

GREATER MANCHESTER POLICE

MEMORANDUM

From: Detective Superintendent Stelfox
Operation Cleopatra
Tel. DPA

Peter Watson
To: Branch Crown Prosecutor, Rochdale.

Our Reference:

Your Reference:

21 May 1998

Re: Cyril Smith.

Attached is the file of evidence we discussed the other day.

It is the same file as considered by the DPP in 1970, with the addition of a statement by the Rev. Potter, which was amongst the papers we uncovered but which does not appear to have been part of the original file

I would be obliged if you could read it with a view to offering an opinion as to whether there is sufficient evidence to support a prosecution, assuming of course that those who made complaints in the 1960's still wish to pursue them, and also if a prosecution would be viable in light of the DPP's original decision.

If you telephone me when you have had a chance to consider the above we could perhaps arrange to meet to discuss how to proceed.

DPA

Peter Stelfox
Detective Superintendent

STATEMENT OF WITNESS

(C.J. Act 1967, ss. 2, 9; M.C. Rules 1967, r.7.)

STATEMENT OF (name of witness) THE REVEREND GEORGE KOSZELSKI ST. JOHN POT

Age of witness 47 YRS. Tel. No. DPA

Occupation of witness SCHOOL TEACHER

Address DPA

Dates not available

STATES:

I reside at the above address and I am at present employed as the Head of the Religious Education Department at The Harris Church England High School, Rugby.

Between September 1956 and October 1962 I was Vicar of St. Aidans Church, Rochdale, and I resided in the Vicarage, Manchester Road, Rochdale. Whilst I was living there I took an active part in youth work. I was a member of the Rochdale Borough Youth Committee 1957 until I left Rochdale.

Whilst serving on this Committee a number of people concerned with youth work in the Town proposed that a Hostel for youths living lodgings be opened. A Committee was formed of which I was one of the founder members. Alderman Cyril SMITH was also a founder member. As far as I can remember The Hostel was opened in the Spring of 1959 or 1960. It was called the Cambridge House Hostel, Castlemere Street Rochdale. I remained on the Committee which ran the Hostel from the time it opened until the time I moved from Rochdale. Alderman Cyril SMITH was also on the Committee. He took a very active part on the Committee and as far as I can recollect he was Chairman throughout this time.

This statement (consisting of pages each signed by me), is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the day of 19

Signed

Officer Recording

STATEMENT OF WITNESS - CONTINUATION SHEET

He was certainly not responsible for medical examination of residents at the Hostel beyond keeping a fatherly eye on general health, i.e. their general cleanliness and well being. As far as discipline was concerned he was not given permission by the Committee to punish the boys beyond the normal administration of general punishment administered by parent or guardian. He was certainly not given permission to cane or spank the boys.

This statement (consisting of 2 pages each signed by me), is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 9th day of March, 1970.

Officer Recording G.L. LEWIS

Signed

DPA

/BAH.

ADVICE

CYRIL SMITH

06/03/1992

MAGISTRATES COURT
MINUTE SHEET

(JESSE BRADSHAW)

OUT OF COURT WORK CONT.

Date	Details	Initials
29/12	File advised by hand by DS Brian Skill	Rm
16/1/92	Meeting with C. Baker	
3.30	1. Discussed my draft advice to police	
4.30 pm	2. CB agreed with my conclusions	
	3. He suggested that I spoke to Chris Enzer at HQ (York) as a matter of courtesy to explain that I was going advice to the police, ask whether they wish to be involved, since HQ had queries against advice in 1970s	Rm
17/1	TC to Chris Enzer	
	1. Explained the background, the content of my advice	
	2. No need to refer to HQ	Rm
17/1	TC to Det Supt Skelton	
	1. Advised him of my conclusions, that my advice was ready for circulation	
	2. He had readily accepted my conclusions	
	3. I explained to him what I meant by 'fuller advice' which just over the doctrine of legitimate expectations - ie advice to support existing complaints, not new advice from new complainants	
	4. If he wants a conference held very soon let us know.	Rm Pto

MINUTE SHEET

OUT OF COURT WORK CONT.

Date	Details	Initials
17/6	TC to DC Aileen Smith DPA left message on answering machine for her to contact me to arrange collection.	Rv
17/6	TC from DS Brian Tall Hill visit by Aline on 18/6	Rv
(18/6	DS Tall visited Aline	Rv

DRAFT ADVICE

1. I have now considered the case papers relating to the investigation conducted by the police in 1970. I note that all the complainants were, at the relevant time, teenage boys aged 15 or 16 years and all vulnerable to the extent that they were living away from home in the Hostel named or dependent upon S, either for employment or financial or quasi parental support.
2. All those complainants who were housed at the Hostel complained of virtually the same type of indecent misconduct and relate virtually the same pretexts for that misconduct, namely medical examination and punishment for misbehaviour. I note that not one of them goes beyond suggesting anything other than the physical handling of the genitalia. In other words, there is no suggestion of masturbation of them. In each case S invited them to drop their trousers and underpants and each of them complied with that request. There is no suggestion that he interfered with their clothing in any way and all the misconduct occurred in the "quiet room".

The complaints with regard to the sexual misconduct arising from "punishment" is a highly unusual feature of the case in so far as it is alleged that he spanked the bare buttocks of 15 year old and 16 year old boys whilst they were voluntarily lying across his knee. The complainants are consistent in their accounts of what he did to them.

3. Of the Cambridge House complainants only [RO-A49] complained but regrettably nothing happened. The others were either too frightened or did not know how or to whom to complain. Although none of them say so, I rather suspect that those who complained of "punishment" were probably too embarrassed to admit to anyone that they had allowed S to punish them in the way described.

Of the non Cambridge House residents, [RO-A51] complained to his parents but only after their suspicion had been aroused and after questioning him. Again, nothing came of the "complaint".

It is perhaps understandable having regard to the physical size of S, his position of authority at the Hostel and within the town that each of them failed to complain. Was their word likely to be accepted against his, having regard to his "good work" with the children of the town.

It seems to me that each of the complainants has a very good reason for failing to complain or pursue an initial complaint against him.

4. I accept that there is no corroboration of the accounts of each of the boys but that is to be expected in the circumstances. Each of the acts complained of took place behind closed doors, in private and to which there were no eye witnesses. The absence of corroboration is always a problem in cases such as these but in my view should not necessarily preclude prosecution.
5. I have considered whether there has been a conspiracy between the boys to complain against S but I am satisfied that there is little or no evidence of this. In fact, S

himself does not appear to be suggesting that any such conspiracy existed. It appears that the complaints were made one by one as the investigation proceeded and it was only when the police had begun their investigation that accounts were sought out. The statements were made some years later in circumstances which made it entirely clear that there was no conspiracy.

6. It is not entirely clear to me how the misconduct complained of initially came to the notice of the police. I understand that [RO-A48] made his first statement on 10th October, 1969. I have also noted that on 14th November, 1969 he was placed on probation for a period of two years for an indecent assault upon a boy aged 11 years. According to the covering report, the police enquiry was not instituted until 10th October, 1969 following the arrest of [RO-A48]. I assume, therefore, that he volunteered information to the police during the course of the investigation into his activities, which resulted in him being charged with indecent assault. Thereafter, I assume that the mention of names by him led to others being interviewed and requested to make statements.
7. Many of the complainants had convictions recorded against them at the time of the alleged misconduct and had further convictions recorded against them before they made statements to the police. In that respect I accept that their accounts would have been open to challenge on the basis of their character. However, the existence of convictions does not necessarily mean that each of them was not telling the truth. Any such suggestion can be countered by the fact that the prosecution case is not founded upon a single assertion by a single complainant but by eight separate complainants giving virtually the same account. I think it is also significant that the nature of the complainants from those not residing at Cambridge House namely [RO-A51] and [RO-A67] are similar to those made by those residing there but the alleged misconduct has been adapted to their situations. In other words there were no "medicals" for them. In the case of [RO-A67] it was the touching of the naked stomach to check his breathing and the "punishment" of [RO-A51] for his misbehaviour.
8. S's response to the accusations made is by no means convincing. He simply made a general sweeping response that he had never behaved in any indecent way to any of them. Significantly, he has not addressed the specific misconduct, attributed to him by each of the boys effectively he has exercised his right to silence. Regrettably, however, no inference can be drawn from that.
9. I have arrived at the firm view, having regard in particular to the number and nature of the complaints and how they came to be made, that there would be a realistic prospect of conviction in respect of a number of indecent assaults. I accept that when the advice was given in 1970, reservations were expressed as to this prospect because of the lack of corroboration, the lapse of time between the alleged offences and the timing of the complaints and the character of some of the complainants. However, I am conscious, as I have said earlier, that corroboration is very often not available to support misconduct of the type complained of. The lapse of time is no longer as important as it was. A lapse of five or six years would not automatically preclude proceedings. Furthermore, there has been a marked change of attitude in the criminal justice system towards cases of this kind in which those in positions of authority have taken advantage of it to commit offences on a wholesale basis against those who are

vulnerable and in their care. I have already mentioned that each of the complainants with convictions would be open to challenge on their accounts but I hold to the view that they are reliable in terms of consistency of account, which cannot be explained by contamination or conspiracy.

10. Should proceedings be instituted against S now? It is not entirely clear to me the circumstances in which the investigation has been resurrected but I understand that one of the complainants has come forward in response to a general invitation to do so.

I note that S was seen by Detective Superintendent Leach on 25th March, 1970 and advised that "it was not intended to take any further action in this matter". It follows that he has relied upon what he was told then for something in the region of 27 years. There is, of course, a general presumption that once a defendant or suspect has been informed of a decision not to prosecute, that decision should not normally be revoked. This doctrine of legitimate expectation must be balanced against the principle that in certain, very limited circumstances the maintenance of public confidence in the criminal justice system may demand the institution of proceedings against someone who has previously been advised that proceedings would not be instituted.

I emphasise the words very limited circumstances because they are normally restricted to cases in which it is appropriate to institute proceedings because fresh evidence affecting the case has come to light after the decision not to institute proceedings has been taken. In the instant case, I have not been apprised of any further evidence and I rather suspect that there is none.

Secondly, it might be appropriate to institute proceedings because there are "special circumstances", suggesting that proceedings should be instituted to maintain public confidence. Do such special circumstances exist in this case? I accept that if the accounts of the complainants are true and accurate then each of them may well have experienced feelings of disillusionment and frustration that the perpetrator of the indecent acts towards them has not been prosecuted despite a full scale police investigation some five years after the event and when they have fully co-operated by providing detailed witness statements. However, some 30 years have now elapsed since the misconduct took place, the alleged perpetrator is now almost 70 years of age and each of the complainants is now 50 years of age or thereabouts. I expect that many of the complainants will have families of their own. Whilst there may be a realistic prospect of a conviction in respect of one or more offences there is no guarantee of a conviction. Nor is there a guarantee that any or all of the identified witnesses would be willing or able to give evidence.

If a decision was reached to institute proceedings then the prosecution would undoubtedly face legal argument from the defence to the effect that it would be an abuse of the process of the court to allow the prosecution to continue with its case. There is a clear line of authority that the prosecution of a person who has received an undertaking, promise or representation from the police that he would not be prosecuted is capable of amounting to such an abuse. Obviously, the greater the period of time that has elapsed since such an undertaking, promise or representation has been made the greater the likelihood that a court would find that an abuse has

occurred. My own view in this case, is that the defence would be more likely than not to be successful in such an argument.

11. 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 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. However, the prosecution of the case would not be an easy one having regard to the background of the complainants and the lack of corroboration.

Despite that prospect, it would not be appropriate to institute proceedings for two reasons. First, S is entitled to rely upon the doctrine of legitimate expectation that he will not be prosecuted. His expectation is strengthened by the lapse of 27 years. That expectation cannot be effectively overturned by resort to "special circumstances" suggesting that proceedings should be instituted to maintain public confidence in the criminal justice process.

Finally, any institution of proceedings would be challenged by the defence resorting to abuse of process arguments, which in my view, are likely to be successful.

I am content to discuss with you the contents of this advice as agreed.

PL Watson
Branch Crown Prosecutor

10th June, 1998

CROWN PROSECUTION SERVICE

MINUTE

TO: MR C BARKER
ACCP
SUNLIGHT HOUSE
MANCHESTER

OUR REF: PLW.AB.

RE: ADVICE REQUESTED IN RESPECT OF "ROCHDALE SUSPECT"
URN NO: 06/P3/A930

1. Thank you for seeing me yesterday to discuss my advice to the police in respect of the above mentioned case.
2. Since speaking to you I have spoken with Chris Enzor at CPS Headquarters at York and advised him, as a matter of courtesy, of the fact that I was submitting an advice to the police and the brief details of its contents. He informed me that it was not necessary to refer the matter to Headquarters.
3. I have spoken by telephone with Detective Superintendent Stelfox yesterday and summarised the contents of my advice. It was clear that he had anticipated much of what I proposed to say. Whilst I offered him the opportunity to discuss any aspect of the case with him, he did not think, it would be necessary.
4. I now enclose a copy of my advice to him. You will note that it is an amended version of the draft which I showed to you. I have added to the draft by explaining what I meant by "further evidence" because he was concerned to know whether that would include the evidence of other complainants, who have not previously come to the notice of the police.
5. I suspect, from my conversation with him, that he will not proactively seek further complaints in view of the substantial period of time that has now elapsed since the incidents complained of took place. I expect that my advice will conclude the investigation into the suspect for all time.

PL Watson
Branch Crown Prosecutor
Rochdale
17th June, 1998

Tel No:

DPA

Fax No:

DPA

01/276 25242-16

CROWN PROSECUTION SERVICE

MINUTE

TO: DETECTIVE SUPERINTENDENT STELFOX
"OPERATION CLEOPATRA"

Our Ref: PLW.AB

RE: ADVICE REQUESTED IN RESPECT OF "ROCHDALE SUSPECT"
URN NO: 06/P3/A930 - "JEAN BROADBENT"

1. Further to our telephone conversation today I confirm that I have now considered the case papers relating to the investigation conducted by the police in 1970 in respect of the named suspect. In the interests of confidentiality I shall refer to the suspect as "S" in this minute. For the purpose of CPS records I have given the suspect the alias, Jean Broadbent.
2. I note that all the complainants were, at the relevant time, teenage boys aged 15 or 16 years and all vulnerable to the extent that they were living away from home in the Hostel named or dependent upon S, either for employment or financial or quasi parental support.
3. All those complainants who were housed at the Hostel complained of virtually the same type of indecent misconduct and relate virtually the same pretexts for that misconduct, namely medical examination and punishment for misbehaviour. I note that not one of them goes beyond suggesting anything other than the physical handling of the genitalia. In other words, there is no suggestion of masturbation of them. In each case S invited them to drop their trousers and underpants and each of them complied with that request. There is no suggestion that he interfered with their clothing in any way and all the misconduct occurred in the "quiet room".

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4. Of the Cambridge House complainants only [RO-A49] complained but regrettably nothing happened. The others were either too frightened or did not know how or to whom to complain. Although none of them say so, I rather suspect that those who complained of "punishment" were probably too embarrassed to admit to anyone that they had allowed S to punish them in the way described.

Of the non Cambridge House residents, [RO-A51] complained to his parents but only after their suspicion had been aroused and after questioning him. Again, nothing came of the "complaint".

It is perhaps understandable having regard to the physical size of S, his position of authority at the Hostel and within the town that each of them failed to complain. Was their word likely to be accepted against his, having regard to his "good work" with the children of the town?

It seems to me that each of the complainants had a very good reason for failing to complain or pursue an initial complaint against him.

5. I accept that there is no corroboration of the accounts of each of the boys but that is to be expected in the circumstances. Each of the acts complained of took place behind closed doors, in private and at a time when there were no eye witnesses. The absence of corroboration is always a problem in cases such as these but in my view should not necessarily preclude prosecution.
6. I have considered whether there has been a conspiracy between the boys to complain against S but I am satisfied that there is little or no evidence of this. In fact, S himself does not appear to be suggesting that any such conspiracy existed. It appears that the complaints were made one by one as the investigation proceeded and it was only when the police had begun their investigation that accounts were sought out. The statements were made some years later in circumstances which made it entirely clear that there was no conspiracy.
7. It is not entirely clear to me how the misconduct complained of initially came to the notice of the police. I understand that [RO-A48] made his first statement on 10th October, 1969. I have also noted that on 14th November, 1969 he was placed on probation for a period of two years for an indecent assault upon a boy aged 11 years. According to the covering report, the police enquiry was not instituted until 10th October, 1969 following the arrest of [RO-A48]. I assume, therefore, that he volunteered information to the police during the course of the investigation into his activities, which resulted in him being charged with indecent assault. Thereafter, I assume that the mention of names by him led to others being interviewed and requested to make statements.
8. Many of the complainants had convictions recorded against them at the time of the alleged misconduct and had further convictions recorded against them before they made statements to the police. In that respect I accept that their accounts would have been open to challenge on the basis of their character. However, the existence of convictions does not necessarily mean that each of them was not telling the truth. Any such suggestion can be countered by the fact that the prosecution case is not founded upon a single assertion by a single complainant but by eight separate complainants giving virtually the same account. I think it is also significant that the nature of the complainants from those not residing at Cambridge House namely [RO-A51] and [RO-A67] are similar to those made by those residing there but the alleged misconduct has been adapted to their situations. In other words there were no

"medical" for them. In the case of [RO-A67] it was the touching of the naked stomach to check his breathing and the "punishment" of [RO-A51] for his misbehaviour.

9. S's response to the accusations made is by no means convincing. He simply made a general sweeping response that he had never behaved in any indecent way to any of them. Significantly, he has not addressed the specific misconduct, attributed to him by each of the boys effectively he has exercised his right to silence. Regrettably, however, no inference can be drawn from that.
10. I have arrived at the firm view, having regard in particular to the number and nature of the complaints and how they came to be made, that there would be a realistic prospect of conviction in respect of a number of indecent assaults. I accept that when the advice was given in 1970, reservations were expressed as to this prospect because of the lack of corroboration, the lapse of time between the alleged offences and the timing of the complaints and the character of some of the complainants. However, I am conscious, as I have said earlier, that corroboration is very often not available to support misconduct of the type complained of. The lapse of time is no longer as important as it was. A lapse of five or six years would not automatically preclude proceedings. Furthermore, there has been a marked change of attitude in the criminal justice system towards cases of this kind in which those in positions of authority have taken advantage of it to commit offences on a wholesale basis against those who are vulnerable and in their care. I have already mentioned that each of the complainants with convictions would be open to challenge on their accounts but I hold to the view that they are reliable in terms of consistency of account, which cannot be explained by contamination or conspiracy.
11. My view as to the realistic prospect of a conviction is based upon the evidence at its highest. In other words, I have reached that conclusion on the basis that all the complainants would now be both willing and able to give evidence. Of course, only one complainant has resurrected his complaint out of eight and it may well be that some of the witnesses may no longer be alive. The strength of the evidence would diminish in direct proportion to the number of complainants willing and able to give evidence and the availability and willingness of other witnesses to give evidence.
12. Should proceedings be instituted against S now? It was not entirely clear to me in what circumstances the investigation has been resurrected but I now understand from you that one of the complainants has come forward in response to a general invitation to do so.

I note that S was seen by Detective Superintendent Leach on 25th March, 1970 and advised that "it was not intended to take any further action in this matter". It follows that he has relied upon what he was told then for something in the region of 27 years. There is, of course, a general presumption that once a defendant or suspect has been informed of a decision not to prosecute, that decision should not normally be revoked. This doctrine of legitimate expectation must be balanced against the principle that in certain, very limited circumstances the maintenance of public confidence in the criminal justice system may demand the institution of proceedings against someone who has previously been advised that proceedings would not be instituted.

I emphasise the words "very limited circumstances" because they are normally restricted to cases in which it is appropriate to institute proceedings because fresh evidence affecting the case has come to light after the decision not to institute proceedings has been taken. In the instant case, I have not been appraised of any further evidence and I rather suspect that there is none.

For the avoidance of doubt, I mean by the phrase "further evidence", further evidence in support of the eight complaints originally made and not further evidence in the sense of further complaints from further complainants.

Secondly, it might be appropriate to institute proceedings because there are "special circumstances", suggesting that proceedings should be instituted to maintain public confidence. Do such special circumstances exist in this case? I accept that if the accounts of the complainants are true and accurate then each of them may well have experienced feelings of disillusionment and frustration that the perpetrator of the indecent acts towards them has not been prosecuted despite a full scale police investigation some five years after the event and when they have fully co-operated by providing detailed witness statements. However, some 30 years have now elapsed since the misconduct took place, the alleged perpetrator is now almost 70 years of age and each of the complainants is now 50 years of age or thereabouts. I expect that many of the complainants will have families of their own. Whilst there may be a realistic prospect of a conviction in respect of one or more offences there is no guarantee of a conviction. Nor is there a guarantee that any or all of the identified witnesses would be willing or able to give evidence.

If a decision was reached to institute proceedings then the prosecution would undoubtedly face legal argument from the defence to the effect that it would be an abuse of the process of the court to allow the prosecution to continue with its case. There is a clear line of authority that the prosecution of a person who has received an undertaking, promise or representation from the police that he would not be prosecuted is capable of amounting to such an abuse. Obviously, the greater the period of time that has elapsed since such an undertaking, promise or representation has been made the greater the likelihood that a court would find that an abuse has occurred. My own view in this case, is that the defence would be more likely than not to be successful in such an argument.

I should add that if further complaints from further complainants were made then the prosecution would be faced with an abuse of process argument in respect of them on the basis of "staleness" and that the suspect could not have a fair trial because of the lapse of time between the misconduct alleged and the complaint.

13. 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 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. However, the prosecution of the case would not be an easy one having regard to the background of the complainants and the lack of corroboration.

Despite that prospect, it would not be appropriate to institute proceedings for two reasons. First, S is entitled to rely upon the doctrine of legitimate expectation that he will not be prosecuted. His expectation is strengthened by the lapse of 27 years. That expectation cannot be effectively overturned by resort to "special circumstances" suggesting that proceedings should be instituted to maintain public confidence in the criminal justice process.

Finally, any institution of proceedings would be challenged by the defence resorting to abuse of process arguments, which in my view, are likely to be successful.

14. I should inform you that I have discussed my conclusions with Clif Barker, the ACCP for CPS North West and, as a matter of courtesy, I have contacted CPS Headquarters Special Casework to inform them that I am providing this advice. They do not wish to become involved in the light of my conclusions.
15. I hope that I have dealt with all relevant issues and that my views are clear and well justified. However, as I explained to you by telephone, I am willing to discuss with you the contents of this advice or any other relevant issues which concern you.
16. I have not arranged for the case papers to be archived in the general archive system within my branch but retain them separately and stored them under lock and key in my own secure cabinet. I shall arrange for them to be shredded as confidential waste in twelve months time unless I hear from you again within that period of time.



*Spoken to 1510 12/2/99 x as per
Mr. Watson not to destroy.*

DPA

PL Watson
Branch Crown Prosecutor
Rochdale
17th June, 1998

Tel No:
Fax No: