

Sir Richard Henriques QC

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Dear Sir Richard

The Home Secretary has asked me to write in response to some of the specific questions you posed in your letter to her published in the Daily Mail on 11 February 2021. Many of these, as well as broader questions you have raised in the media have already been answered within our Operation Kentia investigation report, which is a matter of public record<sup>1</sup>. I welcome the opportunity to respond publicly again.

As you will be aware, our investigation was not a review of Operation Midland itself – we looked at four specific allegations of possible misconduct referred to us from the Metropolitan Police Service (MPS).

Our investigation followed the requirements set out within the Police Reform Act 2002 and associated secondary legislation. Our remit was therefore to consider whether there was an indication that 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 responsibilities<sup>2</sup>.

While our investigation found no evidence that police officers had deliberately misled a district judge, we did find many areas of organisational learning around applications for search warrants and ways this might be strengthened.

Learning recommendations, which we have the power to make under the legislation, are an important tool to help the police improve. As a result of our Operation Kentia investigation, we made 16 learning recommendations to improve policing practice, which have already resulted in national changes to the application and checking of

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<sup>1</sup> [Operation Kentia Report.pdf \(nationalarchives.gov.uk\)](#)

<sup>2</sup> College of Policing Code of Ethics 6.1

search warrants as well as significant changes to policy and processes within the MPS.

Specifically the MPS have advised that over 24,000 police officers and staff have received improved training and have a better understanding of search powers and warrants, particularly around issues such as duty of disclosure, seizure of property, supervision, who attends the search and improved guidance.

In addition, national guidance on search warrants has now been changed as a result of our recommendations and the Criminal Procedure Rules Committee and PACE Strategy Board are considering further work.

More broadly, since our establishment in 2018, we have made over 250 learning recommendations covering areas from stalking and harassment to tactical contact which have resulted in significant improvements to policing practice.

Turning to your specific questions:

**Q4 Whose decision was it to investigate mere misconduct as opposed to gross misconduct or criminal conduct when a district judge was misled by false evidence?**

This decision was made by an experienced investigator, supported by a wider team and in accordance with our legal remit. Further information about this decision can be found below. We have already published considerable detail on the processes that went into the decision-making.

These processes are outlined in our October 2019 publication (specifically Appendix 6 entitled “Assessment of conduct – Allegation 3” (pages 86-126)). This document outlines the assessment in relation to conduct for all five officers in regard to the allegation that the enquiry team had failed to present all relevant information to the district judge when applying for the search warrants.

In this document the investigator:

- detailed the relevant statutory provisions;
- analysed the information contained in the referral from the MPS;
- detailed the further material he had reviewed (in addition to that analysed by the MPS);
- considered the findings of your review;
- summarised the warrant applications;
- detailed the inconsistencies between the different police interviews given by ‘Nick’<sup>3</sup>;
- analysed whether there were reasonable grounds for applying for the warrants (including reviewing the detailed policy decisions); and

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<sup>3</sup> Later to become known as Carl Beech

- considered how the warrants were executed.

The investigator assessed the conduct of each individual officer, evaluating whether their conduct could amount to misconduct, gross misconduct or criminality (referred to under our statutory scheme as the 'severity assessment'). As I am sure you know, under the 2012 statutory scheme 'misconduct' was defined as a breach of the standards of professional behaviour and gross misconduct as a breach so serious as to justify dismissal. This 'severity assessment' is a process that is required to be performed at the beginning of an investigation in order that the officers can have the appropriate misconduct notice served on them (so they are aware of the level of misconduct proceeding they could be facing). The severity assessment can be revised throughout an investigation and indeed if the evidential position materially changes can be revised up to gross misconduct and of course an investigation can become a criminal investigation too (if we find evidence of criminality).

The investigator considered each of the officers' involvement in the decision to apply for the warrants and the drafting of the warrants themselves and reached severity assessments for each officer. The investigator concluded that the three officers who had had direct involvement in the drafting of the search warrants may have misconducted themselves in relation to a lack of diligence in their preparation<sup>4</sup>.

The investigator did not consider that there was evidence of a deliberate or wilful intention to mislead the district judge which would have elevated the potential wrongdoing to gross misconduct and likely criminality. Therefore, the potential wrongdoing for these three officers was calibrated at misconduct only. You yourself appear to suggest that there was no deliberate intention to mislead the district judge as you conclude in your review:

*"...notwithstanding the many mistakes I have enumerated above, the officers had conducted this investigation in a conscientious manner and with propriety and honesty<sup>5</sup>."*

## **Q5 How can the exoneration of the DAC without cross-examination be justified?**

**and**

## **Q6 Whose decision was it to exonerate the DAC and DSU after four months – long before an attempt was made to interview the more junior officers?**

Pages 3 and 4 of our Operation Kentia report explain our processes for investigations and decision making.

The IOPC's role is not to act as judge and jury in relation to a matter but rather to conduct an independent and impartial investigation, based on the evidence

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<sup>4</sup> Standards of Professional Behaviour: 'Duties and Responsibilities' – Police officers are diligent in the exercise of their duties.

<sup>5</sup> 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.

available. Our investigations then make findings and/or learning recommendations, which are considered by the appropriate authority (usually the relevant police force or local policing body).

In Operation Kentia, we reviewed the significant material available to us which included your full unredacted report, copies of the responses made to you on behalf of the officers, the full Operation Midland HOLMES account (the system used by the police for managing major enquiries) and other related material.

The matter we investigated centred around the fact that 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.

In considering the search warrant applications, 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 your report, you accepted this was the case, but you regarded it as a serious failure that they had not done so. We saw evidence suggesting 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.

We 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 a detailed assessment report, also published in our Operation Kentia report. This view was supported by an IPCC Commissioner and the decision to discontinue the investigation into DAC Rodhouse and DSU McDonald was therefore taken.

We did however 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 that they should be subject to a full investigation.

As outlined above, where there is an indication of misconduct that would justify the bringing of disciplinary proceedings the IOPC (and previously IPCC) 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'). These decisions are made by experienced investigators and in accordance with our legal remit.

DS Sword, DI Hepworth and DCI Tudway were served with investigation notices, with an assessment of 'misconduct'. As detailed above, having reviewed the

underlying material, our assessment was that, if proven, their behaviour would not have justified dismissal and that is why the assessment did not reach the 'gross misconduct' threshold. None of the officers were investigated criminally because there was no evidence that a criminal offence may have been committed. By this we mean that in the absence of evidence that the applications were intentionally misleading, we did not have reasonable grounds to suspect that a criminal offence had been committed. We kept these assessments under review throughout the course of our investigation.

With regard to the individuals known as 'A' and 'B', an independent police force is currently investigating matters relating to the MPS decision not to investigate these two complainants who made allegations of sexual abuse.

**Q8 Why did it take some three years to complete an investigation when the two most senior officers were exonerated after four months?**

We agree that this investigation took longer than it should have done and we have apologised for the delay on the public record. The assessment process to determine whether a matter is a possible breach of the standards of professional behaviour is detailed at length above.

We have been working hard to improve the timeliness of our investigations and have made significant improvements in this area. Approximately 90%<sup>6</sup> of our investigations are now completed within 12 months compared with 68% in 2018/19. Operation Kentia was one of the 538 long-standing cases that we inherited from the IPCC. We have worked hard to bring these to a conclusion and now have just three remaining.

**Q9 Why was a person lacking the appropriate skills and experience appointed as lead investigator in such a high profile and important investigation?**

No one single person worked on this investigation – to represent our work as being the responsibility of one person is misleading and inaccurate.

A multi-disciplinary team worked on the investigation. This team included several investigative staff, supported by lawyers from our in-house legal team, policy experts and staff with other relevant areas of expertise. The primary person you had contact with was an accredited (qualified) investigator. They worked with senior managers and colleagues throughout. It is disappointing that despite having explained this many times, the personal attack on this individual has continued.

Final decision-making on investigations is always undertaken by a senior member of staff. The decision to discontinue the investigations into DAC Rodhouse and DSU McDonald was made by experienced IPCC Commissioner Carl Gumsley. Sarah-Louise Davis was the decision-maker in relation to the three officers subject to investigation and she is experienced in criminal law, the application of PACE and has relevant expertise in applying for and executing search warrants. Both of these individuals are named in our report.

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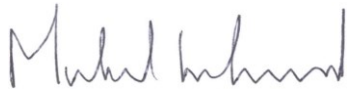
<sup>6</sup> 85% including cases managed by our Directorate of Major Investigations

There were mistakes made during Operation Midland as both your review and our investigation found. While I can appreciate your frustrations about the wider actions which resulted from your report, it is important to be clear about our role and remit in investigating police misconduct. Just as a judge cannot make a finding in the absence of evidence, nor can the IOPC. Our investigation was robust, thorough and conducted within our legal remit.

I recognise the significant trauma and distress caused to all of the individuals affected as a result of the false allegations made by Carl Beech and the subsequent investigation by the MPS. Your review, our investigation and subsequent learning recommendations have led to significant improvements nationally within policing which I hope will mean that the mistakes of Operation Midland will not occur again. I am sure this is something we can all agree on.

In the interests of transparency, I am copying this letter to the Home Secretary and will ensure it is published.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Michael Lockwood', with a stylized, cursive script.

Michael Lockwood

Director General

**Independent Office for Police Conduct (IOPC)**