Opening remarks by MR ALTMAN

MR ALTMAN: Good morning, chair. Before we begin with the first witness, who is, as you will see, on a live link, you have asked me to say a few words for public consumption, as it were, to understand about the process by which representatives of core participants may seek your permission to ask witnesses questions. This is an inquiry undertaken by you and the rest of the panel. It is not adversarial litigation. So it is worth reminding ourselves that all questioning of witnesses takes place because you have determined that it will assist the inquiry with its work.

As you are aware, legal representatives are provided with a list of topics that counsel to the inquiry intends to cover with a given witness in the course of their evidence. The legal representative of a witness intends to cover with a given witness in the course of their evidence. The legal representative of a witness or a core participant may apply to you for permission to ask questions of that witness, and these applications must be made four working days before the witness is timetabled to give evidence so that there is adequate time to consider the application and check that the witness has access to materials to respond to the question.

Applications are considered by you on a witness-by-witness basis. If you give permission for a core participant to ask questions of a particular witness, that should not be taken as any indication that all such applications will be granted. Each application is, of course, witness specific.

Applications can be refused on the basis that questions are repetitive, irrelevant, speculative or evidently cannot be answered by the particular witness. Additionally, there is latitude for representatives to seek permission to ask questions that arise during the questioning of witnesses where it relates to a new issue. This is an application which needs to be made to you. It is solely an opportunity to ask questions about an issue which has arisen for the first time in evidence, not for the first time that a representative has thought about a new issue. So we hope that that is sufficiently informative for members of the public as to the processes which apply in terms of the asking of questions under rule 10.

Examination by MR ALTMAN

WITNESS A4 (affirmed)

MR ALTMAN: Thank you. Can you hear me?

A. Yes.

Q. May I ask you this: you lived in Rochdale in your early years; is that correct?

A. Yes. Yes.

Q. You left school at 15; is that correct?

A. Yes. Yes, that was the legal age to leave school at that time.

Q. Exactly right. Do you remember, when you were about 16, Cyril Smith turned up at your house out of the blue?

A. Well, yes. Yes, you couldn't miss him.

Q. Absolutely. He spoke to your mother, and then to you and your mother, and did he tell you that Cambridge House was a house for working boys and asked you if you would like to go there?

A. Yes. Yes. He -- sorry, it's okay.

Q. He described it to you and, as you said in a witness statement you made this year, I think, you said he made it sound brilliant; is that right?

A. Yeah, he said it was great; better than where I was living at the time.

Q. You were desperate to go, and it sounded to you like you'd get some independence, and so you jumped at the chance?

A. Yes, of course.

Q. Because of the way that Cyril Smith turned up at your home, did you think he had some prior contact or connection with your family?

A. No. I'd only come across Cyril Smith when I was at the "open air school", Brownhill School it's called now, when he visited the school years ago, and that was the only time I had come across Cyril Smith. Before that, I have no idea how he got to know about me or anything or who referred him to me or what.

Q. But he did turn up and, as a result of his visit, you were admitted to Cambridge House you thought when you were about 15 but very nearly 16; is that correct?

A. Yes, as far as I -- I don't remember exact dates, obviously. We're talking over 50, 55 years ago.

Q. I understand. When you arrived at Cambridge House, was it a 'open air school', Brownhill School it's called now, when he visited the school years ago, and that was the only time I had come across Cyril Smith. Before that, I have no idea how he got to know about me or anything or who referred him to me or what.

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A. Yes, as far as I -- I don't remember exact dates, obviously. We're talking over 50, 55 years ago.

Q. I understand. When you arrived at Cambridge House, was it a 'open air school', Brownhill School it's called now, when he visited the school years ago, and that was the only time I had come across Cyril Smith. Before that, I have no idea how he got to know about me or anything or who referred him to me or what.
living, in the quiet room. Then, when we got in there, he said, “Oh, take your pants down. I want to give you a medical examination”, and he cupped over my testicles like he was checking for a hernia, you know like they do when you enter the army or something, and then he started stroking me. You know, he was Cyril Smith, what could I do? I was 15 years old, scared shitless.

Q. How long had you been at Cambridge House when that incident took place?
A. The first time I was there, until they changed my house, yes. But after, after he'd spanked me, he started brushing me saying, “There, there, it’s all right”, and we'd just gone off for the day, and when we come back, Cyril Smith was waiting. Mrs Saille -- was it? -- had called him and said we hadn't gone to work, and we'd just gone off for the day, and when we come back, we were taken individually into the quiet room, the same examination again -- why he wanted a medical again? -- and then a spanking, obviously big, fat, flabby hands, bang, bang, bang. And if you ever saw those hands, they were like weapons.

Q. Can you tell us, were those to your bare behind?
A. He made me pull my trousers down. Yes, he took my trousers down -- sorry, he made me take my trousers down, yes. But after, after he'd spanked me, he started stroking me saying, "There, there, it's all right", because I was crying, you know, he really hurt me.

Q. So you recall that as being the second occasion when
A. One or two days, as far as I remember. I can't honestly say how long. I think it was in the first few days.

Q. Did the same thing happen a second time?
A. Yes. That was when -- wait a minute, was that the second or the third? I don't know. One of the times was when --

Q. Had you gone hitchhiking?
A. Yeah, it was after that. That was the third time. But the second time was when I didn’t go to work and I met my mate. We went to Manchester to goof around and, when we got back, Cyril Smith was waiting. Mrs Saille -- was it? -- had called him and said we hadn't gone to work, and we'd just gone off for the day, and when we come back, we were taken individually into the quiet room, the same examination again -- why he wanted a medical again? -- and then a spanking, obviously big, fat, flabby hands, bang, bang, bang. And if you ever saw those hands, they were like weapons.

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Q. Had you gone hitchhiking?
A. I have absolutely no -- I can’t remember how long I was in Cambridge House the first time, or how long I was away. I just remember these incidents, and little things.

Q. Help us with this: was there a further incident, which you remembered, when you were genuinely unwell and when Mrs Saille got Smith to come to the home? What was that all about?

A. I was in severe pain, vomiting and had a high temperature, and I asked to call the doctor, and she said, "I will", and then Cyril Smith turned up. He sort of prodded me around and then started fondling me and said to Mrs Saille, "There’s nothing wrong with him". Mrs Saille was in the room at that time. She saw this incident. He said, "There’s nothing wrong with him", but when he left the room, I was screaming. One of the boys came in, I think it was one of the Scottish lads came in, and they called an ambulance. I ended up at Rochdale Infirmary, and next thing I knew there was a priest there and my mother was there, I had a ruptured appendix. Now, if I’d have been left there, who knows what might have happened.

Q. Absolutely. Did you often see Cyril Smith at Cambridge House?

A. Oh, of course, yes. He was there quite -- he was there a lot of times. He organised Christmas parties and all sorts of things, and he would bring people -- it was a show case. He would bring visitors, God knows why, he’d bring them around and show them around the house and say, "Look how good we are to these boys, you know, these poor unfortunate boys". Of course we were unfortunate, because we were under the thumb of Cyril Smith.

Q. Can I ask you about someone else, Dave Bartlett. Was he someone you came to know while you were at Cambridge House?

A. Well, yes. Me and my friend, the guy I went up to Manchester with, we used to go to church. Dave Bartlett then was a Baptist minister. And the -- I can’t remember what day it was, but one day a week he would have a meeting of sort of like a youth club in his house, and it was after one of those times, me and my friend, we told him about what was happening, and he didn’t really believe us. I thought he didn’t believe us. That was it, as far as I remember about that.
1 A. Yes.
2 Q. In your statement, just to date this, you thought that
3 that happened in fact around 1983? Do you remember
4 saying that, in 1983, that that occurrence took place?
5 A. That would probably be right. I can't honestly say that
6 is absolutely correct.
7 Q. No, of course. Now, the next thing in sequence of
8 events that you remember was -- I mean, apart from
9 hearing absolutely nothing, because nothing had happened
10 in the meantime, but in regards to allegations about
11 Smith, they didn't surface again until the mid to late
12 1990s. Do you remember that?
13 A. Yeah, I had a visit from Greater Manchester Police, and
14 they were connected with Operation Cleopatra, and they
15 wanted me to go through the whole thing again, and
16 I said, "What's the use? This has been going for years
17 and nothing has been done!", and he said, "This time,
18 something will be done!".
19 Q. So you made a witness statement?
20 A. I made a witness statement, signed, my wife also signed
21 it as a witness.
22 Q. And nothing happened?
24 Q. Then --
25 A. But the next thing that I knew was when I was

1 downloading videos off of YouTube and that, with the
2 police saying things they'd been told to destroy
3 evidence and hide evidence and all that, and I couldn't
4 believe they did that. Of course it happened.
5 Q. Then you became aware, I think, in 2012 of
6 Simon Danczuk, who was then the new MP for Rochdale, as
7 you remember it, being on television?
8 A. That was a very lucky incident. I turned the television
9 on to catch the news and caught his speech and heard my
10 name and another person's name mentioned, and I thought,
11 okay, something is going to be done, and nothing
12 happened. So I emailed the guy, I emailed him, and
13 said, "Listen, do you want to hear my story?!", and I got
14 no reply. I tried telephoning and he wouldn't accept --
15 I reversed the charge, of course, and he wouldn't accept
16 it, so that was it. Then I believe he brought out
17 a book saying the truth about Cambridge House, but I've
18 yet to see what is said in that book. I don't know what
19 has been said or what.
20 Q. It's called "Smile for the camera"?
21 A. Is it?
22 Q. It's been published, and I am sure you can read it if
23 you wish to.
24 Can I ask you this: in the statement that you made,
25 you say:
WITNESS A2 (affirmed)

Examination by MR ALTMAN

MR ALTMAN: Thank you very much. For these purposes, as I have just said, you will be known as A2.

I have just said, you will be known as A2.

Can I ask you this, thinking about your early school years before we come to Cambridge House: did you, as you put it in a statement that I have from you, play truant from school in your early years, but you became a pretty good snooker player during that period of time?

A. Both things are true.

Q. Were you around 16 at that time?

A. 16.

Q. You say that you were absent from school for most of your last school year because of it; is that true?

A. For the whole year, yes.

Q. On one evening -- and nobody is judging this, but it is just part of the background -- did you happen to steal a bike from some bike sheds?

A. From the school bike sheds.

Q. From the school bike sheds. Did you happen to get caught by a police officer, and did that lead you to court and a two-year probation order?

A. Yes.

Q. The probation officer, who was presumably supervising your probation, did he come to your home one day?

A. Yes.

Q. Was there an incident, is all I am going to say, with your dad and, as a result of that incident, did you find yourself a couple of weeks later -- this is not your fault, but something that happened between your dad and the probation officer -- at Cambridge House?

A. I'm not absolutely sure it was a couple of weeks.

Q. Where were they working?

A. Initially, I shared in quite a large dormitory-type room with several of the boys, and later on, I shared a room with one other person, just a double room.

Q. The boys at Cambridge House, generally, in the statement you made you say that they were a mixture of ne'er do wells, that's how you termed it, people on probation, people who were homeless and had problems at home, but you also recall that there was a big group of Scottish apprentices from Glasgow?

A. After I had been there about six, nine months or so, there was a factory called Whipp & Bourne. It was the sister factory to the factory in Scotland where they'd started their apprenticeship.

Q. Where were they working?

A. There's a factory called Whipp & Bourne. It was the sister factory to the factory in Scotland where they'd started their apprenticeship.

Q. I see.

A. Apparently, they couldn't finish their apprenticeship there, so they were then moved down to complete their...
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<td>A. Well, it was a couple. Mr and Mrs Saille.</td>
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<td>A. Well, it seemed to be like that.</td>
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**Page 24**

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6 (Pages 21 to 24)
Is that what you recall?

A. Yes.

Q. "I recall him putting his hands down my front, around my abdomen, but I can't remember if he actually touched my genitals."

That's what you said. Was it correct?

A. Yes.

Q. You say this occurred on two or three occasions, "all of them when I had phoned in to work sick", which is what you have told us?

A. Yes.

Q. Did you then say this:

"At the time, I didn't discuss what had happened with anyone else from Cambridge House. I only discussed it with people years later."

A. Yes.

Q. In a word or two, why was it -- take it from me that this is anything but a criticism, but we just want to understand, and we probably all do -- that somebody in your position as a teenager, perhaps 16 or 17, what was it about Smith that lent itself to somebody like you in that with people years later."

A. Well, it was partly the era at time. Teenagers weren't as outspoken, plus Smith, himself, made himself as intimidating as possible.

Not only did adults fear him, you know, children would fear him. It might seem odd describing a 17-year-old as a child, but you're talking about 1961/62. It was a different era.

Q. Forgive what you may think is a silly question -- it is not designed to be -- but apart from his physical bulk, what else was it about Smith that was intimidating?

A. Well, I'd say that the power that he exercised -- the power that he exercised, his control. I mean, he had control more or less of the town of Rochdale. He didn't just control the boys in the hostel. Everyone in that town was -- if not afeared, certainly wouldn't cross him.

Q. Help us with this, if you can: from your observations, did you have any impression of the type of boy he would target, or social group or type of child he would target, from your own observations?

A. To be honest, when I was in there, I was aware of what had happened to me. I was not aware of it happening to any of the other boys in there. And yet, there was some sort of common understanding that something was going on, but I wasn't aware of him doing anything to other boys because it wasn't really spoken about.

Q. I suppose the reason I'm asking you is simply because of a comment you made in this witness statement:

"I believe ..."

And it could be looking back with retrospect:

"I believe that he targeted the boys who were from a bad home environment."

Was that just really looking back and thinking --

A. Yes, that's retrospective.

Q. In other words, boys who were vulnerable?

A. Yes. People would be in Cambridge House because they were totally dependent on Cambridge House and what it provided. They wouldn't have had other places to turn to.

Q. What about the Scottish lads? Did you ever have an impression of whether they ever fell within Smith's sights, or is it something you thought about afterwards as to whether Smith did interfere with them and, if he didn't, why not?

A. I don't think Smith would have done anything with the Scottish people because they were a group. There were eight -- at least eight or ten of them. If he'd have tried anything with any of them, I don't think -- I think they would have reacted differently than the way that myself or the other people reacted.

Q. When you left Cambridge House, did he ever say anything to you about whether you should talk once you left?

A. At the time I left, he took me to one side and gave me the advice that I should never talk to anyone about what happened during the time I was in Cambridge House.

Q. Did you understand what he meant by "what happened"?

A. Yes, I did.

Q. Did you understand that to mean what I have been asking you about, medical examinations, that sort of thing?

A. Yes. Well, I mean, I don't think -- I don't know how much Smith was frightened about possibly being exposed, but he certainly would try to stop people from saying anything.

Q. Did the police ever approach you for a statement about events at Cambridge House?

A. Pardon?

Q. Did the police ever approach you for a statement --

A. No.

Q. -- about events at Cambridge House?

A. No.

Q. You probably know now, but in 1979, the Rochdale Alternative Press published an article about Cyril Smith. Did you know at the time, in 1979, about that?

A. No. No.

Q. Were you involved in it in any way?

A. No.
Q. Did you know David Bartlett?
A. I sort of met him a couple of times at parties in Rochdale some time in the '70s.
Q. Did you, when you were about 17 or 18 and working in Rochdale, have a friend called Brian Bamford, who later became editor of Northern Voices?
A. Yes.
Q. Bringing matters almost but not quite up to date, in 2012, when there was quite a bit of media publicity about Smith following his death a couple of years before, did Brian get in touch with you?
A. Yes.
Q. Was he doing a piece on Smith for Northern Voices?
A. Yes.
Q. Was Northern Voices a local newspaper or a magazine or ...?
A. No, it is an internet blog.
Q. It is an internet blog, all right. Did Brian arrange for you to be interviewed by a political journalist by the name of Paul Waugh?
A. Yes.
Q. Did he write a piece for this blog site or website about your experiences at Cambridge House?
A. Yes, he did.
Q. I think another individual, whom we don't want to name, also contributed to the article -- A4 as we know him, but you don't know that. I don't want any names, please.
A. There was another boy that was resident at the time I was who was also mentioned.
Q. For the record, that was A4.
A. I think you also got in touch with some solicitors as well around the same time; is that correct?
A. Yes.
Q. I don't want to ask you more about that. Finally, this, please: you say in this statement -- it is actually the final paragraph: "I remain angry. Cyril Smith was allowed to get away with these things over so many years because he was so powerful."
A. Yes.
Q. I say, as you have done: "I am very keen to give evidence to the inquiry and tell my story."
A. Yes.
MR ALTMAN: Well, you have, and I am very grateful to you.
A. Thank you.
Q. Are you the only one or is there more than one?
A. There are two.
Q. Which is why I couched my question in the way that I did.
A. You have made, for which we are very grateful, a lengthy statement going through Lancashire Constabulary's part, if I can call it that, in all of this over the years. I'm not sure we know the date of it, but it was certainly sent to the inquiry on 29 September. Is that the date you actually signed off the statement?
A. That's correct.
Q. Do you have it in front of you?
A. Yes.
A. That's correct.
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A. I think that's correct, yes.
Q. Do you have it in front of you?
A. I do, yes.
Q. Feel free at any time -- I will direct you to passages -- to refresh your memory from it.
A. Okay. Thank you.
Q. Currently, as you say, and as you have told us, rank of assistant chief constable. Did you join the constabulary in 1986?
A. I did.
Q. Serving initially as a uniformed and then as a detective constable in Preston?
A. Yes.
Q. You say a substantial background in investigation. You served as a detective in every rank up to and including superintendent?

A. That's correct.

Q. Head of force intelligence and counter-terrorism 2005?

A. Yes.

Q. Prior to becoming an operations manager the year after?

A. Yes.

Q. You are, therefore -- and we accept -- suitably experienced as a senior investigating officer and in dealing with major investigations?

A. Yes, that's correct.

Q. Promoted to assistant chief constable in March 2014?

A. Yes.

Q. You have had chief officer responsibility for public protection, including child sexual exploitation and non-recent sexual offence investigations?

A. That's right, yes.

Q. Can I please then invite your attention to your paragraph 20 on page 5 of your statement.

A. Yes.

Q. Currently, the Borough of Rochdale comes within the Greater Manchester Police jurisdiction?

A. That's correct, yes.

Q. But you understand that prior to 1 April 1969, Rochdale was a Borough Police Force and outside the auspices of Lancashire Constabulary?

A. That's right, yes.

Q. Does that mean it was an autonomous police force?

A. It was an autonomous police force with its own chief constable.

Q. From that date, 1 April 1969, the Rochdale Borough Police Force, together with other local boroughs, became absorbed into the Lancashire County Court and, as a result, responsibility for policing Rochdale passed to Lancashire Constabulary?

A. It did, yes.

Q. A few years later, on 1 April 1974, did the Borough of Rochdale become absorbed into what was then the newly formed Greater Manchester area and, consequently, the responsibility for policing Rochdale passed from Lancashire to GMP, Greater Manchester Police?

A. It did, yes.

Q. Help us with this, if you are able to: which police force -- GMP, as I shall call them for short, or Lancashire -- would have retained responsibility for criminal investigations relating to Rochdale between 1969 and 1974?

A. Lancashire would have been responsible for anything that happened when Rochdale was part of Lancashire, in the main, unless agreement, for whatever reason, was reached between the two forces.

Q. So unless we hear otherwise, we can assume during that period of time it was Lancashire?

A. Yes.

Q. Which police force retained records of cases or investigations during that same period; do you know?

A. Lancashire would have been responsible for the documentation that mainly related to its cases of that time, albeit, when the geographical area moved to Greater Manchester, the records contained within Rochdale, and everything that pertained to that area, would have transferred responsibility in the main to Manchester.

Q. Can you speak up a bit? I'm sure you can shout, Mr Jacques.

A. I can.

Q. Let me now ask you about the course of the 1970 investigation into Cyril Smith, please. For that, we turn to page 6, paragraph 27 of your statement. We are going to have a look at some documents to help us through this. Let me just clear the decks for the moment.

Now, the dates, please, for the Lancashire investigation into Cyril Smith. When did that investigation commence?

A. It commenced on 10 October 1969.

Q. Effectively over -- at the time the DPP made his decision or was it still an open investigation or did it close?

A. No, it continued until that report was submitted by Detective Superintendent Leach to the DPP.

Q. Looking at your paragraph 29, what was the trigger, as you understood it?

A. Well, it was the arrest of a young man referred to as --

Q. Obviously don't name him.

A. -- no -- A48 in the papers. By way of mitigation for the offences for which he was arrested, he cited abuse by Cyril Smith whilst resident some years earlier at Cambridge House Hostel. So that was the trigger for this investigation.

Q. He was, in effect, saying, "He did it to me, so I did it". That was the effect of it?

A. Yes, it was, yes.

Q. In other words, "I learnt what I did from him".

A. Yes.

Your paragraph 30, you run through, really, all of the police officers who were involved in that inquiry from the researches you, and presumably others who helped you make this statement, were able to glean?

A. Yes.
Q. I am not going to go through all of them, but did they include Sergeant Brierley, who was responsible for the underlying report?

A. Sergeant Brierley picked up the investigation within a couple of days of that initial accusation/allegation by 48. I think it was Worsencroft took the original statement and then Sergeant Brierley obviously quickly picked up that investigation.

Q. We’ll look at it, but Sergeant Brierley’s report. Was the original superintendent, a man by the name of Watson?

A. I actually think Watson took over the investigation in the middle of January in 1970.


A. We can refer if we need to, but the first interview where Smith presented himself at the station, Watson actually says to him, "I am not local and I have only had this job just over a week", so we can put that sometime around the middle of January when he picks it up. But Brierley was a local officer, and I think from the records a DCI Stamp was probably a local officer working with Brierley on those initial investigations.

Q. Jeffrey Leach, detective superintendent. He took it over from Watson?

A. 16 February.

Q. 16 February, which he says himself.

A. So Mr Watson had it for a period of nearly a month, from January to February.

Q. There is also an unnamed chief superintendent who submits the report?

A. The supervisor’s report, which is on 31 December 1969, attached to Brierley’s. It was common practice in those days to report from the chief constable or the chief superintendent off to somewhere, so it will have been a supervisor’s report. It could potentially have been DCI Stamp’s report because we know that he worked with Brierley on it but it was a supervisory officer in Rochdale basically asking for Brierley to keep hold of the investigation.

Q. Other names, simply for your confirmation, which may have relevance later are Jack Tasker?

A. Yes.

Q. What was his part in this?

A. From the documentary records we have, he witnessed one statement being taken by Tom Courtney. He may well have been present with Courtney whilst Courtney took other statements, but his name only appears on our files on one statement.

Q. Then we have a Detective Chief Inspector Wheater, who certainly is in the picture at the time of the interview under caution of Smith --

A. Yes.

Q. -- in February 1970?

A. Wheater stays with the investigation right to the end. In fact, the last, I think, 13 or so statements, the majority are taken by Wheater.

Q. Yes.

A. And he’s present in the interview with Leach prior to the submission of Leach’s report.

Q. There were eight victims of alleged abuse?

A. Yes.

Q. All of them ciphered for these purposes, but can I just run through them for the record, please: A49?

A. Yes.

Q. A48, A51, A69, A65?

A. Yes.

Q. A67, A50 and A1. Were they known individuals but not necessarily interviewed at that time?

A. They were interviewed, I think, as part of the investigation, obviously in a sequential order, by the various officers involved.

Q. In terms of witnesses, again, you very helpfully listed 17 of those who were interviewed. Again, I am not going to go through every single one, but did they include the Sailles, Mr and Mrs, who we know were or became wardens.
of Mr Smith, he would probably have to be passed over for interview as and when it got to that stage, but it is asking that the investigation is kept locally by Brierley, who, it would appear, had his teeth into the investigation. Sadly, that wish wasn't granted -- sadly for them, I should say, and it was deemed that other people from outside should come in and take the investigation, which happened in January.

Q. The other people who came in to take over the investigation were?

A. So that was Watson initially as the superintendent and Courtney and Tasker were the main individuals. Wheater, of course, was involved and involved through.

Q. Then Leach comes in, as you have pointed out, on 16 February 1970?

A. Yes. We don’t know why, but it says in his report, for various reasons, he’s taken it over from Watson one month in.

Q. Let’s just have a look where you get that from. It is the 11 March 1970 report, so it is the Leach report. It is our CPS002701 at page 11. I wonder if that can go up on the screen. If we scroll down towards the bottom, the final paragraph, we see: "This enquiry ..."

Q. "This enquiry was originally conducted by Detective Superintendent Watson who, for various reasons, was unable to carry it through to conclusion."

A. Yes. The various reasons, did you ever discover what the various reasons were?

A. No, we didn’t.

Q. Back to your witness statement, paragraph 31, from January 1970, as I have already pointed out, there was a series of statements taken, and we can see, consistent with what you are telling us, the names of the individuals involved in the right-hand column. So we have got Courtney, Tasker and Courtney -- as you have said, he witnessed the statement of A1 on 19 January of that year.

A. Yes.

Q. On the next page, page 10, Watson at the top is involved in an interview with Cyril Smith, but that interview was not so much an interview but a meeting requested by Smith of the police --

A. Yes.

Q. -- in order to find out what was going on?

A. Yes, I mean, Watson describes it to Smith in that interview as a fishing expedition by Smith.

Q. Exactly. Then we have Mr Courtney's name appearing in several entries. Then, from 19 February, Mr Wheater. Does that suggest that it was around that point that Courtney and Tasker withdrew and Wheater and others took over?

A. It is. It appears that Leach came in on 16 February, and the last statement that Courtney's name is on is on 18 February. From thereon in, it would appear to be — all those that are named, it would appear to be Wheater taking the statements. There are some where the name hasn’t been typed up on the typed copies, but certainly those that it has been typed up, it would appear to be Wheater involved and Leach, ultimately, in the interview.

Q. Can we then, against that background, consider, please, the evidence that was provided to the Director of Public Prosecutions in that time. I am going to bring up
1. several documents, all of which I am sure you are very familiar with. The first is our CPS002699, page 1.
2. This is the unknown chief superintendent's report to the chief constable on New Year's Eve 1969. Perhaps you won't mind if I just run through it with you?
3. A. Okay.
4. Q. Headed "Allegations of indecent assault at Rochdale":
5. "I forward herewith the report from Sergeant Brierley and statements in connection with an enquiry he has undertaken for the past three months.
6. "Of necessity, because of the security risk involved, slow progress has been made ..."
7. Pausing there, as a policeman, perhaps looking back all of those years, what was the security risk, from everything that you have read?
8. A. My interpretation of that is the profile and standing of Smith and his influence locally and the need for the police to keep it tight, basically.
9. Q. So slow progress made because of that, "but from the statements" -- that's a reference to witness statements?
10. A. Yes.
11. Q. "... it will be seen that a certain amount of indecency was taking place some years ago in relation to the activities of Alderman Cyril Smith and it is hoped that as a result of more information coming to light,

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1. information of such activities more up to date will be forthcoming."
2. A. Yes.
3. Q. "In the meantime", says this chief superintendent, "this report is submitted as an interim measure principally because of the high standing Alderman Smith holds in local political and social work circles within the town and the very strong hold he will no doubt have over a number of influential people in the town if his activities have not been confined to the younger element."
4. A. Yes.
5. Q. What did that mean to you, "if his activities have not been confined to the younger element"?
6. A. Well, the law at the time, of course, were that homosexual activity, as it was then classified, was illegal and only in 1967 it became decriminalised with certain conditions around age. So obviously there was the allegations from young boys around abuse by Smith, but there may have been other offences potentially to be investigated that were offences at that time.
7. Q. Of course, although this was 1969, the allegations related to a time before --
8. A. Exactly.
9. Q. -- the Criminal Justice Act of 1967, or was it the Sexual Offences --
10. A. It's the Sexual Offences Act 1967, but the allegations related to pre that.
11. Q. Related to a time earlier?
12. A. Yes.
13. Q. "Attached are also a number of cuttings from the local newspaper."
14. This has a little interest:
15. "I am quite certain that he has the ear of the editor and very seldom does a week go by without some quote or photograph of the man concerned. I know, to my cost on a previous occasion, of the strength of his word in publications in the Rochdale Observer."
16. Two things. Did you have access to the cuttings that were attached?
17. A. No, we have never retrieved the cuttings.
18. Q. Secondly, did you know what this particular superintendent -- I suppose if you did, you could identify him. But he was obviously a little hurt by something that had happened in the past. Did you ever discover what that was?
19. A. No, never did, but clearly, it was a local officer, because of that, and had some concerns about Smith's ability to influence the press reporting.
20. Q. Then the next paragraph I am not going to focus upon,

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1. other than this: of course there is a suggestion by Mr Price that he took his concerns about something that was brought to him, I think in 1965, so about four years before this report is being written, to the then Chief Constable Patrick Ross?
2. A. Yes.
3. Q. What the chief superintendent in this report says, the last three lines of that paragraph:
4. "... I feel confident that, whilst the statement of Mr Price may be true, it is quite feasible that Mr Ross would keep it to himself because of the status of the man involved."
5. We get some other information from another source about that part of things, so I am not going to ask you about that.
6. A. Okay.
7. Q. But the chief superintendent continues:
8. "May I suggest that Sergeant Brierley be allowed to continue his enquiry in relation to the eight youths ..."
9. Those are the eight that you have identified for us:
10. "... mentioned but not interviewed to date ..."
11. A. Sorry, a point of clarification. In Brierley's report there are eight youths that he, at that time, hasn't spoken to. Three of those are named and subsequently
followed up. There is a reference to five other
individuals who they have the names of. The names don't
appear in Brierley's report. So the three not spoken to
who we did identify and five names that we are not quite
sure who they are are the eight remaining that he refers
to there.
Q. So how many boys in all were there that were alleged
victims?
A. In terms of the enquiry and what was -- the evidence
that was managed to be retrieved by the officers, there
were eight altogether, which potentially is the
confusion. Six of those had been residents at some
stage at Cambridge House, two hadn't.
Q. "... not interviewed to date, and at some stage
a decision be made as to whether there is a case to
answer, bearing in mind the period when the alleged
assaults took place. At that point, it might be
considered prudent to hand over the enquiry to the
superintendent task force prior to Smith being
interviewed. Once such an interview took place, of
course, there may well be a considerable inflow of
information on the activities of this man."
What was the superintendent task force?
A. Ultimately, that was a role that we know Mr Leach
undertook. The task force would have been, at the time,
the constabulary's most experienced detectives who took
on the most difficult cases.
Q. So there is that document. Let's move on to the next,
please, which is CPS002700. This is Brierley's report.
It is a bit difficult to read. But that's the report.
A. Yes.
Q. This was submitted to the DPP. We are still looking at
the list of materials which was submitted, including in
paragraph 2 -- I'm not going to read through all of
this, but paragraph 2, a description of Cyril Smith's
personality, dominant, known locally as "Mr Rochdale",
and so on.
A. Yes.
Q. Then to the next page, that he was a close friend of --
and you can see the redaction label, RO-F15?
A. Yes.
Q. Harry Wild and Thomas William Harding. That was the
probation officer for Rochdale?
A. Yes.
Q. "I think it can be said with [something] that he never
employed a good relationship with the police of
the town."
A. Yes.
Q. So that was Cyril Smith's relationship with the police?
A. Yes.
Q. In the next paragraph, how Smith kept a close watch over
and was a frequent visitor to the home. In other words,
Cambridge House, where he interviewed boys privately,
which is the way it is put, at regular intervals.
A. Yes.
Q. And how a little further down he would often visit the
local magistrates' court to speak up on behalf of
particular youths?
A. Yes.
Q. So Brierley's report under cover of the chief
superintendent's report.
Next, CPS002703. This was the meeting which Smith
had sought. We can see Detective Superintendent Watson
and Detective Superintendent Taylor were involved.
A. Mmm.
Q. We know that Smith started this particular ball rolling
by saying:
"I know that enquiries are going on and what I would
like to ask you are three things ..."
In effect, he wants to know what's going on?
A. Yes.
Q. We discover later on the reason is because he needs to
make up his mind whether or not he is going to stand --
A. That's correct, yes.
Q. -- or accept the party's nomination to stand in the
election.
A. Yes.
Q. On the second page, he is warned by Mr Watson, in
effect, about interfering with witnesses?
A. He is, yes.
Q. Because he discloses that he's spoken to one or two of
the complainants?
A. Yes.
Q. All of which you would expect as a police officer,
a police officer conducting an investigation, to do, to
warn off somebody who is a suspect from interfering with
evidence potentially perverting the course of justice?
A. It is known, and there are statements in the file to
show that Smith has been visiting some of these boys
that made the allegations, so a warning was completely
appropriate.
Q. On the fourth page, about two-thirds of the way down, we
have Mr Watson asking Smith -- because at this point
Smith is saying how much he's done for these boys:
"Are you suggesting that these lads are conspiring
together?"
To which Smith says:
"No, I'm not, they are telling the truth as they see
it."
A. Yes, that's right.
Q. That's a remarkable thing to say, don't you think?
A. It is.
Q. It is on page 6 when, as you pointed out earlier, Watson quite plainly and directly puts to Smith, "You are here on a fishing expedition"?
A. Yes.
Q. And Smith laughs and says, "Well, yes, fishing, I think that's fair comment", because that's exactly what it was?
A. Yes.
Q. That's when he discloses the situation about his parliamentary ambition?
A. Yes, that's correct.
Q. That's all we need from that. Then the next document I would like very briefly for us to look at -- I don't think the panel has seen this yet -- is that at CPS002708, please. What had happened, and this is revealed, I think, from Leach's report, is that Sydney Clegg, who was Smith's solicitor, had phoned up in advance when they were making an appointment as to when Smith would come in for an interview under caution, and had asked the police officers at the time whether they would allow Smith to know what the nature of the allegations were -- or was, I should say, and after consideration, those police officers did decide to provide him with the document we are looking at, which was a -- set out the allegations made by each of the boys?
A. Yes. It is referred to in Leach's report about the request and that he considered that request on the date prior to the interview, which is basically setting out the allegations.
Q. While I have it in mind, today, it is perfectly normal when somebody is being interviewed to present the solicitor, if he is represented, in advance of an interview under caution with pre-interview disclosure?
A. It has always been practice. It is more formalised nowadays of course, and the term "disclosure" is more widely recognised. The practice in the day, you would make a decision in the conversation with the solicitor what you would and wouldn't disclose to the solicitor, and that's -- it depended on the case and your assessment of the strength of your evidence, really, I think as well.
Q. Was this exceptional, do you think, for the time?
A. I obviously can't say with great confidence from the time, but it's accepted practice now, and if it wasn't regular practice then, it was probably quite forward thinking by Mr Leach and certainly in keeping with modern day procedures.

Q. But the effect it had is the document we see at CPS002704, because that is a pre-prepared statement that Smith made?
A. Yes.
Q. I read it to the panel during the course of my opening statement, so I am not going to read it all. But we know, and we will come to it in just a moment, because we are still looking at what the DPP was supplied with, that Smith's stance was, in effect, to deny any indecency, to claim that, "We, at all times, were in" what he called "loco parentis to the boys" and he submitted an agreement which all boys were invited to sign, from which he took comfort that that was a correct characterisation of the relationship, let's say, between boys in Cambridge House and him in particular as a member of the committee running the hostel. So that was produced to police at the time?
A. Yes.
Q. Once again, on the final page, this document being dated 27 February 1970, I suppose his stance, which is one we have seen before, of how much he's done for these boys?
A. Yes.
Q. With that, we come to the interview under caution, CPS002714, the same day as the pre-prepared statement which was submitted to which I have just made reference. This was the old style caution before it changed?
A. That's right, yes.
Q. Towards the foot of the first page:
"I've read the complaints of which you so kindly let me have a copy. I rely on the caution and I am handing to you a statement which I have made."
Which is the one I have just referred to:
"I've nothing further to add ..."
He was represented, I take it, by Mr Clegg in the course of that interview?
A. Yes.
Q. His name is at the top?
A. At the top, yes.
Q. That was the stance he adopted all the way through; is that correct?
A. That's correct, yes.
Q. So, as we understand it, Mr Jacques, that was the material which I have just cantered through with you that was submitted to the DPP: chief superintendent's report; the Brierley report; and also of course there is the Leach report as well?
A. And the statements, obviously.
Q. And the statements, obviously. I haven't -- I suppose I should look at that. The Leach report is CPS002701
<table>
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<th>Page 57</th>
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<td>where Mr Leach is quite forthright about his views of</td>
<td>those statements.</td>
<td>A. Yes, of course, in all matters, the police should be as</td>
<td>A. Yes, of course, in all matters, the police should be as</td>
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<td>the criminality?</td>
<td>Q. Then page 11, please, of this report, halfway down:</td>
<td>discreet as they can, but, as I say, we have talked</td>
<td>discreet as they can, but, as I say, we have talked</td>
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<td>A. He is, yes.</td>
<td>&quot;This enquiry has been carried out with the maximum</td>
<td>about the influence and reach of Mr Smith in the town at</td>
<td>about the influence and reach of Mr Smith in the town at</td>
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<td>Q. We don't need to look at them, but there was all of</td>
<td>amount of discretion. Each person interviewed has been</td>
<td>that time. In order to let the investigation continue</td>
<td>that time. In order to let the investigation continue</td>
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<td>the statements which you have listed in your own report.</td>
<td>warned, in no uncertain manner, that the enquiry is</td>
<td>in the best possible way, keeping it as discreet as</td>
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<td>A. Yes.</td>
<td>strictly confidential and must not be discussed with</td>
<td>possible would have been the right thing to do.</td>
<td>possible would have been the right thing to do.</td>
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<td>Q. Against that background, is there anything you think,</td>
<td>other parties. This, unfortunately, does not appear to</td>
<td>Q. We have looked together at the steps taken to question</td>
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<td>with your experience, but of course inevitably looking</td>
<td>have been the case so far as Smith himself is concerned.</td>
<td>Cyril Smith. We looked at the meeting which he sought</td>
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<td>back in time retrospectively, that should have been</td>
<td>It is within my knowledge that he has made it known to</td>
<td>and which took place on 24 January 1970 which led to him</td>
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<td>provided to the DPP that was not?</td>
<td>most of his political and social acquaintances that the</td>
<td>having been given prior notice of what the complainants</td>
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<td>A. No. I think Leach's report sums up the case as it</td>
<td>police are conducting enquiries regarding this matter</td>
<td>were saying?</td>
<td>were saying?</td>
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<td>stood, his views on the case. He was very clear in his</td>
<td>and he has made several unfavorable comments.”</td>
<td>Q. -- during the course of that meeting.</td>
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<td>opinion of what those statements amounted to, in terms</td>
<td>You have already commented on Smith and of course</td>
<td>We have got Mr Leach talking about the enquiry being</td>
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<td>of Cyril Smith and his conduct, and that there was</td>
<td>Mr Watson had?</td>
<td>carried out with the maximum amount of discretion; we</td>
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<td>corroboration amongst the witnesses and the victims as</td>
<td>A. Yes.</td>
<td>have the chief superintendent talking about the security</td>
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<td>well as other independent witnesses as well. So, yes,</td>
<td>Q. An interview under caution on 27 February 1970 which</td>
<td>of the investigation in his cover report to the Brierley</td>
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<td>he formed a very clear view and actually says towards</td>
<td>resulted in his pre-prepared statement of the same date?</td>
<td>report. All of those legitimate concerns?</td>
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<td>the end of his report that he's prepared a schedule of</td>
<td>Q. Absolutely. A couple of things from the Leach report,</td>
<td>A. Yes, absolutely, in terms of the nature of what they</td>
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<td>charges. So he fully expected, from reading that</td>
<td>if we still have it up, please, CPS002701, if we go,</td>
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<td>report, that charges would follow, or certainly hoped</td>
<td>please, to page 7, halfway down:</td>
<td>Q. And an obvious question, but I will ask it anyway: were</td>
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<td>I am satisfied there has been no collusion.”</td>
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<td></td>
<td>well as other independent witnesses as well. So, yes,</td>
<td>what you have looked at, do you think that the way he</td>
<td>what you have looked at, do you think that the way he</td>
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<td></td>
<td>he formed a very clear view and actually says towards</td>
<td>was treated was acceptable practice overall for the</td>
<td>was treated was acceptable practice overall for the</td>
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<td></td>
<td>the end of his report that he's prepared a schedule of</td>
<td>time, insofar as you're able to judge?</td>
<td>time, insofar as you're able to judge?</td>
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<td></td>
<td>charges. So he fully expected, from reading that</td>
<td>Q. I think it was consistent with what would have been</td>
<td>Q. I think it was consistent with what would have been</td>
</tr>
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<td></td>
<td>report, that charges would follow, or certainly hoped</td>
<td>acceptable and appropriate practice at the time.</td>
<td>acceptable and appropriate practice at the time.</td>
</tr>
<tr>
<td></td>
<td>that charges would follow.</td>
<td>There's nothing there that stands out as highly unusual</td>
<td>There's nothing there that stands out as highly unusual</td>
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<td></td>
<td>Q. Absolutely. A couple of things from the Leach report,</td>
<td>or concerning in reviewing that information.</td>
<td>or concerning in reviewing that information.</td>
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<tr>
<td></td>
<td>if we still have it up, please, CPS002701, if we go,</td>
<td>Q. Another question, but really targeted at the same point:</td>
<td>Q. Another question, but really targeted at the same point:</td>
</tr>
<tr>
<td></td>
<td>please, to page 7, halfway down:</td>
<td>is there any evidence, from your point of view, that he</td>
<td>is there any evidence, from your point of view, that he</td>
</tr>
<tr>
<td>&quot;Together with Detective Chief Inspector Wheater</td>
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</tbody>
</table>
was given preferential or special treatment by the
Lancashire Constabulary?

A. I think the context that we have touched upon around his
relationship with the police, his ability to influence
and to say that he had influence, which clearly wasn’t
true, but the evidence to me suggests the police have
received these complaints, they were actively pursuing
those complaints, they were doing their best to keep it
contained, they brought in outside officers to assist in
that, and ultimately brought in what would have been at
the time the constabulary’s most experienced detectives
to follow this through and put the case forward for
consideration by the Director of Public Prosecutions.

Q. The defence, insofar as it was a defence, amounted to,
would you agree, nothing much more than a denial of
indecency?

A. It was the loco parentis defence, as he said, that,
"I was merely doing what a parent would do with these
individuals", and that there was nothing indecent about
that is the view taken by Mr Smith.

Q. Mr Leach had a view about the plausibility of that
defence; is that anything you dissent from?

A. Absolutely not. There is a statement that Leach sort of
alludes to towards the end of his report, and
I absolutely concur with that summary.

Q. In other words, it would be anything any competent
counsel could unravel fairly swiftly?

A. He said he would be at the mercy of any competent
counsel, and that was based on his performance within
the interview or his ability or otherwise to answer
questions or to give anything like a coherent answer.

Q. About which he made a comment, that he was particularly
impressive, I think?

A. Yes, he did. That was Leach’s view, yes.

Q. Thinking of Leach, without going through an analysis of
everything he did, but his report runs to 14 pages?

A. It does, yes.

Q. In a time before word processors and computers?

A. Yes.

Q. Were you satisfied with the professional standard of
Superintendent Leach’s report?

A. I think it shows a balance. He recognises where the
case has strengths, where there are issues with the
case. He makes an assessment of the individual
witnesses. He talks about the collusion and/or
corroborating evidence from independent witnesses. So it is
a very balanced, fair assessment of the evidence that
they have managed to collect, and, yes, I think it is
a highly professional report that evidences Mr Leach’s
view clearly around the evidence base that charges
should follow.

Q. And therefore competent?

A. Yes.

Q. Let’s look at the converse. You, standing back as
a detective with many years of distinction and
experience, looking at Leach and everything we have gone
through, albeit at a canter, as I say, was there
anything you thought to yourself, "I wonder why he
didn’t take that line of investigation?", or, "There is
a gap here which wasn’t closed". Was there anything of
that nature that struck you that you might have done if
you had been in his shoes or, as far as you’re
concerned, did he cover off just about everything?

A. There are some unanswered elements of the enquiry, so
what was the name of the five boys, did they trace them,
did they speak to them? We know, it says in the report,
at least one boy refused to cooperate. But of course we
don’t know what records existed at that time, and quite
possibly — and it was practice in the day — had others
been spoken to, officers would record it in their then
pocket notebooks that they’d spoke to Tim Jacques, for
example, and I didn’t want to speak to them and I had
nothing to offer. So there wouldn’t necessarily be
a record of that. Of course, nowadays, we use what’s
called the HOLMES computer system, which records every
action and the response to every single action in
a major enquiry. In that day, that just didn’t exist,
so we don’t really know what did or didn’t happen or
what enquiries did or didn’t happen outside what is
reported through the documents that we have available.

Q. To the question, "Were there any gaping holes?", were
there any gaping holes? There may be the odd thing --

A. Absolutely. Yes, there's --

Q. — that, with hindsight, we can all say we would do
differently --

A. Yes.

Q. — or even better, but were there any gaping holes in
this investigation?

A. No, there are no gaping holes in that investigation at
all, as far as I’m concerned.

Q. So with the benefit of hindsight, is there anything more
that should or could have been done up to the point of
submission of the material to the DPP?

A. I think the submission and the file and the
investigation was a competent and professional
investigation. I think Leach’s report is an excellent
summary of that investigation and he’s done a good job
and the team have done a good job on that.

Q. While we have that in mind, can I ask you one other
thing about the Leach report, back to CPS002701 at
Q. Would you have expected an investigation or would you have expected Mr Ross to treat it as "for information only"?
A. That's certainly a possibility, yes.

Q. Is that something that you are in any way surprised by or perhaps critical of?
A. Exactly.
Price himself says there's no record made through social services of that. Of course it wasn't, as we have seen in some of the allegations, highly sexual in its nature, albeit we would say it was completely inappropriate behaviour as alleged.

Q. Thank you for that. Let's move on then to the DPP and his decision.

Were you, yourself, having looked at everything that was submitted, the material that we have gone through together this morning and then compared that with the submission to the DPP and the resultant decision of the DPP, surprised?

A. Of course I'm not a lawyer. As an investigating officer, had I submitted that file, I would have hoped that charges would have followed, as Mr Leach clearly did, and he talks about preparing a schedule of charges.

Q. Yes.

A. I would imagine that Mr Leach and the team would have been disappointed, as would I, I guess, if I were the investigating officer, but of course, the decision and the CPS -- it is not unusual for police and CPS to start off with different views around the strength of the case, but that's why that prosecution team is in place, to bring both sides of the view.

Q. I know these are difficult questions because, first, you weren't a police officer at the time; second, perhaps, an understanding of the culture is something that all of us today are slightly divorced from.

A. Yes.

Q. But against all of that, do you think there might have been more correspondence between the DPP's office and the police at the time rather than a single two- or three-paragraph letter to say, "No reasonable prospect", or is that something you can't answer?

A. What does strike me is the sort of swift nature of the response, because I think, if you follow the trail, Leach's report is submitted to the chief constable.

I think it is considered by the assistant chief constable, which would be appropriate. So I think the acknowledgement from the DPP's office says that they received it on 16 March and three days later it comes back with a very short note, you know, "This shouldn't proceed", really. So that's --

Q. In actual fact, the file was submitted by the assistant chief constable --

A. 13 March.

Q. -- on the 13th. That was the Friday.

A. Yes, and I believe --

Q. And 16 March --

A. Is when it was acknowledged.

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Page 71

Page 70

Page 69
<table>
<thead>
<tr>
<th>Page 73</th>
<th>Page 75</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Q. The note below is how it is returned. &quot;To: chief constable (CID) headquarters. Number 5 district task force Oldham, 1 April 1970.&quot;</td>
<td>1 Cyril Smith being in that position?</td>
</tr>
<tr>
<td>2 That's where we get that date?</td>
<td>2 A. It's not unusual practice, and even today with similar matters – you know, it wouldn't be unusual for the investigating officer to communicate with the individual involved the progress of the enquiry one way or the other.</td>
</tr>
<tr>
<td>3 A. Yes.</td>
<td>4 Q. Although today, Mr Jacques, I'm sure you will realise from your own experience, that would be a letter with about ten paragraphs with any number of qualifications in it and it would be sent by the CPS and probably not done by a police officer?</td>
</tr>
<tr>
<td>4 Q. &quot;Returned. ACC number 5 district was absent on annual leave until 31st March. In those circumstances, acting on instructions, I saw Alderman Smith...&quot;</td>
<td>5 A. CPS, obviously if something has gone to CPS, the decision is theirs and the rationale for that decision will be clearly articulated. For a police investigation, if allegations are made that just there was no substance to, it wouldn't be completely unusual for us to speak to the person who the allegations were made about and inform them of that. In fact, it is common courtesy.</td>
</tr>
<tr>
<td>5 A. Yes.</td>
<td>6 Q. Now, can I move on to something else, please. At your page 22, you start telling us about Operation Acura 2012.</td>
</tr>
<tr>
<td>6 Q. &quot;... I saw Alderman Smith on Wednesday, 25 March 1970 and informed him that it was not intended to take any further action in this matter.&quot;</td>
<td>7 A. Yes.</td>
</tr>
<tr>
<td>7 A. Yes.</td>
<td>8 Q. What was Operation Acura?</td>
</tr>
<tr>
<td>8 Q. &quot;Not intended to take any further action in this matter&quot;. From your understanding, would that have been a standard form of communication if you were communicating back then to an individual that, in effect, this was going to be NFAed, no further actioned? Was any form of words required or was it sufficient to convey the sense that you weren't going to be prosecuted?</td>
<td>9 A. Operation Acura was initiated by the constabulary in response to the revelations around Jimmy Savile or to press reporting, et cetera, at that time around high-profile individuals, and a meeting was convened in the constabulary by one of my predecessors to look at a number of issues, Cyril Smith being one of them, that we knew had been part of Lancashire's past, to re-examine whether there was any new information in light of the exposures around Savile, to do a witness appeal, to see if more people were willing to come forward and give information that they previously hadn't been willing to give.</td>
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<tr>
<td>9 A. No, I think that's exactly what it was, and Leach actually says at the end of his interview that he will let Smith know the outcome of that investigation, and that's exactly what he's done and told him that the decision has been made.</td>
<td>10 Q. When did it start?</td>
</tr>
<tr>
<td>10 A. It would have been wise, it would have been great with the benefit of hindsight, but whether that was something that would have been considered in those days... the file, the evidence, was captured and presented and on that evidence that matter wasn't to proceed.</td>
<td>11 A. It started on, I think, 10 October 2012 -- sorry, 19 November.</td>
</tr>
<tr>
<td>11 Q. Any idea why it wasn't done in writing rather than face to face?</td>
<td>12 Q. 9 November 2012?</td>
</tr>
<tr>
<td>12 A. No. Again, probably just general practice of the day. Leach had said that he would do that, and he's done that. So it is probably not unusual of its day. It would have been, obviously, for the purposes of this inquiry, good if we had had a record of the actual communication.</td>
<td>13 A. Yes.</td>
</tr>
<tr>
<td>13 Q. In your judgment, should anybody read into this document that we are looking at and what Mr Leach was asked to do, and in fact did do and said he would do, that any special courtesy was being extended to Cyril Smith that wouldn't have been extended to any person not</td>
<td>14 Q. Was it Detective Chief Inspector Esseen who was the SIO, senior investigating officer?</td>
</tr>
<tr>
<td>14 A. No, it wasn't just about him, but Mr Esseen was given that element in relation to Cyril Smith. We'd had some calls into the organisation from press talking again</td>
<td>15 A. Yes, Mr Esseen was given this particular element as an outcome of that meeting into Cyril Smith.</td>
</tr>
<tr>
<td>15 Q. How did, as you mentioned him, he come into the purview of Acura? It wasn't just about him, was it?</td>
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<td>19 Q. How did, as you mentioned him, he come into the purview of Acura? It wasn't just about him, was it?</td>
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<tr>
<td>19 Q. How did, as you mentioned him, he come into the purview of Acura? It wasn't just about him, was it?</td>
<td>20 A. No, it wasn't just about him, but Mr Esseen was given that element in relation to Cyril Smith. We'd had some calls into the organisation from press talking again</td>
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In November 2012, I think the Lancashire Constabulary,  
for the police file relating to Cyril Smith from 1970?  
1 Did you know about that?  

A. I do recall seeing in the papers a Freedom of  
Information request. I couldn't talk in any great  
detail about it, certainly without looking at it.  
2 Q. The person requesting information was told the  
file couldn't be found. Do you know anything about that at  
all?  

A. We know certainly when Neil Esseen instigated Acura as  
well, he couldn't find the file and, actually, the  
constabulary didn't have the file and we retrieved it  
from the Crown Prosecution Service.  
3 Q. So that might help answer why that was?  

A. Yes.  
4 Q. That request, I think I'm right in saying, was  
November 2012. Do you remember when Acura recovered  
the file from the CPS?  
5 A. I couldn't give a specific date. There are notes in  
Neil Esseen's policy log about trying to get hold of  
the file. I'm sure we could provide that information as  
best we can. But it is towards the end of Acura's  
17 days because we know there was some joint statements,  
some meetings with CPS, so we probably have the  
documentation but I couldn't answer directly.  
6 MR ALTMAN: I would like to bring up on screen, please -- it  
is about 4 minutes to 1.  
7 Chair, I am actually moving on to a different topic.  
8 It is the last topic, but it will take more time than we  
have before we break for lunch. I am entirely in your  
hands, whether we carry on to try to finish Mr Jacques  
or -- I think there are some questions on behalf of --  
by Ms Hoyano. Mr Jacques, are you all right to come  
back at 2.00 pm, if we need you to?  
9 A. Absolutely, if that's required, yes.  
10 MR ALTMAN: I hope you won't be too long after that.  
11 THE CHAIR: Thank you, Mr Jacques. We will take a break  
until 2.00 pm now. Thank you, Mr Altman.  
12 (12.58 pm)  
13 (The short adjournment)  
14 (2.00 pm)  
15 MR ALTMAN: Mr Jacques, before we move on, I have been  
asked -- I am very happy to do this -- to clarify a few  
things, by Mr Brown on behalf of the Crown Prosecution  
Service.  
16 First of all, of course, we have to bear in mind  
that when we make comparisons between what happens today  
and what happened in 1970, the Crown Prosecution Service  
didn't come into existence until 1986?  
17 A. Yes.
Q. Secondly, this: do you remember when you were talking to us about Superintendent Leach's report, one of the comments you made was that -- I think you said that there was independent corroboration. Do you remember?
A. Yes.
Q. You certainly used the word "independent". Did you mean by that, because we have to be slightly careful with what we mean by "corroboration", because back then it had a particular meaning in law, which of course has, as we stand here today in 2017, long gone?
A. I think the reference to that particular phrase was -- that element was present of the different victims giving different stories, of which there were lots of similarities which corroborated each other, and there were some other statements, people who weren't alleging --
Q. Can you speak up a bit? I'm struggling a little.
A. Sorry, yes. There were other individuals, who weren't alleging abuse had taken place against them, that gave statements that gave some credence and credibility and corroboration to what those victims were alleging. So James Patrick Gavin would be one of them, the Sailles and Ruth Mitchell.
Q. So there was evidence from people who were not themselves complainants --
A. Yes.
Q. -- but they -- I suppose we have to be slightly careful. They weren't, themselves -- you will correct me if I am wrong, because I haven't studied them individually in the detail that you have -- corroborating the fact of sexual abuse in a material particular, as would have been required at the time?
A. No.
Q. But their evidence created the background conditions --
A. Exactly.
Q. -- perhaps in which the abuse is alleged to have taken place?
A. That's right. That's correct.
Q. Before we broke for lunch, I was moving on to the report by the Professional Standards --
A. Department, yes.
Q. -- Department, the PSD. I would like to put this up on screen, if I may. It is GMP000158. If we can go to the first substantive page, so that would be page 2, I suspect. Thank you. This is the contents page of the Professional Standards Department investigation report. Why did this report come about? Who initiated it?
A. I initiated the investigation following the publication of the book "Smile for the camera", and obviously the allegations contained with that, which again related to Lancashire Constabulary --
Q. Speak up just a bit, Mr Jacques.
A. Sorry. The allegations that were contained in that book and relating to Lancashire Constabulary and officers of Lancashire Constabulary. So this was a conduct investigation into officers of the constabulary.
Q. You deal with this at your paragraph 99 and onwards. This particular investigation, this Professional Standards Department investigation, was 2014, was it?
A. That's right, yes.
Q. Did it focus upon four particular allegations of corruption made in Simon Danczuk's book?
A. Yes, it did.
Q. The four particular allegations -- you list them at paragraph 104 -- were, can you tell us?
A. Yes, the lack of action by Chief Constable Patrick Ross in 1965 following children's officer Lyndon Price approaching him with allegations of abuse at the hands of Smith.
<table>
<thead>
<tr>
<th>Page 85</th>
<th>Page 86</th>
<th>Page 87</th>
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<tr>
<td>or during the course? It couldn't be during the course</td>
<td>of the investigation, could it? Or was it?</td>
<td>second issue, the Tasker issue. Before I do, perhaps</td>
</tr>
<tr>
<td>A. No. I think the allegation from Tasker, as reported in</td>
<td>the book, is that he was active in the investigation</td>
<td>I should ask you this: as far as one can tell, looking</td>
</tr>
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<td>the book, is that he was active in the investigation</td>
<td>when these officers turned up from headquarters or</td>
<td>at the PSD report, there is no indication that your</td>
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<td>when these officers turned up from headquarters or</td>
<td>somewhere and took away the investigation, the documents</td>
<td>officers actually spoke to Lyndon Price at this point;</td>
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<tr>
<td>somewhere and took away the investigation, the documents</td>
<td>relating to the investigation.</td>
<td>is that right or wrong?</td>
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<tr>
<td>Q. Let's deal with each in turn, and I would simply like</td>
<td>your help, Mr Jacques, with, really, what the conclusion</td>
<td>A. The professional standards officers, no, they didn't, is</td>
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<tr>
<td>your help, Mr Jacques, with, really, what the conclusion</td>
<td>of this particular investigation was in relation to</td>
<td>my understanding.</td>
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<tr>
<td>of this particular investigation was in relation to</td>
<td>each.</td>
<td>Q. Any reason why?</td>
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<tr>
<td>First of all, and we can go to the report at</td>
<td>pages 10 through to 12, please. We start at page 10 of</td>
<td>A. No. I think -- no, I couldn't say why they did or they</td>
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<td>that report that we were just looking at. This deals</td>
<td>with the Ross part of things, the first allegation. If</td>
<td>didn't.</td>
</tr>
<tr>
<td>with the Ross part of things, the first allegation. If</td>
<td>we can scroll down to the next page, please, and this is</td>
<td>Q. But looking at the report, I am sure you are familiar</td>
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<tr>
<td>we can scroll down to the next page, please, and this is</td>
<td>how the report is written, and then to the next page,</td>
<td>with this, is there a lacuna or do you think it would</td>
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<tr>
<td>how the report is written, and then to the next page,</td>
<td>which is page 11. Forgive me, can we just go back up</td>
<td>have made not very much difference if Price had been</td>
</tr>
<tr>
<td>which is page 11. Forgive me, can we just go back up</td>
<td>a page, go back to page 10. It starts at the bottom:</td>
<td>spoken to?</td>
</tr>
<tr>
<td>a page, go back to page 10. It starts at the bottom:</td>
<td>&quot;The only additional evidence of any investigations</td>
<td>A. Well, Price had given the statement to the original</td>
</tr>
<tr>
<td>&quot;The only additional evidence of any investigations</td>
<td>prior to the 1969-70 report comes from a conversation</td>
<td>enquiry. I believe Mr Price's version of events has</td>
</tr>
<tr>
<td>prior to the 1969-70 report comes from a conversation</td>
<td>which Jack Tasker states he had with his superior Chief</td>
<td>changed at different points of him recounting the tale,</td>
</tr>
<tr>
<td>which Jack Tasker states he had with his superior Chief</td>
<td>Inspector Derek Wheater. Wheater is quoted as saying in</td>
<td>and the allegations around what he did or didn't say to</td>
</tr>
<tr>
<td>Inspector Derek Wheater. Wheater is quoted as saying in</td>
<td>this conversation:</td>
<td>Mr Ross ultimately -- Mr Ross is, sadly, deceased and,</td>
</tr>
<tr>
<td>this conversation:</td>
<td>&quot;We've had three goes at him [Smith] but every time</td>
<td>therefore, whether we would be able to substantiate</td>
</tr>
<tr>
<td>&quot;We've had three goes at him [Smith] but every time</td>
<td>we've been blocked. I want to bring him and I need two</td>
<td>anything around what was or wasn't said would be</td>
</tr>
<tr>
<td>we've been blocked. I want to bring him and I need two</td>
<td>officers not known in Rochdale to do it'.</td>
<td>basically down to what Mr Price would say to us did or</td>
</tr>
<tr>
<td>officers not known in Rochdale to do it'.</td>
<td>&quot;According to Tasker, all the statements had been</td>
<td>didn't happen. Nobody else could corroborate any of</td>
</tr>
<tr>
<td>&quot;According to Tasker, all the statements had been</td>
<td>confiscated and he was asked to reinterview the eight</td>
<td>that. Mr Price had reported his version of the events</td>
</tr>
<tr>
<td>confiscated and he was asked to reinterview the eight</td>
<td>boys who had originally complained, which he and</td>
<td>and we looked at our records to see was there anything</td>
</tr>
<tr>
<td>boys who had originally complained, which he and</td>
<td>Courtney then completed in January and February of 1970.</td>
<td>else within the organisational documentary evidence</td>
</tr>
<tr>
<td>Courtney then completed in January and February of 1970.</td>
<td>&quot;Unfortunately, as DCI Wheater has also since passed</td>
<td>that would support whether Ross was told or not or what Ross</td>
</tr>
<tr>
<td>&quot;Unfortunately, as DCI Wheater has also since passed</td>
<td>away, our only source for this information is Tasker</td>
<td>did or didn't do, and there was no record of that in our</td>
</tr>
<tr>
<td>away, our only source for this information is Tasker</td>
<td>himself. It is not clear from the comments made by</td>
<td>systems.</td>
</tr>
<tr>
<td>himself. It is not clear from the comments made by</td>
<td>Wheater who started or stopped any investigations prior</td>
<td>Q. Thank you. In relation to the second allegation, that</td>
</tr>
<tr>
<td>Wheater who started or stopped any investigations prior</td>
<td>to 1969, or if Ross was involved in any way. Therefore,</td>
<td>two unknown officers had arrived in Tasker's office</td>
</tr>
<tr>
<td>to 1969, or if Ross was involved in any way. Therefore,</td>
<td>aside from being aware of the allegations and the lack</td>
<td>demanding all the files, can we go to internal page 14,</td>
</tr>
<tr>
<td>aside from being aware of the allegations and the lack</td>
<td>of any recorded investigation, there is no evidence that</td>
<td>and I think it is about three-quarters of the way down.</td>
</tr>
<tr>
<td>of any recorded investigation, there is no evidence that</td>
<td>Ross made any attempts to 'cover up' Smith's alleged</td>
<td>Just blow up &quot;What can be confirmed&quot;:</td>
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<td>offences. It should be noted that the circumstances of</td>
<td>&quot;What can be confirmed is that Tasker and Dunczuk</td>
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<td>offences. It should be noted that the circumstances of</td>
<td>it being reported to Ross during 1965 were:</td>
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<td>it being reported to Ross during 1965 were:</td>
<td>&quot;(a) there was no complaint being made.&quot;</td>
<td>headquarters Hutton and buried'. Whilst it is quite</td>
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| "(a) there was no complaint being made." | Which is a point you have already made? | feasible files were taken and stored at Hutton ..."
| Which is a point you have already made? | A. Yes. | It seems to blend into the third allegation: |
| A. Yes. | Q. "(b) he was being informed for information only." | "... it is clear that these were not buried and that |
| Q. So that's as far as the investigation could go, as far | A. Yes. | the investigation was continued by Leach and Wheater no |
| as that is concerned. | Q. Then we see 4.1.2, the next paragraph, deals with the | matter what involvement these two 'unknown' officers |
| A. Yes. | Q. Then we see 4.1.2, the next paragraph, deals with the | had." |
| Q. Then we see 4.1.2, the next paragraph, deals with the | | I think you can probably confirm this, because it is |
| A. No. I think the allegation from Tasker, as reported in | | a point that is made in this report at page 12, and |
| the book, is that he was active in the investigation | | perhaps we can go back to page 12 and see if I can find |
| when these officers turned up from headquarters or | | it on the screen. In the centre of this page: |
| somewhere and took away the investigation, the documents | | "The chronology indicates that there is not a single |
| relating to the investigation. | | day's delay between Courtney's last statement taken on |
| Q. Let's deal with each in turn, and I would simply like | | 18 February ..." |
Q. So if there were two officers, who might they have been?

A. It's unexplained. I just can't say who these two officers were or weren't. It is unlikely that it was Leach, but it could have been. So we are unable to explain Mr Tasker's version of events.

Q. The point that was being made is, what was the impact of Mr Robinson's recollection that this phone call takes place in 1977/78, what was the impact of what he was saying?

A. Clearly, the investigation of 1970 had been concluded and reported on, as we have discussed. There was the press circulation, again, with the RAP, Rochdale Alternative Press, in 1979, and possibly the enquiry from MI5 in relation to that was about, then, an MP in the Houses of Parliament and it wouldn't be unreasonable for them to enquire whether there was any substance in those allegations at that time.

Q. We know -- we are going to come to it in a moment -- some of that material we have from the Security Service. Let's read on here:

"It is possible that Robinson is mistaken with his timeline in this respect and that this phone call may have been triggered by the publication of accusations by the Rochdale alternative paper and Private Eye which occurred in 1979. No police investigation appears to have taken place after these accusations, nor did Smith pursue any action against the two publications which many considered at the time to be an indication of guilt. By this time, Rochdale was no longer under the remit of Lancashire Constabulary, having been separated to GMP in 1974, and therefore this has not been considered part of that enquiry."

Q. Do you know, as part of this investigation, the PSD actually spoke to MI5?

A. Yes, that's correct.

Q. I am going to come back to the Thames House material, the Security Service material, but can we just, to deal with and cover off the last of the four allegations that were made in the book, go to page 17, that Cyril Smith's influence enabled him to have the police in his pocket.

Q. It is the last paragraph -- forgive me, just before that:

"Therefore, without further evidence from the author or clarification about who he is specifically referring to, it is not possible to corroborate or indeed support the comment that he 'had police in his pocket' and in
### Questioning about the Police and Cyril Smith

**Q.** Without going back to it -- that's all I need to ask you -- recollection when he was later spoken to?

**A.** It does.

**Q.** -- recollection when he was later spoken to?

**A.** ‘77/’78, he said; this was ’74.

**Q.** Without going back to it -- that's all I need to ask you about that, Mr Jacques.

The PSD investigation noted, and you will remember, that there was missing from the Leach 1970 report page 3?

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### Page 3

- **Q.** Do you remember that?
- **A.** Yes.

- **Q.** That had been a missing page for quite a while?
- **A.** Yes.

- **Q.** Now located. Was there anything to suggest that was anything more than an administrative oversight or just a missing page?

**A.** No, just a missing page. I read the missing page through earlier this week for the first time. It is just a continuation of, firstly, the description of the setup at Cambridge House and then a summary of one of the allegations from one of the victims.

**Q.** Anything, as far as you're concerned, that remains unanswered arising from this Professional Standards Department investigation, or were you satisfied with its analysis of the book and the conclusions drawn in relation to the four allegations?

**A.** I was satisfied, yes.

**Q.** Do you have, finally, any concerns that Lancashire Constabulary failed to investigate Cyril Smith properly in 1969-70 as a result of his influence on the police or others?

**A.** No, I think Lancashire Constabulary diligently conducted their enquiries and the evidence they collected.

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### Page 95

- **Q.** Do you have any thoughts, having read that and any other questions they would like to ask.

**A.** Well, it may have been the enquiries conducted at that time from MI5. We simply don't know. Robinson’s pinpointing of dates is not particularly clear, and I suppose it -- you know, we can't say with any certainty what he may be referring to, other than that he received a call where they were enquiring as to whether he had the file.

**Q.** Date-wise, mid 1970s seems to fit with his --

**A.** It does.

**Q.** -- recollection when he was later spoken to?

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---

### Page 96

- **Q.** Do you have any thoughts, having read that and any other questions they would like to ask.

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**Q.** Date-wise, mid 1970s seems to fit with his --

**A.** It does.

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**A.** ’77/’78, he said; this was ’74.

**Q.** Without going back to it -- that's all I need to ask you about that, Mr Jacques.

The PSD investigation noted, and you will remember, that there was missing from the Leach 1970 report page 3?

---
police relationship with the press. So I can't say with
any great detail or certainty, but certainly from two
separate officers, their view is that the relationship
with the local police and Smith isn't a good one.
MS SHARPLING: Secondly, and it is a matter we may come to
later, absent a national prosecuting authority in 1970,
was there any particular reason why the case was sent to
the DPP as opposed to dealing with locally?
A.  I would imagine because of the high-profile nature of
that case, the historic allegations and the historic
nature of those. This would have been, and still
remains, a high-profile, high public interest case and
I would imagine the chief constable wanted to take the
best possible advice before taking any further action.
MS SHARPLING: An allied question to that: absent a national
prosecuting authority, there may have been local
solicitors, often called Force solicitors, who might be
actively engaged in advising the police at that time.
Was there any record of their involvement in this case?
A.  In Leach's report, he does talk about that if this
was -- if a decision was made that this should be
prosecuted, we should contact a solicitor who would act
on behalf of the constabulary to prosecute these
matters.
MS SHARPLING: I see. But later on, then, presumably, for
the purposes of prosecution?
A.  Yes, yes. Then his report of course was submitted to
the assistant chief constable and I would imagine that
the chief officers would have discussed it, the nature
of that, and therefore the advice sought from the
Director of Public Prosecutions, which I think would
have been an appropriate step from the constabulary's
point of view in those days.
MS SHARPLING: Thank you very much.
MR ALTMAN: Thank you. I will leave to it Ms Hoyano.
Examination by MS HOYANO
MS HOYANO: Mr Jacques, I am just -- I only have two
questions for you.
A.  Okay.
Q.  I am just going to preface that by a remark: given the
controversy that has surrounded the 1969/1970
investigation by Lancashire Police, and also given that
it is very rare for a police force to be given credit
for a sensitive and appropriately conducted
investigation into child sexual abuse; far more
frequently, we hear criticisms. So I want to reiterate
what I put on the record on Tuesday, that as counsel for
the eight complainants who are core participants in this
inquiry, our position is that the investigation in
1969-70 was thorough, impartial and fearless, and that
it was exemplary by the standards of the day and also
holds up very well to close scrutiny in 2017 from all
that we have seen.
A.  Thank you.
Q.  My questions, if I might ask, please, for the document
LCP000013_002 be pulled up on your screen. If you could
please highlight down to the bottom. Yes, that's it.
We are just trying to clarify how many
investigations were actually conducted into
Cyril Smith's activities and by whom.
This is, I believe, a briefing sheet for
Operation Acura for the Lancashire Gold Group during its
brief life?
A.  Yes.
Q.  Mr Esseen states that he had been informed, first of
all, that GMP conducted an inquiry into Smith in the
'80s and the '90s codenamed Operation Veronica:
"I have had it confirmed today that they possess as
computer disc, a Canon diskfile titled ... It contains
a file relating to Cyril Smith [with a number]
containing 172 pages ... entered on 15 February 1995."
Everyone has been searching for Operation Veronica.
The question I had was, was the computer disc relating
to this investigation ever obtained by Operation Acura?
A.  No. My understanding is that it wasn't. As you pointed
out, Acura was relatively short lived, and all the -- or
the predominant amount of information that was gathered
in that short space was Manchester related. Therefore,
it was agreed on 26 November that they would further the
investigation into it, and all that information.
Q.  The second question is the paragraph that starts:
"In addition, a retired DCI from GMP has today
contacted the force to state that a significant enquiry
was carried out into Smith in the '80s. The documents
were originally stored at Rochdale until they were sent
to deep storage in the late 1990s. I therefore believe
we will be able to access this file."
Could I ask if those files were retrieved by
Operation Acura?
A.  Again, those files weren't retrieved, is my
understanding, because that was, again, a Manchester leg
of the enquiry because Rochdale, of course, in the '80s,
was controlled by Greater Manchester and the storage at
Rochdale and any further storage would have been
Greater Manchester's. So that's one of the many reasons
why that primacy of the investigation was passed over to
Greater Manchester.
Q.  Do you have any information at all about what that 1980s
investigation might have pertained to?
A.  I'm sorry, I don't have any now.
MS HOYANO: With the chair's permission, I would like to put those questions to one of the Greater Manchester Police witnesses who will be coming later in the inquiry, just so we can clarify this question.

Thank you very much.

A. Thank you.

MR ALTMAN: Thank you very much, Mr Jacques. Thank you for coming.

THE CHAIR: Thank you, Mr Jacques.

A. Thank you.

(The witness withdrew)

MR ALTMAN: The next witness is Gregor McGill, please. Will you be taking a break this afternoon, may I ask, so that we know where we are?

THE CHAIR: Yes, we shall be taking a break, at a time that is convenient.

MR ALTMAN: Of course.

A. Thank you.

MR GREGOR ANTHONY MCGILL (sworn)

Examination by MR ALTMAN

Q. Your current position?

A. I am Director of Legal Services at the Crown Prosecution Service.

Q. Which you have been since 1 January last year?

A. 2016, yes.

Q. Did you join CPS London as a crown prosecutor in 1991, before progressing to the position of Branch Crown Prosecutor?

A. I did.

Q. In 2001. Did you leave the CPS in the following year to join Her Majesty's Customs and Excise?

A. I did.

Q. I assume as a lawyer?

A. I did.

Q. In 2005, were you transferred to what was then the newly formed Revenue and Customs Prosecutions Office, RCPO?

A. I was, yes.

Q. Where you set up and headed the Serious Organised Crime Division at RCPO in late 2005/early 2006?

A. I did.

Q. Then following the merger of RCPO and CPS, were you appointed head of the Fraud Prosecution Division at the CPS?

A. I was.

Q. Before taking on the role of Legal Director CPS London in 2010?

A. Yes, I did.

Q. Then from 2012 until the end of 2015, were you the head of the Organised Crime Division at the CPS?

A. Yes.

Q. You say for nearly a century prosecutions continued to be prosecuted on a local basis?

A. Yes.

Q. What the 1879 Act did was to set down his duty, the director's duty, to institute and conduct criminal proceedings for offences which were to be prescribed in regulations and was it discovered that, as at 1946, the regulations prescribed that it was his duty to institute and conduct criminal proceedings for (a) any offence punishable with death; (b) any case referred to him by another government department in which he considered
criminal proceedings should be instituted; (c) any case which appeared to him to be of importance or difficulty or which, for any other reason, required his intervention?

A. Yes, indeed.

Q. Those were the three principal criteria. Was he also empowered to give advice to government departments, clerks to justices, chief officers of police and others "as he may think right in any criminal matter which appears to him to be of importance or difficulty"?

A. That's entirely right, Mr Altman, yes.

Q. Of course I am taking this entirely from your helpful statement at paragraph 18. Those were the instances in which the director in those days became involved?

A. Yes.

Q. So far as you were able to judge, was that the position up to and including the late 1960s/early '70s?

A. As far as I could find out, Mr Altman, yes.

Q. Was it right to say that the chief officer of police, of every police district, had to report to the DPP offences punishable with death, offences the prosecution of which had to be undertaken by the DPP or which required his consent to prosecution and cases in which it appears that the advice of the DPP was desirable?

A. Yes, indeed.

---

Q. Was there also a list of other offences that had to be reported -- we don't have to go through the list, but did they include indecent offences on a number of children or young persons?

A. Yes.

Q. And by "a number of children or young persons", did that indicate that the allegation had to embrace a multiplicity of complainants?

A. I think that would be reasonable to assume, yes.

Q. Now, in those days, did the DPP's department consist of a number of lawyers who in some cases you say would be assisted by Treasury counsel, in other words, the office would instruct Treasury counsel presumably for advice and to prosecute cases?

A. Precisely so.

Q. At the Old Bailey, typically?

A. Typically.

Q. Your paragraph 23, please, on page 8. When asked to advise the final decision whether or not to initiate a prosecution remaining with the police until the creation of the CPS in 1986, what was the test the DPP in those days had to be satisfied about, the test to be applied?

A. It's set out in paragraph 24 of my statement, Mr Altman. It talks about a reasonable prospect of a conviction.

---

Q. Of course that has changed, that one word, in more recent times. We will come to that. But this is a quotation that you have taken from Sir Thomas Hetherington, who succeeded Sir Norman Skelhorn as DPP.

A. Yes.

Q. He explained the policy and evidence submitted to the Royal Commission on criminal procedure in 1978, and it is worth a quotation publicly. He said: "The test normally used in the department in deciding whether evidence is sufficient to justify proceedings is whether or not there is a reasonable prospect of conviction; whether, in other words, it seems rather more likely that there will be a conviction than an acquittal. Indeed, the very first regulations under which the Director of Public Prosecutions work provided that he should prosecute wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest. That is still the dominant consideration."

You make clear at your 25 that you were unable to find specific information on the issue from 1970 but were working on the basis that that was the position a few years earlier?
Q. Have you been able to tell whether counsel were instructed?

A. Yes.

Q. I acknowledge receipt of your file.

A. Mr Altman, it is quite quick. It could be done. I can't speculate as to whether that was common or not in 1970. But it is a quick turnaround, yes, I accept that.

Q. Let's perhaps ignore the fact that counsel might have been instructed. Are you able to help us at all, from your general experience, Mr McGill, even though you weren't prosecuting in those days, whether, on the face of it, three or four days is an unusually speedy turnaround time?

A. Absolutely, Mr Altman, yes.

Q. I would like your help with something, Mr McGill.

A. It is quite quick, Mr Altman, yes.

Q. Let's take your general experience. That is what we're interested in.

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A. It is quite quick, Mr Altman, yes.
to various forms of indecency and I also observe that
Smith denies their allegations. Any charges of indecent
assault founded on these allegations, as well as being
somewhat stale, would also be, in my view, completely
without corroboration. Further, the characters of some
of these young men would be likely to render their
evidence suspect.
"In the circumstances, I do not consider that if
proceedings for indecent assault were to be taken
against Smith, there would be a reasonable prospect of
a conviction."
There is the expression of the test of the day:
"I do not, therefore, advise his prosecution."
It is couched in terms of "advice", advisory. Do
you have any view, yourself, Mr McGill, from everything
you understand, it being within the province of
the police in those days to make a charging decision if
they had wanted, unlike today, where the CPS makes the
decision, whether they could have gone ahead and done
it, despite this?
A. I suppose it's possible, Mr Altman. They had the power
to charge. Whether they would have done, when they'd
had express advice from the DPP, I don't know.
Q. No. Again, I suspect I know the answer from you,
Mr McGill, but let me ask you anyway, certainly by
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that will make it easier all round.
Was the general rule on corroboration this, that the
evidence of one competent witness tended to be enough to
support a verdict, except in perjury, but there were
exceptions to it, and the important exceptions -- this
is on your page 10, and I am just going to bullet point
them and you see if I have got it right.
A. Very well.
Q. The exceptions included some sexual cases where there
was a requirement for corroboration before a defendant
could be convicted?
A. Yes.
Q. It meant that there had to be some other material
evidence implicating the defendant?
A. Yes.
Q. That where a complainant's evidence was on oath,
corroboration was not essential in law, unlike in the
case of unsworn testimony of children where there was
a statutory requirement for corroboration?
A. Yes.
Q. That, as a matter of practice, judges were obliged to
warn juries to exercise additional caution when
considering convicting a person of a sexual offence,
which is what we are focusing upon, on the basis of
uncorroborated evidence; is that right?

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A. Precisely so.
Q. That a judge would point out to a jury what was capable
of amounting to corroboration, but the jury would decide
if it did?
A. Absolutely.
Q. So in such cases, corroboration was looked for and
juries were warned of the dangers of acting on it in all
cases of sexual offending, irrespective of age or sex of
the complainant, and it even went to the remarkable
lengths of being required even if identity was in
issue --
A. Precisely.
Q. -- rather than the act itself?
A. I'm sorry, Mr Altman. Yes, precisely so.
Q. It turned out that failures by judges to give juries the
requisite warning were fatal on appeal?
A. Yes, the proviso wouldn't be.
Q. The proviso, in those days, where there had been no
miscarriage of justice, despite the particular ground of
appear being made out, would not be exercised where the
Court of Appeal would sometimes say, "There's been no
miscarriage of justice nonetheless", the proviso would
not be exercised in cases where the corroboration
warning hadn't been given?
A. Precisely so, Mr Altman, yes.
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| **A. Yes.**<br>Q. Where they say at page 682: | a danger of convicting on the complainant's evidence<br>a. It is dangerous because such allegations are<br>b. very easy to fabricate and extremely difficult to<br>c. refute. The judge had then told the jury that, bearing<br>d. the warning well in mind, they must look at the<br>e. particular facts of the case before them and if, having<br>f. given full weight to the warning that it is dangerous to<br>g. convict, they come to the conclusion that in the<br>h. particular case the complainant, without any doubt, is<br>i. speaking the truth, then the fact that there is no<br>j. corroboration doesn't matter, and they are entitled to<br>k. convict whether the issue is consent, identification or<br>l. anything else."<br>m. But there was a little wrinkle through all of this<br>n. which you highlight at your paragraph 48 and onwards,<br>o. because the law became increasingly complicated.<br>**A. It did.**<br>Q. And perhaps as it ever does when it becomes complicated,<br>p. inconsistent and discrepant. But you deal with the<br>q. question, could evidence of other unproven allegations<br>r. amount to corroboration, and that was the situation there<br>s. that confronted the DPP. Whether this was the decision<br>t. he made is another matter. But in this case we have<br>u. multiple unproven allegations from different<br>v. complainants, all of them telling a fairly similar<br>w. story, according to the police officer at the time, in<br>x. the absence of any evidence of collusion.<br>y. What was the position at that time, Mr McGill, as<br>z. your researches indicate to you? In other words, could<br>a. one complaint unproven support the unproven complaint of<br>b. another complainant where there was similar fact?<br>c. A. Well, I'm sorry to sound like a lawyer, but it wasn't<br>d. entirely clear in 1970. There were two lines of<br>e. authority. If I can summarise it, there was the Sims<br>f. line of authority, which tended to suggest that it<br>g. could; and there was the Flack line of authority that<br>h. tended to suggest that it couldn't. That's it put very<br>i. simply. Because the law was so confused, I think,<br>j. Mr Altman, a case did eventually make its way through to<br>k. the House of Lords for the clarification, and that case<br;l. was Kilbourne.<br>m. Q. In the end, I think Kilbourne came to the view --<br>n. I think you set this out in paragraph 51, am I right?<br>o. A. 49, I think.<br>p. Q. Is it 49 you begin?<br>q. A. I begin at 49, yes.<br>r. Q. It wasn't until early 1973, you say, two years after the<br>s. DPPs decision in 1970, that the House of Lords<br>t. reconsidered the question where it was alleged that<br>u. a series of sexual offences of a similar nature had been<br>v. committed on a number of different persons, often<br>w. children, in Kilbourne. The jury had to be directed<br>x. upon the extent to which the evidence of one victim may<br>y. be used to assist them in considering whether the<br>z. allegation involving another victim had been proved, and<br>aa. at 51, you say:<br>ab. "The House of Lords said in the case:<br/ac. "Evidence should not be accepted as corroborative<br/ad. where there was a real chance of collusion between<br/ae. witnesses'."
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<td><strong>A. Precisely so, Mr Altman.</strong>&lt;br&gt;Q. But the comments were obiter, and for nonlawyers that&lt;br&gt;means the comments were not material to the decision in&lt;br&gt;the House of Lords?&lt;br&gt;<strong>A. Yes.</strong>&lt;br&gt;Q. But it was said later in the case of Johansen, in 1977,&lt;br&gt;that the comments should be followed unless there were&lt;br&gt;sound reasons for not doing so.&lt;br&gt;Then at paragraph 52, you deal with the case of&lt;br&gt;Sims, which you have mentioned. At 53, you deal with&lt;br&gt;the case of Flack.</td>
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At paragraph 55, you come back to Phipson On Evidence, the 11th edition, where they considered -- the authors considered a number of scenarios, including this, inadmissible. In other words, they were saying the following scenario was inadmissible: "A is a schoolmaster charged on 16 counts with indecent assaults on boys from the school. Evidence of such an assault on one boy is not admissible for the purpose of proving such an assault on any of the others, citing Flack in support of the proposition."

Q. So whether that was the final word or not, it was a fairly authoritative word at that time, but of course although that's Phipson in 1970, this is, as you point out, a couple of years before Kilbourne seemed to come to the sensible view that multiple unproven complainants could corroborate each other, as long as they were independent or there was an absence of evidence of collusion?

A. Yes, Mr Altman.

Q. So in order to have proved the case that was presented to the DPP, doing the best you can, Mr McGill, what would require to have been proved for a number of indecent assaults against Smith?

A. Well, they would have had to have -- the lawyer looking at it, Sir Norman, would have had to have satisfied himself along the Sims line that they were capable of supporting the allegations and were capable of corroborating the initial allegation. It says on my page 14: "The same considerations would apply to a case where a man is charged with a series of indecent offences against children, whether boys or girls; that they all complained of the same sort of conduct shows that the interest of the defendant was taking them in, and was not of a paternal or friendly nature but for the purpose of satisfying lust."

It is about complaining about the same sort of conduct.

Q. Did Flack, or might Flack, have had any bearing if the DPP of the day was sitting there with Sims in one hand and Flack in the other?

A. Well, I think it is significant that Flack was a 1969 authority, and it was the most recent authority from the Court of Appeal, so it would have been persuasive and would probably have been -- if any authority was in someone's mind, it would have been the most recent authority.

Q. The effect of Flack was to say in such cases a multiplicity of allegations, albeit similar, ought to be tried separately and not together?

A. Indeed. It basically said they weren't cross-admissible and they should be tried separately.

Q. On your page 16, paragraph 56 and onwards, you analyse the DPP's advice in 1970. What was your view, Mr McGill, looking at your paragraphs 56 to 59, whether the DPP reasonably came to the view that the allegations were "completely without corroboration"?

A. First of all, I think the way the decision was communicated in 1970 is not how we would do it today. We would probably, I hope, give better-reasoned decisions than that. But I can't comment on whether that was common for the day in question.

I think, if I could take you to paragraph 58, Mr Altman, having looked at it -- and can I quote from my --

Q. That's what I would like you to do.

A. I say: "I have concluded that, had he considered the overall evidential picture, including CS's claim of innocent association, together with the judgments in R v Sims and R v Flack, it is difficult to see how he would have come to any other conclusion but that there was indeed corroboration of the complainant's account or at least a good arguable case that that was the case."

Q. -- not in the way it was used in those days. He doesn't still use the word but --

A. Not in the legal sense.

Q. -- not in the way it was used in those days. He doesn't say there is evidence of collusion?

A. He doesn't.

Q. He is silent about the concept of collusion.

A. Yes.

Q. What about the DPP's view -- your paragraph 60 -- about the characters of some of the complainants would be likely to render their evidence suspect? Was that reasonable or not?

A. I can't comment on what might have been reasonable in 1970. It is certainly not something that we take into consideration in the same regard today.
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<th>Q.</th>
<th>The fact is that they were vulnerable?</th>
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<td>A.</td>
<td>Yes.</td>
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<td>Q.</td>
<td>The fact that they were vulnerable would make it more likely that they would fall foul of the law and therefore their characters, or the characters of some of them, was not going to be a very unusual feature in any case like this, especially where predatory individuals tend to target vulnerable people?</td>
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<td>A.</td>
<td>That is the way we would look at it today, Mr Altman. I don’t know how it was looked at in 1970, but society was quite different in 1970.</td>
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<td>Q.</td>
<td>Not least also because the very attraction of a vulnerable individual to a predatory offender is that person is going to be someone who is less likely to complain or, if that person does complain, be believed?</td>
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<tr>
<td>A.</td>
<td>Indeed.</td>
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<td>Q.</td>
<td>From anything that you have seen, Mr McGill, there is nothing to indicate whether that kind of thought process was current or popular in the 1970s?</td>
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<td>A.</td>
<td>I can’t speculate on that, Mr Altman, no. I can only go on what I have seen here.</td>
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<td>Q.</td>
<td>What about the third issue which the DPP raised in his letter, that the allegations were &quot;somewhat stale&quot;? Was that valid?</td>
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<td>A.</td>
<td>It is difficult to say. Certainly, if I can use the overarching term &quot;delay&quot;, delay was a factor that was perhaps much more in prosecutors' and lawyers' minds in the 60s, 70s, 80s, and probably up to the 90s, than it is now. Indeed, the first edition of the code, which I looked at in preparing this statement, said that prosecutors should be wary about instituting offences of more than three years old. That was in 1986. So, yes, I can’t say whether it is valid or not. It is certainly not something that we would take into consideration as much today as perhaps it might have been taken into consideration in the past.</td>
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<td>Q.</td>
<td>Again, if we look at the reality, delay may be brought about because people are fearful, or were fearful, in making complaints, especially in relation to somebody quite as powerful as Cyril Smith would be?</td>
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<td>A.</td>
<td>Yes, we would refer to it a myth or a stereotype now, saying you would expect a complaint to be made very quickly. There could be very good reasons why a complaint isn't made quickly.</td>
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<td>Q.</td>
<td>I’m glad you raised that, Mr McGill, because, as you will confirm, there have been a lot of lessons learned over the decades, and dispelling myths is one of the things which judges trying sexual offences are enjoined to instruct/direct juries about, dispelling myths in rape cases, whether people should complain immediately, why they don't complain immediately and how people behave, that there is no stereotypical behaviour which juries should come into the jury box with preconceived ideas about?</td>
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<tr>
<td>A.</td>
<td>Exactly right, Mr Altman, and that's where I think sometimes we have fallen foul in the past, and His Honour Judge Rook has been at the forefront of training the judges on the way to do this.</td>
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<td>Q.</td>
<td>Absolutely, and many barristers as well?</td>
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<tr>
<td>A.</td>
<td>Indeed.</td>
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<td>Q.</td>
<td>Overall, let me ask you this question in relation to this topic: did you think the DPP's decision was reasonable in all the circumstances or not, in light of the law as it stood in 1970?</td>
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<td>A.</td>
<td>I think that Sir Norman would have found himself in a difficult position on the law. I think it is difficult to say that it wasn't a reasonable decision based on the confusion of the law at that time.</td>
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<td>Q.</td>
<td>Now I would like to ask you about something else which you don't deal with in your statement, but I am sure you know about, Mr McGill, which is what the DPP or the DPP's office said to the media, the Rochdale Alternative Press and others, in 1979. You know about that material and what came out from the Security Service?</td>
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<tr>
<td>A.</td>
<td>The only material I have seen is the material that has come from the Security Service, yes.</td>
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<td>Q.</td>
<td>Today, what is the CPS's general policy for dealing with media enquiries?</td>
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<td>A.</td>
<td>We have a communications office that deals with those enquiries that come from the media. We have values that say that we are open and transparent and we communicate openly about our decision making.</td>
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<td>Q.</td>
<td>It should go without saying that, above all, if there are media enquiries of the CPS press office, you, or the organisation generally, would be at great pains to make sure that what the media is told is accurate and truthful?</td>
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<tr>
<td>A.</td>
<td>Absolutely.</td>
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<td>Q.</td>
<td>Do you think that the policy of the director would have been any different in 1979?</td>
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<tr>
<td>A.</td>
<td>I can't speculate what the policy would have been. I think it would be strange to think that you would have a policy that stated that you wouldn't be truthful to the media.</td>
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<td>Q.</td>
<td>I wonder if we can just bring up, to remind ourselves, INQ000963, please. I wonder if we are able to bring up the article. I know it is going to be difficult to read in this format. This is the RAP article from May 1979. Paragraph 6 is headed &quot;The DPP&quot;. It is on the right-hand side.</td>
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I wonder if the Trial Director can bring that up. I'm sure you have looked at this, Mr McGill. It is not brilliant. Let me read it, Mr McGill, and I will take it slowly. It is really just half of this paragraph that I need to remind everybody of:

"An approach to the DPP failed to confirm that a file [I think] had been brought to the attention of the director's office."

I'm just paraphrasing:

"On our first request for information, the DPP's press office agreed to answer the question of whether or not the file had been received by them. After making the appropriate search, we were told that they had failed to find such a file. A further approach brought the official statement from the director ...

And the director at this time was of course Hetherington:

"... the DPP cannot trace such a case being referred to us but cannot confirm or deny receiving it. The director did confirm that under the then applicable regulations the 'chief office of police shall report to the DPP offences which include indecent offences upon a number of young persons'."

That's what we looked at earlier:

"We also wrote to Sir Norman Skelhorn, the man who was the Director of Public Prosecutions at the time of the investigation. RAP's letter was forwarded to him by one of his clubs, the Athenaeum. On Wednesday, 25 April, we received a phone call from someone claiming to be Sir Norman on holiday and from a coin-box phone who said that he could remember nothing at all about such a case. RAP also interviewed Mr Palfrey, the Chief Constable of Lancashire at the time. He agreed that such a file should have been sent, but said, 'I can't say for sure whether the file was sent or not'. He told us to approach police HQ, which we have done several times. Their final comment was: 'We decline to comment.'"

I am sure it is of a speculative nature, Mr McGill, and you will tell me it is, but Sir Norman Skelhorn, in 1979, is unlikely to have had, in the seven years that had passed from 1970, many cases quite like this one across his desk?

A. Who knows, Mr Altman?

Q. There is only one Cyril Smith.

A. No, but he would have referred to him a number of serious cases over that period.

Q. What we do know from the Security Service material -- perhaps we don't need to bring it up -- is that certainly from their point of view, and

Sir Thomas Hetherington himself accepted in April 1979, so this was just before the RAP article was published, that lies had been told by the DPP's office?

A. First of all, Mr Altman, this is 1979, before the setting up of the CPS. We have looked for documents and we haven't been able to find any documents about this.

From what you said, and I haven't got it in front of me now, I think the statement that was made in this was that he could neither confirm nor deny.

Q. That was the press office, yes. My point is that it is rather unlikely that the DPP's office did not know, because that's the DPP's office rather than Sir Norman Skelhorn, who actually phoned RAP to say that he had no recollection of it. It is hardly likely, is it, that the DPP's office would have no institutional memory of receiving a file in the case of Cyril Smith seven years earlier, is it?

A. I can't comment on that, Mr Altman.

Q. I take it, as far as the materials you have looked at, and such access to the materials you have, that there is nothing that you have that sheds any light on why false representations may have been made either by the former DPP or by the current DPP, the then current DPP's, press officers?

A. I have seen no documentation about this matter,
there was a complete denial that any incident at all had taken place and that no question of identity, intent, or rebutting a defence of innocent association ever arose, the evidence of one complainant could corroborate that of another."

What that is saying is that, in the case of multiple complainants, where there is evidence of system, and apparently this comes all the way -- it is a line of authority, in effect, from Sims in 1946, all the way up to Flack, where there was evidence of system, the prosecution could lead that evidence in the case of complaints by multiple complainants as, in effect, corroborative evidence. Was that something you understood?

A. Indeed. That's why, ultimately, I came to the conclusion that if he had looked at the law in that way, he probably would have favoured the Sims line. I think you also have to look at what the defence of Mr Smith was, what he said was, "I was acting in loco parentis and there was no indecency", so there was no denial that it had taken place as well. I think that's relevant as well.

Q. Let's move on, then, to the rationale for not prosecuting Smith in 1998. That's your paragraph 63 and onwards.

The first question: why did the allegations against Smith resurface in 1998?

A. I think it was as a result of an investigation that had been started by the South Wales Police.

Q. Yes, Goldfinch.

A. Yes, as a result, I think a call had come through to the South Wales Police about an incident in Rochdale which the South Wales Police I think then passed on to the relevant police force.

Q. That's right. The relevant police force was Greater Manchester Police?

A. It was.

Q. The SIO at the time, Detective Superintendent Stelfox, who sent an advice on to a CPS Branch Crown Prosecutor, who was the reviewing lawyer --

A. Yes.

Q. -- requesting a review, and this was part of Operation Cleopatra. In a couple of sentences, how had the law changed between 1970 and 1998 regarding who took the ultimate decision to prosecute and the basis of such decisions?

A. The CPS was set up by the Prosecution of Offences Act in 1985 and the CPS became operational in 1986, so that was a major change.
Q. Your paragraph 74 and onwards. Why did the reviewing lawyer in 1998 decide not to prosecute Cyril Smith?

A. Precisely so.

Q. Meaning there would be no prosecution in effect?

A. Yes.

Q. There are typically two grounds: one, where it is unfair to try the defendant; or, secondly, where he can't have a fair trial?

A. Yes.

Q. But what drew the reviewing lawyer, in this particular instance in 1998, to conclude that no prosecution should be instituted were his views about the significant happening on 25 March 1970, when Superintendent Leach went to see Smith and said there would be no further action?

A. Mmm. Well, he didn't state that in quite so --

Q. Not in those stark terms?

A. What he talked about was what's known as the legitimate expectation, that Mr Smith had been told -- or had been given a firm indication that he wouldn't be prosecuted, and he referred to the delay. These incidents were said to have taken place I think between 1961 and 1966, and that we were looking at them in 1998, so there had been a significant delay. Those two factors together led him to conclude that there would be a successful application for abuse of process.

Q. Let me put up page 15 of the final advice of 17 June of the reviewing lawyer. GMP001129. Page 15, paragraph 13 at the foot of the page:

"By way of conclusion and summary, I have little hesitation in expressing the view that applying the Code of Practice for Prosecutors, there is sufficient evidence to proceed against S [Smith] in 1998 for offences which occurred in the mid 1960s. In my view, there would be a realistic prospect of a conviction in respect of each of the offences generated by each of the complainants."

If we look just above in the third paragraph, the last three lines:

"Whilst there may be a realistic prospect of a conviction in respect of one or more offences, there is no guarantee of a conviction."

But the code doesn't require guarantees, does it?

A. It is realistic prospect.

Q. Realistic prospect:

"... nor is there a guarantee that any of the identified witnesses would be willing or able to give evidence."

That's also an occupational hazard, Mr McGill?

A. Yes.

Q. Then at the top of the next page, does the reviewing lawyer say:

A. In your view, was he right to take into account his view of the success of the abuse of process argument in defeating the prospect of a conviction when he'd already come to the view that there was a realistic prospect of conviction?

A. I think in my view, Mr Altman, a prosecutor conducting the Code Test has to ask himself or herself whether, if you institute proceedings, a case is likely to be stopped for an abuse of process. I think it is rightly considered at the evidential stage. I think any prosecutor considering a case like this in these particularly unusual circumstances would ask himself that question.

Q. Was he right to come to the view that there was a realistic prospect of conviction, or should he have advised that there was no realistic prospect of
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| A. **Well, that's an interesting question.**
Q. That's why I asked it.
A. **If that was me, I would have probably concluded that the evidential test wasn't met.** If I had concluded myself that an abuse of process was likely to be successful, I probably would have said that the evidential test wasn't met.
Q. At your paragraph 92, you say that the reviewing lawyer made his own decision, which wasn't tested by the courts, and he predicted how he considered the courts would react --
Q. -- setting out what his principal reason was.
A. Yes.
Q. You used the terminology "legitimate expectation", which rather than the legal sense of the word, I have really seen are what -- he doesn't specify what the word "corroboration", because I think it could be misconstrued. But by that stage, there was no legal requirement for corroboration. I think he was using it in, if I can say, the evidential sense of the word rather than the legal sense of the word.
Q. You used the terminology "legitimate expectation", which you have borrowed from the lawyer's advice which I have just reminded everybody of.
A. Yes.
Q. In a sentence or two, if you can achieve that, Mr McGill, what was the law about that? Was it to do with being given promises or was it something different?
A. **Essentially, boiled down, it was that a defendant who had been informed of a prosecutorial decision should be entitled to rely on it unless there effectively was a material change of circumstances.**
Q. A material change of circumstance would be what?
A. **If significant further evidence became available, would be one.** That's not an exhaustive list, but that's the classic sense, where you would maybe look at a decision again.
Q. Would it be incumbent on the person conveying the message to the suspect that no further action is being taken to qualify that assertion with the further assertion "unless further evidence comes to light"?
A. **That's certainly how we do it now, Mr Altman.**
Q. Yes, I know. Do you know if that is how it was done in those days?
A. I don't. From the documents I have seen in this case, it appears that it wasn't.
Q. No, certainly not. What were the special circumstances that the reviewing lawyer was talking about in that advice?
A. **Well, it is difficult to know because the only documents I have really seen are what -- he doesn't specify what those special circumstances were.** I think he talks about, in the document, the integrity of the criminal justice system.
Q. Yes, he does. I was questioning and seeking your help,

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| application to stay the proceedings before such an argument could be fully litigated before a judge."
So my question arising out of a combination of those two paragraphs is: given that he had arrived at the view that there was, or would be, to use his phraseology, a realistic prospect of conviction based on the evidence that was presented to him, ought it to have been left to a judge to make a decision about any argument of abuse of process that was put before the court?
A. **It could have been left to a judge. We encourage our prosecutors, if they have made a decision that they think an abuse of process is likely to be successful, to have the courage of their convictions. However, as you know, Mr Altman, the case law is that we should only remove a case from court if it is clear that an abuse of process application would succeed.** I think in this case my own personal view is, I don't think his decision was unreasonable, but, as I have said, another prosecutor might have taken a different view.
Q. At your paragraph 105, and I know this deals with his 1999 decision, you say:
"In other respects, [the reviewing lawyer's] approach to 'corroboration' of the complainants' accounts (he said there was none) is open to criticism, although he nevertheless concluded in 1998 that the evidence presented to him from the complainants and from the surrounding circumstances provided a realistic prospect of a conviction. It is also right that he did point to the fact that the prosecution case is not founded on a single assertion by a single complainant, but by eight separate complainants giving virtually the same account."
What was the criticism that you had in mind of his use of the term "corroboration"?
A. **I don't think, in those circumstances, I would have used the word "corroboration", because I think it could be misconstrued.** But by that stage, there was no legal requirement for corroboration. I think he was using it in, if I can say, the evidential sense of the word rather than the legal sense of the word.
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Q. No, certainly not. What were the special circumstances that the reviewing lawyer was talking about in that advice?
A. **Well, it is difficult to know because the only documents I have really seen are what -- he doesn't specify what those special circumstances were.** I think he talks about, in the document, the integrity of the criminal justice system.
Q. Yes, he does. I was questioning and seeking your help,
Mr McGill, with what he might have meant. Was that a matter of law? Was that a factual matter that he had in mind? Are you able to interpret it?

A. I am not able to interpret it, other than to say that that wasn't in the code at that stage, although it was inserted into a later edition of the code, the 2010 version.

Q. Yes.

A. But I don't know where he got that phrase from in 1998/99.

Q. No.

A. The code that was in force in 1998 talks about special reasons for restarting a prosecution. It doesn't talk about special circumstances.

Q. What might have been the special reasons for restarting at that time?

A. In simple terms, I think the code sets out, if the decision was wrong or, again, if there was material evidence that had become available that wasn't originally available when the original decision was made, in simple terms, Mr Altman. It is not a verbatim quote from the code.

Q. No, I appreciate that. Thank you. So that was 1998.

Then we come to 1999, because we know as a matter of history, and the panel have heard a little about this

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already, that Sergeant Vincent Hill, who was an officer on Operation Cleopatra, was asked to re-examine and reinvestigate, and he did, and he submitted a report to his senior officer, by then Roberts, in March 1999, and that report found its way back to the same reviewing lawyer, who produced an advice of 21 May 1999, which, if we go, please, to GMP001129 at page 59, you see at the top where he was asked -- I think I'm right in saying, Mr McGill -- to look at the accounts of two other complainants:

"I am satisfied that there is no new evidence which would alter my view as to whether proceedings should be instituted in respect of the eight original complaints.

"There are now two completely new complaints but the prospect of convictions is unrealistic."

In the body of that advice, I think he sets out why.

What I do think, though, is that there was some scope for using that evidence if there was a trial to strengthen the overall allegation.

Q. Meaning?

A. You could use it in rebuttal, perhaps.

Q. So, in other words, perhaps if he had used the expression "thought outside the box a little", even though the evidence of these two new complainants did not amount to much within themselves, or did not go in support of new charges, they might go in support of the other complainants as bolstering a case which was fit to go to a jury?

A. Yes. They might not found counts themselves, but they could be relevant admissible evidence.

Q. Corroborative evidence, in old money?

A. Yes.

Q. Which brings us to the 2012 review. We have at the same reference, GMP001129 at page 61, a report is how it is headed in relation to Operation Cleopatra by a Divisional Crown Prosecutor. How does he fit into

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this? What was the purpose of this report at that point and how did it come about, do you know?

A. I don't know precisely how it came about, Mr Altman.

Looking at it, it appears to have arisen from Operation Goldfinch and the question that came through from South Wales Police to Greater Manchester Police to have a look at these allegations again.

Q. Without seeking to identify any more closely this individual, he was a Divisional Crown Prosecutor. Which division? Was it South Wales or Manchester?

A. It will be Manchester.

Q. So he writes a report, and then the whole case, really, for review goes to a Senior Crown Advocate of the next day who writes an opinion on 15 November, which is at GMP001129 at page 65.

Again, maybe you don't know, Mr McGill, but why did this come about? Why was that opinion written? What was the point of it? Who asked for it?

A. I don't know the specifics. It just says at the top:

"I have been asked to express an opinion ..."

It doesn't say --

Q. Why or by whom?

A. -- why or by whom.

Q. His opinion, at the foot of page 66, over into 67, is:

"Over the last 40 years, the court's attitude to
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| 1. offences of this nature has evolved. Inferences can now be drawn from silence ...”
2. That's a reference to, I assume, the "No comment" interview by Smith on 27 February 1970?
3. A. Yes.
4. Q. "... and the law relating to corroboration of evidence and bad character has changed.”
5. As we know it did in the Criminal Justice Act 2003:
6. "Further, the recent authorities on abuse of process have looked more towards the prejudice caused to the defendant by any promise made by the prosecution or by any delay in proceedings.
7. "In my opinion, had the original complaints been referred to the CPS today, it is likely that authority would have been given to charge 'S'."
8. Authority of whom?
10. Q. "However, in my opinion, the advice of [the reviewing lawyer] based on the law as it then was cannot be faulted."
11. As a generalisation, and this is not an exercise in criticism, you will understand, Mr McGill --
12. A. Of course.
13. Q. -- could it be faulted?
14. A. I wouldn't use the words "cannot be faulted". I think there are aspects of the way that the reviewing lawyer in 1998 approached the case that could be criticised, although I have to say I don’t think overall his decision was an unreasonable one.
15. Q. No. Then finally in this regard, a different reference, please, INQ000962. This is one of those things, Mr McGill, that we are used to in this day and age, the CPS making public statements, this one dated 27 November 2012. Why did the CPS make a public statement about Cyril Smith on that date, do you know?
16. A. I don't know. This was a statement made by the Chief Crown Prosecutor for the CPS North West.
17. Q. Was that Nazir Afzal?
18. A. Yes.
19. Q. Who is no longer with the CPS?
20. A. He is no longer with the CPS.
22. A. Yes. Do you want me to --
23. Q. Yes, just help us, if you can, with -- clearly culture and prosecution practice moved on?
24. A. Yes.
25. Q. And have been reviewed? | 1. A. Yes.
2. Q. Lessons are being learned and things change. But what, in 1986, did the -- I suppose one of the earliest versions of the code have to say?
3. A. It talks about whether there was any element of seduction or corruption, and looking for evidence like that when deciding whether and, if so, in respect of whom proceedings should be instituted.
4. Q. Are these public interest factors, the second stage of the test, or realistic prospect factors?
5. A. These are public interest factors.
6. Q. So this is, once you've got past the evidential stage, this is the next stage: is it in the public interest to prosecute?
7. A. Yes.
8. Q. Right.
9. A. It is interesting there, actually, what it says:
10. "Should doubt still remain, the scales will normally be tipped in favour of prosecution."
11. That's the earliest edition of the code, though.
12. Q. Things haven't changed. If anything, they have perhaps moved in that general direction?
13. A. Yes, I think that's a fair way of putting it, Mr Altman.
14. Q. Did matters move on in the 1990s?
15. A. Yes, I think we developed a number of legal -- we gave our lawyers legal advice and policy statements as to how they should approach these cases. It must be said that the major change has happened in the present century. There has been a real change in the way that we have approached this type of case, and there have been three things, I think, that have really changed the way that we approach them.
16. First was the merits-based approach of how prosecutors make their decisions. The second is that the current director and the previous director have been very keen that this type of offending should be looked at by specially trained lawyers. And the third thing, I think, that is really significant is that now we have got a victim's right to review policy, which enables a victim -- I use the word "victim" in a non-pejorative sense, because it is in our policy. If a prosecutor makes a decision not to charge, there is a further stage where it can be looked at by another independent prosecutor. I think we have moved on -- those three things show that we have moved on considerably from where perhaps we were 20 years ago.
17. Q. I think I'm right in saying that nondecisions are even judicially reviewable?
18. A. Yes.
19. Q. And have been reviewed?
A. They have been. And are frequently reviewed.

Q. I don't want to go through each of the changes in the code. I think we can both agree that things have moved on in the general direction which you have generally agreed with, and your statement sets out at great length each and every change, or material change, in the code over the years?

A. We have modernised the language and made it, I think, easier to understand, if I can put it that way.

Q. At your page 42, is the Director of Public Prosecutions considered as before the CPS had been established, even so, in 1970, in March 1970, and accepting that of course this was to struggle with over the years --

A. Yes.

Q. -- in the field of sexual offending?

A. Including this crown prosecutor, Mr Altman.

Q. I'm sure. But it is all there, chapter and verse, if it helps anybody who wishes to understand what there is available to crown prosecutors and those who prosecute on behalf of the Crown Prosecution Service?

A. Yes, they are available for counsel as well.

Q. Absolutely, to give guidance, hopefully, I suppose, to make a proper, unchallengable decision?

A. Yes.

Q. If we take all of the facts known to us and we make the decision in light of current policy guidance, Code for Crown Prosecutors and law on the facts as were presented to Sir Norman Skelhorn in March 1970, what do you think the likely decision would be today: to prosecute or not?

A. I think the likely decision today would be that Mr Smith would be prosecuted.

MR ALTMAN: Thank you very much, Mr McGill. That's all I want to ask you. As the chair indicated before we began this afternoon, there will be a few questions from Ms Hoyano and then the panel want to ask you a question or two, I dare say.

Examination by MS HOYANO

MS HOYANO: Thank you, chair. I think I can reduce substantially the number of questions that you kindly gave me permission to ask, given the testimony of the witness already.

Just looking at the decision not to prosecute in March 1970, and accepting that of course this was before the CPS had been established, even so, in 1970, the Director of Public Prosecutions was considered as holding a public office; is that not so?

A. I have tried to find out. Certainly today we are ministers of justice and consider ourselves --

Q. Yes.

A. I have seen nothing to suggest that the DPP in 1970 would be anything different.

Q. Yes. I have seen many dicta in cases before that exactly referring to the prosecutor as being a minister of justice. As a minister of justice, he or she would be required to be politically impartial?

A. Yes.

Q. I appreciate this is a hypothetical: would it be inappropriate for a Director of Public Prosecutions to receive a communication from a Member of Parliament on behalf of a constituent regarding an ongoing investigation?

A. No, I don't think it would be inappropriate. I don't know what happened in 1970.

Q. I don't think any of us know, yes.

A. No, I appreciate that. It is not uncommon to get such letters today. I do receive them. We have to be careful about how we reply to them because we can't deal with the evidence, but we do get letters making representations on behalf of constituents from MPs.

Q. That's a revelation to me, so thank you for telling me. Could I ask about the Home Secretary because the Ministry of Justice and the Crown Prosecution Services are, I believe, under the umbrella of the Home Secretary, in terms of accountability to parliament?

A. No, that's not right.

Q. Okay. All right.

A. The Crown Prosecution Service is an independent prosecution service. It is superintended by the Attorney General and the Attorney General accounts to parliament for the Crown Prosecution Service. But the DPP is an entirely independent prosecutor.

Q. Thank you for correcting me on that. Would it, nonetheless, with the responsibilities that the Home Secretary has for the administration of justice overall, be inappropriate for a Director of Public Prosecutions to receive representations from the Home Secretary in relation to an ongoing investigation?

A. It's very difficult to answer that question. Certainly you wouldn't expect a senior politician to seek to influence the Director of Public Prosecutions. I'm confident that, even if they did, they would not be able to do so. The director is entirely independent.

Q. You are speaking from your experience today?

A. I can only speak from my --

Q. Indeed.

A. -- experience today.

Q. Thank you.

Now I would like to move to the advice of the Branch Crown Prosecutor of 17 June 1998. I wonder if that
A. I'm making a conclusion based on the document. My conclusion is that the reviewing lawyer was just looking at the allegations that he was considering.

Q. It is the breadth of the assurance that I think I am asking about. Perhaps I could test it by a hypothetical. What would the Crown Prosecution Service have done if one of the original complainants had made a more serious complaint, for example, of rape against Cyril Smith? Would the assurance that had been given to Cyril Smith in March or April 1970 be treated by the CPS as binding?

A. Can I just ask a question of clarification?

I appreciate I'm not supposed to ask questions. Do you mean a further allegation that built on the original allegation that was made in the 1960s?

Q. Yes, one of the original complainants. In other words, it moves from indecent assault to perhaps another allegation by the same complainant against Cyril Smith that is much more serious?

A. I think it would be considered in the way that the Crown Prosecution Service would consider any new allegation. It would be capable, I suppose, of amounting to further evidence, because it would be based on a different set of facts. It would have its own difficulties in regard to credibility, and there would have to be questions raised about that. But it could constitute something that we could look at anew, yes.

Q. Now, I would like to turn to the legitimate expectation doctrine. If I could take you, please, to paragraph 92 of your witness statement.

A. Thank you, yes.

Q. You say: "He suggested that ..." That is to say the Branch Crown Prosecutor: "... 'special circumstances' that might justify instituting proceedings to maintain public confidence in the criminal justice system did not override Smith's..."

MR ALTMAN: GMP001120_011.

MS HOYANO: I'm not there at the moment. Maybe I can continue while we are looking for it.

Do you know what the Branch Crown Prosecutor considered the "assurance in regard to this matter" meant? Was that in relation to Cambridge House or in regard to the complainants of 1969.

A. The only document I have seen is the reviewing lawyer's note, and there is no reference to it in the note.

Q. Would you consider that that would be a relevant countervailing circumstance to be considered?

A. The crown prosecutor, in making his decision, is required to look at the evidence that's submitted to him. He applies the code. The crown prosecutor asks himself, is there sufficient evidence and is it in the public interest?

Of course he has to put his decision in context, and there may be surrounding information that enables him to do that. But in making his decision, he makes his decision based on the evidence, and nothing else.

Q. Mr Altman put to you, what really does it mean when the reviewing lawyer knew. He didn't refer to it in his advice. So I can't speculate as to what he said.

I have seen the article. There is a Private Eye article that I have been referred to which shows that there were some concerns. How far those concerns had got, I really don't know.

Q. Fair enough. My second possible countervailing circumstance is what was clear on the police file, which was the attempts by Cyril Smith and his political allies to intimidate witnesses and to obstruct the police in their investigation, and that is documented in the police file which the reviewing lawyer had. Would that be a relevant countervailing consideration?

A. I think we need to be careful. The police file may not be the file that the prosecutor gets. The police will have their own file of their investigation. When they seek advice from the Crown Prosecution Service, they...
Although it was pretty well known that you have to -- just because an abuse -- just because a promise had been made, it didn't necessarily mean there would be a successful abuse of process. Each case had to be looked at on its own particular facts.

Q. Okay. Would you agree with me that, on the face of the advice, there is no consideration of any countervailing considerations that would suggest that public confidence in the criminal justice system could be damaged by a refusal to prosecute Cyril Smith?

A. Certainly there doesn't seem to be -- that doesn't seem to have been developed in the reviewing lawyer's advice, absolutely.

Q. Thank you. I appreciate that's as far as you can go, Mr McGill.

A. Yes.

Q. Just referring you still to that same paragraph, 92, isn't it the case that the Branch Crown Prosecutor was simply wrong in concluding that the legitimate expectation doctrine would bar, and should bar, the prosecution in the absence of any clear evidence of prejudice to Mr Smith and without considering any countervailing special circumstances and not sending the case to a trial judge for the arguments to be tested?

A. I have thought about that quite carefully. I don't think -- I think this was a finely balanced decision, and I don't think, based on the law on abuse of process as it was in the 1990s, where a lot more credence was given to applications of abuse of process, particularly where there had been a legitimate expectation, and I have set out in my statement the authorities, and a lot more credence was given to delay in bringing proceedings. Having looked at the authorities, I don't think I can say that the reviewing lawyer was wrong, particularly when you take into account -- when we look at abuse of process today, we are looking specifically at the prejudice to the defendant.

Back in the 1990s, and Mr Altman stated this when he asked me a question, there was much more emphasis on whether it would be fair in all the circumstances to try the defendant, and that didn't necessarily mean that you had to show prejudice. So the law on abuse of process was much easier to satisfy in 1998 than it was in 2017.

So I don't think the reviewing -- I wouldn't classify the reviewing lawyer's decision in 1998 as wrong.

Q. I just have three more questions, so I will be brief.

In paragraph 10 of the advice of 1999, if we could just go to that -- I'm sorry, I don't have the -- it is core document -- GMP001129, page 58. I can just read it to you. It is brief. The reviewing lawyer says -- he speculates:

"... the defence would labour the political aspects of the case ..."

Given what you have just said about how the prosecutor has to focus solely on the Code Test, the Full Code Test, was this a relevant consideration in a decision not to prosecute a person prominent in public life that there would be political debate potentially in the trial?

A. I don't read that as being a rationale for not prosecuting. I think a prosecutor looking at a case such as this has to understand the context in which the allegations are made, because what a prosecutor has to do in making a decision is actually ask themselves, "If I prosecute this, if I put myself in the place of the defence, how would the defence seek to defend this?", and I think a prosecutor has to think through various options in making a decision.

So I think it is quite reasonable for a prosecutor to ask themselves the context in which the allegations are made, but actually not to take those -- that context into account in making the decision because the decision is based solely on the evidence.

Q. I'm afraid I am a bit lost on that answer, because you are saying they should take it into account but not that
they should apply -- make a decision on the evidence?

A. No, I think you have to -- you can only make the Code

Test on the evidence that's provided to you. But, at least actually, you have to think through, if I charge this case, how am I ultimately going to prove it and how might it be defended? And the prosecutor has to come up with a case strategy as to how they might deal with legitimate forms of cross-examination that the defence may -- may -- undertake in a trial. We exist in an adversarial system. If a case like this is charged, you can expect it to be, I will say, robustly defended. And a prosecutor, when charging, has to have a strategy as to how -- what might arise and, if it arises, how they might deal with it.

Q. I agree that one has to proactively build the case, and develop the case for presentation in court, but you have told us that the decision to prosecute should be based only on the evidence, so why would it be relevant that there will be political controversy in relation -- and political matters raised in court? Doesn't that come in at a later stage?

A. No, I don't think it does. I think if you were charging this case against an individual like this, you would know that -- well, you would suspect that one of the defences that might be made is that this prosecution is politically motivated, or the allegations are politically motivated, and you might want, as a prosecutor, to think, well, if that is what is going to be said, how might I deal with that?

MS HOYANO: Thank you. Those are all my questions. Thank you.

THE CHAIR: Thank you, Ms Hoyano.

Sir Malcolm, do you have a couple of questions?

Questions from THE PANEL

PROF SIR MALCOLM EVANS: Thank you. We have a small number of questions. The first relates to the 1970 DPP decision, and it is a simple enough question: what is the evidence that shows that Sir Norman Skelhorn was the actual decision maker, given that the signature on the letters do not appear to be his?

A. It is on DPP notepaper. I am not an expert in handwriting. I don't know whether it is his handwriting or not. I just go on the fact that it is on DPP notepaper.

PROF SIR MALCOLM EVANS: Thank you. From just a cursory attempt to read the signature, as a layperson reading a signature on a document, it appears to say something like "Hutchins" or "Hutchinson" who appears to have signed both the letter of acknowledgement of receipt of the file as well as the letter of decision. Has anyone
been a prosecutor. When I joined in 1991, actually, we were pretty much encouraged not to talk to the press at all, and things have changed considerably, and we are much more open, transparent and prepared to discuss our decision making in 2017 than we were back when I joined in 1991. It has been a sea change.

MS SHARPLING: I'm conscious that you weren't around at the relevant time of the decision in the 1970s, but do you have any knowledge or does your research tend to suggest that the policy of openness with the press was one that was in force or not in force at the time?

A. I have no information about that at all.

MS SHARPLING: Thank you.

THE CHAIR: Thank you very much, Mr McGill.

MR ALTMAN: Chair, before Mr McGill goes, all I was going to do is point out that there is a document dated 21 May 1998, and we don't need to bring it up, but the reference is GMP001129 at page 1, which was the file that went from Detective Superintendent Stelfox on 21 May 1998 to the Branch Crown Prosecutor for him to give the advice that culminated in the document of 17 June 1998 which we looked at. What that tends to indicate, where he says "Attached is the file of evidence we discussed the other day", and Stelfox was of the Greater Manchester Police, that if Lancashire Constabulary had the file, they must have passed it or it went to or became encompassed by Greater Manchester Police. They simply sent it to the CPS, and that appears to be the means by which the CPS came into possession of the file. That's all I have to say.

THE CHAIR: Thank you, Mr Altman. Thank you again, Mr McGill. You have been here for quite a while. Thanks for your appearance.

A. Thank you.

THE CHAIR: We will reconvene tomorrow at 10.30 am. Thank you.

(4.33 pm)

(The hearing was adjourned to Thursday, 12 October 2017 at 10.30 am)
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