. Sir Richard is of the opinion that the officers did genuinely believe ‘Nick’ and no doubt believed at the time they were taking the right approach in public messaging. Sir Richard does not believe they did take the right approach though and makes the point that the DAC made the decision without having read any of the details or having met Nick. The fact that the DAC appears not to have done so may be a failure in duties, or he may have relied on briefing from other officers which is the reality of a senior position such as his. For this to be misconduct and be a failure in*

Duties and Responsibilities there would have to be some form of act or omission that was willing or neglectful.

5. *In assessing this it is clear that the DAC and D/Supt did make policy decisions that they believed to be right, and in good faith, in the circumstances. They may well have consulted MPS media colleagues too, and in effect were communicating what they believed to be right. There are no grounds to believe that the officers were neglectful or malicious in their approach with the media. It is clear that at the time they thought they were taking the right approach in the interests of the investigation, the public and to appeal to future complainants. The fact that it was the wrong decision according to Sir Richard does not necessarily make it misconduct.*
6. *This also relates to the failures identified in informing 'Nick' of arrests and searches. Though this was with good intentions and would possibly work well in other investigations, it had adverse outcomes in this investigation as it led to breaches of anonymity as more suspect details were published. However, there are no grounds to believe this was anything other than with good intentions to support the complaint 'Nick' [sic], even if in hindsight this was not the best approach.*
7. *There are also examples of the MPS media staff releasing statements which inevitably contributed to the identification of suspects through some form of elimination by the media or corroboration. Sir Richard makes reference to this in p237 amongst other pages. There are no grounds to believe this was anything other than a considered media strategy which contributed to a range of other factors. The fact that it contributed to adverse media in relation to the suspects is clearly regrettable but there are no grounds to show this was neglectful or malicious on the MPS's behalf. Sir Richard believes this could have been handled differently. I therefore do not believe there are any grounds here to support an assessment of misconduct but I would recommend that review be undertaken of Sir Richard's report in terms of organisational learning of handling the media in this case.*

Summary – no assessment of misconduct. Organisational learning

8. *In summary, my assessment is that the officers were doing what they honestly thought to be right in the circumstances and in support of their strategy. They had considered this and decided to take this approach. DAC Roadhouse [sic] may not have read the relevant information or met 'Nick', but even if he had, it would appear that the strategy of 'belief' was already in place and it is probable that he was understandably relying on briefings. There are some parallels here with the failure to investigate, but I believe the context is different. Whereas this led to adverse outcomes, I do not believe that these were caused by neglect, a failure in being diligent or failing to take foreseeable action. I do not assess that this conduct amounts to misconduct though I do advocate that this be considered for organisational learning.*

> Definition of conduct matter

9. A 'conduct matter' is defined in section 12(2) of the *Police Reform Act 2002* (PRA) as follows:

"...any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from the circumstances or otherwise) that a person serving with the police may have a) committed a criminal offence or b) behaved in a manner which would justify the bringing of disciplinary proceedings."

10. A conduct matter becomes a recordable conduct matter, pursuant to paragraph 11 of Schedule 3 to the PRA, if (assuming the conduct matter to have taken place):

"It appears to have resulted in the death or serious injury of any person, or a member of the public has been adversely affected by it, or it meets criteria set out in Regulation 7 of the Police (Complaints and Misconduct) Regulations 2012 (the Complaints Regulations)."

11. Regulation 7(1) lists the criteria as including:

"a serious assault, as defined in guidance issued by the Commission (paragraphs 8.7 to 8.10 of the statutory guidance);

a serious sexual offence, as defined in guidance issued by the Commission (paragraphs 8.11 and 8.12 of the statutory guidance);

serious corruption, as defined in guidance issued by the Commission (paragraphs 8.13-8.17 of the statutory guidance);

a criminal offence or behaviour which is liable to lead to misconduct proceedings and which in either case was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status identified in guidance issued by the Commission (paragraph 8.18 of the statutory guidance);

a relevant offence³³;

conduct whose gravity or other exceptional circumstances make it appropriate to record the matter in which the conduct is involved; or

conduct which is alleged to have taken place in the same incident as one in which conduct within sub-paragraphs (a) to (e) is alleged."

³³ Relevant offences are: any offence for which the sentence is fixed by law or any offence for which a person of 18 years and over (not previously convicted) may be sentenced to imprisonment for seven years or more (excluding any restrictions imposed by Section 33 of the Magistrates Court Act 1980).

> Findings of Sir Richard Henriques

Media briefing

12. Sir Richard set out in his report that DSU McDonald described ‘Nick’s’ evidence as credible and true in a meeting with the media. His exact words were, *“They and I [detective officers] believe that [sic] what ‘Nick’ is saying to be credible and true, hence we are investigating the allegations.”*

13. Sir Richard wrote:

“These words should never have been spoken, nor indeed should such words be spoken in a case where a complainant is credible and true. This investigation was a long way from completion. ‘Nick’s’ injuries, or lack of them, had not been contrasted with his interviews or his mother’s statement. [Person B], [Person A], ‘Nick’ and [Person D] were unresolved issues and the implausibility of the suspects behaving as alleged had not been evaluated, nor had the implausibility of drivers being able to remove a young child from school, time and again, without parental authority.

“The Commissioner himself is fully aware of the context of this remark as he chose to correct it in a subsequent radio interview explaining that the words were spoken ‘in making a quick recourse’ and ‘very quickly in the interview’. The DSU went on to say:

“Within the briefing I have just given, we know the abuse has taken place in London, the Home Counties and within certain military establishments. But the focus of the appeal today is Dolphin Square. I appeal to young men to come forward. ‘Nick’ has shown great courage by coming forward. We need others to come forward. You will be believed. You will be supported.’

“I have little doubt that the origin of the error can be traced back to the decision of the DAC earlier that day, namely Decision number 6: ‘if asked we will confirm we do believe ‘Nick’.”

“The mischief of this statement has been fully publicised. It is, of course, highly prejudicial to any present or future suspect. In the present case, the mischief was amplified by the fact that it implied that police officers were in possession of information which either confirmed, validated or corroborated ‘Nick’s’ evidence. No such independent evidence existed and ‘Nick’s’ evidence itself, as I have already opined, should have given rise to considerable doubt. The words spoken give a most misleading impression of the evidence collated. I have little doubt, however, that the officers did genuinely believe ‘Nick’. I can only assume that they were impressed by his performance in his ABE interviews and his ability to support narrative with detail.”

Information released in relation to the searches

14. Sir Richard set out in his report that concurrent searches took place at the homes of Lord Bramall and Harvey Proctor and at the two homes of Lord Brittan on 4 March 2015. Many officers were involved in those searches in [multiple locations related to the investigation] and an assumption can be made that the media must have received at least some information. Exaro News informed the press bureau that they were aware that the MPS went to [a location related to the investigation] 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 [a location related to the investigation] in connection with their enquiries.*” On 6 March 2015 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 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.

Information released in relation to the interviews

15. Sir Richard set out in his report that a statement was proactively released saying, “*a man in his 90s from [a location related to the MPS investigation] was today interviewed under caution*” together with other details, including he was not arrested and the interview was conducted by Operation Midland officers. The BBC, Exaro and the Press Association ran stories identifying Lord Bramall without making further enquiries.
16. On 18 June 2015 a statement was issued that a man in his 60s from [a location related to the investigation] was interviewed under caution, with other details, including the fact he was not arrested and 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. On 19 June 2015 Mr Proctor was named as having been interviewed in a number of newspapers.
17. On 31 July 2015 Lord Bramall was again interviewed by Operation Midland officers. His wife had recently died and, out of respect and kindness, the Senior Investigating Officer (SIO) decided not to make a proactive statement. There was no media enquiry and no coverage.
18. On 24 August Mr Proctor was again interviewed. In advance of the interview two newspapers reported that the interviews were to take place. After the interview, a proactive statement was released, similar to the earlier one, and the matter was fully reported

19. Sir Richard considered that the information the MPS released to the media was incompatible with its policy that suspects should retain anonymity until they are charged. There was only one candidate in his 90s from [a location related to the investigation] and one in his 60s from [another location related to the investigation].

Media release at the end of Operation Midland

20. Sir Richard made reference in his report to the Operation Midland timeline meeting on 18 March 2016, in which it was recorded that the MPS would need to be clear that they had found no evidence of 'Nick' wilfully misleading the investigation team or anything which would amount to an offence of perverting the course of justice, and that they had investigated a number of allegations which they had been unable to prove or disprove.
21. Sir Richard wrote, *"I fundamentally disagree with this statement. 'Nick' had misled the investigation as the officers I interviewed accepted. He falsely asserted that [Person B] from ██████ was abused, and that [Person E] from ██████ was abused. He said that [Person A] was killed. Professor ██████ had written of 'Nick's' many inconsistencies. This approach was grossly unfair to those accused by 'Nick'. They had been under investigation for a prolonged period and they and their families and the families of other suspects were entitled to be told."*
22. Sir Richard quoted the MPS media release that was sent to him as part of the 'Maxwellisation' process, *"in the course of the investigation, officers have not found evidence to prove that they were knowingly misled by a complainant. The MPS does not investigate complainants simply on the basis that their allegations have not been corroborated."* He wrote:
23. *"I disagree with the assertion that no evidence was found to prove that the officers were knowingly misled. It is common ground that 'Nick' lied about [Person B] from ██████ having been sexually abused at several sex parties. It is manifest that no [Person A] was murdered outside [the primary school]. It is clear that 'Nick' has given conflicting version of events to two different police forces. This closing statement was unfair to every one of those persons named by 'Nick' as his abusers and especially unfair to Lord Bramall and Harvey Proctor who had to live through the ordeal of facing these shocking allegations over a prolonged period. Those named, their families, [Person C] family, and the public needed to be informed that 'Nick' had given inconsistent versions to two different police forces and that several asserted facts had been found to be untrue."*

> Assessment of conduct – Media briefing

24. In conducting this assessment I have had access to:
- Sir Henriques' [Sir Richard's] full unredacted report (references in my assessment are to this version)
 - DAC Rodhouse's full decision log (D1458 on the Op Midland Holmes account)
 - the responses made on behalf of DAC Rodhouse, DSU McDonald and DCI Tudway to Sir Richard as part of the 'Maxwellisation' process (10 October 2016, 12 October 2016 and 26 October 2016)
 - DAC Rodhouse's presentation, delivered to Sir Richard over 16 and 17 August 2016
25. I have not seen the full version of MPS Special Notice 11/2002, 2014 HMIC report, MPS press releases, or logs of the media enquiries. However, it is apparent that the relevant details of these (including direct quotes) have been included in Sir Richard's report and the representations made on behalf of the officers. I have no reason to doubt the accuracy of how this information has been presented.
26. DAC Rodhouse recorded the rationale for holding the 18 December 2014 press conference in his Gold decision log (D1458 on the MPS Midland Holmes account):
27. Decision number 6: 18 December 2014. Subject: Media Strategy and press appeal
- There is considerable public interest in Op Midland and Nick's allegations. Much of Nick's allegations have been widely publicised within the media. In addition, I assess that the many strands of Op Fairbank have the potential to confuse the public's understanding of these inquiries. A formal press briefing will assist by:*
- Clarifying the nature and scope of both Op Fairbank and Op Midland*
- Providing an opportunity to appeal for further victims and witnesses to come forward.*
- To demonstrate the MPS efforts to fully investigate these allegations. This is particularly important in the context of media reporting over historic apparent failures to confront criminality by politicians and others in authority.*

To reassure victims and witnesses that they can come forward with the confidence that they will be listened to and take seriously.

To demonstrate the MPS efforts to fully investigate these allegations. This is particularly important in the context of media reporting over historic apparent failures to confront criminality by politicians and others in authority.

To reassure victims and witnesses that they can come forward with the confidence that they will be listened to and take seriously.

Decision - I will introduce a national media briefing and provide an update on Op Fairbank and Op Midland. Det Supt McDonald will issue an appeal for further witnesses in connection with Op Midland.

I anticipate that Kenny or I will be asked if we 'believe' Nick. This is a significant issue and one with the potential to provide either reassurance or concern to other witnesses. Any indication that we will doubt the word of victims will undermine our efforts for them to come forward and will damage our relationship with Nick.

Decision - If asked we will confirm that we do believe Nick but that as in any case his evidence will need to be tested before it can be put in front of a court.

(see attached script and agreed lines document)."

28. In my view this decision and rationale demonstrate that consideration was given to the benefit that a media briefing could have for the progression of Operation Midland while also providing reassurance to potential witnesses and victims to come forward. It also acknowledged the wider public confidence issues, in light of prevailing public concern about alleged establishment cover-ups of non-recent sexual abuse cases.
29. Solicitors acting for DAC Rodhouse, DSU McDonald and DCI Tudway wrote, in representations to Sir Richard as part of the 'Maxwellisation' process, that the purpose of the media briefing was not simply to speak about Op Midland, but to address the reputational challenges posed by constant media allegations of MPS 'covering up' historic sexual abuse and the high-profile claims (including by MPs) of a paedophile network at the centre of Westminster. They stated that DAC and DSU held the press conference on the advice of senior colleagues from the MPS Directorate of Media and Communications (DMC). The DMC is the expert department within the MPS on media matters, and the advice to hold a conference was in response to a number of issues:
30. A perceived need to update on the status of MPS investigations into historic abuse arising from Tom Watson MP's claims in the House of Commons.
31. A perceived need to respond to the flood of media reports of previous MPS investigations into politicians and celebrities being somehow covered up or inappropriately curtailed.

32. A perceived need to reassure the public of Op Midland's intention to properly investigate these matters 'without fear or favour' and to address complaints about police misconduct.
33. A need to encourage witnesses – if they existed – to come forward.
34. The public concern and external pressure was set out in detail within Sir Richard's report. This included:
 - 3 October 2012 – The revelation of the Jimmy Savile scandal.
 - 24 October 2012 – Tom Watson raised in Parliament the possible existence of a paedophile ring in Westminster.
 - Feb 2013 – The commissioning of an independent review into the 'Dickens Dossier'³⁴.
 - 7 July 2014 – The Home Secretary announced the launch of the Independent Inquiry into Childhood Sexual Abuse (IICSA) and the Wanless/Whittam review into the Dickens Dossier.
 - July 2014 – Operation Hydrant was launched by the police to co-ordinate the service's response to the growing number of child abuse allegations.
 - November 2014 – Tom Watson passed hundreds of pieces of information relating to abuse to the MPS.
35. Sir Richard acknowledged that throughout this period there was intense media reporting of child abuse and alleged cover ups.
36. DAC Rodhouse's policy decision also provides evidence that he recognised the MPS may be asked if they believed 'Nick' and the damaging impact it could have if it was thought the police did not believe the word of victims, both for victims coming forward to report abuse and the investigation team's relationship with 'Nick'. DAC Rodhouse made clear in his decision that they would confirm that they believed 'Nick'. However, it is important to recognise that this was qualified by him also acknowledging that 'Nick's' evidence would need to be tested before it could go before a court.
37. This reflected the MPS policy in place at the time. As Sir Richard explained in his report, the obligation to believe a complainant has its origins in a police Special Notice from 2002, dealing with rape investigation which stated, "*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 substantial allegation after a full and thorough investigation.*" Sir Richard also made reference to a 2014 report on police crime reporting by Her Majesty's Inspectorate of Constabulary (HMIC), which recommended that, "*the presumption that the victim should always be believed should be institutionalised.*"

³⁴ A secret file dossier said to contain the names of paedophiles with links to the British establishment assembled by MP Geoffrey Dickens and handed over to the then-Home Secretary, Leon Brittan, in 1984.

38. DSU McDonald did go further than DAC Rodhouse's policy decision by stating, during the briefing, that it was believed that what 'Nick' was saying was credible and true.
39. Sir Richard wrote in his report that DSU McDonald had said, during the interviews he conducted with Operation Midland officers over 16 and 17 August 2016, "*I did think 'Nick' was credible and true. The Commissioner was [sic] that it was a misspeak. I would have perhaps used different language.*"
40. Solicitors wrote, in representations to Sir Richard as part of the 'Maxwellisation' process, that the officers entirely accepted that the use of the phrase 'credible and true' was inappropriate and ill advised, for the reasons Sir Richard identifies. There was no attempt to defend that phrase. They wrote that DSU McDonald did not intend to inflict any harm upon the suspects by using the phrase and that he never identified the suspects to the public.
41. They also wrote that:

"DSU McDonald's words were uttered with a proper motivation, namely to encourage other (hopefully genuine) complaints or witnesses to come forward and to have confidence that the MPS was taking the allegations seriously. Of course he now appreciates that this end could have been achieved with words such as 'the MPS will thoroughly and fairly investigate the allegations, without fear or favour'.

"DSU McDonald was doing his best to gain the confidence of potential (hopefully honest) witnesses. He is not to be criticised for this. That he selected – in the heat of an interview – inappropriate words is a matter of profound regret to him, but it is hoped that Sir Richard does not doubt the bona fides of DSU McDonald's intentions and might feel able to reflect this in this paragraph or elsewhere in the report.

"DAC Rodhouse, DSU McDonald and DCI Tudway all fully recognise that a more prudent phrase would have been words to the effect that 'the MPS will thoroughly and fairly investigate the allegations, without fear or favour'. They recognise that to proffer an opinion on the credibility or veracity of the allegations was inappropriate not least because the credibility and veracity of the allegations was the very point of the investigation.

"The officers would not want the readers of Sir Richard's report to be left with the impression that almost 2 years after that press conference they have not learned the lessons: they certainly have. Nor would they wish the reader of the report not to have drawn to their attention the contextual points raised above. Neither DAC Rodhouse nor DSU McDonald were responsible for the prevailing MPS policy in the Special Notice.

“Neither DAC Rodhouse nor DSU McDonald had met ‘Nick’ by the date of (Rodhouse decision 6) but they had been briefed that other experienced officers – who had spent some time with ‘Nick’ – did believe him.”

42. There is evidence that other officers did believe Nick. It was recorded that Officer 1 (an officer who interviewed ‘Nick’) told Sir Henriques [Sir Richard], *“We came out of every ABE thinking he was the real deal – genuine and credible. I never doubted him. I was his liaison officer and the drive around officer – I am constantly questioning if someone is telling me the truth and thinking it could be true.”* When asked at what stage he began to doubt ‘Nick’s’ credibility he stated, *“I haven’t. I still consider him to be a victim.”*
43. In my view it is significant that Sir Richard stated, *“I have little doubt, however, that the officers did genuinely believe ‘Nick’ in light of the evidence set out above.”* Sir Richard also wrote, *“At the conclusion of my interview with the officers on 16–17 August 2016, I formed the view that, notwithstanding the many mistakes I have enumerated above, the officers had conducted this investigation in a conscientious manner and with propriety and honesty.”*
44. In light of these views from Sir Richard, the various external pressures set out above, the content of Special Notice 11/2002, the reasons for the media briefing expressed in DAC Rodhouse’s decision log/other representations, as well as the clear acceptance by officers that they regretted using the phrase ‘credible and true’, I agree with the MPS that this does not provide evidence of a conduct matter, as there is no indication of a criminal offence or behaviour which would justify the bringing of disciplinary proceedings. I agree that there may be organisational learning for the MPS. However, whether to take forward any learning or performance issues will be a matter for the MPS.

> **Assessment of conduct – Information released to the media**

45. DAC Rodhouse set out the following in his presentation to Sir Richard:

“MPS did not proactively inform the media that these searches had taken place. However, it was always likely that they would become aware. MPS strategy was to only confirm Operation Midland policing activity within a broad location if journalists were already aware of the detail of the searches.

“Response to the media enquiries and why:

4 March – Call in from the office of [member of the public]. No response provided by MPS DMC.

4 March (19.20 and 19.42) – Call in from Exaro News enquiring about a search at [location related to the investigation] (no mention of the 4 other

addresses being searched). MPS DMC responded by confirming a search in the area [of location related to the investigation].

5 March – Harvey Proctor addressed the media and confirmed that his house had been searched.

6 March – Exaro News approached MPS DMC with details of the searches at Lord Brittan and Lord Bramall's premises. MPS again confirmed search activity in the broad locations. No individuals were named.

8 March – Exaro News and the Daily Telegraph published an article naming Lord Brittan and Lord Bramall.

9 March – the BBC named Lord Bramall and Lord Brittan.”

46. Linked to this allegation, as set out in the MPS MM1 form, is the information that was provided to both 'Nick' and the family of [Person C], about the searches and interviews.
47. Solicitors acting for DAC Rodhouse, DSU McDonald and DCI Tudway wrote, in representations to Sir Richard as part of the 'Maxwellisation' process that:

“'Nick' was informed about 10 minutes after the searches commenced. This was a decision made in good faith based upon the spirit but not – it is accepted – the letter of the Victim's Code. Searches were a significant development.

It was a recognised risk that informing 'Nick' of the searches could lead to him informing the media. However:

This risk was mitigated by informing 'Nick' after the start of the searches

The experience of the MPS was that details of these searches inevitably end up in the public domain through a variety of routes and this may have been inevitable in this case as the media were already well aware of the identity of the suspects.

Accordingly in this case the officers judged it to be appropriate to inform both 'Nick' and the family of [Person C] about the searches, without disclosing who or where. Although there is no specific provision within the Victims' Code to notify victims about prospective searches, this decision is consistent with the essence of the Code that sets out that victims should be notified of significant updates.

The officers judged that it would be a serious blow to the police relationship with 'Nick' and the family [of Person C] if they became aware of the searches through other means and concluded that the police had withheld relevant updates.”

48. DAC Rodhouse set out in the presentation to Sir Richard that:

“Nick’ and the family of [Person C] were informed once the searches had started on the 4 March.

They were not told which premises were being searched (albeit they might have predicted who the searches were linked to).

Under the Victims’ Code they have a right to be informed of significant developments in the case within 1 day. We considered that it would undermine our relationship if they were to discover the activity through other sources. We judged that this outweighed the risk of them actually publishing the searches.”

49. Maintaining the confidence of ‘Nick’ and the family of [Person C] was an important consideration for officers during Operation Midland and featured in many of the decisions that were made about pursuing (or not) certain lines of enquiry. Maintaining the confidence of a victim of serious sexual abuse, or family of a victim, is clearly a relevant consideration for communication with them. The Victims’ Code states that:

“You are entitled to be informed by the police of the following information and to have the reasons explained to you within 5 working days of a suspect being:

- *arrested;*
- *interviewed under caution;*
- *released without charge;*
- *released on police bail, or if police bail conditions are changed or cancelled.*

If you are a victim of the most serious crimes, persistently targeted or vulnerable or intimidated, you are entitled to receive this information within 1 working day.”

50. The allegations being considered under Operation Midland would fall within the category of ‘the most serious crimes’. Although the Victims’ Code does not refer to searches, I agree with the representations made that the matters which victims are entitled to be kept updated on relate to significant developments in a police investigation. In my view, providing information about the searches was in keeping with the spirit of the Victims’ Code.

51. It was of course known that the media had a keen interest in Operation Midland and that ‘Nick’ had already been in close contact with journalists. There was also media interest in the case [of Person C]. This did create a risk that disclosing information to ‘Nick’ and the family [of Person C] could have resulted in it entering the public domain. In my view this presented the investigating team with a dilemma of competing risks, each likely to have a damaging impact on Operation Midland and/or public confidence in the police response to serious allegations of abuse made against prominent people. In my view, the decision to provide information to ‘Nick’ and the

family [of Person C] fell within the margin of reasonable professional judgement. There is evidence that the risks were well understood by the MPS and a decision was made about the most appropriate course of action. I have seen no evidence that this decision was not made in good faith.

52. Solicitors acting for DAC Rodhouse, DSU McDonald and DCI Tudway wrote, in representations to Sir Richard as part of the ‘Maxwellisation process’ that:

“The identity and location of the search warrants was known to the media. It is accepted that the MPS confirmation of the broad location was used by the media to ratify their story. It is understood that the MPS is reviewing the approach for any future similar circumstances. The Op Midland officers would support legislation that prevents the media from naming the subject of police searches.”

This aspect (confirming the addresses) of the case was handled by DMC and not the officers making these representations. The strategy adopted around confirming the broad location of addresses that had been searched was heavily influenced by advice from the DMC (reflecting national police custom and practice) and was to the effect that where the enquiring journalist was aware of the location of the search then the MPS would confirm this in broad terms.”

53. The possible implications of providing information to the media about the interviews was set out in two decisions recorded in DAC Rodhouse’s Gold decision log:

54. Decision number 17: 13 April 2015. Subject: Media Strategy

“It is likely that the operational team will seek to carry out interviews with HP [Harvey Proctor] and EB [Lord Bramall] in the near future.

I have been considering the implications of the current MPS media policy in these circumstances. In particular, I consider it likely that, following these interviews, the MPS DMC will be asked to confirm whether we have carried out interviews of both HP & EB. Current and consistent MPS policy would be to confirm that interviews have been conducted with an ‘XX’ year old man. I have raised concerns that this will be used by the media to confirm their suspicions and therefore identify those subject to interview in the minds of the public.

“I have consulted Ed Stearns (Head of Press) and Martin Fewell (Director of Media & Communications) on the merits of an alternative approach whereby the MPS would not provide details of the ages of those interviewed and therefore would not be seen to be responsible for identifying them in the public domain. The merits of this policy change are outlined in the attached emails. On the basis that it would be wrong to be seen to treat prominent politicians differently from other cases such as Operation Yewtree, I have agreed to maintain and adopt the existing MPS policy in response to enquiries about interviews conducted under Operation Midland.

“I find this a difficult judgement to make as I am uncomfortable with the MPS being seen to contribute to media stories that may identify those subject of this enquiry. However, I note that, following the searches of his property, HP himself contacted the media and identified that he was the subject of these searches. I am also aware that EB [Lord Bramall] made a pro-active approach to the media.”

55. Decision number 18: 29 April 2015. Subject: Media Strategy

“The investigation team plan to interview EB tomorrow (30th April) and I have considered the media strategy in consultation with Det. Supt McDonald, Ed Sterns (Head of Media) and Martin Fewell (Director of Communications). As recorded in the preceding decision, the advice from DMC is that we should adhere to the current policy and I do have longer term concerns over this wider policy. However, on balance, I am aware that to change the policy for this particular case would potentially create the appearance of this matter being different to cases of a similar nature which have previously been investigated by the MPS. My rationale for this is:

It demonstrates consistency of treatment with other similar operations such as Yewtree.

To divert from the corporate policy in this instance will have ramifications for other such interviews later in the investigation.

If we fail to proactive [sic] issue the notices then we will be criticised for making ‘secret interviews’ and protecting the privacy of individuals based on their status in society. This is most relevant in this case where there are linked allegations of establishment cover-up.

Media coverage gives us an opportunity to reinforce the message that victims of non recent abuse will be taken seriously.

EB has identified himself to the media following our searches.

I concur with Det Supt McDonald’s view that we should only issue lines once EB has been dealt with and the risk of media confrontation is over. This principle must extend to Nick so that there is no opportunity for it to be said that he briefed the media.”

56. DAC Rodhouse set out in his presentation to Sir Richard:

“The location and focus of the warrants were already known to journalists prior to any police comment. A failure to respond to informed media queries would undermine public confidence and lead to allegations of ‘secret policing’.

Maintain a consistent approach leading on from Operation Yewtree.

Failure to do so would lead to unchecked rumours and speculation.”

57. In my view this provides evidence that the MPS was alive to the risks of providing details to the media about the location and age of the suspects

and DAC Rodhouse had reservations about this approach. I also agree that there would be difficulty in deviating away from a policy merely on the basis of the suspect's public prominence, particularly in light of the public concerns already outlined above. I again think that the provision of information to the media was a judgement call made in good faith and does not, in my opinion, provide an indication of a criminal offence or behaviour that would justify the bringing of disciplinary proceedings. I agree with the MPS that there may be organisational learning for them. However, whether to take forward any learning or performance issues will be a matter for the MPS.

> **Assessment of conduct: press release following Operation**

Midland

58. Solicitors wrote, in representations to Sir Richard as part of the 'Maxwellisation' process, that (in relation to the press release following Operation Midland):

"This statement was signed off at the Diamond Group meeting chaired by AC Gallan on 21 March 2016.

On 21 March 2016 DAC Rodhouse spoke to TV journalists and said: 'as part of this enquiry I haven't seen any evidence to prove that anyone, Nick or otherwise, has knowingly provided false information to the investigation. Of course if that situation changes, then we will review the evidence.'

It has not been custom or practice for the police, at the end of an investigation which does not lead to criminal charges, to provide an assessment of the guilt or innocence of the accused. It has been the custom and practice for the police merely to state that there was insufficient evidence to proceed."

59. For similar reasons to those set out above about the apparent need to maintain the confidence of victims and witnesses coming forward, I do not think that the issuing of this press release amounts to an indication of a conduct matter.

February 2017

> Appendix 6: Assessment of conduct – Allegation 3

1. This assessment relates to allegation 3, recorded on the IPCC MOI decision rationale as:

“The enquiry team failed to present all relevant information to a Judge when applying for search warrants. Parts of the searches were not conducted lawfully and some exhibits were seized otherwise than in accordance with the warrants – DAC Steve Rodhouse, D/Supt Kenny McDonald, DCI Diane Tudway, DI Alison Hepworth, DS Eric Sword (retired).”

> The conduct recorded and referred by the MPS

2. The full wording of the conduct recorded by the MPS on the MM1 form dated 6 November 2016 was:

“The enquiry team made inaccurate applications for search warrants as they did not disclose all relevant information. Parts of the searches were not conducted lawfully and some exhibits were seized otherwise than in accordance with the warrants (Duties and Responsibilities / criminal offences).”

3. The MM1 went on to state:

“The officers involved either made policy decisions about the searches, directed staff, supervised them or actually applied for the warrant. Without a closer analysis of decision logs and meeting notes it is not possible to confirm the actions of each officer though. DI Hepworth authorised the warrant and DS Sword applied for the warrants. It is not evident in this Review who directed the actual searches, seized the property or who were the exhibits officers. The issues within Sir Richard’s alleged failures in this section are also directly linked to the failings of lack of investigation.

“Sir Richard makes it clear that the enquiry team misled the judge in the application of the search warrants. The warrants were, in part, also unlawfully executed as searches and seizures of exhibits took place which were not within the power of the warrant.

“In paragraph 2.3.8.59 on page 346 Sir Richard states that the ‘inaccurate statements placed before the judge’ in application for the warrants was ‘the most significant error’ and had that been avoided the investigation may have been completed without the ‘dreadful adverse consequences’. Sir Richard states on page 347 that the information that was available from the Wiltshire interviews, which would have undermined ‘Nick’s’ account, was not used or was overlooked and thereby not made available to the judge.

The applications citing the veracity of Nick’s accounts therefore misled the judge and on page 183 Sir Richard is unequivocal in stating that in his judgement the warrants were obtained ‘unlawfully’. Additionally, he states that searches outside of the authority of the warrant were undertaken at the grounds in Yorkshire, items were seized [...] outside the authority of the warrant. This is also unlawful.”

4. The MPS went on to state that this allegation overlaps with allegation 1, relating to “a failure to properly investigate the allegations made by the complainant ‘Nick’.” They stated, “this is directly related to the failure to diligently investigate the allegations and Sir Richard has stated that evidence was available which would have cast serious doubt on Nick’s account, and which should have been brought to the attention of the Judge in the application process. If this evidence was made available then the judge would have been fully informed. The fact is that this evidence which was available, and should have been obtained, was not obtained and therefore the judge was not informed.”
5. In relation to the searches, “The searches were also executed unlawfully in part as Sir Richard states that some searches and seizures at those searches were outside of the warrant’s authority. The impact on the suspects and those present was severe as a result.”

> Assessment of the MPS referral

6. A ‘conduct matter’ is defined in section 12(2) of the *Police Reform Act 2002* (PRA) as follows:

“...any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from the circumstances or otherwise) that a person serving with the police may have a) committed a criminal offence or b) behaved in a manner which would justify the bringing of disciplinary proceedings.”
7. A conduct matter becomes a recordable conduct matter, pursuant to paragraph 11 of Schedule 3 to the PRA, if (assuming the conduct matter to have taken place):

“It appears to have resulted in the death or serious injury of any person, or a member of the public has been adversely affected by it, or it meets criteria set out in Regulation 7 of the Police (Complaints and Misconduct) Regulations 2012 (the Complaints Regulations).”

8. Regulation 7(1) lists the criteria as including:
- a. *“a serious assault, as defined in guidance issued by the Commission (paragraphs 8.7 to 8.10 of the statutory guidance);*
 - b. *a serious sexual offence, as defined in guidance issued by the Commission (paragraphs 8.11 and 8.12 of the statutory guidance);*
 - c. *serious corruption, as defined in guidance issued by the Commission (paragraphs 8.13-8.17 of the statutory guidance);*
 - d. *a criminal offence or behaviour which is liable to lead to misconduct proceedings and which in either case was aggravated by discriminatory behaviour on the grounds of a person’s race, sex, religion, or other status identified in guidance issued by the Commission (paragraph 8.18 of the statutory guidance);*
 - e. *a relevant offence³⁵;*
 - f. *conduct whose gravity or other exceptional circumstances make it appropriate to record the matter in which the conduct is involved; or*
 - g. *conduct which is alleged to have taken place in the same incident as one in which conduct within sub-paragraphs (a) to (e) is alleged.”*
9. I accept that the allegation, as set out by the MPS, can reasonably be argued to fall within the definition of a recordable conduct matter and was therefore correctly referred to the IPCC. I do note, however, that there are some limitations to its assessment as the MPS had not fully reviewed some material: *“Without a closer analysis of decision logs and meeting notes it is not possible to confirm the actions of each officer though”* and *“It is not evident in this Review who directed the actual searches, seized the property or who were the exhibits officers.”*
10. The MPS also offered its view on the Standard of Professional Behaviour to which the recorded conduct related (Duties and Responsibilities) and also their view on the severity of the conduct, if proven. These are not matters the MPS are required to form a view on at the time of recording and referring conduct to the IPCC and I have not been influenced by its views on these matters in either formulating my assessment of i) whether there are indeed conduct matters that require investigation and, if so, ii) whether they would amount to misconduct or gross misconduct.
11. Further, although in Sir Richard’s judgement the warrants were obtained unlawfully, it will not be for an IPCC investigation to determine whether or not this was the case. That would be a matter for the criminal or civil courts. Any IPCC conduct investigation would be concerned only with whether any of the officers who are a subject of the investigation have a case to answer for misconduct or gross misconduct and, following the submission of a final investigation report to the Commission, whether there is an indication that

³⁵ Relevant offences are: any offence for which the sentence is fixed by law or any offence for which a person of 18 years and over (not previously convicted) may be sentenced to imprisonment for seven years or more (excluding any restrictions imposed by Section 33 of the Magistrates Court Act 1980).

any person may have committed a criminal offence such that it is appropriate to refer the matter to the DPP. It is important to note that evidence of an unlawful action may not necessarily lead to a finding of either misconduct or criminality.

12. In my assessment I have reviewed more material, including:
- Sir Henriques' [Sir Richard's] full unredacted report (references in my assessment are to this version)
 - DAC Rodhouse's full decision log (D1458 on the Op Midland Holmes account)
 - DCI Tudway's full decision log (D4 on the Op Midland Holmes account)
 - relevant meeting minutes
 - the transcript of the interview with 'Nick' conducted by Wiltshire Police on 6 December 2012 (DY1K on the Op Midland Holmes account)
 - the transcript of the initial ABE interview with 'Nick' conducted by the MPS on 22/23 October 2014 (DY1 on the Op Midland Holmes account)
 - the responses made on behalf of DAC Rodhouse, DSU McDonald and DCI Tudway to Sir Richard as part of the 'Maxwellisation' process (10 October 2016, 12 October 2016 and 26 October 2016)
 - DAC Rodhouse's presentation, delivered to Sir Richard over 16 and 17 August 2016
 - statements from those involved in the search of Lord Brittan's property [in Yorkshire]: Officer 2, [the Crime Scene Manager], Officer 3 and Officer 4 (S63A, S82, S10A and S50 on the Op Midland Holmes account)
 - application for search warrants dated 27 February 2015
 - the search warrants issued on 2 March 2015
 - the search briefing document written by Officer 2 on 15 February 2015 (D465 on the Op Midland Holmes account)
 - premises search book for [Lord Brittan's property in Yorkshire] (D493 on the Op Midland Holmes account)

> Findings of Sir Richard Henriques

13. Sir Richard reached the following finding on p.183 of his report:

"The warrants to search the premises of Lord Bramall, Lady Brittan, and Mr Proctor were, in my judgement, obtained unlawfully. The written applications stated that Nick's account had remained consistent and he is felt to be a credible witness who is telling the truth. Nick's account had not been consistent throughout. Further, there were, in my judgement, no reasonable grounds to believe Nick and the statement that he had told the

truth was not consistent with information then available. The magistrate was misled. He was not told of the Wiltshire interviews or Nick's blogs. Further, the application stated, 'the victim in this investigation contacted police in late 2014' when in fact Nick first contacted MPS in 2012 before being referred to Wiltshire Police where he was interviewed at length in December 2012. Nick did not contact the police in late 2014. The MPS contacted him. The Wiltshire interviews alleged anal rape by Nick's stepfather and an unnamed lieutenant colonel. The MPS interviews alleged anal rape by numerous named individuals and three acts of child murder. The warrant in relation to premises owned by Lord Brittan during his lifetime inaccurately stated 'person whose premises are authorised to be searched: Lord Leon Brittan' (Lord Brittan having died. Further none of the conditions in s8(1) of the Police and Criminal Evidence Act 1984 were satisfied. With reference to s8(1) the person entitled to grant entry was Lady Brittan DBE [Dame (Commander of the Order) of the British Empire] JP [Justice of the Peace]. It was practicable to communicate with her. The CPS should have been consulted before such a critical step was taken."

14. On p.186 Sir Richard stated that the following undermining factors, set out in DAC Rodhouse's presentation, should have been brought to the attention of the Senior District Judge but were not:

- *"No witnesses had come forward despite extensive media coverage*
- *'Fred' was either unwilling to engage or an invention of Nick*
- *There was no record of the accident involving Boy 1*
- *There was no identity for Boy 3*
- *Nick's mother did not recall signs of abuse or Nick's absences"*

15. Sir Richard wrote on p.346:

"The most significant error was the decision to apply for search warrants coupled with formulating inaccurate statements which were placed before the District Judge. But for that decision, this investigation may well have been completed without the dreadful adverse consequences I have described. As the three senior officers now appreciate, 'Nick' had been inconsistent in his accounts and yet the District Judge was told that he was consistent. This, combined with other inaccuracies before the District Judge, and the failure to disclose several undermining factors, has caused me great concern. Two more junior officers made the statement and authorised the application."

16. Then on p.347:

"As matters stand I have no doubt that the District Judge was misled, and, had he known the true position, he would not have granted the applications. A rigorous investigation into the decision to apply for the warrants and the formulation of the statements must take place and be conducted by those with the appropriate investigative powers."

17. It is also, in my view, significant that Sir Richard wrote on p.348:

“At the conclusion of my interview with the officers on 16–17 August 2016, I formed the view that, notwithstanding the many mistakes I have enumerated above, the officers had conducted this investigation in a conscientious manner and with propriety and honesty.”

> The application for warrants

18. The application for warrants was dated 27 February 2015.
19. The application commenced: *“The victim in this investigation contacted police in late 2014 detailing allegations of serious historical sexual assaults.”*
20. The applications for search warrants all contain the following passage: *“The victim in this matter has been interviewed at length by experienced officers from the child abuse investigation team. His account has remained consistent and he is felt to be a credible witness who is telling the truth.”*
21. The warrant application also made clear, in relation to the three alleged murders:
- Victim 1 – *“police enquiries in relation to the incident have failed at this time to identify a victim or similar event as described by the victim.”*
- Victim 2 – *“police enquiries in relation to the incident have failed at this time to identify a victim or similar event as described by the victim.”*
- Victim 3 – *“police enquiries in relation to the incident have failed at this time to identify a victim or similar event as described by the victim.”*
22. In my view, this provides evidence that points 3 and 4 from DAC Rodhouse’s presentation (referred to above) were brought to the attention of the Senior District Judge.

> Evidence of inconsistencies between the Wiltshire Police interview and MPS interview

23. One of the key allegations is that the warrants inaccurately stated that ‘Nick’ had remained consistent. I have therefore considered to what extent this statement was inaccurate.
24. Sir Richard sets out, within various sections of his report, a number of apparent inconsistencies between the account ‘Nick’ gave to the MPS, the account he gave to Wiltshire Police, and the content of his blogs. This

evidence was all available to the MPS at the time the applications for the warrants were made.

25. As stated above, at the time of writing this assessment, I have had access to transcripts of both the Wiltshire and MPS interviews with 'Nick'.
26. I have not viewed:
 - 'Nick's' blogs, but have relied upon the content set out within Sir Richard's report. Many of the blogs appear to have been quoted by him verbatim.
 - The note from [the clinical psychologist] dated 26 February 2015 in which she provided a professional opinion that 'Nick's' counsellor was well placed to judge his truthfulness and credibility.
 - The statement Wiltshire Police took from 'Nick's' mother dated 16 April 2013.
 - The original notes of Sir Richard's interviews with officers on 16 and 17 August 2016.
 - The notes from 'Nick's' counsellor.
27. Again, I have relied upon the content of Sir Richard's report, which summarises, and in parts quotes directly from, this evidence.
28. I note that solicitors responding to Sir Richard on behalf of DAC Rodhouse, DSU McDonald and DCI Tudway (as part of the 'Maxwellisation' process) state that Sir Richard has accurately, in the conclusions section of his report, described the inconsistencies in 'Nick's' accounts (with the exception of two areas which in their view cannot be fairly described as inconsistencies). They do not argue that the underlying material has been inaccurately set out by Sir Richard. I therefore consider that, in making my assessment, I can in part rely upon the contents of Sir Richard's report in this regard without causing any unfairness to the officers.
29. On this basis, I have set out below the evidence currently available of the various inconsistencies between 'Nick's' accounts. I have not conducted a full forensic comparison between accounts from the underlying material to identify all consistencies and inconsistencies, but have sought to check the inconsistencies highlighted by Sir Richard where the underlying material has been available to me.
30. In his description of the initial rape in the Wiltshire Police interview 'Nick' referred to it being carried out by the Lieutenant Colonel. To the MPS this first occasion of rape was attributed to his stepfather in a toilet cubicle at a wildlife park in Burford. I note the argument put forward by solicitors acting for DAC Rodhouse, DSU McDonald and DCI Tudway to Sir Richard that, even though the two acts described are similar, that does not necessarily mean that 'Nick' was describing, on both occasions, the first act of rape. It was feasible that he was describing the first occasion that he was raped by his stepfather and the first occasion he was raped by the Lieutenant

Colonel. 'Nick' was consistent when describing how he felt and the level of pain alleged to have been inflicted.

31. 'Nick' told Wiltshire Police that, after the first meeting, his stepfather would put his penis in his bottom a couple of times a week. To the MPS he said it did not happen that often before they moved on (from Wilton to Bicester), they weren't there (Wilton) that long.
32. In the Wiltshire Police interview 'Nick' said that names were never used in the group. In the MPS interview he said he was introduced to General Bramall at the Erskine Barracks in Wilton and also that names were habitually used by almost all of his abusers.
33. In the Wiltshire Police interview 'Nick' talked about going to the Wiltshire house and he said that his stepfather told him to take his clothes off. In the MPS interview he said his stepfather was asked to leave, another person came in and he was asked to undress.
34. In the Wiltshire Police interview 'Nick' said there was a guy in the Wilton house taking pictures, he remembered the flashes and the photos seemed to go on forever. In his MPS interview he said that the person who came in when his stepfather was asked to leave had a video camera.
35. In his Wiltshire Police interview 'Nick' described the first rape by the Lieutenant Colonel. He said that the Lieutenant Colonel had put his hand over his mouth and the pain was unbelievable, his stepfather came in and was telling him to get dressed but he couldn't move and he put his hand down the back of his pants and when he pulled it out it was covered in blood. In his MPS interview he said that General Bramall didn't make him do anything, then raped him. It was like nothing had happened, his stepfather was asked to come back in, he was told to get dressed and that was it.
36. In his Wiltshire Police interview 'Nick' stated that, when the incidents happened with the group, a lot of times he was the only child present, but not always. About a quarter of the time another child would be present, just one other. His name was [Person B]. In his MPS interview he said he was taken to buildings in Imber. There were some other boys there, he did not know who they were, and he had not seen them before. He also said in Bicester there would be seven or eight of them roughly all the same age, perhaps a couple were older.
37. In his Wiltshire Police interview 'Nick' said he became friends with [Person B] in [REDACTED], they were the same age and he last saw him 30 years ago. In his MPS interview he stated, "*I have no idea how these events fit together chronologically, but my friend has been able to piece some of these together for me and that's useful but I'll tell you that, because that's somebody else's recollection and not mine. This is the person I touched on last week who was present through some of this, and I'm still in touch with him.*"

38. 'Nick' had referred only to anal bleeding in his Wiltshire Police interview. In his MPS interview he had referred to wounds but no fractures. However, in his blogs and counselling notes he referred to sustaining multiple broken bones.
39. In his blog of 6 May 2014 'Nick' referred to the group coming together for big parties, mentioning Christmas and Valentine's Day. Nowhere in his Wiltshire Police or MPS interview did he mention Valentine's Day parties.
40. To Wiltshire Police, when asked if his stepfather put his penis in his bottom 'Nick' said, "*regular, after that first sort of meeting I suppose, couple of times a week.*" To the MPS he referred to the incident at Burford with excruciating pain and bloodshed. He got a beating when he got home because he should not have struggled or screamed. In his 19 June 2014 blog he referred to the blood and trauma, being beaten unconscious when they got home, then after getting home that he had a plaster cast and was raped again by his stepfather.
41. 'Nick' made no mention of any murders to Wiltshire Police. To the MPS he alleged three murders.
42. To Wiltshire Police 'Nick' accused his stepfather, a Lieutenant Colonel, Jimmy Savile, a man named Pete and unnamed individuals from the Middle East, Saudi Arabia and America. To MPS officers, he accused his stepfather, Field Marshall Lord Bramall, Lord Brittan, Sir Edward Heath, Field Marshall Sir Roland Gibbs, Jimmy Savile, Harvey Proctor, Sir Michael Hanley, Sir Maurice Oldfield and Sir Peter Hayman. He also accused General Sir Hugh Beach and mentioned Lord Janner being present and witnessing various offences of sexual abuse.
43. To Wiltshire Police and the MPS 'Nick' alleged indecent assault, violence and rape, but no allegation that his stepfather had inflicted any visible physical injury. In his blogs he alleged that he had been beaten black and blue and had his arm fractured by his stepfather.
44. In my assessment, there were some inconsistencies set out by Sir Richard which, in my view, are not supported by the evidence, namely:
45. At para 2.3.8.6 of Sir Richard's report, it was set out that 'Nick' stated in his Wiltshire Police interview that he was introduced to the group a couple of months after he moved to Bicester. During his MPS interviews he stated that he was introduced to the group at Wilton.
46. In the Wiltshire Police interview, 'Nick' talked about the first meeting with the Lieutenant Colonel in Wilton. He also talked about being taken to the house for the first abuse in Wilton and described there being others present at that house. Later in the interview, when again talking about the abuse at the Wilton house he said, "*I suppose that was my first introduction to the group. I suppose.*"

47. At para 2.3.8.7 of Sir Richard's report, it was set out that in 'Nick's' blog of 18 August 2014, he talked about being missing for days. Nowhere in his Wiltshire Police or MPS interview did he mention being away for days.
48. In his first ABE interview with the MPS, when 'Nick' provided evidence of being hung up as the group burnt his feet, he stated he did not remember what happened afterwards. He then agreed with the interviewing officer that he did not know if it was hours or days before he was back home.
49. On p.107 of Sir Richard's report, it was set out that, in his Wiltshire Police interview (tape 3), 'Nick' stated, "*the first rape was by the Lieutenant Colonel not Ray. I was just laid on my front.*" In his MPS interview when talking about being raped by Bramall for the first time "*Bramall did the same as Ray really, kissed me, hands all over me. I was completely naked, then I just have to get on the floor, and he penetrates me again, just as Ray did.*"
50. I can find no reference to 'Nick' stating "*the first rape was by the Lieutenant Colonel not Ray. I was just laid on my front.*" in the Wiltshire Police interview.

Conclusion on the consistency of 'Nick's' accounts

51. Overall, I am satisfied that there is evidence of inconsistencies between 'Nick's' accounts. This is not disputed by DAC Rodhouse, DSU McDonald DCI Tudway in the representations their solicitors made to Sir Richard, albeit they also contend that the account from 'Nick' was a "*developing*" account rather than an inconsistent one. It was also argued that they recognise (and recognised throughout Op Midland) that inconsistencies can be a reflection of untruthfulness. But they can also be a reflection of the passage of time, human frailty, trauma, confusion; and other similar factors.

> Other inconsistencies and undermining factors

52. There is also evidence that 'Nick's' accounts were not consistent with the statement his mother had given to Wiltshire Police. She told Wiltshire Police that she had no idea at the time that he was being sexually abused and never suspected it. She never saw Ray physically assault or chastise any of the four children during the marriage. She did not remember any reported attendance issues at school nor any blood-stained underwear or similar signs of sexual abuse. I do also note the representations made by DAC Rodhouse and others that 'Nick's' mother may not have been a wholly reliable witness, as her evidence in relation to 'Nick's' bed-wetting was undermined by the medical evidence, and she did not recall significant absences from school, whereas the school records demonstrated 22 absences in one year.

53. 'Nick' had alleged that a boy called [Person A] who had been at school with him had been murdered by the group. At the time of the application for warrants there was evidence that all seven [children of the same name as Person A] from [the primary school] had been accounted for. It was recorded in the minutes from the office meeting on 27 Jan 2015 (D335 of the Midland Holmes account): "*EO Davies gave an update regarding the search for [Person A] who was identified by N1 as going to school with him. Records from [the primary school] revealed some 7 [children of the same name as Person A] and all of them have been accounted for. None of them died as children although one of them passed away aged around 19.*" I do also note there was reference in the meeting minutes to tracing and interviewing the rest of the named [persons of the same names as Person A] and enquiries had also been planned regarding other schools that 'Nick' had attended. Furthermore, and significantly, in my opinion, the application for the warrants stated, "*police enquiries in relation to the incident have failed at this time to identify a victim or similar event as described by the victim.*"
54. 'Nick' first contacted the MPS in October 2012 and was referred to Wiltshire Police. He was interviewed by Wiltshire Police on 6 December 2012. The MPS contacted Exaro News in July 2014 following a media report that described the abuse that 'Nick' had suffered. The officers left their details and, through Exaro, invited 'Nick' to contact them. In October 2014 'Nick' contacted MPS officers and agreed to meet with them.
55. Officer 8 from Wiltshire Police investigated the case but, as there was no living or identifiable suspect, the file was returned to the MPS with a letter expressing doubts about 'Nick's' credibility. Officer 8 described 'Nick's' account as "*it all sounds a bit 'Spooks'*" and "*it's all a bit odd.*"
56. There were also a number of other potentially undermining factors about 'Nick's' allegations highlighted by Sir Richard, but these largely related to the nature of the allegations and the accused. The nature of the allegations was set out in the warrant application, so was known to the Senior District Judge. Therefore the Senior District Judge was in a position to come to his/her own view on the plausibility of the allegations in general.

Conclusion on the accuracy of the warrant application

57. On the basis of the above, it is my opinion that there is some evidence to support the contention that it was inaccurate and misleading for the warrant applications to state that, "*The victim in this investigation contacted police in late 2014 detailing allegations of serious sexual historical sexual assaults*" [sic] and, "*His account has remained consistent and he is felt to be a credible witness who is telling the truth.*"

> **Reasonable grounds and whether warrants should have been applied for**

58. Leaving aside inaccuracies on the application for the warrants, there is also a concern raised by the MPS about whether applying for warrants was an investigative step that should have been taken at that stage.
59. Solicitors acting for DAC Rodhouse, DSU McDonald and DCI Tudway wrote the following in representations to Sir Richard as part of the ‘Maxwellisation’ process:
60. *“The decision to apply for warrants was not taken lightly. The applicant for the warrants was a detective sergeant (now retired) who honestly believed that the threshold of reasonable grounds was met by reference to the following factors:*
- a. The manner in which Nick relayed his account to interviewing officers*
 - b. The opinion of a trained counsellor who had worked with Nick for many years*
 - c. The professional opinion of a Chartered Psychologist, [REDACTED], who had assessed that Nick’s counsellor was well placed to judge Nick’s truthfulness and credibility*
 - d. Nick’s ability to describe the access arrangements for Lord Bramall’s office*
 - e. Nick’s apparent trauma at returning to areas of the military base and his ability to describe the layout of private areas of the base before they were refurbished*
 - f. Nick’s identification of [Person C], a young boy who went missing in November 1979 and who has never been found.*
 - g. The long standing nature of these allegations. They were first made to a counsellor in 2012, then to Wiltshire Police and now to the MPS*
 - h. The three officers expressly deny that they or DS Sword or any officer who participated in the application of the warrants ‘must have known reasonable grounds did not exist’ to apply for the warrants. This contention is factually wrong, deeply unfair and defamatory.”*
61. In my view the following three decisions recorded by DAC Rodhouse in the Gold decision log (D1458 on the MPS Midland Holmes account) are also relevant:
62. Decision number 1: 7 November 2014. Subject: to formally investigate Operation Midland

“On 7th November 2014 at 11.30am I met with Officer 10 and DCS Niven to discuss allegations of abuse and homicide. I have received a written briefing note (attached) concerning allegations made by a man known as ‘Nick’. Nick’s true identity is known to officers.

These allegations relate to violent and sexual abuse of Nick through his childhood from the age of 7 until the age of 16.

“Nick has spoken with MPS officers ([Officer 1]) and provided a detailed account of how he was subject to sexual abuse by his mothers [sic] partner (a senior army officer) and then subsequently by other senior military figures, politicians and other senior figures within the security services. Details of those named are contained within the briefing note.

“Nick goes on to detail how he was present at what he believed to be the murder of three young boys. He implicates senior establishment figures in these offences. I note that Nick was introduced to the MPS by Mark Conrad, an investigative journalist from Exaro News. I understand that Nick has disclosed his account to Conrad and potentially other media channels.

“These are extremely serious allegations and although the events described are extreme and startling they require a full investigation to establish:

- The credibility of Nick as a witness*
- Any corroboration of these offences*
- What offences may have been committed and by whom*
- Whether there is sufficient evidence to bring a criminal prosecution against any surviving offenders*

“I am aware there will be huge public and media interest in Nick’s account. The MPS response must secure wider public confidence and ensure that any other victims and witnesses have the confidence to come forward.

“I recognise the importance of testing Nick’s account and ensuring that the investigation takes a balanced view of what allegations are made. In the event that the subjects named by Nick are placed into the public domain it will cause significant damage to their reputation and distress to them and their families. However, I also recognise the need to reassure both Nick and other potential victims that the MPS will believe their accounts and that they will be listened to.

“There are already several challenges to this investigation and areas where investigators will have to overcome evidential deficiencies. I am conscious that Nick has named a number of notable individuals, most of which have already been subject to some public speculation over their involvement in abuse. I have considered that Nick may have fabricated some or all of this allegation with this speculation in mind.

“Equally, Nick has discussed his allegations with media sources who have sought to assist Nick to identify those who offended against him by suggesting names or showing photographs of possible suspects. I am not aware of the precise details of this but I do recognise that this may undermine an effective PACE COP compliant identification.

“My rationale for believing that this matter must be formally investigated is:

- Nick had been interviewed by experienced officers with a background of dealing with victims of historic abuse. In their view Nick is a credible witness.*
- Nick does not present with any obvious cause to doubt his account. He is a mature professional man.*
- Nick has been subject to counselling as a result of his trauma. His counsellor has advised that he has been consistent in his account.*
- Nick names a number of individuals as being involved in violent and sexual abuse. Several of those named are subject to other police investigations of a similar nature. These include Leon Brittan, Greville Janner and Jimmy Saville [sic].*
- Nick has stated that he is still in contact with a friend who was also subject to abuse at that time. This person, if identified, may be able to offer corroboration of Nick’s account.*
- Nick details how he witnessed three boys apparently die following abuse. Initial enquiries indicate a number of outstanding missing reports for boys at that time. This requires further investigation.*
- In particular, Nick has provided an e fit of one of the boys that he witnessed being abused and dying. Officers have noted a similarity between this image and photographs of [Person C], a boy who went missing in London in 1979 and has not been found.”*

63. Decision number 10: 24 February 2015. Subject: search strategy

“I have met with DCI Tudway and Det Supt McDonald. They have briefed me on their intention to conduct s.8 PACE search warrants at premises occupied or controlled by Harvey Proctor, Leon Brittan and Edwin Bramall. The purpose of the searches would be to locate and secure any evidence to corroborate (or discredit) the allegations made by Nick. In particular, Nick has alleged that on occasions he was video recorded by his abusers and the search will seek to locate any such recordings. The team will also search for documents, journals or diaries relating to the alleged periods of abuse detailing associations and movements; documents, journals or recordings detailing actions by the named individuals in relation to abuse of the victim or others; still images of the victim or any other child of an indecent nature; digital media products containing images still or moving of the victim or any other child in the circumstances of indecency, computers & mobile phones.

“In addition, both DCI Tudway and Det Supt McDonald outlined that they wished to carry out some forensic examinations of premises identified to them by Nick as locations within the Imber military village where he had been abused.

“The decision as to whether to grant the search warrants is a judicial matter and will only be approved if appropriate justification is provided. However, my own considerations on this matter are:

- I consider that it is possible that the execution of these warrants will become known in the public domain. There are number of routes for this to occur including Nick briefing his contacts within the media, neighbours and contacts in the proximity of the addresses, the subjects themselves disclosing or potentially an unauthorised leak within the MPS.*
- Any such public knowledge of the searches could cause public distress and embarrassment for the named subjects and their families. Such activity should not be taken without good cause.*
- The allegations made by Nick are still effectively not corroborated. Despite media coverage no additional victims have identified themselves to the MPS. This however may be considered understandable bearing in mind the nature of the allegations, the trauma that any other victims may have endured and the fact that a number of the named subjects are still alive.*
- Despite the lack of corroboration the investigation has not revealed any cause to disbelieve Nick. He has remained consistent and detailed in his accounts. I am told that the enquiry team and his counsellor believe him to be credible in his account.*
- The nature of these enquiries (historic, no likely opportunity for forensic evidence) is such that corroboration is likely to be challenging to find. The continued possession of trophies and other indicators of past abuse is however a potential source of corroboration.*
- In the event that no other corroboration of Nick’s allegations is forthcoming I do consider that a failure to conduct searches of premises occupied and controlled by the named subjects will present a risk to the integrity of the inquiry. Any review of operational activity would highlight a failure to explore this source of corroboration and potential evidence.*

“Decision: Prior to making a decision on whether to support the application for search warrants I requested further information from DCI Tudway, namely:

- Nick’s counsellor had indicated that she believes his account. What credibility can I place on this? What are her qualifications and what expert advice can CEOP provide on the strength of her expertise to make this assessment?*

- *I wish to understand the status of any other current enquiries into the same nominal (Brittan, Proctor)?*
- *Does the DPP guidance on the investigation of rape provide any expert guidance on this issue of taking operational action following an allegation with little or no corroboration? I am mindful that in regular cases officers are expected to make arrests in response to an allegation of rape without having any evidence to support the account of the victim and their identification of the suspect.*
- *I wish to review the SIO proposal to offer a voluntary interview to Bramall / Proctor rather than to arrest.”*

64. Decision number 11: 26 February 2015. Subject: Decision to support operational activity

“I have reviewed the material supplied to me by DCI Tudway and Det Supt McDonald. I am content for them to make applications for s8 warrants in support of the searches proposed at locations occupied or controlled by LB [Lord Brittan], EB [Lord Bramall] & HP [Harvey Proctor].

“My rationale for this decision is largely documented within decision number 9³⁶. Although I understand the possible impact on the reputation of the named individuals and the potential distress should this police activity come into the public domain, I remain convinced that this operational activity is necessary and proportionate to achieving the aims of Operation Midland.

“I am mindful of the impact of this decision and will brief AC Gallan and Commissioner Hogan Howe in advance of any searches.”

65. DAC Rodhouse set out in his presentation to Sir Richard (delivered at the start of the interviews on 16 and 17 August 2016), that after eight to ten weeks of investigations he was approached by the SIO and DSU to consider executing search warrants. He set out that nothing had changed in order to undermine Nick’s character, motivations or reliability. He continued to relay his account consistently and was pushing for progress. He also set out that, before applying for warrants, they fully recognised that aspects of the allegations were not borne out by their investigations, but they took the view that they were outweighed by the various elements that ‘Nick’ had provided some knowledge or evidence to support his assertions. None of these underlying factors were, by themselves or collectively, viewed as a justification to end the investigation and to not seek corroboration through searches and interviews.

³⁶ Decision 9 related to a victim strategy and not a search. It is believed DAC Rodhouse meant decision 10.

66. In order for a warrant to be issued under Section 8 *Police and Criminal Evidence Act 1984*, the court needs to be satisfied, on an application by the police, that there are reasonable grounds to believe;
- a. *“that an indictable offence has been committed; and*
 - b. *that there is material on premises [mentioned in subsection 1A below] which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and*
 - c. *that the material is likely to be relevant evidence; and*
 - d. *that it does not consist of or include items subject to legal privilege, excluding material or special procedure material; and*
 - e. *that any of the conditions in subsection (3) below applies”*
67. The subsection (3) conditions are:
- a. *“that it is not practicable to communicate with any person entitled to grant entry to the premises;*
 - b. *that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;*
 - c. *that entry to the premises will not be granted unless a warrant is produced;*
 - d. *that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.”*
68. In my view, the policy entries from DAC Rodhouse taken at face value provide evidence that, from the outset of the investigation, an open mind was being kept as to ‘Nick’s’ credibility and that the possibility that he may even have fabricated some or all of his allegations had been considered. However, at the same time, there was also already a developed view, from DAC Rodhouse and likely those that had briefed him and interviewed ‘Nick’, that there was evidence ‘Nick’ was credible, consistent in his accounts and there was no obvious reason to doubt his account.
69. It is apparent the views of the interviewing officers had a big impact on this assessment and I am mindful of the account from Officer 1 to Sir Richard Henriques in which it is recorded he said, *“We came out of every ABE thinking he was the real deal – genuine and credible. I never doubted him. I was his liaison officer and the drive around officer – I am constantly questioning if someone is telling me the truth and thinking it could be true.”* When asked at what stage he began to doubt ‘Nick’s’ credibility he stated, *“I haven’t. I still consider him to be a victim.”*
70. It is also clear that the gravity of the decision both to investigate the allegations made by ‘Nick’ and to apply for search warrants were appreciated by DAC Rodhouse – he set this out in detail within his decision log. He openly acknowledged and documented potential weaknesses in the

case and demonstrated that he had applied his mind to those and provided rationale both for why the investigation should commence and why there was a legitimate need to conduct searches.

71. DAC Rodhouse requested further enquiries to be conducted prior to an application for a warrant being made. In my opinion this demonstrates he was willing to challenge the investigation team and seek further assurance before this significant step was taken. It is clear also that 'Nick's' counsellor stating that he was credible and consistent and [the clinical psychologist's] professional opinion that she was well placed to judge his truthfulness and credibility significantly impacted both DAC Rodhouse's and other officers' assessment of 'Nick's' credibility, including those briefing him. It is notable that reference was made to her views in the application for warrants.
72. The reliance on both of these may have been somewhat misplaced given there is evidence that neither the interviewing officers nor 'Nick's' counsellor had reviewed all of his accounts.
73. I am also aware that a number of enquiries into 'Nick's' credibility had not been pursued at the time that the warrants were applied for. This included an examination of his computer and phone and asking him to undergo a medical examination. As mentioned above, there was evidence at this stage that all the [children of the same name as Person A] from [the primary school] had been accounted for and DAC Rodhouse set out in his presentation to Sir Richard that: no witnesses had come forward despite extensive media coverage; 'Fred' was unwilling to engage; there was no record of the accident involving Boy 1; there was no identity for Boy 3; Nick's mother did not recall signs of abuse or 'Nick's' absences. There are equally arguments to counter these points, and the MPS have to an extent provided rationales for the above including:
 - Asking 'Nick' to undergo a medical examination and submit his computer for examination was considered, given careful thought and pended so as not to damage the relationship with him and cause him to disengage.
 - Enquiries into potential [Person A] continued, including making contact with them all and widening this enquiry to other schools 'Nick' attended.
 - The application for the warrants acknowledged, in relation to the three potential victims, police enquiries in relation to the incident have failed at this time to identify a victim or similar event as described by the victim.
 - There may be good reason why witnesses were unwilling to come forward.
 - 'Nick's' mother was not considered to be a wholly reliable witness.
74. The MPS rightly points out in its referral to the IPCC that potential failures to pursue enquiries into 'Nick's' credibility and test the evidence he had provided link to allegation 1 about the conduct of the investigation as a whole and meant that the MPS was unable to provide the Senior District Judge with a balanced picture. My views on these potential failures are set

out in full on another assessment document, but for the purposes of my assessment for allegation 3, I do not consider there is an indication that any failure to pursue those enquiries amounts to a recordable conduct matter. I do agree that, had those enquiries been pursued at the time, it is likely that they would have uncovered evidence that would have been relevant to the decision of the Senior District Judge in respect of granting the warrants. Indeed, there is evidence that the results of further enquiries did, in fact, undermine 'Nick's' integrity (such as [Person B] disputing the allegations from 'Nick' and 'Fred' likely to have been made up). However, whether the officers had formulated reasonable grounds to believe an offence had been committed would have been dependent upon their assessment of the information that was known to them at the time the applications were made.

75. DAC Rodhouse explained, in his presentation to Sir Richard, that the decision to obtain warrants was not taken lightly, and I agree his decision log supports this. He set out in his presentation that, despite the undermining factors:
- The undermining factors do not conclusively rule out that some or all of the offences that 'Nick' is alleging may have happened.
 - The failure to further investigate at this stage would have resulted in reasonable lines of enquiry failing to be pursued.
 - In particular, the potential links to the case of [Person C] highlighted the need for more detailed investigations.
 - The failure to take executive action in this case would have limited their opportunities to prove or disprove the case.
 - CPS guidance para 67, "*An early account should be taken from the suspect and the possibility of having to wait a significant period of time for comprehensive expert medical statements should not prevent an arrest taking place and an early explanation from the suspect.*"
 - Risk that the accused persons could have access to children and were currently offending.
 - Failure to undertake a search would have been a clear gap in the investigation and undermined its value and conclusions.
 - To obtain documents, records and diaries to establish the movements and relationships between the accused at the material time.
 - The allegation was that photos and videos were taken during abuse. Experience from Operation Yewtree shows that offenders will retain letters and trophies for several decades.
 - To reduce the risk of evidence being destroyed following media reporting.

- A search by consent or with prior notice would have led to allegations that relevant evidence had been destroyed and that the accused were treated differently on the basis of their public standing.
- To progress the investigation in a timely fashion. Anticipated it would take significant time to assess the seized material. (Material seized from Harvey Proctor took five months).
- Age of Lord Bramall.
- This decision was endorsed by the MPS Serious Crime Review Group in their review.
- Reasonable grounds to believe that an indictable offence had been committed.

Conclusion on the decision to apply for the warrants

76. In my opinion, the decision to apply for warrants, on the basis of the information and inferences that had been drawn at the time, does not provide an indication that officers have behaved in a manner which would justify disciplinary proceedings. I do consider there may be wider learning and possibly performance matters that should be addressed internally by the MPS and, as previously mentioned, whether the application for the warrants was lawful will be for others to judge.
77. I deal with the content of the warrant applications later on in this assessment.

> Execution of the warrants

78. The recordable conduct matters referred to the IPCC relating to the execution of the search warrants concern the search of Leon Brittan's address in [Yorkshire]. Specifically that *"items were seized [...] outside the authority of the warrant."*
79. The warrant authorised for Leon Brittan (D475 on the Op Midland Holmes account) stated:
- "I authorise the person or persons identified beneath to enter all premises specified below and/or occupied or controlled by the person specified, on the number of occasions indicated, to search for:*

Documents, journals or diaries relating to the alleged periods of abuse detailing associations and movements.

Documents, journals or records detailing actions by the named individuals in relation to abuse of the victim or others.

Still images of the victim or any other child of an indecent nature.

Digital media products containing images still or moving of the victim or any other child in circumstances of indecency.

Computers.

Mobile phones.

Premises authorised to be searched (the London and [Yorkshire] address).

This warrant was applied for by DS Eric Sword.”

80. This warrant, and the other two, were issued on 2 March 2015.
81. The items listed on the search warrant matched exactly those that had been listed on the application form submitted by DS Sword.
82. The Notes for Guidance on the application stated under ‘6. The material sought’: *“The application must explain what the search is for in as much detail as practicable. A Corresponding description must be entered in the draft warrant for the court (and the applicant must take care that the words used in the warrant can be understood without reference to the rest of the application). The search may be unlawful if the warrant does not sufficiently detail the material for which it authorises the search, or if it leaves the identification of that material to the discretion of those who conduct the search.”*
83. A briefing document was prepared by Officer 2 for the searches (D465 of the Op Midland Holmes account). This was dated 15 February 2015. It was set out in the briefing document that Lord Edwin Bramall, Leon Brittan and Keith Harvey Proctor were subject to the operational activity, the others named by ‘Nick’ either being deceased or too unwell for prosecution. A summary of ‘Nick’s’ allegations was set out.
84. The briefing document stated:
85. *“To execute search warrants under Section 8 Police and Criminal Evidence Act at addresses linked to the alleged perpetrators to search for:*
 - *Digital media*
 - *Documents relating to child sexual abuse*
 - *Equipment pertaining to sexual abuse/violence*
 - *Videos and recording equipment*
 - *Diaries*
 - *Computers”*

Specific items of interest

[List of specific items included]

86. None of the specific items of interest were either requested or authorised on the warrant, other than (arguably) the school exercise books.
87. The roles of those conducting and overseeing the [Yorkshire location] search were set out in the briefing as:
 - Search lead – Officer 2
 - [Crime Scene Manager]
 - Exhibits Officer – Officer 3
 - Document Triage – [Officer's name]
 - Occupant Welfare Officer – [Officer 5]
 - Searching Officers – MPS POLSA team
 - Forensic Practitioner – [name]
88. A list of POLSA officers involved in the search was created (D462 on the Op Midland Holmes account), which they signed.
89. The premises search book (D493 on Op Midland Holmes account) shows that [specific items of evidence] were exhibited. It was recorded that these were found by [the Crime Scene Manager] in the [search location] at 12.55pm and exhibited as JDW/1.
90. [The Crime Scene Manager] provided a statement (S82 on the Op Midland Holmes account). He stated that he was present for a briefing from Officer 2 on 4 March 2015. He wrote [a description of what was found in the property from a forensic perspective].
91. Officer 3 provided a statement (S10A on the Op Midland Holmes account). She wrote on the statement that she was aware of the warrant that had been obtained and that authority had been given to search for, and seize, documents, journals or diaries, computers and mobile phones and any images children of an indecent nature. She stated that she attended a briefing on 4 March 2015. She stated that [a description of what was found in the property from a forensic perspective].
92. Officer 2 provided a statement (S63A on the Op Midland Holmes account). He stated that he was the investigative search lead. He made reference to the warrant and that authority had been given for officers to search and seize documents, journals, diaries, computers, mobile phones and any indecent images of children.
93. He stated that Viking 271 began to systematically search the premises under the supervision of Officer 4. Any items of perceived evidential value were identified and if suitable were photographed in the position that they

were found. They were then handed to the exhibits officer, Officer 3 for packaging and recording. He stated that Officer 12, Officer 3, Officer 5 and he were based in the [location]. He stated, *“I was the investigative lead throughout the duration of the search and was available for advice if necessary. I was also responsible for the direct supervision of [Officer 12], [Officer 3] and [Officer 5].”* He also stated that he did not get involved directly in the search of the address.

94. Officer 4 provided a statement (S50 on the Op Midland Holmes account). He stated that he was the team leader of specialist search team call sign V271 on 4 March 2015 and made reference to the briefing from Officer 2. He stated that he commenced a search record, produced as exhibit DAC/1/exh, and he implies he was present until the conclusion of the search the following day.

> **Assessment of conduct – Officer 2, Crime Scene Manager, Officer 3 and Officer 4**

95. It is unclear why the ‘Specific items of interest’ referred to in Officer 2’s briefing were not requested in the application for the warrant, or if Officer 2 was aware of that (given the briefing document pre-dated the application). I do not consider there is evidence that Officer 2 intentionally instructed officers to act outside of the warrant, given this was set out so openly in his detailed briefing document (51-slide PowerPoint presentation) and, given the warrant was so broad, it is unlikely that the Senior District Judge would not also have allowed the specific items of interest to be included on the issued warrant.
96. Although [specific items of evidence] were not requested on the application for the warrant, nor on the issued warrant, officers do have additional powers to seize items if lawfully on a premises. Although the lawfulness of the warrant is a matter in contention, I am not aware of any evidence that the officers involved in the searches had any reason to doubt that they were there lawfully. Section 19 PACE states that a constable who is lawfully on any premises:

“may seize anything which is on the premises if he has reasonable grounds for believing—

(a) that it has been obtained in consequence of the commission of an offence; and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

“(3) The constable may seize anything which is on the premises if he has reasonable grounds for believing—

(a) that it is evidence in relation to an offence which he is investigating or any other offence; and

(b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.”

97. It appears that [specific items of evidence] were seized for the purpose of DNA analysis/reference DNA. It is unclear what this analysis was for, or if there were any recovered items on which the officers believed analysis could be undertaken. I am aware that, on 9 February 2015, within the weekly DSU briefing minutes, it was recorded that there were no positive forensic results from the crown [insignia] or knife provided by ‘Nick’, but reference was made to forensic examination being planned for Imber Village in early March.
98. Leon Brittan had recently died, and therefore obtaining DNA from him directly would not have been possible. Had officers known in advance that they required DNA evidence, I would have expected it to have been specified on the warrant application. It is possible that this was not considered until [a specific item of evidence] was found during the search (the day prior to [another specific item of evidence] being seized) and the officers formed the reasonable grounds under s.19 PACE. I am aware that the courts have previously held that, where an officer has mistakenly seized material under one power, his actions will still be lawful if he could have seized it under a different power (PF Surge Ltd v Attorney General [2005] UKPC 44).
99. I am also mindful of the possibility that the seizure may have been purely speculative.
100. It is outside the remit of the IPCC to determine if the seizure of the above items was unlawful. However, in considering whether there is an indication that any of the officers involved in the search may have behaved in a way that would justify disciplinary proceedings, I have taken the following into consideration:
101. No attempt has been made to hide the seizure or for officers to argue within their statements that they thought the warrant covered these items.
102. The general powers of seizure provided by s.19 PACE.

Conclusion on seizure of items not covered by the warrant

103. I do not consider there is any evidence of dishonest intention on the part of the officers who seized the items referred to and, in my view, the available evidence suggests that they were taken in good faith for the purposes of investigating the serious offences for which the warrants were issued. There may well be learning or performance matters that will be identified and

addressed internally by the MPS, but on the basis of the evidence currently available to me I do not think there is an indication that Officer 2, [the Crime Scene Manager], Officer 3 or Officer 4 have behaved in a manner which would justify the bringing of disciplinary proceedings.

104. I recommend the investigation into the conduct of those involved in the search in [Yorkshire location] be discontinued. More details about this recommendation are at the bottom of this document.

> Assessment of conduct – DS Sword

105. Under the Police Standards of Professional Behaviour, police officers are expected to be diligent in the exercise of their duties and responsibilities.

106. DS Sword applied for the warrants. PACE Codes of Practice Code B 3.1 states, “*when information appears to justify an application, the officer must take reasonable steps to check the information is accurate, recent and not provided maliciously or irresponsibly.*”

107. In addition to the evidence of inconsistency in ‘Nick’s’ accounts (and other undermining factors), there is also evidence that the ‘Specific items of interest’ set out in the briefing document authored by Officer 2 were not included in the application for the warrant or the warrant that was issued. Section 15(6) of PACE 1984 states that (a warrant) shall identify, so far as is practicable, the articles or persons to be sought.

108. There is therefore evidence that the applications were misleading and inaccurate. Notwithstanding the evidence that the warrants were authorised by DI Hepworth, reviewed by DCI Tudway and the tactic of applying for warrants agreed by DSU McDonald and DAC Rodhouse, I am of the opinion there is an indication that DS Sword’s conduct breached the professional standard of exercising his duties and responsibilities diligently. Applying for warrants in this case was a significant decision, likely to have seriously damaging implications for the accused and attract widespread media attention and public interest. Clearly this application demanded careful thought and attention as to content and accuracy before being placed before a court. Consequently, in my opinion, there is an indication that DS Sword may have behaved in a manner which would justify disciplinary proceedings.

Severity assessment – DS Sword

109. There is no specific guidance as to what constitutes either misconduct or gross misconduct. However, the presence of one or more of the following factors is likely to make a matter more serious: criminality, intention, wilful recklessness, gross negligence, dishonesty. It should be noted that this is not an exhaustive list.

110. In the absence of an account from DS Sword, or other contemporaneous records, it is difficult to assess what material he had reviewed prior to writing the application for the warrants. However, there is some evidence available to me that I consider assists in determining the severity of the conduct, if proven.
111. As set out above, solicitors acting for DAC Rodhouse, DSU McDonald and DCI Tudway set out the factors that led to DS Sword formulating reasonable grounds. They also argued:
112. *“Sir Richard has accurately described the inconsistencies in Nick’s accounts. Sir Richard has done so with the benefit of a) hindsight and a retrospective analysis of the totality of the evidence whereas the officer’s [sic] analysis was necessarily prospective and developing with the emergence of the evidence b) 50 years as a barrister, 25 years as a Recorder and 16 years as a High Court judge (the officer’s [sic] forensic experience is significantly less).*

“The officers accept that the information for the search warrant should have made clear that:

- a. Nick contacted the MPS in October 2012 which referred him to Wiltshire Police;*
- b. The MPS contacted Exaro news in July 2014 following a media report that described the abuse that Nick had suffered. The officers left their details and, through Exaro, invited Nick to contact them.*
- c. Wiltshire Police had interviewed Nick in 2013.*
- d. One Wiltshire officer (rather than ‘Wiltshire Police’) had expressed doubts about Nick’s credibility in an email dated 7 May 2013 (thought [sic] that same officer also opined that he could find nothing to disprove the allegations).*
- e. In October 2014 Nick contacted MPS officers and agreed to meet with them.*

“That these matters were not brought to the attention of the District Judge was not a product of deliberate deception but of inadvertence for which apologies are hereby tendered (only the SIO of the three officers making representations checked the informations).

“The most significant criticism in this paragraph is the contention in the information that Nick had “remained consistent” and “he is felt to be a credible witness who is telling the truth”. These were the honestly held views of the officer making the application.

“It is denied that the district judge was misled [sic]. However, if Sir Richard considers that the judge was misled [sic], then it is emphatically denied that any of the officers – the DAC, the DSU or DCI (or for that matter, DS Sword) – intended to mislead the judge. They had no motive for doing so and would not dream of doing so.

“The three officers expressly deny that they or DS Sword or any officer who participated in the application of the warrants “must have known reasonable grounds did not exist” to apply for the warrants. This contention is factually wrong, deeply unfair and defamatory.”

113. I am aware that, although DCI Tudway listed a forensic read of ‘Nick’s’ ABE near the start of Operation Midland as an investigative priority, a list of consistencies/inconsistencies in ‘Nick’s’ evidence was not completed until 27 October 2015 by DI Hepworth.
114. I am also aware of the account from Officer 1 to Sir Richard Henriques in which it is recorded he said, *“We came out of every ABE thinking he was the real deal – genuine and credible. I never doubted him. I was his liaison officer and the drive around officer – I am constantly questioning if someone is telling me the truth and thinking it could be true.”* When asked at what stage he began to doubt ‘Nick’s’ credibility he stated, *“I haven’t. I still consider him to be a victim.”*
115. Sir Richard wrote in this report, *“I am minded to accept that the officers had persuaded themselves that Nick had been consistent.”*
116. Sir Richard also wrote, *“At the conclusion of my interview with the officers on 16-17 August 2016, I formed the view that, notwithstanding the many mistakes I have enumerated above, the officers had conducted this investigation in a conscientious manner and with propriety and honesty.”*
117. In my view, it is likely that some of the nuanced discrepancies in the accounts from ‘Nick’ would not have been apparent without a full forensic comparison. There is no evidence that this was done until some time after the warrant applications were made. There is evidence that some officers were aware of at least some differences in the accounts provided by ‘Nick’, but contend that they were part of the development of an account. There was evidence that ‘Nick’s’ counsellor had said that he was credible and consistent and [the clinical psychologist] had provided a professional opinion that she was well placed to judge his truthfulness and credibility (albeit it appears neither had actually seen all of ‘Nick’s’ accounts). Explanations have been put forward for why some lines of enquiry had been pended and arguments advanced to counter some of the undermining factors. The application had been authorised by a DI and the content agreed by the SIO for Operation Midland (who informed Sir Henriques [Sir Richard] that, at that time, she had reviewed the Wiltshire Police interview, MPS interview and ‘Nick’s’ blogs). The application for the warrants openly stated for victims 1, 2 and 3, *“police enquiries in relation to the incident have failed at this time to identify a victim or similar event as described by the victim”*.
118. In light of this, and after careful consideration, I do not consider there is evidence that DS Sword deliberately intended to mislead the Senior District Judge. The evidence I have seen indicates the application was made in good faith and with the support of senior officers. I do not therefore consider

that dismissal would be justified in this case and that the conduct, if proven, would amount to misconduct.

119. As DS Sword has retired and is no longer a serving police officer, Regulation 27 of the Police (Complaints and Misconduct) Regulations 2012 applies, namely:

“Where a complaint or conduct matter relates to the conduct of a person who has ceased to be a person serving with the police since the time of the conduct, then Part 2 of the 2002 Act shall apply in relation to such a person as if it did not include any requirement for an appropriate authority to determine whether disciplinary proceedings should be brought against a person whose conduct is the subject-matter of a report.”

There will therefore be no misconduct proceedings should it be concluded that DS Sword has a case to answer for misconduct.

> Assessment of conduct – DI Hepworth

120. Under the Police Standards of Professional Behaviour, police officers are expected to be diligent in the exercise of their duties and responsibilities.
121. DI Hepworth authorised the warrants. PACE Codes of Practice Code B 3.4(a) states, (an application) to a justice of the peace for a search warrant or to a Circuit judge for a search warrant or production order under PACE, Schedule 1 must be supported by a signed written authority from an officer of inspector rank or above.
122. In addition to the evidence of inconsistency in ‘Nick’s’ accounts (and other undermining factors), there is also evidence that the ‘Specific items of interest’ set out in the briefing document authored by Officer 2 were not included in the application for the warrant or the warrant that was issued. Section 15(6) of PACE 1984 states that (a warrant) shall identify, so far as is practicable, the articles or persons to be sought.
123. There is therefore evidence that the applications were misleading and inaccurate. Notwithstanding the evidence that the warrants were reviewed by DCI Tudway and the tactic of applying for warrants agreed by DSU McDonald and DAC Rodhouse, I am of the opinion there is evidence that DI Hepworth’s conduct breached the professional standard of exercising her duties and responsibilities diligently. Applying for warrants in this case was a significant decision, likely to have seriously damaging implications for the accused and attract widespread media attention and public interest. Clearly this application demanded careful thought and attention as to content and accuracy before being placed before a court. Consequently, in my opinion there is an indication that DI Hepworth may have behaved in a manner which would justify disciplinary proceedings.

Severity assessment – DI Hepworth

124. There is no specific guidance as to what constitutes either misconduct or gross misconduct. However, the presence of one or more of the following factors is likely to make a matter more serious: criminality, intention, wilful recklessness, gross negligence, dishonesty. It should be noted that this is not an exhaustive list.
125. In the absence of an account from DI Hepworth, or other contemporaneous records, it is difficult to assess what material she had reviewed prior to authorising the application for the warrants. However, there is some evidence available to me which I consider assists in determining the severity of the conduct, if proven.
126. As set out above, solicitors acting for DAC Rodhouse, DSU McDonald and DCI Tudway set out the factors that led to DS Sword formulating reasonable grounds. They also argued:

“Sir Richard has accurately described the inconsistencies in Nick’s accounts. Sir Richard has done so with the benefit of a) hindsight and a retrospective analysis of the totality of the evidence whereas the officer’s [sic] analysis was necessarily prospective and developing with the emergence of the evidence b) 50 years as a barrister, 25 years as a Recorder and 16 years as a High Court judge (the officer’s [sic] forensic experience is significantly less).

“The officers accept that the information for the search warrant should have made clear that:

- a. Nick contacted the MPS in October 2012 which referred him to Wiltshire Police;*
- b. The MPS contacted Exaro news in July 2014 following a media report that described the abuse that Nick had suffered. The officers left their details and, through Exaro, invited Nick to contact them.*
- c. Wiltshire Police had interviewed Nick in 2013.*
- d. One Wiltshire officer (rather than “Wiltshire Police”) had expressed doubts about Nick’s credibility in an email dated 7 May 2013 (thought [sic] that same officer also opined that he could find nothing to disprove the allegations).*
- e. In October 2014 Nick contacted MPS officers and agreed to meet with them.*

“That these matters were not brought to the attention of the District Judge was not a product of deliberate deception but of inadvertence for which apologies are hereby tendered (only the SIO of the three officers making representations checked the informations).

“The most significant criticism in this paragraph is the contention in the information that Nick had “remained consistent” and “he is felt to be a credible witness who is telling the truth”. These were the honestly held views of the officer making the application.

“It is denied that the district judge was mislead [sic]. However, if Sir Richard considers that the judge was mislead [sic], then it is emphatically denied that any of the officers – the DAC, the DSU or DCI (or for that matter, DS Sword) – intended to mislead the judge. They had no motive for doing so and would not dream of doing so.”

127. I am aware that, although DCI Tudway listed a forensic read of ‘Nick’s’ ABE near the start of Operation Midland as an investigative priority, a list of consistencies/inconsistencies in ‘Nick’s’ evidence was not completed until 27 October 2015 by DI Hepworth.
128. I am also aware of the account from Officer 1 to Sir Henriques [Sir Richard] in which it is recorded he said, *“We came out of every ABE thinking he was the real deal – genuine and credible. I never doubted him. I was his liaison officer and the drive around officer – I am constantly questioning if someone is telling me the truth and thinking it could be true.”* When asked at what stage he began to doubt ‘Nick’s’ credibility he stated, *“I haven’t. I still consider him to be a victim.”*
129. Sir Richard wrote in this report, *“I am minded to accept that the officers had persuaded themselves that Nick had been consistent.”*
130. Sir Richard also wrote, *“At the conclusion of my interview with the officers on 16-17 August 2016, I formed the view that, notwithstanding the many mistakes I have enumerated above, the officers had conducted this investigation in a conscientious manner and with propriety and honesty.”*
131. In my view, it is likely that some of the nuanced discrepancies in the accounts from ‘Nick’ would not have been apparent without a full forensic comparison. There is no evidence that this was done until some time after the warrant applications were made. There is evidence that some officers were aware of at least some differences in the accounts provided by ‘Nick’, but contend that they were part of the development of an account. There was evidence that ‘Nick’s’ counsellor had said that he was credible and consistent and [the clinical psychologist] had provided a professional opinion that she was well placed to judge his truthfulness and credibility (albeit it appears neither had actually seen all of ‘Nick’s’ accounts). Explanations have been put forward for why some lines of enquiry had been pended and arguments advanced to counter some of the undermining factors. The application had been agreed by the SIO for Operation Midland (who informed Sir Henriques [Sir Richard] that, at that time, she had reviewed the Wiltshire Police interview, MPS interview and ‘Nick’s’ blogs). The application for the warrants openly stated for victims 1, 2 and 3, *“police enquiries in relation to the incident have failed at this time to identify a victim or similar event as described by the victim”*.

132. In light of this, and after careful consideration, I do not consider there is evidence that the inaccuracies on the application for warrants provide evidence that DI Hepworth deliberately intended to mislead the Senior District Judge. The evidence I have seen indicates the application was made in good faith and with the support of senior officers. I do not therefore consider that dismissal would be justified in this case and that the conduct, if proven, would amount to **misconduct** and lead to a misconduct meeting.

> Assessment of conduct – DCI Tudway

133. Under the Police Standards of Professional Behaviour, police officers are expected to be diligent in the exercise of their duties and responsibilities.

134. DCI Tudway recorded in her SIO Policy File on 23 January 2015:

“Decision: To authorise application for a search warrant under s8 PACE 1984 to search home address of LB [Lord Brittan].

Rationale: I was made aware that LB had passed away on 22/01/15. Whilst he has not [sic] passed away, he remains a suspect for the purpose of this enquiry. Had he not have passed away he would have been subject to a decision to arrest. Whilst arrest will not now happen I have grounds to believe that there were indictable offences committed, that there is material at those premises which will be of substantial value to the investigation either by way of a record of events, photographs or videos. There may also be evidence of association or information which may identify other victims and witnesses. Careful consideration will be given in the tactical plan to avoid and negate the risks in relation to LPP. I understand this is a time of mourning for LB’s family, this plan will be HR compliant.”

135. On 16 February 2015, she recorded:

“Decision: to apply / authorise for search warrants under S8 PACE 1984 in relation to venues occupied or controlled by: Leon Brittan, Harvey Proctor, Edwin Bramall.”

136. The rationale was provided on a separate typed document. In this, DCI Tudway stated:

“Premises under the control of Brittan/Bramall and Proctor will be subject to a warrant to the magistrates to search for evidence in relation to non recent sexual offending. The primary information sought is that of photo’s [sic], video’s [sic] diaries or accounts which would prove or disprove the allegations made.

“Leon Brittan was alive at the time the allegations were made and had recently passed away. It is my view that Mr Brittan has so recently passed away the opportunities to recover information and evidence relevant to the allegations is a more realistic proposition that to consider him in the same

tranche as those suspects who are named but not dead. To that end, Leon Brittan's premises will be subject to an application to search.

"Bramall/Beach/Proctor and Brittan considered are suspected of being involved of non recent sexual abuse against the victim and other young boys. To avoid duplication I refer to analytical product, 'record of abuse and suspected murders'. A copy of this document has been submitted with this decision log entry as a record of on what basis these men are considered suspects."

137. She then provided a summary of the allegations against Edwin Bramall, Harvey Proctor and Leon Brittan. The analytical research products showed profiles of the subjects, links to other people of interest for Op Midland and any other relevant intelligence or records that connect them to relevant criminal offences.

138. On 24 February 2015 DCI Tudway recorded:

"Decision: Consult with Gold DAC Rodhouse to request sign off against operational activity.

"Rationale: On Wednesday 18th February 2015 I met with Cmdr Spindler, DCS Duthie and Det Supt McDonald to invite challenge to proposed (4pm) (1600) operational activity (see attached plan). During this meeting we discussed the fact that Nick's allegations were, as yet uncorroborated. To that end I undertook to progress the advice from the NCA in respect of the provision of therapy to a victim / witness. I had a meeting planned with Nick on Monday 23rd Feb. Following those enquiries and following my meeting with Nick I asked to see Cmd Spindler in company with Det Supt McDonald at 2pm (1400) Tuesday 24th Feb. Having spoken with Mr Spindler he supported a briefing to DAC Rodhouse. In company with Det Supt McDonald I met with DAC Rodhouse at about 2.30 (1430) in company with [another officer]. DAC Rodhouse raised a number of observations which I recorded on an email timed 1702 and used that email to record activity I had undertaken. DAC Rodhouse was supportive of the activity in principal [sic] and requested some additional information prior to sign off."

139. During this assessment I have not had sight of the advice from the National Crime Agency (NCA), the content of the discussion between DCI Tudway and Cmd Spindler, the briefing given to DAC Rodhouse, the email DCI Tudway refers to, or the full results of the enquiries to obtain the information requested by DAC Rodhouse.

140. Solicitors acting for DAC Rodhouse, DSU McDonald and DCI Tudway wrote, in representations to Sir Richard as part of the 'Maxwellisation' process, that the wording on the information on the warrant was approved by DCI Tudway. She personally checked the information in support of the application and, having checked the warrant information, was present when the warrant was sworn.

141. As the SIO for Operation Midland, DCI Tudway would likely have had the best overview of the strengths and weaknesses in the case and she confirmed she had sight of all of 'Nick's' accounts. Arguably DCI Tudway should have been well placed to assess 'Nick's' credibility and the accuracy of the detail in the applications for the warrants.
142. In addition to the evidence of inconsistency in 'Nick's' accounts (and other undermining factors), there is also evidence that the 'Specific items of interest' set out in the briefing document authored by Officer 2 were not included in the application for the warrant or the warrant that was issued. Section 15(6) of PACE 1984 states that (a warrant) shall identify, so far as is practicable, the articles or persons to be sought.
143. There is therefore evidence that the applications were misleading and inaccurate. I am of the opinion there is evidence that DCI Tudway's conduct breached the professional standard of exercising her duties and responsibilities diligently. Applying for warrants in this case was a significant decision, likely to have seriously damaging implications for the accused and attract widespread media attention and public interest. Clearly this application demanded careful thought and attention as to content and accuracy before being placed before a court. Consequently, in my opinion there is an indication that DCI Tudway may have behaved in manner which would justify disciplinary proceedings.

Severity assessment – DCI Tudway

144. There is no specific guidance as to what constitutes either misconduct or gross misconduct. However, the presence of one or more of the following factors is likely to make a matter more serious: criminality, intention, wilful recklessness, gross negligence, dishonesty. It should be noted that this is not an exhaustive list.
145. There is evidence that, at the time of the applications, DCI Tudway was aware of the account 'Nick' provided to Wiltshire Police, the account he provided to the MPS and his blogs. Sir Richard set out in his report, under the officer interview section (the interviews on 16 and 17 August 2016) that DCI Tudway had stated that she had watched the MPS videos at home over the weekend. She did not accept there were material differences between the Wiltshire Police account and MPS account. She had read Officer 8's email. She intended a further interview to deal with inconsistencies but the media onslaught in the summer 2015 made it impossible to interview 'Nick'. She concluded the blogs contained emotional writing and so were not reliable. When asked why she did not establish 'Nick's' credibility first she said it was a chicken and egg situation.
146. Sir Richard wrote that DCI Tudway had said she had seen the written application for the search warrants. She said, "*his account was consistent. It was broadly consistent. They were consistent accounts delivered in stages.*"

147. Solicitors acting for DAC Rodhouse, DSU McDonald and DCI Tudway wrote the following in representations to Sir Richard as part of the ‘Maxwellisation’ process:

“Every officer present accepted that ‘Nick’ had been inconsistent but also noted that this is not in any way unusual for victims of sexual abuse. The point between Sir Richard and the officers is, perhaps, the extent to which police officers can discount or dismiss allegations based upon apparent inconsistencies when much academic research points to inconsistencies on the part of victims not being inconsistent with underlying truth.

“The officers of course recognise (and recognised throughout Op Midland) that inconsistencies can be a reflection of untruthfulness. But they can also be a reflection of the passage of time; human frailty; trauma; confusion; and other similar factors. Whilst the officers are prepared to accept that Op Midland did not come to a conclusion more swiftly – having regard to, inter alia, Nick’s inconsistencies – it is simply not correct to suggest that the officers contended that Nick had been consistent – the officers understood that his account had inconsistencies and some consistencies which they felt duty bound to investigate.

“During the discussion with Sir Richard the officers acknowledged differences between the accounts by Nick to Wiltshire Police and the MPS but the officers’ view was that this was part of Nick providing a developing account.

“Sir Richard was very clear that by ‘inconsistencies’ he meant that Nick’s accounts were very different. The three officers argued that although Nick’s accounts were different they were reasonably to be regarded as a developing account. This is a respectable view which should not be dismissed lightly.”

148. I am aware that there can be good reason for inconsistencies in the evidence from survivors of sexual abuse and this may not mean they have been untruthful nor does it necessarily undermine their credibility. Whether this could have applied to the inconsistencies in Nick’s evidence is unclear, but there is an argument that officers could have reasonably formed this view when assessing his credibility and formulating their reasonable grounds to believe an offence had been committed. However, in relation to the application for the warrants, this is somewhat irrelevant as they did not make reference to any inconsistencies and I am not aware of any evidence that the argument of a ‘developing account’ was put forward to the Senior District Judge when describing his account as, *“consistent and he is felt to be a credible witness who is telling the truth”* in order that the court could make an informed assessment of ‘Nick’s’ credibility prior to the applications being granted.

149. Solicitors acting for DAC Rodhouse, DSU McDonald and DCI Tudway accepted that it would have been preferable for the applicant to identify to the Senior District Judge that the matters under investigation were linked to

an earlier disclosure/investigation by Wiltshire Police (though it is to be noted that Wiltshire Police supported the CICA claim). The areas of inconsistency could have been made clearer to the Senior District Judge so that there could be no doubt as to the basis on which the warrant was granted.

150. Further evidence I consider of relevance is set out below:

151. As set out above, solicitors acting for DAC Rodhouse, DSU McDonald and DCI Tudway set out the factors that led to DS Sword formulating reasonable grounds. They also argued:

“Sir Richard has accurately described the inconsistencies in Nick’s accounts. Sir Richard has done so with the benefit of a) hindsight and a retrospective analysis of the totality of the evidence whereas the officer’s [sic] analysis was necessarily prospective and developing with the emergence of the evidence b) 50 years as a barrister, 25 years as a Recorder and 16 years as a High Court judge (the officer’s [sic] forensic experience is significantly less).

“The officers accept that the information for the search warrant should have made clear that:

- a. Nick contacted the MPS in October 2012 which referred him to Wiltshire Police;*
- b. The MPS contacted Exaro news in July 2014 following a media report that described the abuse that Nick had suffered. The officers left their details and, through Exaro, invited Nick to contact them.*
- c. Wiltshire Police had interviewed Nick in 2013.*
- d. One Wiltshire officer (rather than “Wiltshire Police”) had expressed doubts about Nick’s credibility in an email dated 7 May 2013 (thought [sic] that same officer also opined that he could find nothing to disprove the allegations).*
- e. In October 2014 Nick contacted MPS officers and agreed to meet with them.*

“That these matters were not brought to the attention of the District Judge was not a product of deliberate deception but of inadvertence for which apologies are hereby tendered (only the SIO of the three officers making representations checked the informations).

“The most significant criticism in this paragraph is the contention in the information that Nick had “remained consistent” and “he is felt to be a credible witness who is telling the truth”. These were the honestly held views of the officer making the application.

“It is denied that the district judge was mislead [sic]. However, if Sir Richard considers that the judge was mislead [sic], then it is emphatically denied that any of the officers – the DAC, the DSU or DCI (or for that matter, DS

Sword) – intended to mislead the judge. They had no motive for doing so and would not dream of doing so.

“The three officers expressly deny that they or DS Sword or any officer who participated in the application of the warrants “must have known reasonable grounds did not exist” to apply for the warrants. This contention is factually wrong, deeply unfair and defamatory.”

152. I am aware that, although DCI Tudway listed a forensic read of ‘Nick’s’ ABE near the start of Operation Midland as an investigative priority, a list of consistencies/inconsistencies in ‘Nick’s’ evidence was not completed until 27 October 2015 by DI Hepworth.
153. I am also aware of the account from Officer 1 to Sir Henriques [Sir Richard] in which it is recorded he said, *“We came out of every ABE thinking he was the real deal – genuine and credible. I never doubted him. I was his liaison officer and the drive around officer – I am constantly questioning if someone is telling me the truth and thinking it could be true.”* When asked at what stage he began to doubt ‘Nick’s’ credibility he stated, *“I haven’t. I still consider him to be a victim.”*
154. Sir Richard wrote in this report, *“I am minded to accept that the officers had persuaded themselves that Nick had been consistent.”*
155. Sir Richard also wrote, *“At the conclusion of my interview with the officers on 16-17 August 2016, I formed the view that, notwithstanding the many mistakes I have enumerated above, the officers had conducted this investigation in a conscientious manner and with propriety and honesty.”*
156. Although there is evidence that DCI Tudway had reviewed the various accounts from ‘Nick’, in my view, some of the nuanced discrepancies in his accounts would not have been apparent without a full forensic comparison. There is no evidence that this was done until some time after the warrant applications were made. There is evidence that DCI Tudway was aware of at least some differences in the accounts provided by ‘Nick’, but contended that they were part of the development of an account, and also that his accounts were broadly the same. Although I have not reviewed ‘Nick’s’ accounts in detail to assess what information was consistent, I understand there was some consistency across them. There was also evidence that ‘Nick’s’ counsellor had said that he was credible and consistent and [the clinical psychologist] had provided a professional opinion that she was well placed to judge his truthfulness and credibility (albeit it appears neither had actually seen all of ‘Nick’s’ accounts). Explanations have been put forward for why some lines of enquiry had been pended and arguments advanced to counter some of the undermining factors. The application for the warrants openly stated for victims 1, 2 and 3, *“police enquiries in relation to the incident have failed at this time to identify a victim or similar event as described by the victim”*.
157. In light of this, and after careful consideration, I do not consider there is evidence that the inaccuracies on the application for warrants provide

evidence that DCI Tudway deliberately intended to mislead the Senior District Judge. The evidence I have seen indicates the application was made in good faith. I therefore do not consider that dismissal would be justified in this case and the conduct, if proven, would amount to **misconduct** and lead to a misconduct meeting.

> Assessment of conduct - DAC Rodhouse

158. Solicitors acting for DAC Rodhouse, DSU McDonald and DCI Tudway wrote in representations to Sir Richard, as part of the 'Maxwellisation' process, that DAC Rodhouse and DSU McDonald approved the investigative tactic of the application for the warrants. They explained that the applications were not personally drafted by the DAC or DSU and neither DAC Rodhouse nor DSU McDonald would have approved the wording of the information in support of the warrant applications (nor did they have any knowledge of the wording of the same prior to their use).
159. DAC Rodhouse set out in his presentation to Sir Richard that he did not draft the written application nor did he validate the statement in support of the allegation.
160. It was recorded that DAC Rodhouse said, in the interviews with Sir Richard, *"They were consistent accounts delivered in stages. I didn't see the warrants before the applications were made. I was aware of the purpose and the grounds of the warrant but I didn't see them. I do say the accounts are consistent. In Wiltshire he had said that there were parts he hadn't told them everything and so I was of the view that the account he gave to the Met was the account he had not given to Wiltshire. There were differences but they were accounted for in his account. There were differences. We weren't trying to mislead the judge it was the development of an account."*
161. Sir Richard accepted that neither the DSU nor DAC would have approved the wording of the statements in support of the warrants. I am minded to agree, and consider it unlikely that DCI Tudway would have agreed to representations being advanced on her behalf to Sir Richard that she was fully aware of the application contents but her supervising officers were not, had that not been the case.
162. I have already set out above that, in my opinion, the evidence relating to the investigate tactic of applying for warrants does not give rise to an indication that disciplinary proceedings would be justified.
163. There is evidence that DAC Rodhouse was aware of weaknesses in the case and that there were differences in the account provided by 'Nick'.
164. Solicitors acting for DAC Rodhouse, DSU McDonald and DCI Tudway wrote in representations to Sir Richard that the officers accepted that the information for the search warrant should have made clear that:

- a. *“Nick contacted the MPS in October 2012 which referred him to Wiltshire Police;*
- b. *The MPS contacted Exaro news in July 2014 following a media report that described the abuse that Nick had suffered. The officers left their details and, through Exaro, invited Nick to contact them.*
- c. *Wiltshire Police had interviewed Nick in 2013.*
- d. *One Wiltshire officer (rather than “Wiltshire Police”) had expressed doubts about Nick’s credibility in an email dated 7 May 2013 (thought [sic] that same officer also opined that he could find nothing to disprove the allegations).*
- e. *In October 2014 Nick contacted MPS officers and agreed to meet with them.*

“That these matters were not brought to the attention of the District Judge was not a product of deliberate deception but of inadvertence for which apologies are hereby tendered (only the SIO of the three officers making representations checked the informations).

“The most significant criticism in this paragraph is the contention in the information that Nick had “remained consistent” and “he is felt to be a credible witness who is telling the truth”. These were the honestly held views of the officer making the application.”

165. I agree that further information should have been supplied to the Senior District Judge and that the information in the applications was misleading. However, I do not consider that DAC Rodhouse can be held responsible for that, given there is no evidence that he viewed or approved the content of applications.
166. As I have set out, DAC Rodhouse was aware of the gravity of the decisions both to commence Operation Midland and to execute search warrants, and the potential challenges the inquiry faced. He recorded that he would brief both AC Gallan and Commissioner Hogan-Howe on the search enquiry development. There is clearly evidence that DAC Rodhouse did have oversight of the process to apply for the warrants and, after being briefed by DSU McDonald and DCI Tudway, requested further work to be conducted prior to the applications being made. These included enquiries related to ‘Nick’s’ credibility.
167. Solicitors acting for DAC Rodhouse, DSU McDonald and DCI Tudway wrote in representations to Sir Richard that DAC Rodhouse received a note from [the clinical psychologist] on 26 February 2015 that concluded, *“all in all this leads me to believe that [‘Nick’s’ counsellor] is likely to be able to make an accurate judgement of Nick’s credibility, and communicate it accurately.”*

168. In my opinion, as I have set out, this demonstrated he was providing challenge and seeking further assurance before this significant step was taken.
169. DAC Rodhouse documented in his third Gold policy log decision, on 12 November 2014, “*Det. Ch Supt Duthie has recommended that DCI Diane Tudway and Det. Supt Kenny McDonald should take on this inquiry. I support that recommendation. DCI Tudway is an experienced SIO and accredited as a PIP 3 investigator. She has a full MIT team to work on this matter and her other inquiries are at such a position as to allow her to focus the majority of her time on this investigation. Det. Supt McDonald is also an experienced SIO and an accredited PIP 4. His role will be to provide professional support and challenge to the SIO. He will be my point of contact into the inquiry.*”
170. In my opinion, not personally reviewing the content of the applications/approving information given in support and allowing other officers more familiar with the detail of the investigation to do this, with oversight of the SIO who DAC Rodhouse knows to be experienced, does not provide an indication that he behaved in a manner which would justify the bringing of disciplinary proceedings.
- 171. I recommend that the investigation into his conduct in respect of allegation 3 be discontinued. More details about this recommendation are at the bottom of this document.**

> **Assessment of conduct DSU McDonald**

172. Solicitors acting for DAC Rodhouse, DSU McDonald and DCI Tudway wrote in representations to Sir Richard, as part of the ‘Maxwellisation’ process, that DAC Rodhouse and DSU McDonald approved the investigative tactic of the application for the warrants. They explained that the applications were not personally drafted by the DAC or DSU and neither DAC Rodhouse nor DSU McDonald would have approved the wording of the information in support of the warrant applications (nor did they have any knowledge of the wording of the same prior to their use).
173. Sir Richard accepted that neither the DSU nor DAC would have approved the wording of the statements in support of the warrants. I am minded to agree, and consider it unlikely that DCI Tudway would have agreed to representations being advanced on her behalf to Sir Richard that she was fully aware of the application contents but her supervising officers were not, had that not been the case.
174. I have already set out above that, in my opinion, the evidence relating to the investigate tactic of applying for warrants does not provide an indication that disciplinary proceedings would be justified.

175. In my opinion, not personally reviewing the content of the applications / approving information given in support and allowing other officers more familiar with the detail of the investigation to do this, with oversight of the SIO who DAC Rodhouse acknowledged to be experienced, does not provide an indication that DSU McDonald behaved in a manner which would justify the bringing of disciplinary proceedings.

176. I recommend that the investigation in his conduct in respect of allegation 3 be discontinued. More details about this recommendation are at the bottom of this document.

> Recommendation for discontinuance

177. The MPS concluded that the conduct matters it had identified should be referred to the IPCC, so each of the matters referred should have been recorded in accordance with para 11(3A), sch 3, PRA.

178. Once a conduct matter is 'recorded' it needs to be handled formally in accordance with the PRA. The next step is for the IPCC to decide whether an investigation is 'necessary' and, if it is, to determine the mode of the investigation. It has already been decided that it is necessary to investigate the conduct matters identified in the MM1 and the mode of investigation was determined as independent.

179. Once it has been concluded that it is necessary to investigate and an MOI is determined, the investigation has effectively 'begun'. There is no distinction under the PRA between the scoping exercise I have carried out and the investigation. Under the PRA there is no means of 'undoing' a decision that the behaviour identified does, in fact, amount to a (recordable) conduct matter or the decision that it is 'necessary' to investigate it. Once the investigation into a conduct matter has begun, I am obliged to make a severity assessment as soon as is reasonably practicable and thereafter serve a notice and come to a view on case to answer unless the investigation is discontinued.

180. The provisions on discontinuing an independent investigation can be found in para 21(2), schedule 3, PRA and regulations 10(2) and 10(4) PCMR.

181. The current scheme of delegation states that any decision to discontinue an independent investigation must be made by the Commissioner.

182. Para 21(2), schedule 3 PRA states that the IPCC shall not discontinue any investigation except as authorised by regulation 10. The grounds under which an independent conduct investigation can be discontinued (as relevant to our purpose here) are:

- “...[the matter] *is vexatious, oppressive or otherwise an abuse of process of the procedures for dealing with complaints, conduct matters or DSI matters*
- ...[the Commission] *otherwise considers is such as to make it not reasonably practicable to proceed with the investigation*”

183. I am the person appointed to investigate under the PRA. As set out above, I have formed the view that there is no indication that DAC Rodhouse or DSU McDonald, nor any officers involved in the execution of the search warrants may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings. As such it is my view that there is no (recordable) conduct matter and therefore no proper legal basis upon which the IPCC can investigate. It would therefore, in my view, be an abuse of process of the procedures for dealing with conduct matters for the investigation to continue (i.e. to prepare a severity assessment, serve notices and come to a view on case to answer). It would also be oppressive to treat officers as subjects in such circumstances.

184. There has not been a formal decision to combine the various conduct matters contained in the referral into one single investigation (although as a matter of practicality that is how we have been treating the referral). If there is no formal decision to combine the various conduct matters, we can discontinue those aspects that we want to discontinue as if they were ‘individual’ entire investigations. If there had been a decision to combine the conduct matters into one investigation we would have needed to formally split off the ones that we want to discontinue. This is because the provisions refer to the discontinuance of ‘an investigation’ rather than ‘parts’ of an investigation.

185. I therefore recommend the investigation into the execution of the warrants and into the conduct of DAC Rodhouse and DSU McDonald be discontinued.

February 2017

> Appendix 7: Assessment of conduct – Allegation 4

1. This assessment relates to allegation 4, recorded on the IPCC MOI decision rationale as:
2. *“Following an investigation into Leon Brittan which was NFA’d, a review and re-investigation was undertaken without new grounds which extended the length of time under investigation thereby causing significant distress to LB [Lord Brittan] and his family.– DAC Steve Rodhouse.”*

> The conduct recorded and referred by the MPS

3. The full wording of the conduct recorded by the MPS on the MM1^{37 38} form dated 6 November 2016 was:

“Failure to investigate effectively by retaining LB [Lord Brittan] under investigation for 16 months where no lawful grounds existed to do so (Duties and Responsibilities).”

“This investigation was initially undertaken by Officer 9 and concerned the allegation that a young lady was raped by LB in his flat in 1967. Officer 9 was clear that in the circumstances, there was insufficient evidence to meet the Full Code Test but referred it to the CPS for advice. The CPS rape specialist lawyer stated there was insufficient evidence but left the decision to arrest or interview to Officer 9, Under the Full Code Test as is policy (p355). Officer 9 decided not to arrest or interview as he did not believe that the victim’s account would ever stand up to the Full Code Test, even with his arrest. The complainant was informed and the case was closed. Sir Richard is clear that he agrees with Officer 9 and was extremely complimentary about his approach (p379).

“Officer 9 was removed from the enquiry [personal information]. Officer 11 decided at a meeting with Officer 10 (retired) and others on 28/04/14 that Officer 10 would review the case as he did not feel a thorough investigation had taken place and LB was ultimately interviewed³⁹. Sir Richard does not

³⁷ The MM1 is a referral form used in this case by the MPS, which detailed the conduct matters referred to the IPCC. Concerns have been brought to the IOPC’s attention about the accuracy of the information included in the MM1.

³⁸ Officer 11 has disputed the accuracy of the information in the MPS referral. He has raised concerns that he is named as giving an assessment of an investigation when neither the MPS nor Sir Richard spoke to him about this matter.

³⁹ Officer 11 has raised concerns about the accuracy of the wording in this part of the MM1. He states that he did not have a ‘feeling’ about the lack of investigation, and that he asked for a review from an experienced rape SIO because it was highly unusual that an interview hadn’t been conducted.

agree with this approach. This investigation was also reviewed by Dorset police who stated that the suspect LB should be interviewed. Sir Richard does not agree with this point either.

“Several attempts were then made to ask the CPS to review the case by Officer 10 and [Officer 1]. On 5/6/14 [CPS 1] simply refused on the grounds that the case had been NFA’d and that if they were to seek a charging decision with new evidence then the Full Code Test should be applied.

“On 02/02/15 DAC Rodhouse wrote to [CPS 2] seeking some form of policy which created a ‘shared view’ on case submissions about high profile suspects outside of the current Code. Sir Richard considers this a ‘blatant attempt to bypass the Director’s guidance’ (p370). Sir Richard states that on three separate occasions, whilst LB was under investigation and had already been NFA’d, the officers sought a pre-charge advice from the CPS who kept giving the same answer regarding submission of a Full Code Test.

“Sir Richard states that LB remained under investigation for 16 months (LB died during it) after Officer 9 made the decision to NFA the case (p391). Sir Richard states that he agrees with Officer 9’s decision. Sir Richard states this was ‘unjustifiable and unfair’ to LB and his family. There was also a failure to offer a proper apology by DAC Roadhouse (p388).

4. *“Assessment of misconduct⁴⁰*

“It is clear that Sir Richard considers the investigation into LB in these circumstances ‘unjustifiable’. It is clear that Officer 9 did not believe that the Full Code Test would be met and nor did the CPS. Sir Richard agrees. Dorset police took another view. Despite CPS advice, Officer 11 took the view that it had not been investigated properly and LB should be interviewed and directed Officer 10 as such. This did not change the evidential status of the case. It could be argued that reviewing the case and interviewing LB was a matter of judgment. However, CPS advice to revert to the Full Code Test on 3/6/14 was clear and there was no further evidence to add. It was at this point that the investigation should, after review, have been terminated in my opinion. There was no new evidence and there were no grounds to maintain the investigation. Whether the review and interview should have taken place is a matter of judgment and opinion. However, there is no allegation from Sir Richard with regard to that point, or information that would lead me to believe there were any failings, malice or neglect in doing so. As such, and incidentally, I do not assess that the actions of Officer 11 or Officer 10 amount to misconduct. It is after this

⁴⁰ Officer 11 has made representations and informed the IOPC that he believes this information to be inaccurate. He stated that he never saw any formal written advice from the CPS. He further stated that he did not feel that the case had not been investigated properly and did not feel that Lord Brittan necessarily should be interviewed, nor did he direct anyone to conduct an interview. He clarified that he asked for a review into the circumstances, as it was highly unusual that an interview had not taken place. Officer 11 also informed the IOPC that he never saw any CPS advice and wasn’t sure if there was any.

police review and second submission to the CPS that I believe failings take place as it was entirely clear at that point that the investigation had no merit.

“DAC Rodhouse however continually sought pre-charge advice whilst LB remained under investigation for 16 months, for an offence he had already been NFA’d for by Officer 9, which was agreed by CPS. I can see no reasonable justification for this within existing investigative or CPS policy, a decision which must have had significant impact on LB and his family at a time of severe ill health. There does not seem to be any evidential basis to pursue the pre-charge advice when an NFA had already taken place and there was no new evidence. The CPS policy of the Full Code Test is clear and despite this being re-iterated by the CPS, LB remained under investigation with the consequent stress this would cause him and his family. Such wider policy discussions could have taken place but this did not require LB to be under investigation.

“In the absence of any further detail I would consider that in light of the existing NFA, lack of justifiable rationale for continued requests, lack of necessity to keep him under investigation, the clear CPS advice, disproportionality of impact upon him, I would anticipate that this would be assessed as a failure to adhere to investigative policy which significantly impacted on LB’s rights and is a breach of Duties and Responsibilities.”

> Definition of conduct matter

5. A ‘conduct matter’ is defined in section 12(2) of the *Police Reform Act 2002* (PRA) as follows:

“...any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from the circumstances or otherwise) that a person serving with the police may have a) committed a criminal offence or b) behaved in a manner which would justify the bringing of disciplinary proceedings.”
6. A conduct matter becomes a recordable conduct matter, pursuant to paragraph 11 of Schedule 3 to the PRA, if (assuming the conduct matter to have taken place):
 - a. *“It appears to have resulted in the death or serious injury of any person, or*
 - b. *a member of the public has been adversely affected by it, or*
 - c. *it meets criteria set out in Regulation 7 of the Police (Complaints and Misconduct) Regulations 2012 (the Complaints Regulations).”*
7. Regulation 7(1) lists the criteria as including:

- a. *“a serious assault, as defined in guidance issued by the Commission (paragraphs 8.7 to 8.10 of the statutory guidance);*
- b. *a serious sexual offence, as defined in guidance issued by the Commission (paragraphs 8.11 and 8.12 of the statutory guidance);*
- c. *serious corruption, as defined in guidance issued by the Commission (paragraphs 8.13-8.17 of the statutory guidance);*
- d. *a criminal offence or behaviour which is liable to lead to misconduct proceedings and which in either case was aggravated by discriminatory behaviour on the grounds of a person’s race, sex, religion, or other status identified in guidance issued by the Commission (paragraph 8.18 of the statutory guidance);*
- e. *a relevant offence⁴¹;*
- f. *conduct whose gravity or other exceptional circumstances make it appropriate to record the matter in which the conduct is involved; or*
- g. *conduct which is alleged to have taken place in the same incident as one in which conduct within sub-paragraphs (a) to (e) is alleged.”*

> Findings of Sir Richard Henriques

8. The conduct recorded by the MPS relates only to the decision making and police involvement from 3 June 2014, i.e. once the CPS had stated that they would not be providing any further pre-charge advice. The MPS assessed that the decision to continue the investigation into Lord Brittan after the involvement of Officer 9, up to 3 June 2014, was a judgement call. It was not one that Sir Richard agreed with, but was supported by the findings of an independent review conducted by Dorset Police. Further details about the Dorset review are contained below, but I am in agreement with this assessment by the MPS and the focus of this document is on the activity following 3 June 2014.
9. Sir Richard set out the chronology of key events within Operation Vincente, which can be summarised as:
10. Officer 9 commenced a decision log on 20 December 2012. The offence was initially reported to South Yorkshire Police (SYP) and transferred to the MPS on 30 December 2012. Sir Richard was satisfied from the original notes that the initial investigations were sound. Officer 9 tasked Officer 6, an experienced and suitably qualified officer, to speak the victim and offer reassurance. He recorded that the allegation may ultimately centre on

⁴¹ Relevant offences are: any offence for which the sentence is fixed by law or any offence for which a person of 18 years and over (not previously convicted) may be sentenced to imprisonment for seven years or more (excluding any restrictions imposed by Section 33 of the Magistrates Court Act 1980).

consent and, as it was not a clear-cut allegation, he would liaise with Sapphire (specialist MPS rape unit) with a view to advising and if need be reviewing their actions to date. Officer 9 decided the victim should be further interviewed.

11. On 8 Jan 2013 there was a further ABE with the complainant. Officer 9 believed the account was consistent. He recorded that it remained an incident involving two people in a private dwelling some 40 years ago and it was hoped that the witnesses may offer some corroboration of the events, which would strengthen the victim's account. He advised that four potential witnesses be interviewed and a fifth be traced and interviewed.
12. On 15 June 2013 Officer 9 wrote that he had spoken to [another officer] who had agreed to look at the investigation and also wrote that he was not sure the allegation constituted a rape, as he was unsure if Lord Brittan could have reasonably known or suspected that consent was an issue.
13. On 7 June 2013 Officer 9 reviewed the evidence [describes the evidence]. Officer 9 decided to seek advice from the CPS. He did not feel at that stage that arrest of the suspect was a proportionate response. He was not convinced the offence was made out.
14. On 19 August 2013 CPS advice was provided by [a CPS] rape specialist prosecutor: [advice about the alleged offence].
15. On 4 September 2013 Officer 9 applied the full code test and decided to NFA the case and there would be no arrest or interview. He considered it would be disproportionate as there was insufficient evidence to prove that the suspect would be aware that the complainant was not consenting.
16. On 17 Feb 2014 Officer 9 met with complainant to explain the decision.
17. On 21 April 2014 Officer 9 was taken out of role [personal information] by Officer 11⁴².
18. On 28 April 2014 there was a letter from Tom Watson MP that was highly critical of the decision not to interview Lord Brittan. The letter was not sent to the MPS. They became aware of it on 2 June 2014, although it was published on Exaro on 17 May 2014. On 13 June 2014 the DPP replied to the letter saying it was a matter for the police.
19. On 28 April 2014 there was an Operation Fairbank⁴³ tactical review meeting, it was decided that Officer 10 would establish the rationale for not approaching Lord Brittan and would review the exact nature of the CPS advice and review the decision not to speak to Lord Brittan. Regard was had to para 4.2 of the Code for Crown Prosecutors which states, "*in most*

⁴² Concerns have been raised by Officer 11 about the accuracy of this information. Officer 11 states that he did not make the decision to remove Officer 9 from the investigation, and that this was a joint decision between him and other managers.

⁴³ Operation Fairbank: an MPS umbrella inquiry into historical child sex abuse claims involving politicians and other public figures, which began in 2012.

cases prosecutors should only decide whether to prosecute after the investigation has been completed and all the available evidence has been reviewed.” Officer 11 took the view that, as Lord Brittan had not been interviewed, the investigation had not been completed and all the evidence had not been reviewed. He also had regard to para 4.3, *“prosecutors should only take such a decision (whether or not to prosecute) when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken later in accordance with the full code test.”* Sir Richard disagreed with this decision.

20. Reference was made to the review by Dorset Police: *“The reviewer concludes that there were ample reasonable grounds to conduct an interview of Lord Brittan and that the enquiry could not be properly progressed without doing so. Such action was necessary, proportionate and justified and far from unlawful as was contended by the SIO on the basis that the ingredients of the offence were not made out due to ‘consent’. Whilst he has sought to rationalise this in his decision log, the reviewer believes that the only way to explore that consent was by questioning the suspected person. Had other available lines of enquiry been explored, these may well have unearthed information that negated the need for an interview but for the SIO to base the decision entirely on his assessment of the consent issue is difficult to justify.”*
21. Sir Richard found this hard to understand as the issue at that stage was clearly consent and nothing else. In his judgement the SIO was correct to *“base the decision on the consent issue.”* Despite this, he did not regard the decision as wholly unreasonable and understood it was potentially a controversial decision and it remains a legitimate concern of senior officers in the MPS to maintain public confidence in the MPS. He had no doubt that, had the suspect been an ordinary member of public, no review would have taken place.
22. On 19 May 2014 there was a review of Op Vincente by Officer 7. She thought certain witnesses could be traced, however, it would be unlikely to change the CPS decision. She believed Lord Brittan should be interviewed under caution.
23. On 30 May 2014 Lord Brittan was interviewed. He denied having ever met the complainant or living in [location]. He provided his actual address and named his landlady. [Details of alleged offence.]
24. On 3 June 2014 [CPS 1] emailed Officer 10 saying she was confused as the case had been NFA'd by Officer 9 and the investigation had finished. She said the CPS would only now become involved if the OIC confirmed the case was complete, completed an MG3, confirmed the evidential threshold had been met and then submitted a full set of papers for a charging decision to be made. She said that any supervising officer may struggle to

show it met the threshold bearing in mind the reasons given by Officer 9 for NFA and that the new evidence from the interview weakened the case.

25. On 5 June 2014 Officer 1 emailed [CPS 1] saying that the decision had been reviewed by another [Evidential Review Officer], and there was significant pressure from senior management for a decision asap (victim charter, public interest, ill health of Leon Brittan and political sensitivity around subject). His view was that a transparent review was carried out, not by the police, so there could be no allegation of cover up.
26. [CPS 1] replied that she had already sent an email to Officer 10 on the matter and reiterated her earlier comments that Lord Brittan denied the allegations and raised an ID issue which weakened the case further. She stressed that [guidance] should be followed and the case was not accepted by the CPS to provide advice.
27. On 23 June 2014 Lord Brittan's solicitors wrote [details of alleged offence].
28. On 7 July 2014 DAC Rodhouse was appointed as Gold Commander for Op Vincente.
29. On 22 August the complainant was taken for a drive around in attempt to locate the scene of crime. She could not positively identify the location.
30. On 7 October 2014 an identification procedure was carried out through the WADS (witness album display system). Lord Brittan declined to attend an ID procedure. The complainant identified the suspect.
31. On 12 November 2014 the file was resubmitted and there had been an endorsement from Officer 10 who said there were some points of case law to be considered around consent. Case law appears to show that, unless consent is obvious, it is up to a jury to decide if intercourse is lawful. [CPS 1], Head of Homicide and RASSO (Rape and Serious Sexual Offences) returned it and stated it was not accepted for pre-charge advice. She reiterated the DG guidance and that it should not be referred unless the full code test was met.
32. On 24 November 2014 DAC Rodhouse emailed Officer 10 saying he was puzzled at the CPS and wondered why there could not be some common sense applied – the CPS should be able to offer a professional view where a decision not to proceed would be of such huge public interest. He stated that he was keen to appeal and they were seeking a professional view. These were unique circumstances where the background context was one where the previous independence of the police to tackle sexual offending by VIPs had been publicly called into question.
33. On 8 Jan 2015 DAC Rodhouse emailed Commander Spindler asking how they could get the CPS to assess the evidence in cases of public interest even if their assessment was that the threshold was not met.
34. On 21 Jan 2015 Lord Brittan died.

35. On 23 Jan 2015 DAC Rodhouse emailed [CPS 2], Deputy Chief Crown Prosecutor. He referred to correspondence with [CPS 1] and said that they did not think that the full code test had been met, she refused to review the case and they had been at an impasse ever since. He asked for the merits of a protocol for these types of cases.
36. On 12 Feb 2015 there was a meeting with DAC Rodhouse [CPS 2] and [CPS 3]. DAC Rodhouse expanded on his proposal. Agreement could not be met that the CPS would review the case. They agreed their respective organisations would consider the proposal.
37. On 1 April 2015 AC Gallan wrote to the DPP regarding a recent meeting stating they discussed the Director's guidance in relation to allowing the CPS to review cases involving prominent figures when the full code test has not been met. She went on to ask whether the CPS would reconsider whether it should review Lord Brittan's case. She wrote that the case, as she understood it, met the evidential test.
38. On 5 April 2015 AC Gallan wrote to the DPP writing in similar terms.
39. In response to the letter, the Chief Crown Prosecutor stated that, as the full code test had not been met, they should not carry out a separate review.
40. On 24 June 2015 the CPS announced that police had taken a decision in 2013 to NFA.
41. On 11 September 2015 Lady Brittan's solicitors wrote to the MPS setting out the history of the investigation and expressed regret that the MPS had not confirmed to Lord Brittan, and subsequently Lady Brittan, the decision(s) reached following the further investigation in 2014.
42. On 6 October 2015 DAC Rodhouse wrote to the solicitors explaining the decision briefly and said, "*I do recognise that this clarity should have been provided at an earlier stage and I apologise for any distress that has caused to Lady Brittan.*"

> Dorset review

43. This was completed on 13 Jan 2016 by Dorset Police Deputy Chief Constable (DCC) James Vaughan. He had been briefed by AC Gallan and DAC Rodhouse and the terms of reference (TOR) were agreed by DAC Rodhouse.
44. Relevant findings of the review included:
 - Criticism of Officer 9 for the lack of detail in his initial MG3.

- The initial lawyer review made no reference to [describes alleged abuse] – this was important in understanding consent. No investigative advice provided by the CPS and this could have outlined the benefits of an interview with Lord Brittan.
- There were ample reasonable grounds to conduct an interview with Lord Brittan and the enquiry could not be properly progressed without doing so – the only way to explore consent was by questioning the suspected person.
- The SIO to base the decision entirely on his assessment of the consent issue is difficult to justify.
- The MPS appropriately commissioned an internal review of the case by a suitably experienced senior rape investigator. This (Dorset) review concurs with the findings and directions provided in the internal review.
- (In relation to the identity parade) Notwithstanding the aforementioned e-mail from the CPS (3 June 2014 email) and the apparent subjective test applied by the Officer 10, it is questionable whether an identification parade was necessary. The reviewer, hypothetically making the same decision, struggles to see what *useful purpose* under 3.12 was being served by asking the witness to identify an image of someone she had named as Lord Brittan and would obviously identify as Lord Brittan in any identification procedure. In all her disclosures and her ABE she is very clear that the perpetrator of the rape is Lord Brittan, who she now knows as the prominent Peer and former Home Secretary.

It must be noted that this remains a subjective test and was not necessarily an incorrect interpretation of the Codes.

45. The decision to use video (still images) identification in this case was clearly the least intrusive and most appropriate identification method in the circumstances. The Acting Inspector has made considerable effort to source a date-relevant image, i.e., an image of Lord Brittan circa 1967. He prepared the identification parade in line with PACE guidance, including the covering of two moles on the face of the suspect and on images of other persons within the parade. In my view the Acting Inspector has clearly demonstrated that he has discharged his duties fairly, proportionately and in keeping with Code D of The Codes of Practice.
46. The identification parade took place on 7 October 2014 at Southwark Identity Suite. Lord Brittan's legal representative was present throughout the process. Within the identification pack (item DS/1) the legal rep was specifically asked if she had any objections to the arrangements of the procedure and she confirmed she had no such concerns.
47. In summary there is a provision for the investigators to do an identification procedure supported by a clearly defined rationale. What is apparent, though, is that from the time of deciding it was necessary on or around

03/06/14, to the point of a positive identification on 07/10/14, at least four months had elapsed. This built in further delay to an outcome for either victim or suspect.

48. The MPS then correctly assessed that the full code test had not quite been met but submitted to CPS anyway for independent review.
49. Senior CPS colleagues correctly applied the DG's guidance in their refusal to further review a file and provide charging advice upon completion of the investigation. However, the reviewer is sympathetic to the notion that an independent assessment may have better served the public interest. In cases surrounding very senior members of the British establishment, particularly those engaged or formally engaged in home affairs or law enforcement, an independent review would provide necessary rigour and integrity in decision making.
50. The (Dorset) reviewer is satisfied that the investigation was launched in good faith, against a credible account provided by a compelling witness and was undertaken with integrity. Enquiries were proportionate to the matters in hand and remained objective throughout.

> **'Maxwellisation' representations received from solicitors acting for DAC Rodhouse**

51. Contextual documents that Sir Richard should be mindful of include Special Notice 11/2002 and the April 2013 reports of Alison Levitt QC and Keir Starmer QC.

52. They set out:

"The maintenance of public confidence in the police service is a well-recognised and legitimate objective, see Chief Constable of Dorset Police v. Salter [2012] EWCA Civ 1047, per Maurice Kay LJ at [21]: 'Although police officers do not have a fiduciary client relationship with individual members of the public or the public at large, they do carry out vital public functions in which it is imperative that the public have confidence in them.' This remark was made against the backdrop of similar statements about public confidence: See R (Green) v Police Complaints Authority [2004] UKHL 6, where Lord Carswell stated at [78]: 'Public confidence in the police is a factor of great importance in the maintenance of law and order in the manner which we regard as appropriate in our polity. If citizens feel that improper behaviour on the part of police officers is left unchecked and they are not held accountable for it in a suitable manner, that confidence will be eroded.'

"The maintenance of public confidence is all the more difficult at a time of often hysterical media reporting including allegations of police cover ups. Accordingly seeking CPS endorsement – or otherwise – of a potentially

controversial decision to NFA a case against a former Home Secretary was and remains a legitimate concern of senior officers at the MPS. Efforts towards maintenance of public confidence (and thus the reputation of) the MPS do not reflect a craven or improper attitude to the media.”

> **Letter to IPCC from solicitors acting on behalf of DAC Rodhouse dated 12 January 2017:**

53. The letter included the following:

“At that time officers were mindful of not closing rape investigations prematurely in cases where the behaviour of the complainants might have raised a defence opportunity to claim that the complainant did in fact consent...”

“DAC Rodhouse agreed with Officer 10’s stance and although his sense was that the Full Code test was not quite met he did believe this was a fine judgement. Additionally, and importantly, DAC Rodhouse wanted the CPS to review the decision making in this case in order to give confidence to the public that the MPS had properly investigated a serious allegation against a prominent individual. The context in which DAC Rodhouse took this decision was set out in paragraphs 23 to 25 of our letter dated 30 November 2016.

“DAC Rodhouse took the view that although the Director’s Guidance did require the police to apply the Full Code Test, it did not explicitly state that the CPS could not voluntarily review the papers and offer a professional view. He considered that this was an exceptional case where public confidence was an important consideration.

“Lord Brittan had already been publically [sic] named in relation to this case and the associated alleged mishandling of the so-called ‘Dicken’s [sic] dossier’. National newspapers were regularly carrying stories about how ‘the police’ had failed to robustly investigate allegations against prominent individuals. The MPS Directorate of Professional Standards had recorded many investigations in relation to this and such allegations had been raised in Parliament.

“As a consequence of the CPS refusal to consider the papers submitted, DAC Rodhouse asked a colleague to draft a letter on his behalf to the Deputy Chief Crown Prosecutor (DCCP) in order to seek more senior scrutiny. On 8 January 2015 he chased this up with the colleague and repeated his request for a letter to be written.

“On 15 January 2015 DAC Rodhouse met the DCCP in relation to another case and raised this verbally. Sadly, Lord Brittan died a week later.

54. *It follows that Lord Brittan had therefore not been told of the MPS conclusion that the Full Code Test had not been met because:*

“The MPS wished for the CPS to review the evidence in the case to assess whether they agreed with the MPS conclusion. This was particularly relevant given the legal issues that Officer 10 had raised and the inevitable media scrutiny that the case had raised.

“With this in mind, it was possible that the CPS may have recommended further enquiries (which might even have led to charges).

“It was therefore not appropriate to inform Lord Brittan at that point.

“Following the death of Lord Brittan, AC Gallan wrote two letters to the DPP. In the first letter dated 5th March 2015 she asked the DPP to consider allowing a process whereby the CPS review a small number of cases where the public interest would be well served by the CPS reviewing police decision making where the police had assessed that the Full Code Test had not been met. This was in response to constant media coverage of cases where it was alleged that the police had not properly investigated VIPs.

“The second letter dated 1st April 2015 specifically asked the DPP to review the evidence in the Lord Brittan case. Both letters appear to endorse DAC Rodhouse’s desire for independent oversight in cases where the police decision not to seek a prosecution could impact on public confidence.”

> **Assessment of conduct**

55. In conducting this assessment I have had access to:

- Sir Richard’s full unredacted report (references in my assessment are to this version)
- the review of Operation Vincente conducted by Dorset Police dated 13 January 2016
- the responses made on behalf of DAC Rodhouse, DSU McDonald and DCI Tudway to Sir Richard as part of the ‘Maxwellisation’ process (10 October 2016, 12 October 2016 and 26 October 2016)
- letters from AC Gallan to the DPP on 5 March and 1 April 2015
- the CRIS (Crime Report Information System) report for Operation Vincente
- Officer 9’s decision log for Operation Vincente
- representations made to the IPCC on behalf of DAC Rodhouse on 12 January 2017

56. The public concern and external pressure expressed by DAC Rodhouse and his representatives was set out in detail within Sir Richard's report. This included:
- 3 October 2012 – The revelation of the Jimmy Savile scandal
 - 24 October 2012 – Tom Watson raised in Parliament the possible existence of a paedophile ring in Westminster
 - Feb 2013 – The commissioning of an independent review into the 'Dickens Dossier'
 - 7 July 2014 – The Home Secretary announced the launch of the Independent Inquiry into Childhood Sexual Abuse (IICSA) and the Wanless/Whittam review into the Dickens Dossier
 - July 2014 – Operation Hydrant was launched by the police to co-ordinate the service's response to the growing number of child abuse allegations.
 - November 2014 – Tom Watson passed hundreds of pieces of information relating to abuse to the MPS.
57. Sir Richard acknowledged that, throughout this period, there was intense media reporting of child abuse and alleged cover ups.
58. Sir Richard also explained in his report that the obligation to believe a complainant has its origins in a police Special Notice from 2002 dealing with rape investigation which stated, "*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 substantial allegation after a full and thorough investigation.*" Sir Richard also made reference to a 2014 report on police crime reporting by Her Majesty's Inspectorate of Constabulary (HMIC), which recommended that, "*the presumption that the victim should always be believed should be institutionalised.*" There is evidence that this heavily influenced decision making in Operation Midland and, in my view, also likely to have in part influenced decision making in Operation Vincente, particularly after the involvement of Officer 9.
59. As already mentioned, the MPS has not recorded conduct relating to actions/decisions prior to 3 June 2014. I agree with their rationale for that.
60. The first (post Officer 9) CPS advice was on 3 June 2014, where it was made clear that it would not be provided. There were then further enquiries undertaken until 12 November 2014, when a further attempt was made to obtain CPS advice. This included a drive around to locate a scene of crime and also an identification procedure. It would appear therefore, from the MPS referral, that they considered that these enquiries were not necessary and form part of their rationale for the conduct recorded.
61. PACE Codes of Practice Code D, which deals with the arrangements for identity procedures, sets out that:

“Circumstances in which an eye-witness identification procedure must be held

3.12 Whenever:

(i) an eye witness has identified a suspect or purported to have identified them prior to any identification procedure set out in paragraphs 3.5 to 3.10 having been held; or

(ii) there is a witness available who expresses an ability to identify the suspect, or where there is a reasonable chance of the witness being able to do so, and they have not been given an opportunity to identify the suspect in any of the procedures set out in paragraphs 3.5 to 3.10,

and the suspect disputes being the person the witness claims to have seen, an identification procedure shall be held unless it is not practicable or it would serve no useful purpose in proving or disproving whether the suspect was involved in committing the offence, for example:

- where the suspect admits being at the scene of the crime and gives an account of what took place and the eye-witness does not see anything which contradicts that.*
- when it is not disputed that the suspect is already known to the witness who claims to have recognised them when seeing them commit the crime.*

“3.13 An eye-witness identification procedure may also be held if the officer in charge of the investigation considers it would be useful.”

62. It was clear that, following the interview with Lord Brittan, the MPS considered that identification was an issue. This was recorded, following a transcript of the interview with Lord Brittan, on the CRIS for Operation Vincente by Officer 6 on 19 June 2014. DCC Vaughan questioned, in the Dorset review, what the useful purpose of this was, given that the complainant had been clear throughout that the allegation was made against Lord Brittan. However, Lord Brittan was not necessarily ‘known’ to the complainant at the time of the alleged assault, although clearly knew of him subsequently from his prominent public role. Notwithstanding this, 3.13 above does appear to provide wide discretion to the officer in charge to use professional judgement to determine whether a procedure would be ‘useful’. As DCC Vaughan stated in his review, this is a subjective test there and was not necessarily an incorrect interpretation of the Codes in this case. He also acknowledged that, *“It is regrettable that no decision log entries exist providing rationale for undertaking identification procedures and therefore it is impossible to assess the subjective opinion of the SIO.”*
63. On 11 August 2014 Officer 6 made an entry onto the CRIS report, documenting the details of a conversation she had with the complainant. [Details regarding attempting to identify the location of the alleged offence] Officer 6 recorded that she would discuss this with Officer 1 and that if she thought she could ID the flat they would discuss facilitating this.

64. On 21 August 2014 Officer 6 recorded on CRIS, *“Having discussed this with [Officer 1] arrangements have been made with [the complainant] who is coming to [location and personal information]. I have arranged to pick her up from [location] with [name of officer] and we will drive her around and see if she can ID the flat. ID Procedures are on-going. [name of officer] has been liaising with the ID Insp. I have given [the complainant] their names and vice versa. They can then sort out arrangements direct.”*
65. It appears from this that the drive around did not delay the investigation, as this occurred in parallel to the identification procedure.
66. In my view, although I agree with Dorset Police in that the identity procedure was unlikely to have been useful in the circumstances, this was a judgement call that the officer in the case was entitled to make. Albeit highly unlikely, it was possible that the complainant had mistakenly thought that Lord Brittan was the suspect. DCC Vaughan found, *“Enquiries were proportionate to the matters in hand and remained objective throughout.”*
67. In light of the above, I do not therefore think the pursuit of these enquiries provide an indication of a conduct matter, but may amount to unsatisfactory performance and/or there may be learning for the MPS / individuals involved. However, whether to take forward any learning or performance issues will be a matter for the MPS.
68. Following these enquiries, a further attempt was made to refer the case to the CPS for pre-charge advice, which was again refused on the same grounds. As outlined above, the MPS continued to try and get the CPS to deviate from the Director’s Guidance and persuade them to review the case. This protracted dialogue between the MPS and the CPS clearly prolonged the investigation and a decision being communicated to Lord Brittan and then Lady Brittan.
69. There is evidence that the MPS was seeking a review from the CPS to add independence to what was likely to be a controversial decision, where, in their view, the evidential threshold had not quite been met. This was a high-profile case and there was significant public concern and media reporting about the police response to handling such allegations against prominent people. Set within that context, in my view, there was a proper motivation for pursuing the matter in the way the MPS did. However, given the CPS had been very clear on their position and reiterated this several times, it was likely that this was a wider policy matter that would not be resolved quickly. This was a decision for the police to make themselves and they could have done so. In those circumstances I agree with the MPS that these wider discussions could have taken place separately from the Lord Brittan case, which could have been finalised and decision communicated much sooner. I note that DAC Rodhouse has apologised to Lady Brittan via letter to her solicitor.
70. In light of the external pressures set out above and apparent good faith in seeking the CPS review, I do not consider that this amounts to an indication

of conduct. I do, however, consider that there may be learning/performance matters for the officers involved in deciding to pursue the identification procedure and in the protracted dialogue with the CPS which delayed the conclusion of this investigation. However, whether to take forward any learning or performance issues will be a matter for the MPS.

> Recommendation for discontinuance

71. The MPS concluded that the conduct matters it had identified should be referred to the IPCC, so each of the matters referred should have been recorded in accordance with para 11(3A), sch 3, PRA.
72. Once a conduct matter is 'recorded' it needs to be handled formally in accordance with the PRA. The next step is for the IPCC to decide whether an investigation is 'necessary' and, if it is, to determine the mode of the investigation. It has already been decided that it is necessary to investigate the conduct matters identified in the MM1 and the mode of investigation was determined as independent.
73. Once it has been concluded that it is necessary to investigate and an MOI is determined the investigation has effectively 'begun'. There is no distinction under the PRA between the scoping exercise I have carried out and the investigation. Under the PRA there is no means of 'undoing' a decision that the behaviour identified does, in fact, amount to a (recordable) conduct matter or the decision that it is 'necessary' to investigate it. Once the investigation into a conduct matter has begun, I am obliged to make a severity assessment as soon as is reasonably practicable and thereafter serve a notice and come to a view on case to answer, unless the investigation is discontinued.
74. The provisions on discontinuing an independent investigation can be found in para 21(2), schedule 3, PRA and regulations 10(2) and 10(4) PCMR.
75. The current scheme of delegation states that any decision to discontinue an independent investigation must be made by the Commissioner.
76. Para 21(2), schedule 3 PRA states that the IPCC shall not discontinue any investigation except as authorised by regulation 10. The grounds under which an independent conduct investigation can be discontinued (as relevant to our purpose here) are:
 - "...[the matter] *is vexatious, oppressive or otherwise an abuse of process of the procedures for dealing with complaints, conduct matters or DSI matters*
 - "...[the Commission] *otherwise considers it such as to make it not reasonably practicable to proceed with the investigation*"

77. I am the person appointed to investigate under the PRA. As set out above, I have formed the view that there is no indication that any officers connected to the matters subject to this referral may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings. As such it is my view that there is no (recordable) conduct matter and therefore no proper legal basis upon which the IPCC can investigate. It would therefore, in my view, be an abuse of process of the procedures for dealing with conduct matters for the investigation to continue (i.e. to prepare a severity assessment, serve notices and come to a view on case to answer). It would also be oppressive to treat officers as subjects in such circumstances.
78. There has not been a formal decision to combine the various conduct matters contained in the referral into one single investigation (although as a matter of practicality that is how we have been treating the referral). If there is no formal decision to combine the various conduct matters we can discontinue those aspects that we want to discontinue as if they were 'individual' entire investigations. If there had been a decision to combine the conduct matters into one investigation we would have needed to formally split off the ones that we want to discontinue. This is because the provisions refer to the discontinuance of 'an investigation' rather than 'parts' of an investigation.
- 79. I therefore recommend the investigation into the conduct matter concerning Operation Vincente be discontinued.**

February 2017

> Appendix 8: Discontinuance of independent investigations – Decision-making document – 6 March 2017

> Rationale

1. Operation Kentia relates to conduct referrals made by the Metropolitan Police Service (MPS) to the IPCC following a report produced by Sir Richard Henriques into the way MPS officers investigated Operation Midland (allegations of abuse made by a complainant, 'Nick', against a number of prominent figures) and Operation Vincente (an allegation of rape made against Lord Leon Brittan).
2. The alleged conduct of the following officers was referred by the MPS
 - DAC Rodhouse
 - DSU McDonald
 - DCI Tudway
 - DI Hepworth
 - DS Sword
3. Following the referral made by the MPS it was determined by the Case Assessment Unit of the IPCC that an independent investigation should be carried out in relation to each of the allegations made.
4. As a result a considerable amount of work has been carried out in assessing the nature and detail of the allegations. As this progressed, the Lead Investigator began to form the view that the information available was such that consideration should be given to whether a number of the investigations into some of the allegations referred should be discontinued.
5. The provisions on discontinuing an independent investigation can be found in para 21(2), schedule 3, PRA and regulations 10(2) and 10(4) PCMR.
6. The current scheme of delegation states that any decision to discontinue an independent investigation must be made by the Commissioner.
7. The decision as to discontinuance therefore falls to me to take.

8. Para 21(2), schedule 3 PRA states that the IPCC shall not discontinue any investigation except as authorised by regulation 10. The grounds under which an independent conduct investigation can be discontinued (as relevant to our purpose here) are:
 - a. ...[the matter] *is vexatious, oppressive or otherwise an abuse of process of the procedures for dealing with complaints, conduct matters or DSI matters*
 - b. ...[the Commission] *otherwise considers it such as to make it not reasonably practicable to proceed with the investigation*
9. In considering these matters I have relied heavily on accuracy of the information provided to me by the Lead Investigator, as detailed in his Assessment of Conduct documents, and as set out in summary form in the draft Discontinuance Decision Record. I see no merit in mere repetition of the matters set out in these documents, but I can confirm that I have considered them and had regard to them.
10. It is also important to note that, as well as the considerable efforts made by the Lead Investigator to clarify the position relating to each of the allegations, these matters have also been considered in some detail by Sir Richard in his report. While I have naturally read the report and the details of the matters contained within it, and noted the opinion which has at times been expressed by Sir Richard, the decisions I make as to discontinuance are my own and based on all the information with which I have been provided. In addition, the purpose of Sir Richard's detailed investigation and subsequent report was to examine how Operation Midland and Operation Vincente were carried out within the context of a wider remit and broader terms of reference.
11. The IPCC must consider possible conduct issues as against individual officers. Although we may find possible systemic issues as an investigation progresses this is not the primary focus of a PRA-compliant 'conduct' investigation.
12. Operation Midland and Operation Vincente were clearly complex investigations dealing with allegations of historic abuse made against high-profile individuals. Clearly, within such investigations, difficult decisions are taken as a matter of course on a daily basis. It is inevitable and understandable that sometimes there are differences of opinion as to the appropriateness of a particular decision, and that some decisions turn out, with the benefit of hindsight, to have been wrong. Within any investigation there is inevitably a margin of appreciation in which there are a range of possible priorities and investigative decisions which can be set or made, and which require a judgement call by those investigating at the time. Where decisions sit within that margin of appreciation, it is not for me, when considering whether an allegation amounts to a conduct matter, to try to substitute my views as to what investigative actions I might or might not

have taken had I been making them, or even to state whether I agree or disagree with those taken.

13. I also think that it is important to acknowledge and put appropriate weight on the context in which the Operation Midland and Operation Vincente were being carried out. At this time there was much concern that ‘cover-ups’ by the ‘establishment’ were taking place to protect ‘their own.’ This had no doubt come about, in part at least, due to the revelations about the activities of Jimmy Savile and the way it was suspected (whether true or not) that his behaviour had been effectively ignored by those who had known full well about it, as well as emerging revelations about other ‘celebrities.’ It was a time of intense public and media scrutiny, and public press and political criticism of the authorities failing to act. I have been referred to the MPS policy at the time which was *“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 substantial allegation after a full and thorough investigation,”* and also an HMIC recommendation that *“the presumption that the victim should always be believed should be institutionalised”*, which perhaps demonstrates the context in which these investigations were being carried out. While it is not for me to comment on the culture and context that existed at that time it would be wrong to seek to consider these allegations without at least an acknowledgement of it.
14. It should be noted that at present there has been no formal decision to join the individual allegations in one investigation, and so they presently stand separately. I shall therefore deal with each of the allegations in the same way:
15. For the purposes of the decisions I have to make in relation to whether any matters should be discontinued I have considered whether, on the information available, there is an indication that the individual being considered in relation to the specific allegation may have committed a criminal offence or behaved in a manner that would justify disciplinary proceedings.
16. In doing that, I have considered the allegations at their highest (that is, assuming that they were proven and considered to be relevant). I acknowledge that, where I consider there may be such an indication, whether the allegations would or would not be actually proven are matters for others.

> Operation Midland

Allegation: “A failure to properly investigate allegations made by complainant ‘Nick’ which led to an avoidable extended investigation which caused prolonged and undue stress to those suspected – DAC Rodhouse, D/Supt Kenny McDonald, DCI (SIO) Diane Tudway.”

17. On the basis of the information I have been provided with, it seems to me that the thrust of this allegation is that enquiries into the credibility of 'Nick' were inadequate and/or not carried out quickly enough.
18. The view of the Lead Investigator is that the matters raised, even if established and considered to be deficiencies in the investigation, arise from essentially matters of judgement, directing resources and emphasis towards the 'wrong' areas, and thus, at their highest possible, performance issues. In summary the investigation may well have lost objective focus on areas which should have been given more emphasis but was nevertheless carried out in good faith.
19. The information available seems to suggest that the investigation was extensive and that what was actually carried out was done in a diligent manner. I am informed that rationales for the majority of decisions were largely recorded. In addition, in respect of this allegation, there appears to be no evidence of bad faith, malice or dishonesty in the way that the investigation was carried out.
20. Indeed I am directed towards the view that Sir Richard sets out that *"at the conclusion of my interview with the officers on 16/17 August 2016, I formed the view that, notwithstanding the many mistakes I have enumerated above, the officers had conducted this investigation in a conscientious manner and with propriety and honesty."*
21. I am therefore persuaded by the Lead Investigator's submission that these matters, do not amount to behaviour which may justify the bringing of disciplinary proceedings against the officers concerned. Whether or not the issues identified by Sir Richard in his report amount to performance failings is a matter for the MPS and more appropriately dealt with by the force itself.
22. To continue an IPCC conduct investigation where it is clear that there is no indication that the officers may have behaved in a manner which would justify disciplinary proceedings would in my view be oppressive and an abuse of the process. In particular, if there is no conduct matter, the IPCC has no legal basis on which to carry out an investigation. I agree that the independent investigation into this allegation should therefore be discontinued. The MPS should be invited to consider the matters relating to this allegation and deal with them as they consider appropriate.

Allegation: "The enquiry team made inaccurate applications for search warrants as they did not disclose all relevant information. Parts of the searches were not conducted lawfully and some exhibits were seized otherwise than in accordance with the warrants – DAC Steve Rodhouse D/Supt Kenny McDonald DCI Diane Tudway, DI Alison Hepworth, DS Eric Sword (retired)."

23. The Lead Investigator considers that no conduct issues are indicated in relation to DAC Rodhouse and DSU McDonald in relation to this allegation.

24. The Lead Investigator does, however, consider that there are indications of conduct matters relating to the other officers. This derives primarily from the fact that those officers were directly involved in what was contained in the application and what information was, or was not, provided to the Senior District Judge, in that procedure. It is not necessary or appropriate for me to consider their respective positions at this stage. However, I should perhaps stress that the fact that there has been no submission for the case to be discontinued against these officers should not be taken as any determination of the allegations relating to them which will be considered as part of the independent investigation. The test to be applied at this stage is only, based on the information currently available, whether or not there is an indication that the officers may have behaved in a manner that would justify disciplinary proceedings.
25. By contrast, in relation to the involvement of DAC Rodhouse and DSU McDonald, there is no evidence that they were involved in the drafting of the warrant, or the actual application hearing before the Senior District Judge.
26. The Lead Investigator has also considered matters relating to the decision to obtain the warrant itself and the execution of the warrant.
27. In relation to the decision to seek a warrant it is right to observe that Sir Richard considers that the warrant was obtained unlawfully. The legality of the warrant is not for me to consider at this stage (or indeed would not even be for a full investigation to decide) unless there is an indication of criminal conduct by DAC Rodhouse and/or DSU McDonald, in that they knew that it was or was likely to have been unlawful, and I do not seek to do so. Sir Richard also considers that the state of the evidence was such, even at the time the warrants were applied for, that the senior officers should have prevented the application being made. In essence it is suggested that the true picture of inconsistencies, contradictions and inherent implausibility of 'Nick's' allegations were not properly considered at the decision-making process and then were not brought to the attention of the Senior District Judge.
28. It does seem to me that there is information which suggests that, at the time the warrant application was made, there were some concerns about the account given by Nick and that further enquiries as to Nick's credibility had not been pursued adequately or at all at that time. I have already commented upon the alleged inadequacies of the investigation above and indicated that I had been persuaded by the Lead Investigator that, in the absence of an indication of mala fides, or an indication that the decisions that were taken were outside the scope of what might be considered as reasonable these did not amount to behaviour that may justify disciplinary proceedings.

29. The Lead Investigator has referred to a number of decisions recorded by DAC Rodhouse and memorialised in the decision log that strongly support the view that DAC Rodhouse:
- Had been aware of and considered the possible defects in the account given by ‘Nick’.
 - Had considered what evidence might be obtained as a result of a search, notwithstanding the historic nature of the allegations.
 - Had balanced the risk of the searches becoming publically known and the need not to take this action without good cause, and that, significantly in my view, “*the allegations made by Nick are still effectively not corroborated*”, with his view that, unless searches were carried out, the integrity of the investigation might be called into question.
30. It also appears that before supporting the application for the warrant DAC Rodhouse asked for further enquiries to be made and thereafter reviewed the material provided on these issues. The information available suggests that DAC Rodhouse was taking the issue of ‘Nick’s’ credibility, and the application for a warrant, seriously and had justified his decision to support that application.
31. While there may well be an argument that the decision to support the application for the warrant was in fact wrong, in my view this was a judgement call and, absent mala fides, malice or dishonesty or clearly unreasonable decision making, I am persuaded by the Lead Investigator that there is no indication of misconduct on the part of DAC Rodhouse on this issue. As I touched upon above I am also informed that there is no information to suggest that DAC Rodhouse was involved in the drafting or approval of the wording of the search warrant application itself. I do not consider it unreasonable for DAC Rodhouse to have expected that the application would have been appropriately and accurately drafted by the officers ‘on the ground’ and the application presented properly to the Senior District Judge. I am therefore equally not satisfied that any failure to check the warrant application on the part of DAC Rodhouse might amount to misconduct.
32. As I have stated above, to continue an IPCC conduct investigation where it is clear that there is no indication that the officer may have behaved in a manner which would justify disciplinary proceedings would in my view be oppressive and an abuse of the process. In particular, if there is no conduct matter the IPCC has no legal basis on which to carry out an investigation. I agree that the independent investigation into this allegation should therefore be discontinued. The MPS should be invited to consider the matters relating to this allegation and deal with them as they consider appropriate.
33. I am equally persuaded by the view taken by the Lead Investigator as to the position of DSU McDonald, who stands in a similar position to that of DAC Rodhouse. There is no information which indicates that he has, or should have, drafted, ‘checked’ and approved the warrant applications or that he in any way improperly sought out or supported the applications for the

warrants. In the circumstances I am also persuaded that the independent investigation into this allegation in respect of DSU McDonald should also be discontinued.

34. As for the execution of the warrant, the Lead Investigator has reviewed the position of those involved in taking part in the search. He has expressed the view that the information available demonstrates that they were taking part in what is essentially routine procedure, in accordance with instructions given to them and, on the face of it, under the authority of a court-granted warrant. For the avoidance of doubt, and although the MPS may consider that there are performance issues and/or learning to be taken from the way the search itself was carried out, I agree with the Lead Investigator that there is no indication of a conduct matter arising from this itself.

> Operation Vincente

Allegation: “Following an investigation into Leon Brittan which was NFAAd (no further action), a review and re-investigation was undertaken without new grounds, which extended the length or time under investigation, thereby causing significant distress to LB [Lord Brittan] and his family – DAC Steve Rodhouse”

35. The Lead Investigator expresses the view that there is little doubt that there was significant delay in the final decision-making process in this case. With that view I agree. However the Lead Investigator considers that the delays in dealing with the case do not, in the circumstances, provide any indication of misconduct.
36. The Lead Investigator has helpfully set out from Sir Richard’s report a chronology which shows the progress, or in reality the lack of it, in the decision-making process in this case.
37. It seems clear that a CPS lawyer clearly advised in August 2013 and thereafter a NFA decision by Officer 9 was made in September 2013. However, and notwithstanding that, the case was effectively re-opened in April 2014.
38. I am of the view that there was a sound basis for the view that the original investigation had not followed all reasonable avenues of evidence, a view taken by a Dorset Police review and by an experienced detective, Officer 7, who also reviewed the case. Although I am aware that there may have been somewhat vague suggestions that political ‘unhappiness’ might have been part of the decision to re-open the case, I have not been referred to any specific evidence that political pressure formed any part of the decision to re-open the matter. Consequently, in the absence of any evidence (or even indication) that the force or any officer within it took improper factors into account when making decisions, I agree with the Lead Investigator and am

not persuaded that the re-opening of the case could be shown to be anything other than a difference in opinion and a judgement call

39. What appears to be less justifiable is the passing backwards and forwards of the final decision between the CPS and the force once the review and interview of Lord Brittan had taken place (essentially from June 2014 onwards). Indeed an apology for the way this issue was handled has been provided by the force to Lady Brittan.
40. Reasons for the delay are advanced, which seem to be based on the difference in opinion as to whether there were any legal issues to be resolved and 'uncertain' case law to take into account. What might equally be inferred is that the force was unhappy about making a final decision given the high profile nature of the case, and again within the context of the policies and culture existing at the time.
41. Clearly the MPS did not distinguish themselves in the way this case was dealt with. From July 2014 and the appointment of DAC Rodhouse as Gold Commander, it is clear that he was unhappy that he could not seem to obtain a more flexible approach in reviewing the case from the CPS who was (arguably quite properly) referring the police to [guidance]. However, it appears that he was not alone in wanting CPS 'flexibility', as others, including Officer 1 and AC Gallan, seem to have been involved at one time or another in the impasse that was in existence between some in the MPS and others in the CPS. It might well be considered that this impasse resulted in matters of principle being advanced, and discussions as to protocols or the way the Director's guidance should operate in reality, without proper thought for the people involved. While the result of the debate that was taking place was clearly to extend the time distress was caused to Lord Brittan and his family, I have seen no evidence that there was any dishonesty or malice in what they did. DAC Rodhouse and indeed the other officers seem to have genuinely been of the view that their request for further CPS consideration was appropriate in all the circumstances.
42. I am therefore persuaded by the Lead Investigator's submission that the matters relating to the delay in informing Lord Brittan's family do not amount to an indication that DAC Rodhouse may have behaved in a manner that would justify him facing disciplinary proceedings. If there are matters of performance and/or if, as a result of dispute between the force and the CPS, operational efficiency and effectiveness are being compromised, these are matters for the MPS and CPS to resolve. The matters raised have been identified by the Henriques Report and by the MPS themselves and an apology has been issued. As above, to continue an IPCC conduct investigation where it is clear that there is no indication that the officer may have behaved in a manner which would justify disciplinary proceedings would in my view be oppressive and an abuse of the process. In particular, if there is no conduct matter the IPCC has no legal basis on which to carry out an investigation. I agree that the independent investigation into this allegation should therefore be

discontinued. The MPS should be invited to consider the matters relating to this allegation and deal with them as they consider appropriate.

43. In addition to the above, and for the avoidance of doubt, the allegation that *“misleading statements to the media and providing information to complainant ‘Nick’ which led to breaching anonymity – DCA Steve Rodhouse, D/Supt Kenny McDonald”* was, as I understand the position, never actually referred to the IPCC. Based on the information which I have been made aware of on this point I can presently see no basis for the IPCC to use its powers to ‘call in’ this allegation.
44. Finally, it is important to note that the discontinuance decision has been made on the basis of the information presently available and which I have been made aware of. If, as the investigation progresses, further information comes to light which might be relevant to that decision, it should be brought to my attention for me to consider further.

Commissioner Gumsley

IPCC

6 March 2017

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