

Request:

1. A summary of the IPCC review of Operation Douglas (known as Operation Waldhorn) which was presented to members of the Police Authority's Audit and Risk Committee on 2 November 2012.
2. A disciplinary review commissioned by a Chief Constable (Operation Douglas)

Section 17 of the Freedom of Information Act 2000 states that:

- (1) A public authority which, in relation to any request for information, is to any extent relying on a claim that information is exempt information must, within the time for complying with Section 1(1), give the applicant a notice which:-
 - (a) states the fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.

REASONS FOR DECISION

The reason that we are unable to provide you with this information is covered by the following exemption:

S40(2)(a)(b) - Personal Information

Section 40 (2) is a class based exemption, and provides an absolute exemption where disclosure of the personal data would breach the Data Protection principles. Where personal information has been redacted in this case, the Office of the Police and Crime Commissioner considers that disclosure of the personal information would breach the first principle of the Data Protection Act, in that it would not be 'fair and lawful' to the data subject. All individuals have a right to privacy under the Data Protection Act 1998, and the right to respect for their private and family life under Article 8 of the European Convention of Human Rights. It is reasonable that these individuals have an expectation of privacy. The nature of this request deals with a subject that involves violent, career criminals and disclosure of personal information would place individuals at risk of harm. The Office of the Police and Crime Commissioner has a duty of care and confidentiality to the individuals concerned. Whilst there is a public interest in the accountability of public servants, it is not considered that the disclosure of individual names and personal information would add value in this case.

It can be seen that some names have been included. These relate to individuals where it is considered that their senior, public position is such that their expectation of privacy in relation to such matters is lower, there is an increased threshold for accountability and, given the risks to which their public position necessarily exposes them, it is not considered that this would be exacerbated by disclosure.



Section 31 (1) (a) (b) (c)

Section 31 (1)(a)(b)(c) is a prejudice based qualified exemption. There is a requirement to articulate the harm in disclosing the information, as well as considering the public interest. It should be noted that the public interest is not what is of interest to the public, but what is of benefit to society. Lord Wilberforce said in *British Steel Corp v Granada Television Ltd* [1981] AC 1096 at 1168: "There is a wide difference between what is interesting to the public and what is in the public interest to make known"

Considering if the exemption is engaged (Harm in disclosure)

Modern day policing is intelligence led. Information is available publically, and it is a well-known fact that Covert Human Intelligence Sources (CHIS) are used in the prevention and detection of crime, and that they are a valuable intelligence tool in the fight against all types of crime.

Disclosure of the requested information into the public domain would hinder the prevention and detection of crime. For example, it would compromise techniques used in relation to CHIS and, by extension, compromise the ability to protect confidential sources and their families. This fear of risk of exposure and for safety would, in turn, hinder the ability of police forces to recruit and retain sources and so reduce the flow of intelligence into the police service. This then places members of the public at risk of harm from crime.

In addition, the disclosure of the information on CHIS management and handling would enable criminals to counteract police intelligence-gathering methods. This would seriously undermine police operations and future prosecutions. This would be to the detriment of providing an efficient policing service and would compromise the key policing roles of preventing and detecting crime and protecting the public at large. Disclosure of information that undermines the operational integrity of police activities will adversely affect public safety and have a negative impact on law enforcement.

Public Interest Factors favouring disclosure

- General public interest in transparency.
- Enhance public knowledge on how CHIS are used.
- Inform public debate on West Yorkshire Police decision making and integrity.
- Ensure accountability for the appropriate use of public funds.
- Add to information in the public domain to inform a fuller public debate.

Public Interest Factors favouring maintaining the exemption

- Law enforcement tactics would be compromised.
- Individuals would be placed at risk.
- Prevention and detection of crime.
- The revealing of tactics would mean more police resources would be needed.

- Disclosure could increase the chance of identification, or misidentification, of individuals. This places themselves and their families at risk. Arguments of misinterpretation generally carry little weight in considering the public interest, although in this case as it could compromise the health and safety of individuals, then it is considered relevant.

Balancing Test

The subject of the request is currently under discussion in the media and public authority decision making is subject to scrutiny. It is important to add to public debate to ensure it is well informed and that public authorities are transparent and accountable for their actions. There is some public interest in disclosure. However, the public interest in allowing the police to protect the public and individuals through carrying out its core functions of prevention and detection of crime, apprehending and prosecuting offenders and the administration of justice is stronger. It is entirely reasonable for a member of the public to expect the police service to protect information of this nature and therefore maintain their law enforcement capability. The Office of the Police and Crime Commissioner considers, in this case, the factors against complying with section 1(1)(b) to outweigh those in favour of complying. Therefore, the balance lies in favour of non-disclosure and the exemption is engaged.

OPERATION DOUGLAS – REVIEW OF DISCIPLINE INVESTIGATION

Introduction

1. The Criminal Cases Review Commission (CCRC) was established in 1997 by the authority of the Criminal Appeal Act 1995. As a result of recommendations in the Report of the Royal Commission on Criminal Justice published in 1993, the CCRC assumed responsibility for reviewing and investigating suspected miscarriages of justice. Where an investigation reveals a real possibility that a conviction is unsafe the CCRC is empowered to refer the matter to the appropriate appeal court.

2. In the vast majority of cases subject to CCRC review, their investigation centres on scrutiny of case papers and court transcripts, supplemented, where necessary, by informal interviews of relevant parties conducted by their own staff. Section 19 Criminal Appeal Act 1995, however, authorises the CCRC to appoint a police officer as Investigating Officer and the section empowers the CCRC to require that an Investigating Officer be appointed from a police force not associated with the original prosecution. The Investigating Officer (IO) effectively becomes an agent of the CCRC for the purposes of their enquiry. The cost of the enquiry, however, is borne by the force responsible for the prosecution(s) leading to the suspect conviction(s).

3. The power to appoint an Investigating Officer is used sparingly as evidenced by the fact that in the seven years of its statutory life the CCRC has used this power only 23 times. The option to appoint an external Investigating Officer was exercised by the CCRC in respect of the convictions of Gary Ford, Paul Maxwell and Daniel Mansell. Their convictions and consequential imprisonment for lengthy terms resulted from criminal investigations conducted by West Yorkshire Police. It was agreed in October 2001 that an Investigating Officer from North Yorkshire Police would be appointed. Initially [REDACTED] was identified for the purpose but subsequently, in August 2002, he was succeeded by [REDACTED]. The Investigation, conducted on behalf of the CCRC, was codenamed 'Operation Douglas'.

Section 40 (2)

Section 40 (2)

Section 40 (2)

Background

4. Whilst it is not the purpose of this review to scrutinise the detail of the evidence leading to the convictions, a brief synopsis of the facts and circumstances places this report in a narrative context and highlights the grave and complex features involved.

5. Gary Ford was found guilty of a series of 19 aggravated burglaries and robberies in October 1996 and sentenced to twenty-five years imprisonment. Maxwell and Mansell, who are full brothers, were found guilty in February 1998 of murder and two robberies and sentenced to life

imprisonment.

Section 40 (2)

Without Chapman's evidence, it is doubtful whether 'proof beyond reasonable doubt' could have been established particularly in the trial of Maxwell and Mansell.

6. In 1992 Chapman and Ford worked together in committing bogus official burglaries, with some offences escalating to robberies, in and around Leeds. Predictably the victims were the elderly, the confused and the particularly vulnerable. Chapman was arrested in 1994 and admitted more than 250 similar offences.

Section 40 (2)

Chapman himself pleaded guilty in July 1995 and was sentenced to 9 years imprisonment.

Section 40 (2)

7. In the course of his association with Maxwell, Chapman recounted his crimes and, it is suggested, provided an A to Z geographia with locations of previous crimes marked out. Acting on this information provided by Chapman, Maxwell, on his release, is said, together with his brother, to have robbed elderly brothers at their home in June and October 1996. One of the brothers, Mr Joe Smales, died as a result of the injuries he received in the second robbery.

8. Chapman became aware of the murder and made the connection between the offence and information he had earlier provided to Maxwell.

Section 40 (2)

Section 40 (2)

10. Operation Douglas has revealed matters which are a basis of substantial concern.

Section 40 (2)

It appears he was supplied with alcohol – again in breach of Prison Regulations – and there are indications that drugs may have been supplied.

Section 40 (2)

11. The overriding aggravating feature of the above police misconduct is that, for the most part, the information was not disclosed to defence teams.

Concerns

12. The enquiry is well into its 3rd year. The most optimistic estimate is that, as currently managed and pursued, a further full year will be required to secure completion. At a cost of 45K per month funded from West Yorkshire Police resources, the expenditure will be at least £2m. The opportunity cost of the investigate team to North Yorkshire should not be underestimated. The experience and skills of that team cannot be readily replaced in their absence.

13. The Chief Constable of West Yorkshire, Mr Colin Cramphorn, who inherited the ongoing investigation on his appointment in the Autumn of 2002, has a number of legitimate concerns. These include the length of the enquiry to date and the continuing costs to the revenue budget. A Chief Constable has statutory responsibilities in relation to the discipline of his officers and Mr Cramphorn harbours a concern that abuse of process or staleness of evidence could inhibit, or even prevent, formal disciplinary proceedings. It is therefore important that 'Operation Douglas' is focussed and does not suffer the enquiry drift that has been a regrettable feature of sizeable disciplinary investigations in England and Wales in recent years. Such anxieties lead logically to the lateral possibility of removing, if surgically possible, the disciplinary issues emerging from Operation Douglas and pursuing those separately under a second Investigating Officer.

14. In order to obtain an experienced and independent view the Chief Constable invited Sir Dan CROMPTON CBE, QPM a former Her Majesty's Inspector of Constabulary assisted by Michael BRIGGS QPM, a former Assistant Inspector of Constabulary:

"To review, and if appropriate, make proposals for change, regarding the progress of all disciplinary aspects pertaining to Operation Douglas paying particular attention to the following aspects:

- The timeliness of the investigation to date.
- Whether the disciplinary enquiry is progressing with clarity, proportionality and understanding.
- Whether the disciplinary aspects can be realistically separated from the CCRC enquiry and if appropriate make recommendations for the rank and skills required for a Senior Investigating Officer.
- Whether the current enquiry is adequately resource.

- Does there exist a sound basis for the disciplinary aspects of Operation Douglas to be referred to the Police Complaints Authority.
- Consider a strategy and direction for any future discipline work.
- Timescales for future reviews/stakeholder groups.

Methodology

15. In addition to considering voluminous documentation the review team have conducted interviews of varying length from a full day to an hour with:

- [REDACTED] a Criminal Case Review Commission, along with the case lawyer [REDACTED] Section 40 (2)
- [REDACTED] Section 40 (2)
- [REDACTED] Police Complaints Authority. Section 40 (2)
- [REDACTED] Crown Prosecution Service – Head Office. (note: by telephone) Section 40 (2)
- [REDACTED]
- Mr Colin CRAMPHORN, Chief Constable of West Yorkshire Police.
- Ms Della CANNINGS, Chief Constable of North Yorkshire Police
- Mr Roger BAKER, Deputy Chief Constable of North Yorkshire Police.
- [REDACTED] Investigating Officer of another Section 19 investigation ordered by CCRC. Section 40 (2)
- [REDACTED] West Yorkshire Police, Complaints and Discipline. Section 40 (2)

The interviewees represented a range of varying perspectives. The review team are grateful for both their candour and their invaluable and thoughtful contributions.

16. The thinking of the review team was influenced by their own experience of complex complaint and disciplinary investigations and, significantly, by the recent case study review report of 'Operation Lancet' led by Mr William TAYLOR CBE, QPM which is the acknowledged document of guidance for complex disciplinary investigations.

Scoping the Enquiry

17. It was clear from the preliminary enquiries made by the CCRC that the appointment of an Investigating Officer was necessary. Those enquiries had revealed a number of causes for concern, including:

[REDACTED]

Section 40 (2)

[REDACTED]

Section 40 (2)

[REDACTED]

Section 40 (2)

- Persistent breaches of Prison Rules relating to money payments whilst CHAPMAN was in police custody.
- The falsifying of CHAPMAN's charge sheet, including exaggerating the value of offences, to increase CHAPMAN's prestige and credibility with MAXWELL.

18. In addition the CCRC had discovered that West Yorkshire police had themselves ordered an internal inquiry into allegations that people in custody at Killingbeck between 1996 and 1998, had been supplied with heroin in exchange for confessions and information. This inquiry, 'Operation Passport', led to disciplinary charges against a number of officers.

Section 40 (2)

[REDACTED] However, the prevailing conditions of detention, as highlighted in the Investigating Officer's report, were relevant in so far as key aspects of poor practice were "culturally ingrained".

Section 40 (2)

19. Although there seemed to be irritation amongst some within senior levels of West Yorkshire Police in the autumn of 2001, the decision of CCRC to exercise its statutory powers to appoint an external Investigating Officer is unquestionable. What, in retrospect, seems to have been common to the organisations impacted by that decision, ie the CCRC itself, the West Yorkshire Police and the North Yorkshire Police who were required to make available an Investigating Officer, is a substantial miscalculation of the likely duration of the investigation. Tangible evidence of this miscalculation is the fact that the original Investigating Officer retired 10 months into the enquiry. In other words, the designated Investigating Officer, was available for less than a third of the length of the investigation to date, and probably much less than a quarter of the investigation in its ultimate entirety. It is doubtful, perhaps inconceivable, that the parties would have agreed on such a course if their estimate of likely enquiry length had been more accurate.

20. It follows that if the temporal estimate was so inaccurate, it is likely that other dimensions of the investigation such as its breadth and potential depth were equally matters of speculation, as it is the latter elements that determine the former. The police service has learned, and continues to learn, many organisationally painful and expensive lessons in both resource and credibility terms in the management of complex enquiries. It may have been an opportunity lost for the CCRC not to have availed themselves of the benefit of such experience in the formative stages of the investigation. In fairness, it is distinctly possible that, at this stage, the CCRC had expectations of a shorter and less complex enquiry.

Priorities and Expectations

21. The above does not attempt to detract from the exercise by the CCRC of their statutory powers. The Investigating Officer acts as the agent of the CCRC in their review and investigation of suspected miscarriages of justice. However, any miscarriage of justice in respect of Messrs FORD, MAXWELL and MANSELL would be inextincably woven in a web of police malpractice or maladministration with potential criminal or disciplinary consequences for individual officers. Until the very recent inception of the Independent Police Complaints Commission, the totality of experience and expertise in investigating police malpractice rested with police forces and the Police Complaints Authority. This experience and expertise at a strategic level was either not offered or its value was not recognised

22. Whilst the statutory responsibility of the CCRC is paramount, the statutory powers and responsibilities of others are important tangents to that primacy. The Chief Constable of West Yorkshire, for example, has the statutory responsibility for the discipline of his officers. If malpractice is a feature of the conduct of those officers, the Chief Constable needs to be able to exercise an unfettered discretion. Lapse of time, a lengthy investigation, increasing staleness of evidence and abuse of process are all pitfalls that, in fact, fetter that discretion. It would be an unacceptable irony if the overriding responsibility to root out miscarriages of justice resulting in individuals serving lengthy terms of imprisonment, was at the same time and through its own processes to provide routes from justice for those whose conduct led to such miscarriages. This would be, in effect, a denial of justice.

23. It is unlikely that legislators were aware of the potential for conflict of statutory responsibilities. The reality is that the same investigation is looking at the same facts through the varying filters of different burdens of proof:

1) The CCRC investigation is aimed at revealing facts that, if put before a properly directed jury, proof beyond reasonable doubt would not have been established.

2) Proof beyond all reasonable doubt in connection with criminal allegations against police officers (bearing in mind the Crown Prosecution Service requirements of likelihood of conviction and the public interest merit in prosecution).

3) Sliding scale burden of proof in respect of disciplinary matters with the more severe punishment attracting the greater the burden of proof.

This asks a great deal of an investigation which, if not carefully controlled, can lead to investigatory drift, and diminishing returns on a substantial investigatory investment.

Co-operation without Conflict

24. As each month passes. 32 of them so far which may reach the half-century before completion, all parties have corresponding increases in professional anxiety. The Chief Constable of West Yorkshire is concerned that any necessary disciplinary proceedings would be seriously prejudiced, if not compromised, by protestations of abuse of process and/or delay in investigation. The ongoing monthly cost of £45K is a significant expenditure from the West Yorkshire Police revenue budget and continues to deny other spending opportunities. The Chief Constable of North Yorkshire is concerned at the ongoing abstraction of scarce and skilled resources from a relatively small personnel establishment. She has an ongoing responsibility for those staff beyond 'pay and rations' and their agency status on this enquiry does not abrogate her responsibilities for their welfare and career development. Some of those responsibilities, such as Health and Safety, are of course statutory. The CCRC themselves must be ever conscious of timescales because if Ford, Maxwell or Mansell are wrongly incarcerated, each month perpetuates the injustice. Furthermore, the CCRC would want to present the best assembled evidence to the Court of Appeal, if this is the decision Commissioners decide to take. Is that "best evidence" inextinguishably linked with longevity and the completion of each strand of their supervised enquiry?

25. All these parties and others, such as the Police Complaints Authority, had much to offer to expedite the enquiry. Their contributions have either remained silent or not been heard leaving the totality of the process and the Investigating Officer in the sole, albeit primary, hands of the CCRC. Greater collaboration in the initial stages could have helped to target the direction of the CCRC enquiry, rather than constituting a threat to it, and laid firm foundations for the ongoing investigation. One of many tangible benefits to accrue from such a collaborative approach would have been to nip some avenues of disciplinary investigation very firmly in the bud.

26. Experience has taught the Police Complaints Authority and Chief Constables to sacrifice minor disciplinary matters for the benefit of the investigative core. The principle strands of this core can be summarised as follows:

- What are the substantive issues?
- What strategic path should be followed to address those issues? (This may involve ring-fencing).

- How can investigative economy be achieved so that the outcome is recognised by opinion formers to be delivered proportionately in terms of time, resource input and cost?
- How does the enquiry (which may well uncover disturbing evidence of malpractice) give a criminal prosecution or disciplinary proceedings the optimum chance of success?

Against such criteria a survey of Operation Douglas reveals some strategic anomalies. Such an examination is legitimate since the enquiry has important tangents to its overriding rationale of establishing evidence that might render criminal convictions unsafe. The important tangents (the collection of criminal and disciplinary evidence against officers) lead to a three dimensional function for the enquiry with three differential burdens of proof (see para 23). The necessity for a strategic blueprint for the enquiry assumes an even more compelling imperative as many people in the supervisory chain are now retired. It seems unlikely that a junior officer will ultimately be left with the totality of the disciplinary blame. Lapse of time and other objections to disciplinary proceedings make the possibility of conviction and substantial punishment even more remote.

27. It is important to retrace the investigate steps in relation to disciplinary matters as the process of 'Operation Douglas' is geared to and reliant on their investigation being completed. The view of the CCRC, based on their experience with the Court of Appeal, is that the Court will not recognise the investigation as thorough (and the rules of natural justice as having been followed) and complete unless the suspect officers have been given the opportunity to respond to the disciplinary allegations against them. Two considerations arise from these set of circumstances.

28. Firstly, it does not follow automatically that the fullness of the disciplinary process is necessary to elicit a response, especially pertinent when the primacy of the CCRC enquiry is evidence regarding unsafe convictions. The burden of proof required here is less than that of a criminal court or for serious disciplinary matters. Indeed, whether or not officers are guilty of criminal or disciplinary matters remains a secondary issue to that of 'are there any circumstances which might render convictions unsafe?' It is more likely to progress this investigation into a possible miscarriage of justice if some suspect officers are interviewed as witnesses, who could be warned that any misconduct disclosed in interviews could be dealt with by the Chief Constable. Such an approach could have had a positive effect on the duration of the enquiry. This benefit is reinforced by the fact that the fullness of the disciplinary process reminds a suspected officer that he/she may say nothing without adverse inference being drawn.

29. Secondly, is it necessary to pursue all strands of both criminal and disciplinary misconduct? A comprehensive pursuit of all disciplinary issues is to attract the sanction of the 'law of diminishing returns', sacrificing investigative economy and encouraging enquiry drift. The key stakeholders (CCRC, IPCC, the Chief Constables both of the investigated Force and of the

force providing the investigative team) have a vested interest in a focused, crisp enquiry that ultimately is seen to deliver on the substantive issues. Such considerations indicate that the less substantive issues are eliminated whilst effort is concentrated on the key areas of concern. There is a clear analogy with other complex police enquiries such as major fraud where the prosecution press specimen charges without committing resources to prove every strand of fraudulent activity.

Splitting Responsibility - Dual IOs

30. It could be suggested that the role of Investigating Officer for the CCRC should remain distinct with a separate Investigating Officer being appointed to oversee the police disciplinary matters. The suggestion is based on the consideration that it is asking too much to expect a single Investigating Officer to service the needs of the CCRC, whilst keeping an event watchful eye on the demands of the police disciplinary system and the responsibilities of the Chief Constable, or even the IPCC in future cases.

31. The idea, whilst its lateral approach is welcome, is flawed.

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The lack of disclosure to defence teams, a further example of police conduct, is the kernel of the prospective debate on the safety of convictions. In summary, therefore the Investigating Officer's task is centred on the investigation of police misconduct. It is difficult to recognise any benefit that would now accrue from an unnecessary duplication of effort or variety of approach. It does not eliminate the potential conflict an IO faces in Section 19 directed cases ie. primary of consideration to the requirements of the CCR whilst having regard to the preferred route for criminal or disciplinary proceedings. There could be conflict around strategic direction and "end goals".

32. It must be emphasised that this is a CCRC investigation authorised by statute. Their primacy is sacrosanct. The special nature of the relationship between the CCRC and their Investigating Officer is underlined in their power to order a public body to produce/retain anything of relevance (Section 17), thereby overcoming confidentiality issues, and significantly the additional power (Section 25) for the owner of the disclosed material to put restrictions on onward disclosure. Disclosure by the CCRC itself is circumscribed (Section 23) and exceptions are permissible only on the authority of a Commission member (Section 24). Working relationships between two IOs and between the disciplinary IO and the CCRC would be, at best, tenuous with a real risk of strains in the relationship to the detriment of all expectations and perspectives of the enquiry. This represents the other side of the coin to the scenario outlined at the foot of the paragraph above.

Strategic Collaboration

33. The rejection of the notion of a second Investigating Officer for disciplinary matters alone, does not indicate that there is an impasse in meeting the needs of the stakeholders that are, in fact, more complementary than they are diverse. It follows from a collaborative initial approach to scooping the dimensions of the enquiry (paras 17-20) that the strategic bond should be maintained as the enquiry progresses. It is not the function of this review to apportion blame (nor do we think it appropriate) its thrust is to isolate and highlight lessons for the future, both for this investigation and others to be conducted under CCRC authority. The absence of active co-operation at a strategic level is a master class in the learning experience.

34. A consultative approach to establishing terms of reference would in hindsight have enabled West Yorkshire Police to have settled the parameters of their disciplinary needs. It would arguably have assisted the CCRC in their task by drawing on the expertise and experience of others from diverse disciplines without diluting their primacy. No organisations, as no individual, has a monopoly of wisdom or exclusive experience of the complexities of a major investigation.

35. The Taylor Report, using Operation Lancet (Cleveland Constabulary) as a case study, is explicit on the necessity for a 'case conference' approach in major disciplinary investigations. Whilst accepting the introduction of a tier of bureaucracy, the Report is resolute that the beneficial outcomes of such an approach outweigh the burdens. It is now adopted by Home Office, police forces and the Police Complaints Authority (until its demise) as the rubric for progressing a complex disciplinary enquiry. It is acknowledged that the purpose of this investigation was establishing evidence regarding the safety of criminal convictions. Where, as in this case, that safety is almost totally dependent on police conduct the grounds of a collaborative approach seem overwhelming.

Terms of Reference

36. Taylor emphasis the 'paramount importance..... (of) clear, unambiguous and tightly drawn terms of reference so that they provide focus and direction. There should not be 'open ended' phrases on tasks". The Report recommends the collaborative 'case conference' approach in "large scale and protracted cases" irrespective of the commissioning authority. While it can be argued that investigations under the Criminal Appeal Act were not within the boundaries of Taylor's contemplation, the similarities of investigation type are striking.

37. The nomenclature 'terms of reference' were not used presumably because the statute empower the CCRC to 'direct' enquiries so the Investigating Officer acted under directions formulated unilaterally by the CCRC. The Investigating Officer accepts, as do we, that these directions were the terms of reference for the investigation.

38. The first directions at the start of the investigation required the then Investigating Officer to:

1. "Make enquiries with a view to establishing whether CHAPMAN was provided with drugs by police or whether the police facilitated their provision by others.

[REDACTED]

Section 40 (2)

[REDACTED]

Section 40 (2)

[REDACTED]

Section 40 (2)

[REDACTED]

Section 40 (2)

[REDACTED]

Section 40 (2)

39. A comparatively short time into the investigation on 22 February 2002 (22/02/2002) an additional direction was issued ie: "Is there any evidence that material relating to the investigation of other suspects for the SMALES robberies and murder was not properly disclosed?"

40. Later the same year on 8 September 2002 (08/09/2002) with a replacement Investigating Officer in post the directions are revised. In relation to [REDACTED] a direction is added "to make enquiries to ascertain how [REDACTED] was dealt with for this or any other offence she may have committed." This addition does not appear to make any difference of substance or emphasis to the original. However, the revised direction goes on to elicit motivation of offences in addition to the facts of their actions, asking the IO:

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"Is there any evidence or reason to believe that the course of action taken by police with reward to [REDACTED] was influenced by her relationship to CHAPMAN or any other improper reason?"

Section 40 (2)

and also

"Make enquiries to ascertain whether police officers gave truthful evidence at the trials of FORD, MAXWELL and MANSELL in relation to [REDACTED] treatment."

Section 40 (2)

[REDACTED]

Section 40 (2)

This further direction requires the IO to establish evidence or reason to believe that CHAPMAN was provided with, or promised, alcohol or any other improper benefit which might affect his credibility as a prosecution witness. A further direction is added concerning [REDACTED]

[REDACTED]

Section 40 (2)

41. Terms of reference (in this investigation known as directions) are not static: they are not set in stone. An investigation is a dynamic process and lines of enquiry will merge from the investigative process itself. The CCRC have kept in close contact with the IO, primarily through their barrister case worker, [REDACTED] but also through the case Commission, [REDACTED]

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[REDACTED] Indeed, in addition to formal meetings every two to three months, [REDACTED] is in telephone contact with the IO several times a week. They have total confidence in the IO and his pursuit of the task.

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42. Such confidence is reassuring but nonetheless the impartial observer is left with residual questions. That observation suggests a range of time consuming investigative actions that seem to be beyond the scope of the 'directions'. For example, in relation to offences 'taken into consideration', the almost microscopic examination, sometimes by meticulous research of crime reports, at other times by distant scene visits, does not appear to fit with the 'directions'.

[REDACTED]

Section 40 (2)

However, within the direction itself, the quote from the summing-up suggests that this matter was before the jury and perhaps concerned by police. Activity around this issue appears an inordinate expenditure of effort and resources for a point that is longer at issue. This prompts the question whether a focussed enquiry into the substantive is adversely affected by equal effort and energy devoted to the less substantive. (See also the commentary in the latter part of para 29).

43. A sufficiency of complex issues to subject to scrutiny provides a powerful inhibitor to the expenditure of time and energy on extraneous matters. This is an area where the CCRC could have benefited from the advice and support of a collaborative forum.

Stakeholders

44. The management statement of the CCRC sets out the organisational objectives. One of those objectives is "to deliver its services in ways appropriate to stakeholder needs". There is no delineation of stakeholders and they may vary from case to case. In the instant case it would be difficult to imagine a portfolio of stakeholders without the inclusion of West Yorkshire and North Yorkshire police services. A case could be made for the inclusion of the Police Complaints Authority and certainly the West Yorkshire Police

Authority. There can be no better way of delivering "services appropriate to stakeholder needs" than by actively involving them in the process at a strategic level.

The Police Authority

45. The Police Authority have, by statute, responsibilities for the efficiency and effectiveness of the force. Their specific fiscal responsibilities, in addition to those regarding complaints and discipline predicate a closer involvement in the origin, progress and outcomes of Operation Douglas. It is acknowledged that the frequency of recent changes of key members within the Authority has made continuity difficult. Nonetheless this matter has been ongoing for almost three years and has profound implications for the finances as well as the reputation of the Force. Any Appeal Court hearing has the potential to generate significant adverse publicity. It is suggested that a copy of this report be made available to Police Authority members and dealt with in the appropriate forum.

Costs

46. It is worth repeating the bold financial fact that Operation Douglas is costing West Yorkshire Police £45K per month. The total projected cost is estimated at around £2m. Other than the greater exploitation of collaborative opportunities that had the potential to curtail the length of the investigation, there is little that West Yorkshire police can now do but absorb the costs. In a public sector climate that demands value for money, efficiency gains and sublimation to a Best Value regime, this taxation without effective representation must be difficult to digest.

47. The CCRC have a statutory responsibility in cases of potential miscarriages of justice and statutory powers, admittedly sparingly used, to secure an Investigating Officer and direct the investigation. What they do not have (legislation and working arrangements never provided for it) is an investigatory budget that puts legitimate constraints on the extent of investigatory activity. This is not the case for the Police Ombudsman in Northern Ireland or the recently empowered Independent Police Complaints Commission. Both these bodies have to tailor their investigative activity to their available resources. This is generally how the public sector works and fiscal prudence is a significant discipline when establishing priorities. Even justice has its price.

48. Representations should be made to Government by the Association of Police Authorities (APA) and the Association of Chief Police Officers (ACPO), that the investigative power of the CCRC be subject to budgetary disciplines in common with all other public sector activity. Such an approach would be consistent with the funding arrangements of most of the various Ombudsmen in the UK. If such a recommendation is seen presentationally as an unnecessary fetter on 'justice being seen to be done', the cost of an investigation should be borne by centrally provided funds. This seems a logical extension of the fact that any compensation paid as a result of

miscarriage of justice is funded centrally. What seems unacceptable is the expectation of, in effect, an open chequebook on the account of the particular police service that initiated the original prosecution even if it is the conduct of their officers giving rise to a Section 19 Criminal Appeal Act enquiry. It is not part of the legislative intention that there should be a punitive element against the force concerned.

Interim Reports

49. It was not long into this review that the notion of an interim report to the Court of Appeal had a stimulating attraction. The idea was firmly rejected by the CCRC whose intimate knowledge of the workings and thinking of that Court should be respected. It is that experience of the Court that determines the investigation of the myriad disciplinary matters to the point of file submission, in the full knowledge that most, if not all, will settle on stony ground due ironically, in part, to the length of the investigation. It may be that the Court of Appeal fails to recognise that every 'i' dotted and 't' crossed is so perfected at a cost. This investigation concerns matters of immense gravity with implications not only for the three imprisoned individuals, police officers and their Force but also for the integrity and public approbation of the criminal justice system itself. Such imperatives, however, do not mean that a judicial view cannot be taken when sufficient doubt about the safety of convictions has been established. It is difficult to see what added value the warmth of the dying embers of a very protracted disciplinary process can generate.

Specific Questions

50. Within the embrace of this review, specific aspects were singled out for comment in the terms of reference. Many of these specifics are dealt with at some length in the body of this report whilst the remainder flow from its various thrusts. In summary therefore:

i) The timeliness of the investigation to date.

Essentially the question concerns the extent of the investigation as there is no evidence of manufactured delay in working practices. There are concerns with the effort and resources given to certain aspects of the investigation (see paras 42-43) and, most importantly, the insistence of seeing the totality of disciplinary matters through to the point of file submission.

51. ii) Whether the disciplinary enquiry is progressing with clarity, proportionality and understanding?

There is no doubt that many lines of disciplinary investigation could and should have been curtailed at an earlier stage. Had the investigation been internal with the IO being able to seek direction and decision at chief officer level, many lines of enquiry would have been closed. This is not suggesting "sweeping material under the carpet" but, rather, a direction of investigatory effort to that which is seen as a priority and substantive. The complication is the alignment of the many disciplinary matters with the core of the

investigation ie: the safety of criminal convictions. (See paras 27 to 29). Put simply, if four substantive matters would suggest convictions are unsafe then it seems poor investment of human resources and revenue to pursue 15 or 20. The practice in major fund cases is a sound comparator. Such good investigative practice is reinforced in Operation Douglas by the significant consideration that non-disclosure of relevant matters is such a powerful influence that casts a substantial shadow on the value of peripheral considerations.

52. iii) Whether the disciplinary aspects can be realistically separated from the CCRC enquiry and if appropriate make recommendations for the rank and skills required for an SIO?

The issue is argued at length within the report (see paras 30 to 32). A disciplinary SIO would complicate the existing complexity. It is doubtful, in any event, that such an individual could be easily added to the team as the statutory responsibility for the investigation lies firmly with the CCRC. There would be further problems, even if the idea were accepted in principle, regarding the specific disclosure provisions that are particular to a CCRC investigation.

53. iv) Whether the current enquiry is adequately resourced?

This review did not incorporate a 'time and motion' study and it is difficult within the constraints of time to establish the workload per individual. The IO is content with the number of skills of his team although not all would have been a preferred choice. This is a truism in any team drawn together as much on availability as any other criteria, especially when the current IO was a replacement 10 months into the operation. There is an impression that work expands to fill the time available but this is encouraged by the open ended nature of the investigation.

54. v) Does there exist a sound basis for the disciplinary aspects of Operation Douglas to be referred to the Police Complaints Authority?

The absence of the Police Complaints Authority leaves a void in the strategic direction of the disciplinary content of the investigation. The lack of their tactical advice is also evident. West Yorkshire Police did refer the matter to the PCA on a voluntary basis on 30 July 2002 (30/07/2002) inviting their supervision. The invitation was declined on 9 September with a proviso that "if the complaint turns out to be more serious" the matter should be re-referred. It is difficult to be certain as to the precise state of knowledge of the investigation in the late summer of 2002 but the evolution of the "directions" from the CCRC at that time suggest that the greater mass of suggested misconduct had been brought to the investigative surface (paras 35-37).

55. [REDACTED] (PCA) was surprised by the referral as it is not Section 40 (2) usual practice in a CCRC led investigation. He nonetheless attended two meetings and offered such advice as he could. It is evident that he recognised certain parallels with Operation Douglas expanding as in a manner not unlike

Operation Lancet. The PCA itself did not escape unscathed in the Lancet wake. It is not unreasonable to suggest that an organisational distance was seen to be desirable if it appeared to the PCA that Operation Douglas was not being conducted in accordance with post Lancet principles. The fact that 'Douglas' was directed by another statutory body provided a rationale for organisational exclusion and perhaps an escape route.

56. The Police Complaints Authority is now history and a new body, the Independent Police Complaints Commission, with an armoury of wider powers and a broader remit has succeeded them. The new body should be invited to become involved in cases of this type even if that involvement is limited to an input at a strategic collaborative level.

57. Beyond an immediate benefit to 'Operation Douglas' there is a need for the formulation of protocols between the CCRC and the IPCC, delineating their respective responsibilities in future cases of this nature.

58. vi) Consider a strategy and direction for any future discipline work
- vi) Timescales for future reviews/stakeholder groups

The two aspects are taken together as they are so closely related. There are decisions regarding discipline that can be taken now. An urgent approach should be made to the CCRC to have access to papers so that the chaff can be sifted and investigative efforts concentrated on the residual wheat. This is not to the prejudice of the CCRC work nor does it impinge their statutory authority. Legitimate decisions can be taken by the Chief Constable of West Yorkshire that there is insufficient evidence against the sliding scale. Alternatively, as is more likely, whilst accepting there is sufficient evidence, proceedings would falter to collapse on the impediments of lapse of time, process abuse or junior individuals being links in the beginning of a chain where many of the supervisory links are beyond proceedings through retirement. Such legitimate decisions could be included in the submission to the Court of Appeal.

59. Regular updates of the remaining disciplinary matters should be submitted by the Investigating Officer for decision against the same criteria.

Drawing the Threads Together

60. The linking thread of this review has been the necessity and benefits of adherence to the collaborative approach of the post Lancet doctrine. The key

stakeholders ie the CCRC, the IPCC, West Yorkshire Police and possibly North Yorkshire Police should meet as soon as possible under the chairmanship of the CCRC to inform the thinking of the CCRC on the way forward. It would be appropriate to arrange future stakeholder meetings on dates before, but proximate to, the 2 to 3 months formal reviews by the CCRC of the Investigating Officer's work.

61. In recent years the Police Service has experienced a number of protracted internal enquiries with many supervised by the PCA. These enquiries have centred predominately on criminal or very serious disciplinary misconduct but have ultimately lost focus by attempting to accommodate every conceivable transgression on a sliding scale from the very serious to the relatively trivial. Indeed, energetic attempts to identify and isolate every pebble on the investigative beach have attracted Ministerial frustration with an inability 'to draw lines in the sand'.

62. Such enquiries are marked by striking common features. They are as costly as they are protracted in producing end results that have led local and national politicians, as well as other opinion formers to question the value of the outcomes against the sizeable input of both human and financial resources. These concerns

were substantial considerations in the establishment of the 'Taylor Review' focusing on the Cleveland enquiry 'Operation Lancet' as a case study.

63. Historically IOs and their teams, in investigating serious criminal/disciplinary allegations have generated more frustration than satisfaction. Why?

- A defensive mechanism on the part of the IO to rebut any future suggestion that the enquiry was defective in not tackling all the allegations brought to notice or unearthed.
- If it is not possible to prove the substantive there is a temptation to 'swim downstream and gather the remnants of flotsam'. This satisfies an investigative culture of 'we will prove something'.
- It had not been ingrained strategic thinking or planning to strip away the extraneous for the benefit of the substantive.
- The investigative process becomes an end in itself lacking focus on delivering the outcomes that would enable a credible criminal prosecution or disciplinary case.
- Lack of collaboration thereby losing the contribution of other bodies to the strategic focus of the investigation.

64. It is fully appreciated that the role and function of the CCRC is statutorily distinct from that of an IO investigating solely police misconduct. Nonetheless, the distinction does not delineate substantial differences where alleged police misconduct is at the heart of issue of the safety of a criminal conviction. The parallels are indeed stark. It is understandable that the CCRC, in carrying out their onerous role, has a natural instinct to protect itself from criticism of professional competency. The need to explore every avenue, to turn every stone in aggregating every conceivable piece of evidence to put before the assiduous scrutiny of the Court of Criminal Appeal, has a cost that is more than financial. It prejudices the possibility of criminal and/or

disciplinary sanctions against these responsible as indicated in the commentary at para 22.

65. The Police Service, in line with most of the rest of the public sector, has struggled, with a great deal of success in many of its activities, to adopt the endemic disciplines of the private sector. These disciplines, originating in a competitive creed, involves the management of risk and investment corresponding to intended outcome. Such considerations have not figured so prominently in complex disciplinary enquiries. They increasingly feature in the decision making of the Police Ombudsman in Northern Ireland and will be adopted by the recently empowered Independent Police Complaints Commission. The various Ombudsmen in the UK ring fence their enquiries. Thereby they secure balanced judgements that thoughtfully weigh priorities, costs and anticipated outcomes, thus safeguarding themselves from the burden of diminishing returns.

66. The adoption of such disciplines leads to a careful consideration that meets the needs of all. Those needs are most likely to be met in a collaborative approach, as deployed by the Police Ombudsman in Northern Ireland for example, to the management of risks which is such a key feature of this review. The application of this ring fencing approach to a Section 19 enquiry would replace the tortuous pursuit of the A to Z by strategic identification of the substantive avenues of investigation.

67. The Chief Constable of West Yorkshire has not been in a position to make priority or risk management decisions on the outstanding disciplinary issues emerging from Operation Douglas. The CCRC wish to await the conclusion of disciplinary interviews with all officers on all of the disciplinary matters before reaching their

judgement on whether or not to refer the criminal convictions to the Court of Criminal Appeal. Since the record of the interviews (and the officers can choose to say nothing) will be recorded in files for submission to the Crown Prosecution Service or the Chief Constable, the CCRC appear locked into awaiting their full preparation. Indeed it is difficult to acknowledge any material difference in the files destined for the CPS or the Chief Constable and those forwarded to the CCRC. However, the Chief Constable, in a more collaborative regime may well have chosen to exercise his discretion and terminated further enquiry for disciplinary purposes into less important matters or those where the prospect of conviction was remote.

68. The apparent dependency of the CCRC enquiry on the investigation of all police disciplinary matters emphasises the need for strategic collaboration at the formative and developmental stages of an enquiry. The signposting of the route of the enquiry is best delivered in collaboration so that tangential needs can be satisfied whilst the route remains direct rather than circuitous. This would not impact to the detriment of CCRC or impinge on its primacy. In acknowledging that the needs of the various stakeholders are more complimentary than they are diverse, justice will be done more speedily

both for those convicted and those whose malpractice was the basis of the convictions.

-

Implications beyond Operation Douglas

69. There is an opportunity to use Operation Douglas as a springboard for change and clarification of roles, as the post Lancet review by Bill Taylor has determined ideal practice in other major investigations of complex police misconduct matters.

70. Whilst the CCRC believe their needs are being met, the tangential needs of others appear not to be met with equivalent equanimity. It is surely temporally appropriate that the perspectives of experience of the 23 cases over 7 years should be shared to find a definitive way forward. The perspectives of course would be those of all the relevant stakeholders.

71. It is appreciated that resolution of the current inequity in financing Criminal Appeal Act investigations under Section 19 will need government intervention and possibly legislation in line with para 48. Government exists to resolve inequity.

72. The Court of Appeal and perhaps the Minister for Constitutional Affairs, should be asked again to consider the issue of interim reports and their thinking informed of the resource implications of remaining implacably opposed to their potential value.

73. The exercise by the CCRC of their statutory Section 19 powers on only 23 occasions since their inception must be welcome to Chief Constables. The skills and expertise required of an IO for these complex and sensitive enquiries are not in the abundance an ideal world would require. They represent a profile of skills that are at a premium and in great demand across the range of major police investigations. However, it follows from the infrequent use of Section 19 that experience to provide the foundations of good practice is strictly limited. Some IOs have retired, whilst CCRC case workers will have moved on to pursue their careers. It is important that the existing experience within the police service and the CCRC is brought together in a workshop so that lessons are learnt and good practice fostered.

Conclusion

74. This final recommendation encapsulates the approach of this review. It has not attempted to apportion blame. To underpin the review on a philosophy of blame would simply have encouraged the various organisations to have retreated to the stockades of institutional pride. Assaults on the periphery of the review would have left its essence neglected. This essence is to carve a critical path for the future. That path is signposted by meaningful collaboration and learning all the lessons that collective experience can offer.

**NOT FOR PUBLICATION:
THIS REPORT DEALS WITH
EXEMPT INFORMATION AS
DESCRIBED IN PARAGRAPH
2 OF PART 1 OF SCHEDULE 12A TO
THE LOCAL GOVERNMENT ACT
1972**

AGENDA ITEM NO: 14

**AUDIT AND RISK
COMMITTEE**

2 NOVEMBER 2012

SUBJECT: OPERATION DOUGLAS/WALDHORN

Report of the Chief Constable

PURPOSE OF THE REPORT

1. The purpose of this report is to provide Members with a summary of the investigation undertaken by West Yorkshire Police supervised by the Independent Police Complaints Commission (IPCC) relating to Operation Douglas.

RECOMMENDATION

2. That Members use the information provided in this report to assure themselves that terms of reference for the Operation Waldhorn have been met and that any shortfalls, remedial actions and lessons learnt have been identified and actioned.

KEY INFORMATION

3. Attached at Appendix A is a summary of the confidential report from the team involved in Operation Waldhorn. This investigation was undertaken by West Yorkshire Police as a supervised enquiry by the IPCC, was borne out of an enquiry conducted by North Yorkshire Police relating to alleged criminal and disciplinary offences by West Yorkshire Police Officers in the 1990s in respect of the conditions bestowed on an informant in a murder trial
4. The terms of reference of the investigation were agreed between the commissioning officer, DCC Mr John Parkinson, the Police Authority and the IPCC. The specific terms of reference and the findings are laid out in Appendix A. The recommendations made within the report will now be taken forward, both internally and with the relevant authorities through existing organisational learning and development mechanisms. A copy of the full report can be made available to Members to scrutinise, but given the protective marking this document can not be in the public domain.
5. The findings of the investigation in respect of Term of Reference 1 have been independently reviewed by the Association of Police Officers lead for Professional Standards and a copy of his findings can be found at Appendix B.
6. The IPCC have also reviewed the overall findings of the investigation and have confirmed that the terms of reference of the investigation have been satisfied. A copy of the IPCC letter can be found at Appendix C.

STRATEGIC RISK IMPLICATIONS

7. There are considerable reputational risks for the Force should it not follow the relevant regulations in relation to handling co-operating offenders. The recommendations outlined within the report will mitigate the risks.

RESOURCE IMPLICATIONS

8. There are no resource implications resulting from the content of this report. The investigation was undertaken by a Detective Superintendent and staff of the Homicide and Major Enquiry Team and there were no additional costs incurred.

EQUALITY AND DIVERSITY CONSIDERATIONS

9. It is not considered that there are any Equality and Diversity considerations in respect of the content of this report.

HUMAN RIGHTS CONSIDERATIONS

10. The report made a number of recommendations in respect of the development of national and local policy for the management of co-operating offenders. Failure to take these recommendations forward could impact on the human rights of offenders.

CONTRIBUTION TO THE POLICING PLAN

11. It is not considered that this report has any direct impact on the Policing Plan. As identified above there is a reputational risk associated with adverse media coverage of any cases where co-operating defendants may be used, which in turn could impact on confidence in the police.

IMPLICATIONS FOR REGIONAL/COLLABORATIVE WORKING

12. It is not felt there are any implications in relation to regional or collaborative working.

CONTACT OFFICER

Jeff Bridgeman
Executive Officer
West Yorkshire Police
PO Box 9
Wakefield WF1 3QP
Telephone: 01924 292306
Jeffrey.Bridgeman@westyorkshire.pn
n.police.uk

SUPPORTING DOCUMENTATION

Appendix A – Operation Waldhorn
summary report.
Appendix B – DCC J Feavvour's letter
dated 4 September 2012.
Appendix C – IPPC letter dated 29
October 2012.

BACKGROUND PAPERS

Operations Waldhorn Report
(Confidential)

OPERATION WALDHORN

Introduction

'Operation Waldhorn' is the name given to a West Yorkshire Police investigation for an Independent Police Complaints Commission (IPCC) supervised enquiry commissioned in October 2011.

The investigation itself is borne out of an enquiry conducted by North Yorkshire Police relating to alleged criminal and disciplinary offences committed by serving West Yorkshire Police officers during the 1990's. The working title of the North Yorkshire Police investigation which itself was commissioned by the Criminal Case Review Commission (CCRC) was 'Operation Douglas'.

'Operation Douglas' commenced on 3rd November 2001 and concluded on 11th September 2006. No criminal charges were ever instigated against any of the accused officers despite consideration by the Crown Prosecution Service (CPS).

West Yorkshire Police also took no disciplinary action against the remaining serving officer's when the discipline file relating to the officers' alleged misconduct was considered by the Office of the Force Solicitors (OFS) in October 2006.

The principle purpose of 'Operation Waldhorn' was to review the decision making rationale and outcomes derived at by the original investigation and assess them in line with the terms of reference agreed by the IPCC and the commissioning officer Deputy Chief Constable (DCC) Mr John Parkinson of West Yorkshire Police. The aim was to identify any shortfalls, remedial actions and lessons learnt that could be implemented to improve the current working practices of West Yorkshire Police.

Terms of Reference for Operation Waldhorn:

- 1. Examine the decision making rational of the appropriate authority, considering the legal advice provided and any direction given to senior officers in relation to disciplinary matters concerning the actions of any person involved in the case.**

Findings:

- a) The Crown Prosecution Service decided that no criminal charges would arise from Operation Douglas and as such North Yorkshire Police compiled the discipline file.
- b) The accounts of the key stakeholders along with evidence gathered as part of 'Operation Waldhorn' and 'Operation Douglas' was independently reviewed by Deputy Chief Constable John Feavoyour of the Cambridgeshire Constabulary who is the Association of Chief Police Officer's (ACPO) lead for Professional Standards.
- c) DCC Mr Feavoyour considers that each decision made by The Force Solicitor and the then Head of Professional Standards Department, in respect of all five officers concerned to be reasonable, rational and entirely proportionate in the circumstances.

- 2. Review the written judgements issued by the Court of Appeal (Criminal Division) on 1st December 2009 and The Supreme Court on 20th July 2011 to establish whether there are any new aspects of police conduct which would warrant further action.**

Findings:

Upon completion of the review of relevant documentation it was concluded that the Criminal Cases Review Commission were in possession of all relevant material to enable them to make their decision. To date no new

aspects of police conduct, which would warrant further action, have been identified.

- 3. To examine current policy, practice and procedures regarding the management of CHIS with a particular focus on participating CHIS, and Protected Witnesses, to ensure that the integrity of these covert policing methods is fit for purpose.**

Findings:

- a) Key issues to address were identified as:

EXEMPTION S31 (1) (a) (b) (c)

- b) Since the original investigation it is fair to say that there has been a complete root-and-branch overhaul of procedures to safeguard against such failings and to prevent them from ever happening again.

EXEMPTION S31 (1) (a) (b) (c)

EXEMPTION S31 (1) (a) (b) (c)

As a result of the investigation, 8 recommendations have been made:

1. It is recommended, following the review by DCC Mr Feavoyour, that no further action is taken against any serving officer in relation to the misconduct previously identified by Operation Douglas.

EXEMPTION S31 (1) (a) (b) (c)

EXEMPTION S31 (1) (a) (b) (c)

John Feavour DMS BSc Dip App Crim (Cantab)
Deputy Chief Constable
EXEMPTION S40 (2) (a) (b)

Your Ref: JP/rg

Our Ref: JF/bw/lett12/

4th September 2012

John D Parkinson OBE
Deputy Chief Constable
West Yorkshire Police
Command Team
PO Box 9
Laburnum Road
Wakefield WF1 3QP

I am writing further to your letter of 20th June 2012, in which you ask me to review Operation Waldhorn on behalf of West Yorkshire Police. You subsequently forwarded three lever arch files containing evidential review documents, and in your letter as well as in those files you asked me to consider four specific questions in relation to potential police misconduct.

Firstly, I ought to explain the delay. **EXEMPTION S 40 (2) (a)**
(b) However, I have in the last couple of weeks had the chance to properly review the files you sent through and I have come to some unequivocal conclusions in respect of the questions you asked.

I attach to this letter therefore, a brief report which sets out my professional experience in complaints and misconduct and the approach I took to the review and my conclusions. In those conclusions I offer some general observations and also cover the four specific questions upon which you asked for my view of.

In short having reviewed all of the material provided I have concluded that the decisions made by the then head of PSD and the force solicitor were entirely reasonable in the circumstances, and that no officer should have faced disciplinary proceedings. It follows that there is no case for any current serving officer to face any disciplinary proceedings.

Cambridgeshire Constabulary Headquarters, Hinchingsbrooke Park, Huntingdon,
Cambridgeshire, PE29 6NP

Telephone: 101, Website: www.cambs.police.uk

On an administrative note I have maintained the files securely in my office until you advise me either to destroy them or that you will collect them in due course.

Please do not hesitate to contact me if I can be of any further assistance.

John Feavour

**OPERATION WALDHORN EVIDENTIAL REVIEW, DCC JOHN FEAVYOUR,
CAMBRIDGESHIRE CONSTABULARY, 3 SEPTEMBER 2012**

1. Introduction

- 1.1 My name is John Feavours and I am the Deputy Chief Constable of Cambridgeshire Constabulary. I have been a chief officer in Cambridgeshire for nine years, all but eighteen months of which I have been responsible for the professional standards portfolio within force. Beyond this I have for the last five years been the national ACPO lead for complaints and misconduct.
- 1.2 My experience within Cambridgeshire in relation to misconduct matters extends from being the lead officer for Sir Michael Bichard's public enquiry into potential failings around the Soham investigation, as well as directing many internal investigations into alleged misconduct by officers and staff at all levels of the organisation from constable to chief officer. On occasions where there has been sufficient evidence and in the public interest to do so I have prosecuted former officers resulting in their imprisonment, had officers dismissed for gross misconduct, put action plans in place for officers where circumstances mitigated against any other sanction and even taken no action following conviction at Crown Court of three officers because I was able to take account of comments made by the judge in that case. In short I am extremely experienced in matters to do with police misconduct.
- 1.3 In my national role I have provided a liaison point between ACPO and the IPCC, and on one occasion even set terms of reference for an investigation into the IPCC. I have also provided advice to several forces in respect of their response to misconduct critical incidents and I have also acted as a confidant to individual forces and the IPCC in sensitive matters.

2. Operation Waldhorn

- 2.1 In June 2012 I was asked by DCC John Parkinson of West Yorkshire Police to review the case of Operation Waldhorn. Operation Waldhorn arises from Operation Douglas, a previous investigation conducted by North Yorkshire Police on behalf of the Criminal Case Review Commission.
- 2.2 Operation Douglas examined the criminal cases that were constructed by West Yorkshire Police against a number of individuals and that with hindsight can now be seen to exemplify a wholesale failure on the part of some of the officers concerned in the original investigations to deal properly with informants.

3. Terms of Reference

- 3.1 The purpose of my review was set out in formal Terms of Reference to provide an independent review of the decision of the [REDACTED] that no officers would face disciplinary proceedings in line with the disciplinary regulations in force at time (2006).

540 (2)

3.2 Specifically DCC Parkinson asked me to consider the material and make recommendations regarding the following:

- i. An indication whether or not each decision made is considered to be reasonable, rational and proportionate in the circumstances made by [REDACTED] and [REDACTED] in respect of [REDACTED] S40 (2)
- ii. Consideration from the information provided whether any form of disciplinary action may have been appropriate against any of the named officers.
- iii. Consideration whether a discipline office could have been more likely than not substantiated against any officer involved.
- iv. Consideration that on the evidence provided that there is now a viable case for disciplinary action against those named officers who are still employed by West Yorkshire Police [REDACTED] S40 (2)

4. Methodology

- 4.1 I have reviewed three lever arch files of documents provided to me by West Yorkshire Police. This included an introduction which set out the background to Operation Douglas and the investigation by North Yorkshire Police. It described that investigation and the subsequent referral through to the Criminal Cases Review Commission. The detail of the criminal justice processes was also set out including the conviction, appeals and subsequent reconvictions of the individuals concerned. This introduction alluded to wholesale abuse of appropriate and recognised systems for managing police informants and witnesses. The introduction concluded with terms of reference for my review and set out the four specific questions as mentioned above.
- 4.3 I was also provided with further documentation namely, what was described as List A and List B.

List A

- i. Discipline file submitted to West Yorkshire Police from Operation Douglas for the remaining officers.
- ii. Covering letter from [REDACTED] pertaining to the discipline file dated 3rd October 2006. S40 (2)
- iii. Response from [REDACTED] recommending no disciplinary charges against any officer with supporting rationale dated 12th October 2006. S40 (2)

- iv. Witness statement from [REDACTED] regarding his involvement in Operation Douglas. S40(2)
- v. Witness statement from [REDACTED] regarding his involvement in Operation. S40(2)
- vi. File Note ref: [REDACTED] produced by [REDACTED] S40(2)

List B

- vii. Advice files submitted to CPS for the officers involved in Operation Douglas and the reviewing lawyer's advice.
- viii. The CPS files are split into three parts as they were sent a different times throughout the duration of Operation Douglas.

Part 1: Refers to [REDACTED] S40(2)
 Part 2: Refers to [REDACTED]
 Part 3: Refers to [REDACTED]

- ix. Discipline events timeline
- x. A review of Operation Douglas by Sir Dan Crompton.
- xi. A case study review report of Operation Lancet.

4.4 I reviewed all of the above documentation making notes on some as I went through to try and understand the background and the context to the investigation. There is a great deal of detail in the files which I do not propose to rehearse here. However, I was struck by the comprehensive nature of the advice files which have been sent to the CPS and the point by point way in which the CPS lawyer had dealt with each of the potential criminal charges which could have been laid against a number of officers. I also noted in particular the review of Operation Douglas by Sir Dan Crompton and the Operation Lancet case study, elements of their conclusions being entirely relevant to the situation which faced me in reviewing this case.

5. Observations

5.1. Operation Douglas identified a whole raft of inappropriate conduct by a number of officers. However, after very careful consideration the CPS advised that no criminal matters should follow from the investigation. Subsequently the matter was considered in relation to potential disciplinary action and I was particularly struck by a comment by [REDACTED] when he wrote to [REDACTED] 12th October 2006 when in his opening paragraph he describes Operation Douglas as having revealed "a lamentable and systematic disregard for proper accounting procedures and the need to maintain a professional distance [REDACTED]". I believe this to be an excellent summary by [REDACTED] describing as it does S40(2)
S40(2)
S40(2)
S40(2)

not only failing on behalf of the officers themselves but also, and importantly, a "systematic" failure on behalf of the organisation.

- 5.2 This systematic failure is important when considering whether or not misconduct proceedings should follow. It is wholly inappropriate in my view that the most junior officers in any part of the organisation should take full responsibility for their actions, even when they are inappropriate actions, in the absence of their managers also being held to account where it is apparent that those self-same managers condoned or, in any event, turned a blind eye to the misconduct concerned.
- 5.3 Indeed [REDACTED] turns to this very point in his next paragraph in the letter which I have already mentioned, when he says "that very senior officers routinely disregarded proper accounting procedures, thereby facilitating and condoning much of the abuse undertaken by the more junior officers...". S40(2)
- 5.4 In these circumstances an abuse of process argument is always likely to succeed. I say likely but not inevitable. An abuse of process argument must demonstrate a fundamental unfairness if it is to succeed and in his letter [REDACTED] [REDACTED] states simply that "it would be wholly untenable and an abuse of process" for disciplinary action to be taken against these junior officers. My reading of this comment is that he sees the abuse of process argument as inevitable; my own view is that it is highly likely and whilst I therefore feel that if falls short of being inevitable the conclusion which is reached by [REDACTED] is entirely reasonable. S40(2)
- 5.5 [REDACTED] goes on to describe how one other disciplinary matter was reported and seemingly dealt with at that time by a Superintendent. He is right to conclude that this matter should not be revisited. S40(2)
- 5.6 [REDACTED] then turns to matters said against [REDACTED]. Here the rationale used to conclude that no disciplinary proceedings can be justified relies on a number of factors including the absence of any direct financial benefit for the officer concerned. I cannot give any weight to this particular element as the absence of a personal financial gain cannot in my view be the determinant as to whether the officer's actions amount to misconduct. However, the other elements within the rationale applied to [REDACTED] [REDACTED] take my mind back to my earlier comments in relation to the difficulty of proceeding against the most junior officers when their supervisors, managers and in this case a chief officer would need to be held to account at least alongside a junior officer concerned. S40(2)
- 5.7 My only other observation by way of conclusion is in respect of the letter sent by [REDACTED] to [REDACTED] of 3rd October 2006, wherein in his final line he uses the phrase "it is my heartfelt opinion that there is insufficient evidence to consider disciplinary proceedings...". I do not understand, and I was surprised by reference to the term "heartfelt". My expectation would be that the [REDACTED] would provide an objective opinion based on the evidence and public interest concerned. I feel that the use of the word S40(2)

"heartfelt" on the other hand suggests some form of sympathy for the position the officers found themselves in, and actually detracts from what otherwise is a perfectly sensible conclusion to come to.

6. Conclusions

6.1 In bringing my thoughts together therefore, the officers under investigation had in the first instance been subject to careful consideration for criminal proceedings and on each and every aspect had such a course dismissed by the Crown Prosecution Service. In these circumstances I would only expect to proceed in relation to disciplinary matters where those matters can be said to be sufficiently distinct from the criminal allegations to make such proceedings justified. They are not. They are substantially the same and as such I would only expect to proceed with disciplinary matters where the activity concerned was blatantly or maliciously in contravention of force policies and procedure. In this last regard there are considerable difficulties precisely because of the involvement of more senior officers, and as [REDACTED] [REDACTED] says in his letter they had all long since retired. The time delay is also problematic if disciplinary proceedings were to have been contemplated. I have rehearsed my views in relation to the potential for an abuse of process argument and have concluded that whilst it is not inevitable it would have been entirely likely to succeed.

S40(2)

6.2 Taking account of these conclusions I turn to the four specific questions which I was asked by DCC Parkinson as follows:

i. *An indication whether or not each decision made is considered to be reasonable, rational and proportionate in the circumstances made by [REDACTED] and [REDACTED] in respect of [REDACTED]*

S40(2)

I consider that each decision made by [REDACTED] and the then [REDACTED], in respect of all five officers concerned to be reasonable, rational and entirely proportionate in the circumstances.

S40(2)

ii. *Consideration from the information provided whether any form of disciplinary action may have been appropriate against any of the named officers.*

I consider that it would have been inappropriate for any of the named officers to have been subject to any form of disciplinary action for the reasons which I have set out in my conclusion above.

iii. *Consideration whether a discipline office could have been more likely than not substantiated against any officer involved.*

I consider that [REDACTED] could have faced disciplinary action in respect of his abuse of policy and procedures. I cannot conceive that he did not know that he had become too close to [REDACTED] and on my assessment of the

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material in the bundle provided I believe that it is more likely than not that matters could have been substantiated against him amounting to misconduct. In the light of all the circumstances described in the evidential review file and the conclusions which I have come to, I consider that a sanction in the terms of a reprimand or a written warning would have been appropriate should such a matter have been found against him. It is my view that no disciplinary offences would have been more likely than not substantiated against any of the other officers concerned.

iv. *Consideration that on the 2 evidence provided that there is now a viable case for disciplinary action against those named officers who are still employed by West Yorkshire Police* [REDACTED]

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There is no viable case for disciplinary action against either [REDACTED]
[REDACTED]

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5.10 I offer these final observations in closing; the Operation Lancet report was one of the catalysts for the work by William Taylor CBE QPM, which led to the changes in the police conduct regulations enacted in 2008. In my words he sought to ensure that the most serious misconduct – gross misconduct - should be dealt with expeditiously and where that conduct is so serious that dismissal is justified, then the officer should lose their job. However, his overarching concern was that where mistakes were identified including systematic failings of the organisation, then matters should be brought swiftly to a conclusion and appropriate learning taken on board with a view to improving the organisation and its method of operation. I cannot conceive that West Yorkshire Police has other than long since taken steps to address the failings identified by Operation Douglas and any suggestion of any misconduct proceedings should have a very firm line drawn underneath it and the matter closed.

John Feavoyour
4th September 2012

Our reference number:
Your reference number:

ipcc

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yr heddlu

PO Box 473
Sale M33 0BW

Blwch Post 473
Sale M33 0BW

Tel/Ffôn: 0300 020 0096

Fax/Ffacs: 0207 166 3306

Text relay/Cyfnwid Testun: 18001 0207 166 3000

Email/E-bost: enquiries@ipcc.gsi.gov.uk

Web/Gwefan: www.ipcc.gov.uk

T/CC John Parkinson
West Yorkshire Police
PO Box 9
Wakefield
West Yorkshire
WF1 3QP

29 October 2012

Dear T/CC Parkinson

IPCC supervised Investigation of Operation Waldhorn

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Thank you for [REDACTED] report about the above investigation. My role in supervised cases is to monitor the progress of the investigation against an agreed investigation plan and terms of reference. Having considered the report, I confirm that the terms of reference, agreed at the outset, have been satisfied. My supervisory responsibility is now at an end.

Yours sincerely

S40(2)

[REDACTED]

S40(2)

[REDACTED]

Independent Police Complaints Commission (IPCC)

S40(2)

IPCC Contact:

[REDACTED]
Senior Casework Manager

S40(2)

[REDACTED]

