

Investigation name:	Dr Shao Jiang
IOPC reference:	2016/061560

> Determinations and final outcomes

This document sets out final outcomes for each allegation, as well as the provisional and final determinations, with full rationales, that have led to these.

> Detective Superintendent 1

> Allegations and final determinations

It is alleged that that D Supt 1 may have breached the standards of professional behaviour.

1. It is alleged that D Supt 1 made the decision to arrest Dr Shao for Conspiracy to Commit a Section 5 Public Order Act offence. The rationale outlining this decision does not reflect the available evidence and indicates that there was insufficient evidence upon which to reasonably suspect a conspiracy and further indicates that D Supt 1 failed to understand and/or consider the necessary components of this offence. It is anticipated, based on D Supt 1's role and rank that they would understand the legislation in relation to a decision of this nature. When considering D Supt 1's decision and rationale, there is an indication that they failed to appropriately apply the relevant tests, perhaps knowingly and deliberately. This may amount to an abuse of authority.

No case to answer

2. It is further alleged that D Supt 1 used their written rationale to instruct other lower ranked officers to carry out the arrest of Dr Shao. It is relevant that this enabled officers to exercise search and seizure powers under section 18 PACE, available only when a person is under arrest for an indictable offence, and that D Supt 1 was aware of this. The exercise of these powers, as directed by D Supt 1, in these circumstances gives serious cause for concern, and there is an indication that this may have amounted to an abuse of authority.

No case to answer

> IOPC Decision maker's provisional opinions – 14 June 2018

“D Supt 1 made the decision to arrest Dr Shao and the two women for conspiracy to commit a Section 5 Public Order offence. There is evidence set out in the IOPC report which, in my opinion, a tribunal could find undermines the rationale they provided in their email for the arrest decision, including:

- D Supt 1 described Dr Shao being stopped from what appeared to be ‘*an attack of some kind*’ when CCTV actually showed Dr Shao walking slowly towards the path of the motorcade holding signs. It was recorded in the City of London Police CAD that apparently a demonstrator ran towards the motorcade. However, no reference was made to any attack.
- D Supt 1 described the two women being arrested in ‘*close proximity*’ at around the same time. The two females were, in fact, on a different road to Dr Shao.
- D Supt 1 stated the ‘*individuals acted together as a three*’. There is evidence that the three were acting in a similar way, namely all had entered the sterile area and moved to protest closer towards the motorcade. A criminal conspiracy requires a shared criminal purpose or design in which all have joined, rather than merely similar or parallel ones. It is not clear, in light of the evidence available, on what basis D Supt 1 formed the suspicion that the individuals acted together as a three for the purposes of a conspiracy.
- D Supt 1 described a ‘*pattern of behaviour by fixated determined individuals*’. The pattern of behaviour appears to be based on the following: Dr Shao had been forcibly moved in Whitehall earlier that day due to his behaviour. [Intelligence of previous similar behaviour by someone suspected to be Dr Shao and a suspected connection to one of the females arrested¹]. This provides evidence that the individuals arrested had behaved in similar ways previously and on one occasion a suspected but unconfirmed link had been made between Dr Shao and one of the arrested women. There is no evidence I have seen that all three had previously acted or conspired to act together. A tribunal may find that D Supt 1’s description was an exaggeration given the evidence that was apparently available to them at the time.
- D Supt 1 described the actions as ‘*clearly a pre-meditated action*’. Other than the evidence above, it is unclear on what basis this assessment was made.

“D Supt 1 stated they did not have the officer notes or CCTV at the time of making their arrest decision and noted that within this written arrest rationale. This may seem surprising given that this was a decision that had otherwise been subject to a high level of scrutiny, including seeking legal advice and consultation with at least one other senior

¹ Redaction necessary in the public interest.

officer. This was an uncommon offence to pursue with some experienced detectives questioning whether it was legal.

“Despite the IOPC investigation, it is still unclear how D Supt 1 had obtained the details about the events of 21 October 2015 in order to make their arrest decision, including the source, format and provenance of any information they received. No record was either made or retained which set this out.

“D Supt 1, when interviewed by the IOPC, was asked a number of questions about the detail and source of the information they relied upon in their arrest decision. D Supt 1 was asked:

- who informed them about the arrests, when, and what information they were given
- why D Supt 1 described the incident as an attack of some kind
- why D Supt 1 thought the individuals were acting together
- what led D Supt 1 to write *‘It appears that the male is acting together with two other females and that there is some collusion/conspiracy to carry out an act towards the Chinese President.’*
- why D Supt 1 thought the females were in close proximity
- why D Supt 1 thought there had been an agreement between them
- why D Supt 1 had written that they acted as a three and the evidence upon which they based this decision
- what evidence led D Supt 1 to conclude this was a pattern of behaviour by fixated determined individuals
- why D Supt 1 thought it was clearly a pre-meditated action

“D Supt 1 did not answer these questions during interview. D Supt 1’s account about their decision making was set out in a prepared statement, the detail of which is covered in the IOPC final report.

“The IOPC report summarises the importance of the Chinese state visit and some of the pressure placed on the policing operation, including ensuring the state visit ran smoothly and that embarrassment to the Chinese was avoided. In my view, a reasonable tribunal could find that, despite officer accounts that the event was policed like any other, this pressure may have influenced to some degree the decision to arrest Dr Shao and the two women for a conspiracy offence. Adding the conspiracy element made the offence indictable, enabled the suspects to be kept in custody while s.18 searches were carried out, allowed their communicating devices to be seized and bail conditions to be imposed. All these activities would have had the effect of limiting the suspect’s ability to protest during the remainder of the Chinese state visit. I have considered that Dr Shao and the

women could also have been bound over by the courts in respect of the breach of the peace offence had they considered that necessary to prevent any further breaches.

“However, that would have involved putting the matters before a court and it, not the police, would have made these decisions. A court may not have decided to restrict the movements of the individuals.

“In my opinion, given the available evidence, a reasonable tribunal could conclude that D Supt 1 was not diligent in the execution of their duties and responsibilities by failing to fully assess the available evidence, with reference to the necessary elements of the offence, in deciding to arrest Dr Shao and others for conspiracy to commit a Section 5 Public Order offence. Therefore, in my opinion, D Supt 1 has a case to answer for a breach of the professional standard relating to Duties and Responsibilities.

“In my opinion a reasonable tribunal could alternatively conclude, in the absence of any reasonable explanation for their provenance, that the detail in D Supt 1’s arrest decision about the events of that day was deliberately misleading or exaggerated, as opposed to being the result of a lack of diligence, misunderstanding as to what happened or what the law of conspiracy required. Therefore, in my opinion, D Supt 1 also has a case to answer for a breach of the professional standard relating to Authority, Respect and Courtesy and Honesty and Integrity.

“In assessing the severity of this alleged breach of the Standards of Professional Behaviour, I have had regard to the College of Police Guidance on outcomes in police misconduct proceedings. In assessing seriousness, consideration should be given to culpability, harm, aggravating factors and mitigating factors.

“**Culpability** – although others had involvement, D Supt 1 made the decision to arrest Dr Shao, stating, *‘Whilst this was in many ways a joint decision I take full responsibility for it in my role as Crime and Intelligence Coordinator on the day.’* D Supt 1 also made it clear in their arrest decision rationale email document that section 18 searches were to be carried out and also made representations to PACE Insp 3 to have Dr Shao’s PACE rights postponed. It appears to have been D Supt 1’s choice not to have viewed the CCTV or arresting officer’s notes and it is their interpretation of the other supporting evidence which may be considered exaggerated.

“**Harm** – As a result of the arrest, Dr Shao was kept in police custody, his home was searched, items were seized and he had bail conditions placed on him which restricted his movements – impacting directly on his ability to protest in the vicinity of the Chinese Premier. Both Dr Shao and his wife have stated that this incident has had a significant impact on them.

“**Aggravating factors** – I have considered whether abuse of trust, position, powers or authority applies or whether any lack of diligence may have been deliberate.

“As set out above, in the absence of an explanation as to the divergence between the circumstances set out within his arrest rationale and what had actually occurred, a

legitimate construction of the available evidence is that D Supt 1 deliberately exaggerated and misrepresented the case against Dr Shao and the two women.

“On the available evidence, a reasonable tribunal could, in my opinion, conclude that this was to justify an arrest for an indictable offence, enabling the police to restrict the movement of Dr Shao and the two women.

“**Mitigating factors** – I have considered the mitigating factor of acting pursuant to a legitimate policing purpose or in good faith, i.e. a genuine belief that there was a legitimate purpose but getting things wrong.

“This could apply if D Supt 1 had misunderstood the circumstances of the case or what the law of conspiracy required. However, this would be only one interpretation of the evidence in the case and it has not been put forward as an explanation by D Supt 1.

“This mitigating factor could also be considered for the more serious allegation that the evidence and circumstances of the case had been deliberately exaggerated, namely that any exaggeration was due to pressure being placed upon the police not to cause embarrassment to the Chinese government, or legitimate concerns about Dr Shao’s safety [detail of a concern mentioned by Silver²]. However, the police have stated their approach to the policing operation was not influenced by any external pressure and D Supt 1 did not make reference to any suspicion about [concern mentioned by Silver].

“Taking the above into account, in my opinion D Supt 1 has a case to answer for gross misconduct and should face a gross misconduct hearing.”

> **Appropriate Authority (Metropolitan Police) response – 13 July 2018**

“40. Detective Superintendent 1 was served notice with regards to the following allegations:

- D Supt 1 made the decision to arrest Dr Shao for Conspiracy to commit a Section 5 Public Order Offence;
- There is an indication there was insufficient evidence to reasonably suspect a conspiracy;
- D Supt 1 failed to either understand and/or consider the required components for this offence; and
- D Supt 1 instructed lower ranked officers to carry out the arrest for Dr Shao and directed them to exercise search and seizure powers under Section 18.

“41. I note from the IOPC report and evidence supplied that D Supt 1 emailed their decision to arrest Dr Shao and two females for Conspiracy to commit a Section 5

² Redaction necessary in the public interest.

Public Order (POA) offence to DS 21, DS 6, Bronze, DI 11, Gold and Silver at 19:47 hours on 21 October 2015.

- “42. D Supt 1 email outlines their decision was made at 18:30 hours and the aggravating factors which formed the basis of their decision were as follows:
- Individuals acted together as a three;
 - A pattern of behaviour by fixated determined individuals;
 - Clearly a pre-meditated action;
 - Unable to ascertain intent/threat without investigating conspiracy;
 - Convoy protected by firearms officers and putting aside the intended outcome, attacking/rushing a protected convoy presents a number of threats to the suspects, the police officers, to the principles *[sic]* and the public.
- “43. D Supt 1 decision also outlined Dr Shao’s actions from earlier that day *‘this male had to be intercepted by a forward police motorcycle outrider who jumped off his motorbike in order to stop what appeared to be an attack of some kind.’* D Supt 1 also wrote *‘around the same time two females were arrested in close proximity by other officers.’*
- “44. I note from D Supt 1’s response to caution paragraph 4 the words used were *‘Almost simultaneously two females were arrested in close proximity by other officers for breach of the peace, who the officers believed were in the process of, or about to rush the convoy in the same manner as Dr Jiang had.’* [Emphasis added]
45. “I have noted from D Supt 1’s response to caution paragraph 8 they stated, *‘Immediately intelligence was sought in relation to the three detained individuals once their details were made known to us and at 18:36 Bronze forwarded to me the research which had been requested in relation to them. I was also verbally briefed.’*
- “46. The IOPC report states *‘Given the timings set out in their email, it appears this information was sent to D Supt 1 after they had made their decision to arrest Dr Shao for Conspiracy to commit a Section 5 POA offence rather than before.’*
- “47. I have noted that [a DS] received the email with the related intelligence at 18:20 hours from the PSO Intelligence Officer. As D Supt 1 states, they also received a verbal briefing, which occurred *‘earlier on the 21 October 2015’*.
- “48. Public order events are dynamic and events unfold in extremely fast time. The Command Team are not solely making decisions about isolated incidents but the event as a whole, which in this case covered a large area. Decisions are required to be made to match the pace of the event. As such the recording of multiple decisions in the officers Decision Log may be delayed, with an explanation provided

as to why. D Supt 1 in their response stated that it was a difficult day, with protestors being quite visible and vocal.

- “49. D Supt 1 provides in their response to caution that they immediately sought intelligence of the arrested persons. Intelligence officers/staff are posted as dedicated staff to such events as the CSV to allow for quick time intelligence checks to be completed. This information would have been made available to D Supt 1 very soon after their request. As D Supt 1 states in their response they received a verbal briefing prior to receiving the email. Due to the nature of events and the pressures on the intelligence staff it is very likely that written confirmation of the intelligence passed to D Supt 1 would have come at a later time but as it is required for auditable purposes it is sent via such means to allow for this.
- “50. Further to this I have noted in the IOPC report that Bronze (formerly MPS but now serving with Hertfordshire Police) stated they were almost immediately aware of Dr Shao’s arrests for Breach of the Peace, as they were situated next to the intelligence unit who had a live stream of the event as it unfolded. At the time of the arrest, Bronze stated they did not feel there was sufficient for a Section 5 POA offence. However, [Bronze] states that, following the arrest, D Supt 1 involved themselves with the situation ‘[D Supt 1] *very much took it out of my hands and said leave it with me, I will sort this, I’ll come back to you.*’
- “51. Bronze stated it was their belief D Supt 1 sought advice from the MPS Department of Legal Services (DLS) as to the offence of conspiracy and that Bronze challenged D Supt 1 as to using this particular offence as it played into the hands of the press.
- “52. It is therefore reasonable to accept the intelligence was available to D Supt 1 prior to receiving the formal email as referred to in the IOPC report.
- “53. Additionally, whilst positioned in the Special Operations Room (SOR) the Command Team would be listening to all the working radio channels assigned to this event, in particular the flow of information from the Oracle Units (who are on the ground at the event and monitor and provide continuous feedback and intelligence relating to the event). The team also have immediate access to a bank a CCTV monitors providing live coverage of the event and have access to the staff and officers working in the PODs at SOR. These PODs are positioned just outside of the Command Team location in SOR to allow for the smooth transition of intelligence and information. Throughout public events officers and staff continuously communicate information relating to arrests, disturbances and other potential risks to the event, ensuring the Command Team are kept up to date as events occur.
- “54. The IOPC report makes reference to in paragraph 85 ‘*The CAD also includes a request from silver at 4.21pm requesting CCTV of Bank/Princess Street and Cornhill junction between the times 3.45pm and 4.10pm. The CCTV had not been collected by the MPS before 7.20pm, which is when the CAD finished.*’

- “55. This request would have been made to secure the evidence of any possible offences. Of note this was a MPS Command Team run operation for this aspect of the event held within the City of London police jurisdiction. Whilst it was a joint operation, protocols between the two forces are still required to be followed, such as requesting CCTV. If the request was made by Silver at 16:21 hours this would indicate the Command Team were aware/discussed possible offences relating to Dr Shao and the females. As stated above the Command Team have immediate access to numerous CCTV screens in the GX/SX suite at Lambeth SOR. Therefore it is reasonable for one or more of the Command Team and their support staff to have seen the incidents (including the arrests of the females) in live time. During public events such as this where a policing operation is in place, arrest of persons is fed back into the Command Team fast time as it is relevant and essential information to allow the team to judge the mood of the event and make future decisions in line with the National Decision Model (NDM).
- “56. This would account for the question raised in the IOPC report as to it being unclear how the level of information obtained by D Supt 1 was obtained as the City of London CAD (5733) contained limited information.
- “57. I have also noted that an email from [the IOPC Oversight Force Liaison for the MPS] sent on 15 November 2016 provides: *‘The DCI [D Supt 1] would have been in the control room at the time the alleged/suspected breach of the peace took place (committed by Dr Jiang). It was on the basis of what the DCI saw that action was taken.’*
- “58. In Paragraph 9 of their response, D Supt 1 states: *‘The verbal briefing included information that Dr Jiang had been forcibly moved earlier in the day on the 21st October due to concerns about his behaviour [and intelligence that would be relevant to his later decision to arrest Dr Shao for the conspiracy offence]³. I recorded these incidents at the time in my policy note on the 21st October 2015.’*
- “59. Paragraph 9 continues with: *‘the research emailed to me revealed other recorded intelligence [of previous similar behaviour by someone suspected to be Dr Shao and a suspected connection to one of the females arrested]⁴.’*
- “60. Paragraph 11, D Supt 1 states: *‘At that stage I became extremely concerned that it appeared that Dr Jiang and the females were known to each other, [and there was intelligence of previous similar behaviour]⁵. It has seemed to me that on this occasion, given that previous joint behaviour [REDACTED],⁶ the fact that they clearly knew each other, and the incidents involving them on this occasion had happened within seconds, there was clear evidence upon which I reasonably formed grounds to suspect that they had conspired together to carry out these unlawful acts and a breach of peace, prior to*

³ Redacted: disclosure of criminal intelligence could impact on effectiveness of policing future events.

⁴ Redacted: disclosure of criminal intelligence could impact on effectiveness of policing future events.

⁵ Redacted: disclosure of criminal intelligence could impact on effectiveness of policing future events.

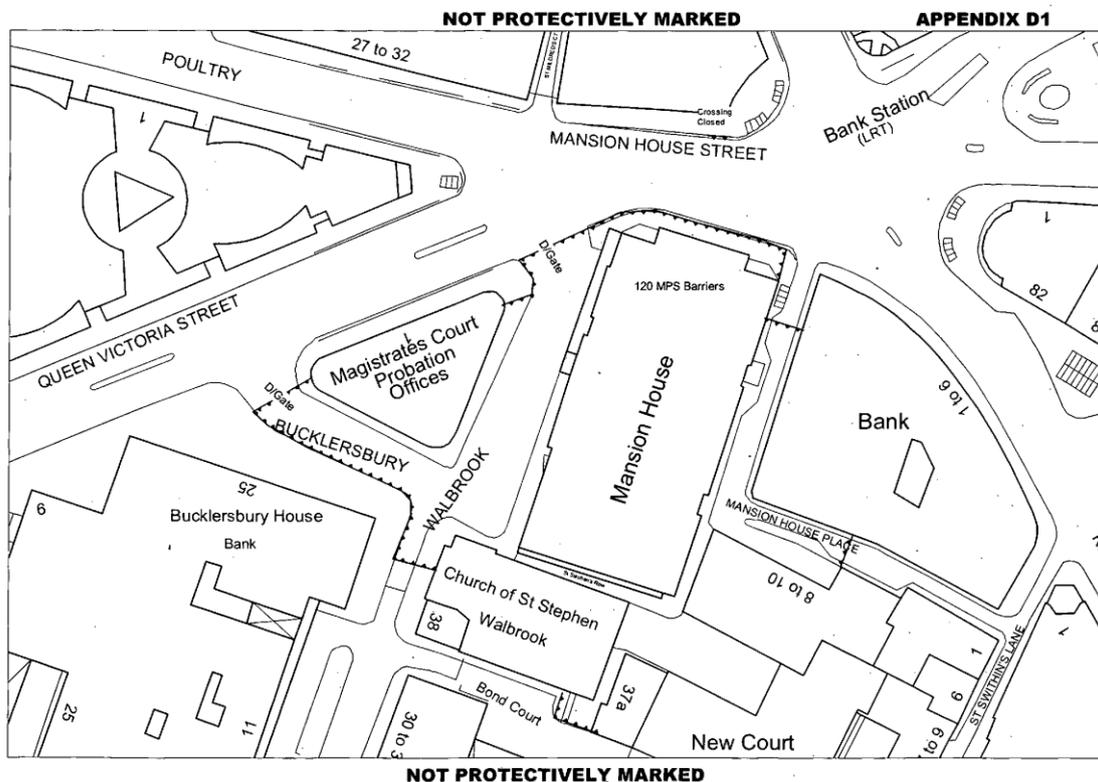
⁶ Redacted: disclosure of criminal intelligence could impact on effectiveness of policing future events.

arriving at the scene in the City where they occurred.’ [Emphasis added by Appropriate Authority]

- “61. Paragraph 12, D Supt 1 states: ‘*At this stage I had not seen the CCTV and did not have the notes of the officers who had arrested them.*’
- “62. Paragraph 13, D Supt 1 states: ‘*It seemed to me though, unequivocally, that an offence of conspiracy required investigation primarily with a view to (hopefully) eliminating the possibility that they either together had conspired to conduct themselves in this manner or more importantly and significantly, what part they might be of a larger group of those determined to either disrupt the visit of the Chinese President and continue with unlawful activity, that evening or thereafter. We did not know what the full intention of these individuals was, and therefore what would have happened if it were not for the quick actions of the police officers present.*’
- “63. Paragraph 24, D Supt 1 states: ‘*In an effort to ensure transparency and accountability around the decision that I had made, at 19:47 on the 21st October I sent an email to [Bronze]/[DS 21]/[DS 6] as well as [DI 11], [Gold] and [Silver].*’
- “64. Paragraph 26, D Supt 1 states: ‘*I believe the decision I made to have them arrested for the offence of conspiracy was reasonable, appropriate and proportionate, and lawful at the time. I believe that reasonable grounds existed upon which I formed and held an honestly held suspicion as to their potential involvement in that offence. I appreciate I was not required to have compelling evidence on any conspiracy, but simply the reasonable suspicion, which I had, to justify continuing with investigation into their conduct in this way, which is what then took place.*’ [Emphasis added]
- “65. Paragraph 27, D Supt 1 states: ‘*...The President was not leaving the United Kingdom until Friday, and therefore there would be further opportunity for those who wanted to either harm him or continue to disrupt his visit to do so and we were anxious to establish the level of concerted activity which the arrest of these three individuals represented.*’
- “66. Paragraph 28, D Supt 1 states: ‘*I made it clear what the expectation was in relation to that investigation and that the necessity to carry out the enquiry was based on the need for a prompt and effective investigation.*’
- “67. Paragraph 30, D Supt 1 states: ‘*I believe the decision to arrest Dr Jiang, and the two females, for conspiracy was appropriate, lawful and necessary one at the time. I did not need to “evidence the presence of an agreement” to legitimise that decision but simply have a reasonable held belief as to the situation and that is what I had and therefore I acted as I did.*’ [Emphasis added].
- “68. Paragraph 31, D Supt 1 states: ‘*Given that it appears to be conceded that Dr Jiang and the two females were engaging in “similar or parallel behaviours” I find it somewhat difficult to comprehend on what basis it is therefore not accepted that*

further enquiry in these particular circumstances as to whether or not there was any prior agreement between them to act in this or any other way, was reasonable. Only by investigating the situation could we establish a “shared purpose” that had been the subject of prior communication before their arrest. [Emphasis added].

“69. In a further response to caution D Supt 1 explained that whilst Dr Jiang and the two female were in a separate road to each other, the individuals were positioned in a major road junction. It was D Supt 1 belief at the time and remains so that Dr Jiang and [one of the females] were in close proximity to each other and in line of sight of one another. The two females were arrested in Queen Victoria Street, outside the Magistrates Court and Mr Shao was arrested outside Mansion House.



“70. I have reviewed the legislation relating to Section 5 Public Order Act and actions undertaken by Dr Shao. There is evidence from the officers’ arrest notes, witnessing officers and CCTV footage to support an offence under Section 5 Harassment, Alarm or Distress has been made out.

“71. A person is guilty of this offence if they use threatening or abusive words or behaviour, or disorderly behaviour, or displays any writing, sign or other visible representation which is threatening or abusive, within the hearing or sight of a person likely to be caused harassment, alarm or distress.

“72. Dr Shao climbed over a barrier and entered a sterile area, not open to members of the public, and stood in the road holding up two signs as the Chinese President’s

motorcade approached. It would therefore be reasonable to believe this offence has been made out.

“73. PC 13’s statement further supports this evidence as the officer wrote ‘*I formed an initial threat assessment that he was running at the principle [sic]*’ and ‘*I feared he would either go under the principle [sic] vehicle or attack it.*’

“Section 1 Criminal Law Act 1977 states:

“74. If a person agrees with any other person or persons that a course of conduct shall be pursued, which if the agreement is carried out in accordance with their intentions either will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement or would do so but for the existence of the facts which render the commission of the offence or offences impossible would be guilty of conspiracy to commit the offence in question.

“PACE Code G states

“75. This Code of Practice deals with the statutory power of police to arrest a person who is involved, or suspected of being involved, in a criminal offence.

“76. The use of the power must be fully justified and officers exercising the power should consider if the necessary objectives can be met by other, less intrusive means. Absence of justification for exercising the power of arrest may lead to challenges should the case proceed to court.

“77. Section 24 of the Police and Criminal Evidence Act 1984 (as substituted by section 110 of the Serious Organised Crime and Police Act 2005) provides the statutory power for a constable to arrest without warrant for all offences.

“78. A lawful arrest requires two elements: (1) A person’s involvement or suspected involvement or attempted involvement in the commission of a criminal offence; AND (2) Reasonable grounds for believing that the person’s arrest is necessary.

“79. A constable may arrest without warrant in relation to any offence anyone:

- who is about to commit an offence or is in the act of committing an offence;
- whom the officer has reasonable grounds for suspecting is about to commit an offence or to be committing an offence;
- whom the officer has reasonable grounds to suspect of being guilty of an offence which he or she has reasonable grounds for suspecting has been committed;
- anyone who is guilty of an offence which has been committed or anyone whom the officer has reasonable grounds for suspecting to be guilty of that offence.

- “80. There must be some reasonable, objective grounds for the suspicion, based on known facts and information which are relevant to the likelihood the offence has been committed and the person liable to arrest committed it.
- “81. Of note whilst officers must meet the required threshold with regards to reasonable grounds, it remains a low threshold in comparison to areas which are beyond reasonable doubt.
- “82. For a constable to have reasonable grounds for believing an arrest is necessary , they are not required to be satisfied there is no viable alternative but that the arrest is practical, sensible and a proportionate option in all the circumstances.
- “83. *‘Code G does not draw distinction between dynamic decisions such as those made by an incident response officers without the benefit of all available information and decisions on necessity to arrest based on the result of further investigation. The emphasis is on the circumstances existing at the time of the decision...’* ACPO position statement: Necessity to Arrest 2012.
- “84. D Supt 1 has provided in their response that they made their decision on the information they had available to them at that time. This is in accordance with the NDM.
- “85. D Supt 1 states that they were at Lambeth SOR with [Gold] and [Silver]. Following the arrest of Dr Shao D Supt 1 discussed the situation with Silver and *‘It was agreed that we should look into whether or not this was a pre-planned act arising out of a conspiracy to disrupt the visit.’* The outcome of the discussion was a decision to inform the officers at Bishopsgate Police Station to further arrest Dr Shao for the offence of Conspiracy to commit S5 POA. Consultation is considered best practice and again conforms to the NDM.
- “86. I have noted D Supt 1 has stated *‘Whilst this was in many ways a joint decision I take full responsibility for it in my roles as Crime and Intelligence Coordinator on the day’*”
- “87. I also acknowledge D Supt 1 was under the impression Gold and Silver had also recorded this as a joint decision in their personal decision logs.
- “88. I have taken into account D Supt 1’s prepared statement as set out in paragraph 99: *‘I stand by the content of my document created on 21st October 2015 and the subsequent Briefing Note on the 28th October 2015. Both [Silver] and I had agreed that there were sufficient grounds to investigate the offence of conspiracy and we both felt that action to be proportionate, necessary and legitimate in the circumstances. It remains my honest held belief that honest actions taken by my colleagues that day were correct. We were amongst a number of police officers doing their very best around a difficult, fast-moving, multifaceted and very large armed policing operation, involving sensitive and complex issues around threat and*

security. The investigation that was carried out was thorough but proportionate, and following the seizure of items a graduated approach was taken.'

"89. D Supt 1 also provide further explanation in their response regarding who was aware of the level of detail of the conversations held between [Gold], [Silver] and D Supt 1: *'I would like to add as well that previous references I have made to conversations I had with Silver relating to numerous serious security concerns, and human rights obligations that we were managing, include conversations which I shared with Gold and Silver but which would not have been shared with or come to the attention of officers from the Crime Team such as [Bronze, DS 6 and DC 7]. They were not aware of the threats which I referred to in those conversations and I cannot elaborate on here. The decision to broaden the investigation relating to the three individuals who were arrested on 21 October 2015 was taken at a senior level, where a wider strategic view of the potential ongoing threats was obviously clearest.'* [Emphasis added].

"90. I have taken into consideration the IOPC Decision Maker's opinions relating to D Supt 1 and have noted the following points.

"91. The IOPC Decision Maker's opinion is that D Supt 1 has breached the standards of professional behaviour for:

Authority, respect and courtesy regarding there being:

- Insufficient evidence to reasonably suspect a conspiracy;
- D Supt 1 failed to understand and/or consider the necessity components of this offence;
- Based on their rank and role D Supt 1 would understand the legislation.
- There is an indication D Supt 1 failed to apply the appropriate tests knowingly and deliberately.
- This may amount to an abuse of authority

"92. The IOPC Decision maker refers to D Supt 1 describing *'Dr Shao being stopped from what appeared to be "an attack of some kind" when CCTV actually showed Dr Shao walking slowly towards the path of the motorcade holding signs. It was recorded in the City of London Police CAD that apparently a demonstrator ran towards the motorcade. However, no reference was made to any attack.'*

"93. I note however that Dr Shao jumped over police barricades into a sterile area prohibited for members of the public to enter due to the concerns about possible attacks on the Chinese Presidents convoy, this in itself is an aggressive action and not a peaceful action. D Supt 1 was not the only officer who feared Dr Shao's actions were an attack on the convoy. PC 13 wrote, *'I formed an initial threat*

assessment that he was running at the principle [sic] and 'I feared he would either go under the principle [sic] vehicle or attack it'.

- "94. It is therefore reasonable that, until the facts are fully investigated, by means of an interview with Dr Shao, it would not be known by any officer as to what his intentions were and that he could have intended to attack by means of an aggressive action the convoy and those within it. Therefore to describe this as an attack based on the circumstances known to D Supt 1 at that time was reasonable.
- "95. The IOPC Decision maker refers to D Supt 1 as describing the two females being arrested in '*close proximity*' at around the same time. The two females were, in fact, on a different road to Dr Shao.
- "96. As set out in paragraph 55 and the map above, whilst Dr Shao and the two females were in a separate road to each other, the individuals were positioned in a major road junction in close proximity to each other and in line of sight of one another. The two females were arrested in Queen Victoria Street, outside the Magistrates Court and Mr Shao was arrested outside Mansion House. Therefore D Supt 1 is correct in stating the three individuals were in close proximity to each other and able to work together. There *[sic]* actions and subsequent arrests occurred at similar times to Dr Shao's actions and subsequent arrest. It is therefore reasonable for D Supt 1, based on the information they had at that time, to make the conclusions they did.
- "97. The IOPC Decision maker refers to D Supt 1 as describing the '*individuals acted together as a three*' but that '*It is not clear, in light of the evidence available, on what basis D Supt 1 formed the suspicion that the individuals acted together as a three for the purposes of a conspiracy.*'
- "98. D Supt 1 has provided a response to this area of the investigation based on intelligence reports they received and as set out in their email to the arresting officers. D Supt 1 has also explained that they believed '*there were sufficient grounds to investigate the offence of conspiracy and we [with Silver] both felt that action to be proportionate, necessary and legitimate in the circumstances*' and that '*I did not need to "evidence the presence of an agreement" to legitimise that decision but simply have a reasonable held belief as to the situation and that is what I had and therefore I acted as I did.*' Additionally, '*Given that it appears to be conceded that Dr Jiang [Shao] and the two females were engaging in "similar or parallel behaviours" I find it somewhat difficult to comprehend on what basis it is therefore not accepted that further enquiry in these particular circumstances as to whether or not there was any prior agreement between them to act in this or any other way, was reasonable. Only by investigating the situation could we establish a "shared purpose" that had been the subject of prior communication before their arrest.*'
- "99. It is the opinion of the IOPC Decision Maker that '*There is no evidence I have seen that all three had previously acted or conspired to act together. A tribunal may find*

that D Supt 1's description was an exaggeration given the evidence that was apparently available to them at the time.'

- "100. As set out by the Decision Maker, '[D Supt 1] described a "pattern of behaviour by fixated determined individuals".' The pattern of behaviour appears to be based on; Dr Shao had been forcibly moved in Whitehall earlier that day due to his behaviour; [intelligence of previous similar behaviour by someone suspected to be Dr Shao and a suspected connection to one of the females arrested]⁷. This provides evidence that the individuals arrested had behaved in similar ways previously and on one occasion a suspected but unconfirmed link had been made between Dr Shao and one of the arrested women.
- "101. As set out above in paragraph 83 D Supt 1 has outlined their rationale for stating in their belief there was a pattern of behaviour sufficient to warrant an arrest for conspiracy.
- "102. The IOPC Decision Maker has referenced their concerns regards D Supt 1 not having the officer notes or CCTV at the time of making their arrest decision and noted that within this written arrest rationale. Additionally their concerns as to how D Supt 1 had obtained the details about the events of 21 October 2015 in order to make their arrest decision, including the source, format and provenance of any information they received.
- "103. These has [*sic*] concerns has [*sic*] been addressed above in paragraphs 34 to 54.
- "104. The IOPC Decision Maker has also referenced in their report that in their opinion *'the detail in D Supt 1 arrest decision about the events of that day, was deliberately misleading or exaggerated, as opposed to being the result of a lack of diligence, misunderstanding as to what happened or what the law of conspiracy required. Therefore, in my opinion, [D Supt 1] also has a case to answer for a breach of the professional standard relating to Authority, Respect and Courtesy and Honesty and Integrity.'*
- "105. The test regarding honesty is set out under Ivey V Gentling Casinos 2017 and states the actual state of the person's knowledge or belief as to the facts must be ascertained. There is no additional requirement for the belief to be reasonable but that they were genuinely held at that time. The question of whether the person's conduct was honest or dishonest is based on the objective standards of an ordinary decent person. There is no requirement that the person must appreciate that what they have done is, by those standards, dishonest. The burden of proof placed on the AA taking cases to misconduct hearings is that D Supt 1 did know that their decision to further arrest for conspiracy was wrong and that by the standard of an ordinary person D Supt 1 was dishonest.

⁷ Redacted: disclosure of criminal intelligence could impact on effectiveness of policing future events.

“106. It is my belief as the Appropriate Authority the IOPC investigation has not provided sufficient evidence to support a breach of Authority, Respect and Courtesy and Honesty and Integrity.

DETERMINATION SUMMARY

“141. It is my determination a reasonable panel could not conclude there is sufficient evidence of a departure from the Standards of Professional Behaviour that gross misconduct proceedings would be justified in relation to Authority, Respect and Courtesy and Honesty and Integrity. It is my determination there are no performance matters identified.

“142. I propose to take no further action regarding these allegations.”

> IOPC Decision maker’s response to the Appropriate Authority and final determination – 25 September 2018

“I have now considered your memorandum in respect of D Supt 1 and it is my view that your proposals for action are appropriate.

“I set out in my provisional case to answer opinion that there was sufficient evidence on which a reasonable tribunal could find that that D Supt 1 had exaggerated or misrepresented the available evidence in support of their arrest rationale for Dr Shao, namely:

- That Dr Shao had been stopped from what appeared to be ‘*an attack of some kind*’.
- The two females being arrested in ‘*close proximity*’.
- The ‘*individuals acted together as a three*.’
- Describing a ‘*pattern of behaviour by fixated determined individuals*’.
- Describing the actions as ‘*clearly a pre-meditated action*’.

“Whilst the choice of the word ‘attack’ could be construed as unnecessarily prescriptive, the context was that Dr Shao had jumped over a barrier into a sterile police-controlled area as part of a protest as the motorcade approached. I accept that this could reasonably be construed as a situation which created a risk and a potential threat. I also acknowledge that PC 13 wrote, ‘*I feared he would either go under the principle [sic] vehicle or attack it*’ – it appears both PC 13 and D Supt 1 reached this view independently, given that D Supt 1 stated that they did not read any of the officer’s notes (and there is no evidence to suggest that D Supt 1 had). In all of the circumstances, I do not think that a misconduct panel could draw negative inferences – namely deliberate exaggeration – from the use of the word ‘attack’.

“In relation to the phrase, ‘close proximity’, I accept that, although Dr Shao and the two women were on separate roads, given the open layout of the location on a large junction it is not necessarily inaccurate for D Supt 1 to state that they were in ‘*close proximity*’. At the time of the Chinese state visit there were many protesters gathered around the junction, outside of the sterile area – this may have impacted on whether the women arrested could have had direct line of sight of Dr Shao. However, in my opinion a panel could not infer deliberate exaggeration or an intention to mislead based upon the phrase used by D Supt 1 in their arrest rationale.

“In assessing D Supt 1’s reference to ‘*individuals acted together as a three*’, I agree with the appropriate authority that it is important to recognise that the threshold for reasonable suspicion is low:

Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking; “I suspect but I cannot prove”. Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage. It is indeed desirable as a general rule that an arrest should not be made until a case is complete. But if an arrest before that were forbidden, it would seriously hamper the police ...

Their Lordships have not found any English authority in which reasonable suspicion has been equated with prima facie proof. In Dumbell –v- Roberts [1944] 1 All ER 326 Scott LJ said at page 329:

“The protection of the public is safeguarded by the requirement ... that the constable shall before arresting satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt. That requirement is very limited. The police are not called upon before acting to have anything like a prima facie case for conviction....”

There is another distinction between reasonable suspicion and prima facie proof. Prima facie proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all.....Suspicion can also take into account matters, which, although admissible, could not form part of a prima facie case. Thus the fact that the accused has given a false alibi does not obviate the need for prima facie proof of his presence at the scene of the crime; it will become of considerable importance in the trial when such proof as there is is being weighed against the alibi. It would undoubtedly be a very suspicious circumstance.⁸

“Taking into account the above definition of reasonable suspicion, I have reflected and acknowledge that D Supt 1 did not require prima facie proof of a shared design in order to satisfy the test for reasonable suspicion of a conspiracy. In my view, the fact that all three were acting in a similar way at the same time would have been sufficient particularly where there was also intelligence to indicate a potential link between the

⁸ Hussein –v- Chong Fook Kam [1970] AC 942 at page 948 B
Dr Shao Jiang – Determinations and final outcomes

parties. Therefore, there is insufficient evidence on which a reasonable tribunal could draw the adverse inference that D Supt 1 deliberately exaggerated or misrepresented the situation or that D Supt 1 did not have the requisite reasonable suspicion for the arrest. In assessing D Supt 1's reference to '*a pattern of behaviour by fixated determined individuals*' I referred to there being no evidence that all three had previously acted or conspired together. On reflection, as above, it is necessary to recognise that reason to suspect is a low threshold and actual evidence of this was not necessarily required in order for D Supt 1 to form a reasonable suspicion.

"D Supt 1's reference to '*clearly a pre-meditated action*' does, in my view, appear to overstate the position and D Supt 1 did not set out in the arrest rationale why they suspected that the actions were pre-meditated. However, poor or even careless phrasing is to be distinguished from deliberate exaggeration. There may be learning for D Supt 1 from this case concerning the need for careful language in their recording of decisions and I would be grateful for the appropriate authorities' view on this⁹.

"There is an apparent discrepancy between the fact that D Supt 1's 7.47pm email records the arrest decision as being taken at 6.30pm but the intelligence was not emailed by Bronze to D Supt 1 until 6.36pm. I have again reflected and for the reasons given below I do not consider that this apparent anomaly, by itself, is sufficient to find a case to answer for misconduct.

"D Supt 1 has stated that they received a verbal intelligence briefing in addition to the email from Bronze. However, in the first Response to Caution D Supt 1 appears to suggest that the verbal briefing related to Dr Shao's earlier movements the previous day and the man-marking, whereas the research emailed related to the intelligence. In D Supt 1's second Response to Caution D Supt 1 describes being '*briefed by BX Intel*'. Silver's Response also refers to them being shown an intelligence document although Silver does not provide specific timings.

"I am conscious that, should this matter go before a misconduct panel, the panel would need to infer deliberate and dishonest ex post facto rationalisation from the apparent six-minute discrepancy of timings, for which there are other potential and plausible explanations including approximation/error, or the verbal briefing preceding the email (I note in this regard that Bronze received the intelligence at 6.20pm). Taking into account all of the available evidence I do not consider that there is sufficient evidence on which a reasonable panel could draw such an inference.

"Whilst there is evidence that policing the CSV brought particular pressures and demands, again, a panel would be being asked to infer that this motivated or influenced the decision to further arrest Dr Shao for conspiracy to commit a s.5 offence, rather than there being clear evidence of this, such as, for example, a witness statement from an officer stating that this was the reason for the further arrest. While it could be argued that a motivation for the further arrest was that the indictable offence enabled the s.18

⁹ The Appropriate Authority passed this to the MPS Prevention & Reduction Team and the learning shared with D Supt 1.

searches, D Supt 1 explicitly considered this in their rationale, as well as the possibility of proceedings with a s.5 offence alone, without the conspiracy aspect. This arguably supports the transparency of the decision-making.

“The case to answer I initially proposed was predicated on the absence of an explanation and inference of deliberate exaggeration and misrepresentation. While I remain concerned about the lack of clarity around when and how D Supt 1 obtained the knowledge of the incident and associated information, on reflection, my provisional decision perhaps did not give enough weight to the factors in the officer’s favour as well as against. For example, D Supt 1 is a long-serving officer of rank and the context was a challenging police operation. D Supt 1’s arrest decision appears to have been openly discussed with a number of officers, justified in writing on the day, and the rationale emailed to a number of officers including those at high level. D Supt 1 has indicated in their Response to Caution that they believed that Silver and Gold recorded the decision. The officer has entirely accepted responsibility for the arrest decision and its consequences and has not attempted to deflect it. I have not upheld the complaint that the original arrest was unlawful. It was D Supt 1 who approved the discontinuance of the investigation and the case disposal of no further action once the investigation into the phones of the arrested females had failed to establish a link to Dr Shao.

“It is not in dispute that D Supt 1 did record their decision; D Supt did so reasonably promptly; they did so in a relatively detailed way; the decision explicitly states that D Supt 1 had not viewed the CCTV; supportive intelligence had been sought promptly; they discussed the decision with senior officers; D Supt 1 appears to have sought legal advice; and it is not clear whether or not they or any of the investigative team had seen the live stream or whether the CCTV was even available for D Supt 1 to view before the decision. The context of the decision and pressures and demands on the officer at the time of the decision, are also relevant.

FINAL DETERMINATION

“It is therefore my opinion that there is insufficient evidence for a case to answer, taking all of the above into account and applying the case to answer test.”

> Gold Commander

> Allegations and final determinations

It is alleged that Gold may have breached the standards of professional behaviour.

1. It is alleged that Gold knowingly partook in a decision for an individual to be arrested, in circumstances in which there were not reasonable grounds for the arrest. This led to the individual’s (continued) detention and the search of his home. On this basis there is an indication Gold may have failed to appropriately apply the relevant test to determine whether there were reasonable grounds for

arrest, perhaps knowingly and deliberately, and this may have amounted to an abuse of authority.

No case to answer

2. It is further alleged that Gold may have failed in their positive obligation to question the conduct of their colleague(s) who communicated with them regarding the decision to arrest Dr Shao.

No case to answer

> IOPC Decision maker's provisional opinions – 14 June 2018

“Gold had entries recorded by a loggist stating, ‘3 x arrests in city including a male with history of running towards convoys.... Gold happy with level of force used to achieve the aim of preventing any harm to the principles or dignity of the event.’ Gold also approved a press release relating to the incident.

“Gold stated they were aware that D Supt 1 had reasonable grounds to suspect the offence and had seen D Supt 1’s written arrest rationale (although could not recall at what time), but said it was not their role to be responsible for individual arrest decisions. Gold could not account for why D Supt 1 said that Gold agreed with D Supt 1’s assessment and assumed it was because Gold did not challenge the decision.

“I have seen no evidence that Gold was aware of the content of the CCTV, arresting officer notes or intelligence relied upon by D Supt 1 and it is unlikely this would have been expected of Gold, given their role. In my opinion there is insufficient evidence upon which a reasonable tribunal could find that Gold would have been aware there was evidence that may have undermined the rationale provided for the arrests and therefore be in a position to question the conduct of their colleagues about this.

“Gold was unable to recall when they read the arrest rationale email from D Supt 1 or what they may have discussed with D Supt 1 about the incident. Gold could not recall who attended the Silver Commander’s meeting at 8pm on 21 October 2015 or what was discussed at that meeting. It is clear from the Gold Commander’s log that Dr Shao’s arrest was discussed during that meeting. It is disappointing, particularly in the absence of the Silver Commander logs, that Gold was unable provide the IOPC with further information on these points. This could have provided further evidence about the basis for the arrest decisions and what Gold was aware of at the time.

“I am aware that the lack of detail Gold was able to provide on these points is an area of considerable concern for Dr Shao and his wife, Ms Johanna Zhang.”

> **Appropriate Authority (Metropolitan Police) response – 13 July 2018**

“34. Gold was served notice with regards to the following allegations:

- Gold knowingly partook in the decision to arrest Dr Shao where there were not reasonable grounds for the arrest. This may have amounted to abuse of authority; and
- Gold may have failed in their positive obligation to question the conduct of their colleagues who communicated with them regarding the decision to arrest Dr Shao.

“35. I have noted the IOPC Decision Maker’s opinion is that there is no case to answer for Gold in relation to the allegations as above.

“36. I have reviewed the evidence in the IOPC report and agree with this proposal to take no further action.

“37. I have noted Gold’s strategic intentions for the CSV, which are in line with how the MPS police public events.

“38. Gold’s decision log has recorded ‘*3x arrests in the city including a male with a history of running towards convoys*’. This would support Gold, as GX for the event, was made aware of the arrests and that an entry made as a result of a briefing at 20:00 hours on the 21 October 2015 states: “*Gold happy with the level of force used to achieve the aim of preventing any harm to the principles dignity of the event.*’

“39. Gold explained to the IOPC investigation team their role as GX and that it would not have been their decision to determine whether there were reasonable grounds for the arrests of the three protestors. Therefore Gold did not fail in their positive obligation to challenge the decision made by D Supt 1 to arrest the three individuals for Conspiracy as they did not believe ‘*that what D Supt 1 had done or was doing was wrong.*’

DETERMINATION SUMMARY

“139. It is my determination a reasonable panel could not conclude there is sufficient evidence of a departure from the Standards of Professional Behaviour that misconduct proceedings would be justified in relation to Authority, Respect and Courtesy and Challenging and reporting improper behaviour. It is my determination there are no performance matters identified.

140. “I propose to take no further action regarding these allegations.”

> Detective Inspector 11

> Allegations and final determinations

It is alleged that that DI 11 may have breached the standards of professional behaviour.

1. It is alleged that DI 11 gave directions/instructions to an officer(s) in circumstances where it is unclear what information and on what basis he was able to make that decision. This may indicate a failure in DI 11's requirement to only give lawful orders and instructions.

No case to answer

2. It is further alleged that DI 11's may have failed to question the conduct of his colleagues who were responsible for the decision to arrest Dr Shao.

No case to answer

> IOPC Decision maker's provisional opinions – 14 June 2018

"It appears that DI 11 was made aware of the incident on 21 October 2015 via a call from Bronze at approximately 9.30pm but did not see the written arrest rationale from D Supt 1 until the following day. He also stated that he recalled concerns Bronze had about the arrest and raised those with D Supt 1, although stated to the IOPC that he was not in possession of all the facts so could not comment at the time on those concerns. DI 11 was not on duty until 22 October 2015 which would support his account about not seeing the written arrest decision from D Supt 1 or being in possession of all the facts at the time. In light of this and given his limited involvement in the incident or decision making, in my opinion, a reasonable tribunal could not find misconduct for DI 11 for telling DC 7 to continue with the interview and bail Dr Shao.

> Appropriate Authority (Metropolitan Police) response – 13 July 2018

"107. I note from the IOPC Decision Maker's opinion that it is recommended there is no case to answer for DI 11 regarding his conduct and that there is no case to answer in relation to his performance. I am in agreement with the IOPC Decision Maker regarding DI 11.

"108. DI 11 explains in his statement he was contacted by Bronze regarding the arrests on the 21 October 2015 at about 21:30 hours. Bronze raised with him some concerns as to the Conspiracy aspect of the investigation and stated they had

spoken to D Supt 1 about these. DI 11 stated he did not offer an opinion as he was not in possession of the facts at that point.

“109. DI 11 states he read the email relational form [sic] D Supt 1 on the morning of 22 October 2015 and had no concerns about its content, all be it [sic] he believed the Conspiracy offence could have been handled in a different way such a [sic] remaining a Breach of the Peace or a Section 5 POA. DI 11 stated he was aware DLS had been contacted and the legal advice was that there was a legal basis for the offence and that an individual can conspire to commit a summary only offence.

DETERMINATION SUMMARY

“143. It is my determination a reasonable panel could not conclude there is sufficient evidence of a departure from the Standards of Professional Behaviour that misconduct proceedings would be justified in relation to Orders and Instructions and Challenging and reporting improper behaviour. It is my determination there are no performance matters identified.

“144. I propose to take no further action regarding these allegations.”

> Bronze Crime

> Allegations and final determinations

It is alleged that that Bronze may have breached the standards of professional behaviour.

1. It is alleged that Bronze failed to question the conduct of their colleague who instructed that Dr Shao should be arrested.

No case to answer

> IOPC Decision maker’s provisional opinions – 14 June 2018

“It is clear that D Supt 1 made the decision to arrest Dr Shao and the two women for a conspiracy to commit a section 5 public order offence. There is evidence that Bronze did not think there were grounds for this and raised their concerns directly with D Supt 1 and also DI 11. In the circumstances, I do not consider there to be sufficient evidence upon which a reasonable tribunal could find that Bronze should have challenged the decision further, such that it amounted to misconduct.”

> Appropriate Authority (Hertfordshire Police) response – 16 July 2018

“At the time of this incident and IOPC referral Bronze was serving with the Metropolitan Police Service and subsequently transferred to Hertfordshire Constabulary.

“Hertfordshire Constabulary had no involvement in the referral to the IOPC or the original investigation.

“Having read the details of the IOPC investigation Hertfordshire Police agreed with the IOPC decision maker’s rationale and decision and recommend no case to answer and confirm no under-performance has been identified in this case for Bronze.”

> Police Constable 10

> Allegations and final determinations

It is alleged that that PC 10 may have breached the standards of professional behaviour.

1. It is alleged that PC 10 arrested Dr Shao for Conspiracy, but did so based on the instructions of the Senior Management Team. There are concerns over whether there were reasonable grounds for the arrest and as such PC 10’s application of her duties and responsibilities in this regard.

No case to answer

2. It is alleged PC 10 did not challenge the decision making regarding the reasonable grounds to suspect Dr Shao of the alleged offence of Conspiracy.

No case to answer

> IOPC Decision maker’s provisional opinions – 14 June 2018

“PC 10 made the arrest on behalf of the Senior Investigation Team (SIT) and she was asked to seek authority for s.18 search. PC 10 stated that she queried this due to concerns about the section 5 conspiracy offence, but received confirmation that the conspiracy element made it an indictable only offence.

“She stated that she assumed SIT had further sensitive information she was not privy to. It appears a ‘mass arrest’ process was used in this case, which provides for arrests to be made on behalf of other officers in certain circumstances. The evidence indicates that the criteria for ‘mass arrest’ was not met in this case nor the guidance correctly followed.

“PC 10 was a probationer at the time. She appears to have been the most junior officer involved in this incident, yet given the instruction to carry out the arrests. Due to her role and inexperience at the time, in my opinion a reasonable tribunal could not find that she failed to question the conduct of her more senior colleagues such that it amounted to misconduct.”

> Appropriate Authority (Metropolitan Police) response – 13 July 2018

116. “Police Constable 10 was served notice with regards to the following allegation:

- Failing in her positive obligation to question the conduct of colleagues who were responsible for the decision to further arrest for Conspiracy, as the arresting officer for the Conspiracy allegation.

117. “PC 10 was the officer who further arrested Dr Shao under the direction of D Supt 1. The instruction she received came direct from her Senior Investigation Team.

118. “PC 10 provides in her statement that she was asked to seek authority for a Section 18 search but as she was unsure whether a Section 18 search could be authorised for a summary only offence (Sec 5 POA) she sought advice and was informed that the Conspiracy element made it indictable and therefore available for a Section 18 search.

119. “I note that PC 10 was a probationer at the time of this matter with no experience of large scale public events and therefore sought advice from her peers and supervisors. PC 10 states she understood the Senior Investigation Team had possession of further information which she was not aware of, due to its sensitivity, therefore she did not challenge the decision as she believed she was being tasked by her DS to undertake a lawful, proportionate and necessary action as part of the investigation.

120. “I note from the IOPC Decision Maker’s opinion that it is recommended there is no case to answer for PC 10 regarding her conduct and that there is no case to answer in relation to her performance. I am in agreement with the IOPC Decision Maker regarding PC 10.

DETERMINATION SUMMARY

“147. It is my determination a reasonable panel could not conclude there is sufficient evidence of a departure from the Standards of Professional Behaviour that misconduct proceedings would be justified in relation to Challenging and reporting improper behaviour and Duties and Responsibilities. It is my determination there are no performance matters identified.

“148. I propose to take no further action regarding these allegations.”

> PACE Inspector 3

> Allegations and final determinations

It is alleged that that PACE Insp 3 may have breached the standards of professional behaviour.

1. It is alleged that PACE Insp 3 made the decision to delay Dr Shao's right to have someone made aware of his detention. The entry on the custody log indicates she may have failed to understand and/or consider the necessary components of this offence. PACE Insp 3 used the same latter part of her written rationale for the authorisation of the section 18 PACE search of Dr Shao's home address. This also indicates that she failed to understand and/or consider the necessary components of this offence. It is anticipated, based on her role and rank that she would understand the legislation and the requirements of PACE regarding a decision of this nature.

No case to answer

2. It is alleged that PACE Insp 3 may have failed in her positive obligation to question the decision of her colleagues who had carried out the arrest and authorised Dr Shao's detention.

No case to answer

> IOPC Decision maker's provisional opinions – 14 June 2018

"PACE Insp 3 appears to have satisfied herself there were reasonable grounds for an arrest based upon the verbal update she received from D Supt 1. She stated that when she queried the offence she was informed there was more information and intelligence. I have seen no evidence to suggest that PACE Insp 3 would have been aware there may have been evidence that did not support the arrest rationale provided by D Supt 1, I have seen no evidence that she had sight of the CCTV footage, arresting officer notes or intelligence. It is therefore my opinion that a reasonable tribunal could not find misconduct for PACE Insp 3 for not challenging the decision of her colleagues in respect of the conspiracy arrest decision.

"She stated that D Supt 1 requested a delay in the rights of the detainees and an authority for a search under s18 PACE. PACE Insp 3 explained she thought this was reasonable in the circumstances, to assist with either proving or disproving whether the detainees had committed the offence. As set out in the IOPC final report, a PACE inspector would be responsible for determining the proportionality of a section 18 PACE search or delay in rights and authorising a detainee's continued detention. In my opinion, a tribunal could not conclude it was disproportionate for Mr Shao's rights to be delayed or home address searched in order to prevent prejudice to a conspiracy investigation.

"As noted in the IOPC report, PACE Insp 3's description of the incident, when referring to the grounds (presumably for arrest) in the custody record did not make mention of an

agreement, as required for a conspiracy offence. In my opinion it may be appropriate for this to be dealt with under the Unsatisfactory Performance Procedures.

> **Appropriate Authority (City of London Police) – 28 June 2018**

“The Appropriate Authority (City of London Police) has determined that PACE Inspector 3 did not have a case to answer and did not consider their performance to have been unsatisfactory. However, a debrief will be conducted with the Officer to ensure and further test understanding of the key elements as discussed within this document.”

> **Inspector 4**

> **Allegations and final determinations**

It is alleged that that Insp 4 may have breached the standards of professional behaviour.

1. It is alleged Insp 4 failed to challenge the authorisation of a s.18 PACE search of Dr Shao’s home address.

No case to answer

2. It is alleged that Insp 4 granted an extension to Dr Shao’s detention period. During the process of making that determination it would be reasonably expected that Insp 4 had an understanding of the circumstances in order to make an informed decision. When considering Insp 4’s decision and rationale, there is an indication the description of the incident entered on the custody record did not fit the criteria for a conspiracy offence.

No case to answer

> **IOPC Decision maker’s provisional opinions – 14 June 2018**

“Insp 4 received a handover from PACE Insp 3 and agreed there were reasonable grounds to suspect a conspiracy offence due to *‘the fact that two others suspected to be in his company were arrested at the same location, at the same time for the same offences’*. He agreed with the rationale for delaying Dr Shao’s rights, but later lifted this and re-authorised Dr Shao’s detention to allow him to be interviewed. Insp 4 signed the premises search book relating to the section 18 search on Dr Shao’s premises. It appears DNA, photographs and prints were taken as standard following an arrest for an offence Dr Shao could be charged for. Insp 4 imposed bail conditions on Dr Shao that prevented his presence in the vicinity of the Chinese delegation for the duration of the

state visit. This was to prevent Dr Shao from interfering with witnesses, obstructing the course of justice, prevent further offences and prevent further harassment of the victim.

“I have seen no evidence to suggest that Insp 4 would have been aware there may have been evidence that did not support the arrest rationale provided by D Supt 1, I have seen no evidence that he had sight of the CCTV footage, arresting officer notes or intelligence. It is therefore my opinion that a reasonable tribunal could not find misconduct for Insp 4 for not challenging the decision of his colleagues in respect of the conspiracy arrest decision or s.18 search, for delaying Dr Shao’s rights, processing him in accordance with requirements for an offence for which he could be charged, or imposition of bail conditions.

“As noted in the IOPC report, Insp 4’s description of the incident entered onto the custody record did not fit the criteria for a conspiracy offence. In my opinion it may be appropriate for this to be dealt with under the Unsatisfactory Performance Procedures.”

> **Appropriate Authority (City of London Police) response – 28 June 2018**

“The Appropriate Authority (City of London Police) has determined that PACE Inspector 3 did not have a case to answer and did not consider their performance to have been unsatisfactory. A debrief will be conducted with the Officer to ensure and further test understanding of the key elements as discussed within this document.”

> **Detective Sergeant 6**

> **Allegations and final determinations**

It is alleged that that DS 6 may have breached the standards of professional behaviour.

1. It is alleged DS 6 failed to challenge the decision to arrest Dr Shao for Conspiracy.

No case to answer

2. It is alleged that DS 6 instructed a colleague to search through the personal property taken from Dr Shao when he entered custody and to seize items deemed relevant to the investigation. DS 6 was also directly involved in the section 18 PACE search of Dr Shao’s home and in his capacity as a supervisor it seems likely that he directed colleagues during this process. It appears that, in effecting and supervising this search, DS 6 may not have acted in accordance with his duty to only give and carry out orders and instructions for such an offence where there are reasonable grounds to do so.

No case to answer

3. It is alleged that DS 6 interviewed Dr Shao in relation to the Conspiracy arrest. From the audio recording of Dr Shao's interview it appears that Dr Shao was experiencing communication difficulties and as such may not have clearly understood the interview process. During the course of the interview DS 6 can be heard to acknowledge these difficulties, but there is no indication he took any steps to facilitate the attendance of an interpreter or sought advice as to whether an interpreter was required. It is therefore possible that Dr Shao did not receive the correct entitlements under PACE Code C.

No case to answer

> IOPC Decision maker's provisional opinions – 14 June 2018

"Based on the evidence, as set out in the IOPC final report, that DS 6 was assigned the investigation into the offence to progress, that the arrest decision had already taken place by senior officers, no concerns had been raised by the custody sergeant or PACE inspector and DS 6 appeared not to have viewed the CCTV footage, in my opinion a reasonable tribunal could not find misconduct for DS 6 not challenging the decision to arrest. I have also seen no evidence to suggest that DS 6 would have reason to suspect the s.18 search of Dr Shao's address may have been unlawful in light of the knowledge he appeared to have at the time, including an awareness of advice that had been given by MPS legal services.

DS 6 stated he did not consider that Dr Shao was experiencing any form of language difficulties during interview, nor did DC 7 the co-interviewer and no concerns were raised about this either by the custody sergeant or Dr Shao's solicitor. On that basis, in my opinion, a reasonable tribunal could not find misconduct for a failure to ensure an interpreter was present during Dr Shao's criminal interview."

> Appropriate Authority (Metropolitan Police) response – 13 July 2018

"110. Detective Sergeant 6 was served notice with regards to the following allegations:

- Failing to challenge the decision to arrest Dr Shao for Conspiracy;
- Undertaken a subsequent section 18 search of Dr Shao's home address and directing officers present at that search; and
- Failing to ensure an interpreter was present during the interview of Dr Shao.

"111. I note from the IOPC Decision Maker's opinion that it is recommended there is no case to answer for DS 6 regarding his conduct and that there is no case to answer in relation to his performance. I am in agreement with the IOPC Decision Maker regarding DS 6.

“112. I note that DS 6 was off duty when he received the phone call on 21 October 2015 from Bronze asking him to attend Bishopsgate Police Station to investigate the arrests of Dr Shao and the two females. DS 6 states he queried the legality of the offence and was informed any charging decision would be made under the direction of the Directorate of Public Prosecutions (DPP).

“113. On DS 6’s arrival at the police station he spoke with the custody sergeant and PACE Inspector, neither of whom raised any concerns

“114. DS 6 attended the address of Dr Shao as the senior officer, along with other officers, to undertake the Section 18 search. Entry to the address was made using Dr Shao’s keys and a premises search record was completed. Electrical items were seized such as a computer, iPad and USB stick.

“115. DS 6 interviewed Dr Shao on the 22 October 2015 with DC 7. DS 6 states he never had any concerns regarding Dr Shao’s understanding of English and that he *‘clearly understood the questions I was asking because he attempted to answer them with what would have been the right answers.’*

DETERMINATION SUMMARY

“145. It is my determination a reasonable panel could not conclude there is sufficient evidence of a departure from the Standards of Professional Behaviour that misconduct proceedings would be justified in relation to Orders and Instructions; Challenging and reporting improper behaviour; and Duties and Responsibilities. It is my determination there are no performance matters identified.

“146. I propose to take no further action regarding these allegations.”

> Detective Constable 7

> Allegations and final determinations

It is alleged that that DC 7 may have breached the standards of professional behaviour.

1. It is alleged DC 7 was aware of the facts of the investigation related to Dr Shao, proceeded by way of interview, but did not challenge the decisions that led to Dr Shao being interviewed for the offence.

No case to answer

2. It is alleged that DC 7 co-interviewed Dr Shao in relation to the Conspiracy arrest. From the audio recording of Dr Shao’s interview it appears that Dr Shao was experiencing communication difficulties and as such may not have clearly understood the interview process. During the course of the interview these difficulties are acknowledged by the other interviewing officer, but there is no

indication DC 7 took any steps to facilitate the attendance of an interpreter or sought advice as to whether an interpreter was required. It is therefore possible that Dr Shao did not receive the correct entitlements under PACE Code C.

No case to answer

> IOPC Decision maker's provisional opinions – 14 June 2018

“DC 7's role in this incident appears to have been limited to being the second interviewer for Dr Shao's interview. There is evidence that she raised with more senior officers concerns about the proportionality of dealing with the incident through conspiracy. This account is supported by the accounts of DS 6 and DI 11. In light of this, in my opinion, a reasonable tribunal could not find that DC 7 failed to challenge the decision to arrest Dr Shao for conspiracy.

“DC 7 stated that she did not think there was a language barrier with Dr Shao. This was a view shared by the lead interviewer, DS 6, and no concerns were raised about this either by the custody sergeant or Dr Shao's solicitor. On that basis, in my opinion, a reasonable tribunal could not find misconduct for a failure to ensure an interpreter was present during Dr Shao's criminal interview.”

> Appropriate Authority (Metropolitan Police) response – 13 July 2018

“121. Detective Sergeant¹⁰ 7 was served notice with regards to the following allegations:

- Failing to challenge the decision to arrest Dr Shao for Conspiracy; and
- Failing to ensure an interpreter was present during the interview of Dr Shao.

“122. DC 7 was contacted on her mobile phone and asked to attend Bishopsgate Police Station as there were detainees which required to be interviewed. The officer was aware Dr Shao had been arrested for Breach of the Peace before D Supt 1 requested he be further arrested for Conspiracy to commit Section 5 POA.

“123. DC 7 provided in her response to the IOPC: *‘I did not believe that progressing the investigation in this way (via Conspiracy) was proportionate to the offence committed and I made these opinions known to DS 6 – who seemed to share my concerns. In addition, I spoke with A/DI 11, who I advised of my opinions concerning the nature of the investigation. The response that both DS 6 and I received was that we were to proceed by way of interview and then to bail all the suspects.’*

“124. Of note and as already covered in their memorandum response D Supt 1 explained to the IOPC investigation that due to the sensitive nature of this matter not all

¹⁰ Should read ‘Detective Constable’

information was released to the interviewing officers regarding the background and intelligence relating to Dr Shao and the two females.

“125. DC 7 provides in her statement that she at no times had any concerns as to whether Dr Shao could understand English to a sufficient standard that would require an interpreter and that DS 6 asked a series of questions to clarify his understanding of English. In addition to this Dr Shao was represented by a lawyer who at no time raised any concerns.

“126. I note from the IOPC Decision Maker’s opinion that it is recommended there is no case to answer for DC 7 regarding her conduct and that there is no case to answer in relation to her performance. I am in agreement with the IOPC Decision Maker regarding DC 7.

SUMMARY OF DETERMINATION

“149. It is my determination a reasonable panel could not conclude there is sufficient evidence of a departure from the Standards of Professional Behaviour that misconduct proceedings would be justified in relation to Challenging and reporting improper behaviour and Duties and Responsibilities. It is my determination there are no performance matters identified.

“150. I propose to take no further action regarding these allegations.”

> Silver Commander

> Allegations and final determinations

It is alleged that Silver may have breached the standards of professional behaviour.

1. It is alleged that Silver was aware of the circumstances involving Dr Shao and agreed with the decision to arrest him for Conspiracy to Commit a Section 5 Public Order Act offence. On this basis there is an indication that Silver may have failed in their positive obligation to question the conduct of the colleague who spoke with them regarding the policy decision to arrest Dr Shao.

No case to answer

2. It is alleged that Silver was directly involved in the decision making relating to Dr Shao’s arrest for Conspiracy to commit a Section 5 Public Order Act offence. On this basis there is an indication Silver failed to appropriately apply the relevant tests to determine whether there were reasonable grounds for arrest, perhaps knowingly and deliberately and this may have amounted to an abuse of authority.

No case to answer

> IOPC Decision maker's provisional opinions – 14 June 2018

“The evidence suggests that Silver was heavily involved in the decision to arrest Dr Shao and the two women for the conspiracy offence. Silver stated that they discussed with D Supt 1 the facts of the case and the way forward in relation to the investigation against Dr Shao and the females arrested. Silver has been less specific than D Supt 1 about the reasonable grounds to suspect the offence having been committed, but did state that they were aware a man had run out with a flag or banner and two women were detained shortly after nearby and it was believed all three were acting together [and there was intelligence of previous similar behaviour by someone suspected to be Dr Shao and a suspected connection to one of the females arrested¹¹].

“As above, there was evidence available at the time that a reasonable tribunal could find it did not support Silver's assessment that the women were detained nearby or acting together. Also, as with D Supt 1, it is not clear upon what evidence Silver relied to form this assessment. Silver stated that they became aware of the incident through radio communications and did not see the CCTV until later in the day, not in Special Operations Room. There is no indication Silver viewed the CCTV prior to their conversations or decision making with D Supt 1.

“Silver, when setting out the necessity for the arrest, in addition to reducing the risk to the Chinese State Visit, Dr Shao and others if he intervened in the convoy, also placed a lot of emphasis on [ensuring] Dr Shao's [safety]. This is not specified under s24 PACE as being a relevant consideration for the necessity to arrest, although could arguably relate to preventing the person in question suffering physical injury. [It appears if there was any certainty about Silver's concerns, they would have been mitigated¹²]. It is therefore unclear why Silver placed so much emphasis on this in their account to justify the arrest.

“For similar reasoning to D Supt 1, in my opinion, a reasonable tribunal could find that Silver had not been diligent in the execution of their duties and responsibilities by not assessing fully the available evidence, with reference to the necessary elements of the offence, in deciding to arrest Dr Shao and others for conspiracy to commit a Section 5 Public Order offence.

“In my opinion a reasonable tribunal could also conclude that Silver had involvement in portraying a deliberately misleading or exaggerated version of the evidence, as opposed to any misunderstanding as to what happened or what the law of conspiracy required.

“As Silver retired on [REDACTED], no disciplinary proceedings can follow. It is my opinion that if Silver had still been serving there would be a case to answer for gross misconduct. The views of the Appropriate Authority are not sought in this respect.”

¹¹ Redacted for the purposes of the prevention or detection of crime.

¹² Redaction necessary in the public interest.

> **Appropriate Authority (Metropolitan Police) response – 13 July 2018**

“127. Silver was served notice with regards to the following allegations on the basis they were the Silver Commander (SX) for the Chinese State Visit.

- Silver was directly involved in the decision making relating to Dr Shao’s arrest for Conspiracy to commit a Section 5 Public Order Act offence.
- There is an indication Silver may have failed to appropriately apply the relevant tests to determine whether there were reasonable grounds knowingly and deliberately which may amount to abuse of authority

“128. Silver, now retired, was a very experienced and trained public order commander. In regards to this policing operation they were the Silver for the event whose role it was to coordinate the overall tactical response in compliance of Gold’s strategy. Silver was involved in the planning of the security for the CSV amongst many other responsibilities.

“129. I note from Silver’s provided response to the IOPC they confirm that previous CSV resulted in criticism regarding MPS tactics and that there was pressure on the Command Team regarding this event. [Silver provided details of the political pressure encountered.]¹³ However, Silver states that GX and SX were determined to police this event as any other public event with a proportionate and legal approach.

“130. I have acknowledged that Silver’s decisions logs for this event have been misplaced and were not available to the IOPC investigation, however there is no suggestion this was intentional or an attempt to hinder the investigation.

“131. Silver has explained in their response to the IOPC they became aware of Dr Shao’s arrest via radio communications and did not see the CCTV footage until later in the day. Silver explained most locations of the event were covered by CCTV fed directly into their Silver Suite at SOR (local authority cameras, TfL and MPS installed cameras).

“132. Silver explained what their concerns were at the time:

- *‘The Chinese could have claimed, possibly correctly, that we had not met our obligations under Article 29 Vienna Convention;*
- *‘Whilst it appears that the arrested male’s intention was purely disruption, it raised concerns regarding the security of routes if he had more sinister intent’;*
- [Concern for Dr Shao’s safety].¹⁴

¹³ Redacted: non-disclosure justified on public interest test.

¹⁴ Redacted: non-disclosure justified on public interest test.

“133. I note Silver has referred to the same intelligence as referred to by D Supt 1 and that their initial reaction was the striking resemblance [this incident had to the intelligence]¹⁵.

“134. Silver recalled their conversation with D Supt 1 and Silver’s loggist recorded the conversation. Silver recalls they discussed the facts of the case regarding the arrest of Dr Shao; two females were arrested in close proximity to Dr Shao and they believed them to be working together; [intelligence of previous similar behaviour by someone suspected to be Dr Shao and a suspected connection to one of the females arrested]¹⁶; and the way forward as to how best to investigate Dr Shao and the females arrested.

“135. Silver in their letter stated they *‘fully accepted a conspiracy could not be proven at that time, but felt given the information that existed, there were reasonable grounds to suspect a conspiracy between Dr Shao and the two females.’* Silver states they applied the necessity test and consider the risk to the event and the fact the CSV would not conclude that day. An additional factor considered by Silver was [related to Dr Shao’s safety]¹⁷.

“136. Silver provided in their response to the IOPC that D Supt 1 informed them of the home address searches for Dr Shao and the females and that items had been seized. However, due to no connection being made between the individuals on checking their mobile phones no other electronic device seized was interrogated. Silver states, *‘It was felt an interrogation of the devices, in these circumstances, would be disproportionate’* and *‘I remember thinking at the time this was a proportionate outcome and a highly effective and lawful way of managing risk, to the event, presented, presented by Dr Shao and [ensuring his safety]’*¹⁸.

“137. I have noted the IOPC Decision Maker’s opinion states, *‘As Silver retired on [REDACTED], no disciplinary proceedings can follow. It is my opinion that if Silver had still been serving there would be a case to answer for gross misconduct. The views of the Appropriate Authority are not sought in this respect.’*

DETERMINATION SUMMARY

“150. The views of the Appropriate Authority are not sought in this respect.”

> IOPC Decision maker’s response to the Appropriate Authority and final determination – 25 September 2018

¹⁵ Redacted: disclosure of criminal intelligence could impact on effectiveness of policing future events.

¹⁶ Redacted: disclosure of criminal intelligence could impact on effectiveness of policing future events.

¹⁷ Redacted: non-disclosure justified on public interest test.

¹⁸ Redacted: non-disclosure justified on public interest test.

“In light of my revised position in relation to D Supt 1, I have also considered it appropriate to revisit my case to answer opinion in respect of Silver. My rationale for Silver’s case to answer for gross misconduct (had Silver still been serving) was for similar reasoning to D Supt 1 and I stated, *‘In my opinion a reasonable tribunal could also conclude that Silver had involvement in portraying a deliberately misleading or exaggerated version of the evidence, as opposed to any misunderstanding as to what happened or what the law of conspiracy required.’*”

FINAL DETERMINATION

“Given the opinions I have expressed above about whether there is sufficient evidence to found a case to answer for D Supt 1, I am also no longer of the opinion that there is a case to answer for Silver.”

> IOPC Decision maker’s decisions regarding upholding of Mrs Joanna Zhang’s complaints (not subject to special requirements)

“The investigation into Dr Shao’s arrest for Breach of the Peace, excessive use of force during his arrest for Breach of the peace, subsequent detention for Breach of the Peace and his concerns the pre-planning of the Chinese state visit restricted lawful protest were not certified as subject to special requirements. This means that the evidence collated by the investigation did not indicate that any officer may have behaved in a manner that would justify disciplinary proceedings or committed a criminal offence. I am therefore able to reach a conclusion about whether or not to uphold the complaints. As the investigation into Johanna Zhang’s concerns regarding a breach of confidence and/or misuse of private information and various convention breaches pursuant s.7 Human Rights Act 1998 (HRA) were not subject to special requirements, I am able to reach a conclusion about whether or not to uphold the complaints.

The lawfulness of the above matters are ultimately a matter for a court having heard all of the evidence including the potential cross-examination of witnesses. However, on the basis of the evidence collated during the investigation I am able to express my view, where relevant, on lawfulness and reach a conclusion about whether the complaints should be upheld or not upheld.”

Complaint 1: Dr Shao’s arrest for Breach of the Peace was unlawful

Not upheld.

“I have seen no evidence to undermine the officer’s reasonable grounds to suspect that Dr Shao had committed this offence or that arrest was necessary to prevent Dr Shao

causing or suffering physical injury, causing damage to property or obstructing the highway.”

Complaint 2: if Dr Shao’s arrest for Breach of the Peace was unlawful, his subsequent detention was also unlawful

Not upheld.

“There is insufficient evidence that the arrest was unlawful.”

Complaint 3: there was an excessive use of force during Dr Shao’s arrest for Breach of the Peace

Not upheld.

“Dr Shao did not receive any injuries as a result of the force used which was limited to pushing him back away from the path of the motorcade and then handcuffing him. The evidence does not suggest the level of force used was excessive in the circumstances.”

Complaint 4: Dr Shao was concerned that a decision had been taken in the pre-planning of the Chinese state visit to restrict lawful protest

Not upheld.

“The evidence suggests there was a high degree of pressure placed on the police by both the Chinese and British governments about the policing of the state visit. It also appears the rationale to arrest Dr Shao may have in part been due to consideration of his safety. The position of the Metropolitan Police Service is that they would protect the right to protest in accordance with Human Rights legislation and the Government’s position that the UK police would operate within the parameters of UK law and uphold the people’s right to protest. While it is possible the pressure placed may have influenced the policing response, I have not seen evidence that a decision had been made in the pre-planning of the Chinese State Visit to restrict lawful protest.”

Complaint 5: there was a breach of confidence and/or misuse of private information

Not upheld.

“There is insufficient evidence to show that Dr Shao’s computer, or other items seized from his premises (other than his mobile phone sim card), were accessed by the MPS.”