



# IOPC assessment: findings of the Daniel Morgan Independent Panel's report

**Decisions of the IOPC whether there are conduct matters arising out of the findings of the Daniel Morgan Independent Panel's report dated 15 June 2021; if so, whether there are grounds to exercise the power of initiative to be able to investigate them.**

August 2022

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# Introduction and executive summary

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1. The report of the Daniel Morgan Independent Panel (DMIP) exposed the failure of investigations into Daniel Morgan's murder to result in any convictions and the role corruption may have played in that outcome. We send our condolences to his family and all of those affected by his death.
2. We became the IOPC in January 2018. Before this, we were the Independent Police Complaints Commission (IPCC). The IOPC has statutory responsibilities under the Police Reform Act (PRA) 2002, to investigate the most serious allegations against police in England and Wales, including allegations of corruption. Following the publication of the DMIP report in June 2021, we asked the Appropriate Authorities (AAs) which are the Mayor's Office for Policing and Crime (MOPAC), Metropolitan Police Service (MPS) and Hampshire Constabulary, to assess if any conduct matters should be recorded for the officers and former officers referred to in the report. A conduct matter is an indication that an officer may have breached the standards of professional behaviour<sup>1</sup> (or in relation to conduct before 2004, the police discipline code<sup>2</sup>) in a manner which justifies disciplinary action or committed a criminal offence<sup>3</sup>.
3. The AAs subsequently provided their assessments in writing to the IOPC. The last, from the MPS, was received on 24 March 2022. In each case, the AA has said there are no conduct matters to be recorded.
4. The IOPC is not bound by the AAs' assessments and may exercise the 'power of initiative' (POI) to open an investigation, if in its view, there is a conduct matter and there is a public interest in doing so. Due to the importance of the report and its findings, the IOPC asked its own investigators and legal team to carry out a scoping exercise to review the report, and where necessary and proportionate the underlying material, to identify any potential conduct matters.
5. On completion of the scoping exercise the IOPC decision maker, Regional Director for London Sal Naseem, reviewed the potential conduct matters which had been identified and made determinations. In each case he determined if there was:

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<sup>1</sup> Prior to 2004, there was a police discipline code which the standards of professional behaviour replaced. For convenience, references to the standards of professional behaviour include references to the discipline code where applicable.

<sup>2</sup> Police (Discipline) Regulations 1985, Schedule 1.

<sup>3</sup> See appendix for a detailed explanation of the statutory regime; in the case of some retired officers the definition of a conduct matter requires that the indication must be at the level of "gross misconduct".

- a. An indication there may have been a breach of the standards of professional behaviour (or the discipline code which they replaced in 2004) or that an offence may have been committed.
- b. If so (where applicable) whether they justified disciplinary action and, (where applicable),
- c. if it amounted to gross misconduct and finally
- d. whether there were sufficient grounds for the power of initiative to be exercised.

In considering whether there were sufficient grounds to exercise the power of initiative, in the public interest, he looked particularly at whether any conduct matter which could be recorded had been investigated before; whether any criminal or misconduct proceedings could now fairly be brought and whether the facts of the matter had already been investigated and brought to light, in the DMIP report or by an earlier investigation.

6. Following our scoping exercise, we disagreed with MOPAC's and the MPS' assessment about whether there may have been breaches of the standards of professional behaviour in certain cases, but even so there were not grounds for the power of initiative to be exercised. The determinations for each officer are set out in detail below; this executive summary refers to those of most importance.
7. The DMIP report found that the MPS was culpable of a form of "institutional corruption"<sup>4</sup> because it concealed or denied failings of its investigations, for the sake of the organisation's public image. This amounted to dishonesty on the part of the organisation for reputational benefit. The IOPC's powers and duties concern the discipline standards as they apply to individual officers, and it has no power to make any determination on this institutional issue.
8. The IOPC did determine that there is an indication former Commissioner Cressida Dick, when she was an Assistant Commissioner<sup>5</sup> and, from May 2013 to the beginning of 2015, the senior officer responsible for the inquiry, may have breached the standards of professional behaviour but which does not justify disciplinary action. Therefore no conduct matter can be recorded<sup>6</sup> and there are

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<sup>4</sup> DMIP report (15 June 2021). Volume 1, Introduction, pages 11, paragraph 60.

<sup>5</sup> The DMIP report refers to Cressida Dick variously as Deputy Assistant Commissioner, Assistant Commissioner and Commander during the period of the Abelard Two investigation. MOPAC have advised the IOPC that at the time she was liaising with the Panel she was an Assistant Commissioner.

<sup>6</sup> See appendix 1; where an officer is still serving and there is a breach of the standards of professional behaviour which not justify disciplinary proceedings, individual learning or management action (now a Reflective Practice Review Process) or action under the Police (Performance) Regulations 2012, may be appropriate.

no grounds on which to exercise the power of initiative. The issues concerned were:

- a. Whether sensitive material should be disclosed to all Panel members (rather than in the first instance to the Chair only) between September 2014 and 16 December 2014<sup>7</sup>.
  - b. Access for the Panel and its legal advisers, on suitable conditions, to HOLMES<sup>8</sup> between September 2014 and the beginning of January 2015.
9. There is no evidence to indicate Commissioner Dick intended to protect corrupt officers. Ultimately, it appears the inquiry received access to all relevant material and access to the entire HOLMES accounts. She appears to have acted in the genuine belief she had a legitimate policing purpose, due to concerns about protecting the information, but may have got it wrong by prioritising those concerns over her duty to facilitate full and exceptional disclosure to the Panel. As explained above, taking all the circumstances into account, including how long ago it was and that no complaint had been made at the time, in our view, disciplinary action would not be justified had she still been serving<sup>9</sup>. Therefore, the criticisms in the report do not meet the required threshold for a conduct matter to be recorded and there are no grounds on which to exercise the power of initiative. Our view of the evidence on these issues appears to be consistent with the findings of Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS).
10. The most concerning issue from the IOPC's assessment, as identified by the Panel, was the repeated failures to appropriately deal with many indications of corruption and misconduct when they first came to the attention of the MPS. The power of initiative has not been exercised because the indications of corruption in the report have in reality all been investigated before. Nevertheless, it is important we highlight some notable concerns from our assessment which included the following instances, of matters not being dealt with appropriately when they first came to light. These instances included:
- a. It was established by the Morgan One Investigation that sometime after 9.00pm on 9 March 1987, the night before Daniel Morgan's murder, Detective Sergeant (DS) Sidney Fillery, Mr Jonathan Rees and Daniel Morgan were together in the Golden Lion public house (the scene of the murder the next day) with Police Sergeant (PS) Phillip Barrett, Police Constable (PC) Michael Latham and PC Alexander Gibbs. It is unclear when, if at all, this relevant information was volunteered by the individual

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<sup>7</sup> "DMIP report (15 June 2021) Volume 3, Chapter 11, page 1128 footnote 22 says "*The letter was dated 16 November 2014 but sent in an email on 16 December 2014*".

<sup>8</sup> HOLMES is an abbreviation for Home Office Large Major Enquiry System and is an information system predominantly used by UK police forces for the investigation of major incidents.

<sup>9</sup> As Commissioner Dick resigned as of 24 April 2022, any breach of the standards could now only be recorded if it would justify dismissal, meaning if it were at the level of Gross Misconduct.

officers. It is evident PS Barrett and DS Fillery failed to disclose this information immediately following the murder, whilst working on the investigation. In addition, DS Fillery obtained a first witness statement from Jonathan Rees which referred to he and Daniel Morgan being joined in the Golden Lion public house by plain clothes officers without naming DS Fillery (or others) as one of the officers. By some means, it had come to the attention of the Senior Investigating Officer (SIO) by 16 March 1987 when he had statements taken from the officers who had been present and they were removed from the investigation. However, no disciplinary action was taken against them for this matter; DS Fillery was later investigated but not in relation to this topic. Had the investigation known sooner the information about Jonathan Rees, Daniel Morgan and DS Fillery being together in the Golden Lion public house the night before the murder, the course of the investigation may have changed. In the IOPC's view, the failure by DS Fillery, at least, to disclose that information indicated very serious misconduct.

- b. Detective Constable (DC) Donald Leslie was believed to have been involved in leaking information to the press the day before the first arrests were due, which led to at least one of the suspects becoming aware of their impending arrest. This provided an opportunity, at the very least, to dispose of evidence. DC Leslie was removed from the investigation but faced no immediate disciplinary (or criminal) investigation. He was later investigated in 1988, due to a complaint by Jonathan Rees which alleged he may have been paid £5,000 for the leak. The newspaper involved did not co-operate with the investigation and there was no other evidence to support the allegation. A more immediate investigation of DC Leslie, at the time of the leak, including use of telephone billing and/or financial records may have produced evidence to prove or disprove that he was involved.
- c. DC Alan Purvis and DC Peter Foley, along with DS Fillery, had been involved with Southern Investigations in providing security to Belmont Car Auctions. They must have known of the murder soon after it happened but, along with DS Fillery, they failed to notify the investigation of this information. This led to DC Purvis and DC Foley being arrested as suspects in the murder investigation. It was later accepted that there were insufficient grounds to suspect them of the murder, but they were investigated for breaching the discipline code and received "strong words of advice"<sup>10</sup>. The allegation that they had been 'moonlighting'<sup>11</sup> was found to be unsubstantiated because although they admitted to being present on auction nights, they denied being there on behalf of Southern Investigations and denied being paid. At least by present day standards,

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<sup>10</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 253, paragraph 989.

<sup>11</sup> 'Moonlighting' refers to the act of working an extra job, typically secretly in addition to one's regular employment.

the IOPC would have expected this evidence, which may have stretched credulity, to be tested at a hearing. In any event, the failure by these officers to come forward with their information at the outset, in our view, was a conduct matter which was far too serious to be dealt with by words of advice.

- d. During the Morgan One Investigation, it was established that DC Duncan Hanrahan had been meeting with Jonathan Rees. DC Hanrahan was instructed to stop seeing Jonathan Rees by the SIO but he carried on doing so. When this came to the attention of the SIO, he did not discipline DC Hanrahan for disobeying his order. Instead, the SIO arranged for him to report back on what Jonathan Rees said at their meetings; the information obtained was of little use. Following his retirement on medical grounds, it appears DC Hanrahan worked for Southern Investigations and in 1999 he was sentenced to eight years imprisonment for serious criminal offences unrelated to the murder. It is unknown whether DC Hanrahan may in fact have been providing information about the investigation to Jonathan Rees, but at the very least there was a conduct matter, that he had disobeyed orders and he should have faced disciplinary proceedings.
- e. DS Fillery was arrested as a suspect for the Morgan One Investigation (and he was also a suspect in later investigations). After the Morgan One Investigation, he was subject to a disciplinary investigation in relation to his involvement with Southern Investigations. However, he retired on medical grounds and subsequently worked at Southern Investigations.
- f. Due to all the matters above and a significant volume of other information received by the Morgan One Investigation, there was an indication that Jonathan Rees may have had corrupt relationships with police officers which would meet the definition of “serious corruption” under the current definition applied in police disciplinary proceedings<sup>12</sup>. Inquiries by Detective Superintendent (D Supt) Douglas Campbell identified 43 current and former police officers from Catford police station to be interviewed about knowing Jonathan Rees and/or Daniel Morgan. 17 of these officers admitted having met Jonathan Rees following introduction by DS Fillery. Despite this, there do not appear to have been any attempts made to prevent or monitor associations between Jonathan Rees and police officers between the end of the Morgan One Investigation and Operation Nigeria/Two Bridges Investigation in 1999. The latter investigation revealed a corrupt relationship between Jonathan Rees and DC Austin Warnes resulting in them both being imprisoned. Analysis of historical intelligence in 2006 about 19 former police officers associated with DS Sidney Fillery, Jonathan Rees and Law & Commercial (the new name for Southern Investigations), “showed that ten of the police officers had been

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<sup>12</sup> See Appendix 2

convicted and imprisoned for criminal offences”<sup>13</sup>. Despite all the indications there may have been corrupt relationships coming to the attention of the Morgan One Investigation nothing significant was done to tackle them for almost ten years.

11. Indications there may have been corrupt behaviour in connection with the murder, and failures to confront it, are not limited to officers involved with the Morgan One Investigation. The civil courts found Detective Chief Superintendent (DCS) David Cook, the Senior Investigating Officer in the Abelard One and Two Investigations<sup>14</sup>, repeatedly breached the ‘sterile corridor’<sup>15</sup> and prompted the witness Mr Gary Eaton which amounted to an attempt to pervert the course of justice. This behaviour resulted in conduct matters which meet the definition of serious corruption under the current regulations<sup>16</sup>, regardless that his motivation may have been to seek to convict those he believed were guilty. As stated by the court, “any seeming endorsement of such dishonest behaviour, particularly within the police force, leads... to a (serious and unacceptable) ‘negation of the rule of law’”<sup>17</sup>. His conduct led directly to the case against DS Fillery being dismissed.
12. Other indications of alleged misconduct and corruption<sup>18</sup> by DCS Cook, involved the removal and disclosure of sensitive police information, which appears to have been motivated, at least in part, by an interest to write a book.
13. DCS Cook was criminally investigated by the IPCC, a predecessor of the IOPC, and by the MPS. Files were submitted to the Crown Prosecution Service which decided no charges should be brought. The IPCC found that DCS Cook would have had a case to answer for gross misconduct<sup>19</sup>, but he retired in 2007 meaning no proceedings can be brought. There is no new information in the report and so no basis for re-opening those investigations under the power of initiative.
14. DCS Cook’s breaches of the sterile corridor were known to his supervisory officers. The explanations he gave for them, that the calls were made to him and were uninvited, were difficult to believe. Given the number of calls, he only had to not answer them and he failed to change his number after claiming he would. He continued to make contact despite awareness from management who directed him not to do so. Acting promptly to confront DCS Cook’s behaviour may have prevented the exclusion of evidence. However, it would be speculative to suggest

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<sup>13</sup> DMIP report (15 June 2021). Volume 1, Introduction, page 10, paragraph 55.

<sup>14</sup> It’s acknowledged there is an issue whether DCS Cook was the SIO in Abelard Two Investigation but for all practical purposes he was regarded as such.

<sup>15</sup> As referenced in the DMIP report (15 June 2021): Volume 2, Chapter 8, page 686, paragraph 150, “*The purpose of the sterile corridor is to ensure that, since the Senior Investigating Officer and his or her team have no role to play in relation to the witness, there can be no allegations that there had been any attempt to influence or interfere with the evidence which was given by the witnesses.*”

<sup>16</sup> See appendix 2 for the definition of serious corruption in the police disciplinary regime.

<sup>17</sup> Para 108 Rees and others v Commissioner of Police for the Metropolis [2018] EWCA Civ 1587

<sup>18</sup> As above see appendix 2 for the definition of serious corruption in the police disciplinary regime.

<sup>19</sup> See Appendix 2 for an explanation on whether retired officers may face disciplinary proceedings.



that the prosecution against DS Fillery and others may have continued to a trial when considering the issues over disclosure.

15. In connection to the failure to confront DCS Cook, the IOPC disagreed with the MPS, that reflective practice<sup>20</sup> would be appropriate for former Assistant Commissioner (AC) John Yates. Our determination is that there is an indication that he may have breached the standards of professional behaviour by failing to be diligent in his own duties and/or to take action about DCS Cook's improper conduct, which would justify disciplinary proceedings. In his case, as he retired in 2011 and so, a conduct matter could be recorded<sup>21</sup>. However, no disciplinary proceedings can in fact be brought and because an IOPC investigation would not add to the information available from the report, there are insufficient grounds to exercise the power of initiative.
16. As set out above, from the first to the last investigation of Daniel Morgan's murder there were failures to challenge officers about and/or to investigate indications they may have acted corruptly. Although a number of the officers suspected of corruption were subsequently convicted and/or dismissed in proceedings unconnected with the murder, no successful prosecution or significant disciplinary sanction has taken place in relation to corruption directly connected to the Daniel Morgan murder investigations. The IOPC agrees with the HMICFRS report that this is "a most unsightly stain on the Metropolitan Police's reputation"<sup>22</sup>. Accepting that no further investigations using the power of initiative can now change that, the issue must now be about preventing, confronting and eliminating corruption for the future. To achieve that, it is critical for the IOPC to work with the MPS, other oversight bodies and stakeholders. It may be some reassurance to the public, although little comfort to the family of Daniel Morgan, that reform of the disciplinary regime means that retired officers can now be disciplined for gross misconduct after retirement<sup>23</sup>. Where gross misconduct is proved, they can be placed on a barred list preventing future employment with the police.
17. The DMIP report recommended that anti-corruption work, by the IOPC and collaborative force anti-corruption units, should receive adequate funding. The IOPC was not in existence at the time of the murder or any subsequent investigations. Its predecessor organisation the Police Complaints Authority

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<sup>20</sup> An officer reflecting on their actions is a formal process reflected in legislation. The reflective practice review process consists of a fact-finding stage and a discussion stage, followed by the production of a reflective review development report. The discussion must include, in particular:

- a discussion of the practice requiring improvement and related circumstances that have been identified, and

- the identification of key lessons to be learnt by the participating officer, line management or police force concerned, to address the matter and prevent a reoccurrence of the matter.

<sup>21</sup> See Appendix 2 for an explanation of when conduct matters may be recorded for retired officers.

<sup>22</sup> Foreword to the HMICFRS report 'An inspection of the Metropolitan Police Service's counter-corruption arrangements and other matters related to the Daniel Morgan Independent Panel'.

<sup>23</sup> See Appendix 2 for an explanation of which retired officers are subject to these provisions.

(PCA) could not carry out its own investigations. The IPCC, the next predecessor organisation, could carry out its own investigations but as the report recorded, it was not resourced to carry out many or large corruption inquiries. That resourcing has subsequently improved; the IOPC Directorate of Major Investigations and its Anti-Corruption Unit have significantly improved capacity and capability over what was available to the IPCC in 2013.

18. The HMICFRS report has raised very serious concerns about the MPS' ability to prevent and detect corruption even to the present day. HMICFRS stated it had repeatedly raised concerns about certain aspects of its counter-corruption work but that its advice largely went unheeded. Most concerning in the context of Daniel Morgan's murder and the indications of corrupt relationships between Southern Investigations and police officers, was that HMICFRS could not now, in 2022, offer assurance that the MPS' systems and processes do enough to minimise the risk of corrupt police officers pursuing inappropriate business interests.
19. We note that HMICFRS are particularly concerned with the arrangements that should be in place to prevent corruption. The IOPC's statutory role is more focused on identifying corruption and investigating it. The IOPC believes the failures listed above to confront corruption throughout the investigations have resulted from a reluctance to use the disciplinary regime to robustly challenge and investigate behaviour which may be corrupt. A police officers' role when examining the conduct of others is to have an investigative mindset. That appears to have been absent when considering the conduct of fellow officers.
20. In contrast to bringing criminal proceedings, the tests for recording a conduct matter and bringing misconduct proceedings are low. This reflects the need for high standards, the protection of the public and for there to be public confidence in the police. In this case, and in others the IOPC has seen, there has been too much hesitance in reporting suspected corruption by colleagues and disciplinary decision makers have put the bar too high for recording conduct matters and bringing misconduct proceedings; the best possible interpretation has been placed on conduct and explanations accepted which should be tested before a misconduct panel. At the heart of necessary cultural change must be a robust application of the requirement that "police officers report, challenge or take action against the conduct of colleagues which has fallen below the Standards of Professional Behaviour" with a determination to bring misconduct proceedings when the tests in the regulations are met<sup>24</sup>. If public confidence in the MPS is to be improved, this along with the HMICFRS recommendations, should be among the new Commissioner's highest priorities.
21. We note the MPS agreed in 2011 that an apology was due to Mr Morgan's family, acknowledging that police corruption in the original investigation was a

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<sup>24</sup> Schedule 2 Police (Conduct) Regulations 2020.

significant factor in the failure to bring to justice those responsible for the murder. That statement did not acknowledge that the conduct of DCS Cook, which the civil courts found amounted to an attempt to pervert the course of justice, was also a significant factor, nor does its apology made in response to the DMIP report<sup>25</sup>. An important step in dealing with a problem is to acknowledge its extent and the MPS may want to consider if the apology given truly reflects the full extent of corruption that affected investigations of the murder.

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<sup>25</sup> [https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/priorities\\_and\\_how\\_we\\_are\\_doing/corporate/mps-daniel-morgan-independent-panel-response.pdf](https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/priorities_and_how_we_are_doing/corporate/mps-daniel-morgan-independent-panel-response.pdf)

## About the IOPC

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22. The Independent Office for Police Conduct (IOPC) carries out its own independent investigations into complaints and incidents involving the police, HM Revenue and Customs (HMRC), the National Crime Agency (NCA) and Home Office immigration and enforcement staff.
23. We are completely independent of the police and the government. All investigations are undertaken on behalf of the Director General (DG). Staff taking decisions on behalf of the DG are referred to as DG delegates, or decision makers, and they provide strategic direction and scrutinise the investigation undertaken by IOPC investigators.
24. Under the statutory regime, any indication that an officer or former officer may have committed an offence or behaved in a manner that justifies criminal proceedings (a “conduct matter”) should usually be recorded and referred to the IOPC by the appropriate authority<sup>26</sup> (AA) before it can investigate. However, in appropriate circumstances, we can use the ‘Power of Own Initiative’ (POI) to treat matters that have not been recorded or referred as if they have been. This power can be used if we disagree with the recording and/or the referral decision made by the relevant AA.
25. Whilst the majority of our work consists of conducting formal investigations following a matter being recorded and referred to us or POI being exercised, there are some occasions when we conduct a “scoping exercise” based on information brought to our attention to decide if there are matters it is necessary to investigate and/or for which we should exercise POI.

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<sup>26</sup> The AA is usually the Chief Officer for the force or their delegate but in the case of Chief Officer it is the Local Policing body, usually a Police and Crime Commissioner. In the case of the Commissioner of MPS, it is the Mayors’ Office for Policing and Crime (MOPAC).

## Background information

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26. On 10 March 1987, Daniel Morgan was murdered in the car park of the Golden Lion public house, Sydenham in London, and the Metropolitan Police Service (MPS) started a murder investigation. On 3 April 1987, six men including three serving MPS police officers were arrested in connection with the murder: Jonathan Rees, his brothers-in-law Glenn and Garry Vian, DS Sidney Fillery, DC Alan Purvis and DC Peter Foley. The Crown Prosecution Service (CPS) decided no charges should be brought and to await further possible evidence from the inquest. In April 1988, the inquest was held and a verdict of 'unlawful killing' was delivered. However, no charges were brought following the inquest. The investigation was not formally closed until February 1989 when the Hampshire Constabulary began investigating the murder and all material was handed over to their investigation.
27. In 1988, there was a police discipline investigation concerning DS Fillery, DC Purvis and DC Foley's involvement with Southern Investigations, a private investigation agency which had been owned by Daniel Morgan together with Jonathan Rees. In addition, the investigation looked at whether DS Fillery may have removed files from Southern Investigations' offices. The three police officers each admitted to being present at Belmont Car Auctions on auction nights, but denied they were there on behalf of Southern Investigations and denied being paid; the investigating officers' report stated "there was no evidence that any officer had been paid for attending Belmont Car Auctions"<sup>27</sup>. DS Fillery was able to retire on medical grounds which brought the investigation into him to an end. The other two officers were recommended for "strong words of advice"<sup>28</sup>.
28. Following the Morgan One Investigation, there had been an investigation into complaints made by Jonathan Rees about the handling of the investigation. DCS David Lamper investigated the complaints and all but one were withdrawn or found to be unsubstantiated. The substantiated complaint related to the handling of evidence by DC Clive Blake, and the supervision and handling of property by DS Malcolm Davidson, his line manager. DCS Lamper recommended that DS Davidson, "be given words of advice concerning the supervision and handling of property"<sup>29</sup> and that, "D.C. BLAKE's training needs are examined, and he receives strong words of advice"<sup>30</sup>.
29. Regarding the other criticisms of the investigation, which he said were unsubstantiated, DCS Lamper relied on findings of a review of the Morgan One Investigation (carried out at the request of the SIO) by DCS Douglas Shrubsole,

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<sup>27</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 252, paragraph 982.

<sup>28</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 253, paragraph 989.

<sup>29</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 257, paragraph 1005.

<sup>30</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 257, paragraph 1004.

who stated he, “was satisfied that all reasonable lines of enquiry had been identified and that the investigation was completely thorough and professional”<sup>31</sup>.

30. In June 1988, following concerns raised by members of Mr Morgan’s family, the allegations of police involvement in the murder were referred by the MPS to the Police Complaints Authority (PCA). The PCA arranged that Hampshire Constabulary would investigate the allegations of police involvement in the murder, which it did in Operation Drake. By July 1988, Operation Drake had begun investigating all the murder suspects, including those who were not police officers. In February 1989, Jonathan Rees and Paul Goodridge were charged with the murder and Jean Wisden was charged with attempting to pervert the course of justice. In May 1989, the proceedings were discontinued by the CPS due to a lack of sufficient evidence. Operation Drake was subsequently renamed Operation Plymouth which was intended to re-focus on police corruption, but it does not appear any significant further investigation was carried out. The investigation was effectively closed in September 1989 when it submitted its report to the PCA.
31. In the mid-1990s unrelated proactive MPS anti-corruption investigations by Complaints Investigation Bureau 3 (CIB3) and Complaints Investigation Bureau Intelligence Cell (CIBIC) produced intelligence suggesting possible criminality by Jonathan Rees and former DS Fillery, who by then had become Jonathan Rees’ business partner at Southern Investigations. This resulted in Operation Nigeria/Two Bridges. Although the investigation was targeting corruption generally, it was aware of the suspicion that both men were involved in the murder. Some actions were taken with the intention to provoke discussion of the murder between them, which could be recorded and used as evidence or intelligence. Some intelligence/evidence was obtained but no arrests for the murder followed. However, the investigation led to a serving police officer, DC Warnes, Jonathan Rees, and a client of Jonathan Rees being arrested in September 1999 and later convicted of perverting the course of justice and sentenced to imprisonment; Jonathan Rees had arranged for drugs to be planted on the client’s wife and for DC Warnes to corruptly arrest her.
32. In October 2000, the MPS Murder Review Group produced a report following an examination of the investigation files. As new investigative opportunities were identified, in April 2001, the MPS began a new covert investigation – named Operation Abelard, now known as the Abelard One Investigation. The investigation built on intelligence obtained during Operation Nigeria/Two Bridges. This was later extended to include an overt investigation of the murder – titled Operation Morgan Two and a witness appeal was made on the BBC programme Crimewatch. Between October 2002 and January 2003, eight arrests were made including Jonathan Rees, DS Fillery, Glenn and Garry Vian. In August 2003, the CPS advised there was insufficient evidence to prosecute anyone in connection

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<sup>31</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 257, paragraph 1008.

with the murder of Daniel Morgan. However, DS Fillery was convicted in October 2003 for possessing indecent images of children on a computer which had been seized.

33. On 27 October 2005, the Metropolitan Police Authority (MPA) commissioned a report by the MPS on the murder, pursuant to Section 22 (3) of the Police Act 1966. In March 2006, the MPS began a further investigation of the murder – named Operation Abelard Two. Jonathan Rees, Glenn and Garry Vian and James Cook were subsequently charged with the murder in April 2008 and DS Fillery charged with perverting the course of justice. A sixth man, a serving police constable, was arrested on suspicion of misconduct in public office but in September 2008, a decision was taken not to prosecute him. The officer, who had been suspended from duty, subsequently resigned from the MPS.
34. The prosecution relied in particular on three witnesses, Gary Eaton, James Ward and person J5 who were treated as co-operating offenders under the provisions of the Serious Organised Crime and Police Act 2005. This required them to be debriefed and for there to be sterile corridors to prevent the officers involved in the investigation contaminating (or prompting) their evidence. On 15 February 2010, Mr Justice Maddison excluded Gary Eaton's evidence, due to concerns about his mental health and breaches of the sterile corridor by DCS Cook. This led to DS Fillery being discharged. On 18 October 2010, the prosecution withdrew person J5 as a witness because of concerns about their reliability which resulted in James Cook being formally acquitted of the murder. The prosecution also withdrew James Ward as a witness as a result of disclosure failures. The remaining defendants had 'not guilty' verdicts entered in March 2011, when Mr Justice Maddison gave his reasons for excluding Gary Eaton's evidence. This included the findings that DCS Cook had breached the sterile corridor and he had probably prompted Gary Eaton to implicate the Vian brothers.
35. Following the collapse of the trial the Acting Commissioner of the MPS, Tim Godwin, made a public statement that police corruption in the original investigation was a significant factor in the failure to bring to justice those responsible for the murder. He also stated that Daniel Morgan's family was entitled to an apology for the repeated failure by the police to acknowledge this corruption.
36. In 2011, inquiries not directly related to the Abelard Two Investigation led to DCS Cook being referred to the IPCC for improperly disclosing material from the investigation to a journalist. This resulted in an independent investigation, Operation Longhorn, during which DCS Cook was arrested by the IPCC and subsequently referred to the CPS, which decided not to charge him in September 2015.
37. In January 2012, Commander Peter Spindler of the MPS Directorate of Professional Standards arranged for D/Supt Mark Mitchell to carry out a review to establish if there were any conduct matters which should be recorded for any of

the officers in the Abelard Two Investigation; this was completed in February 2012. D/Supt Mitchell's opinion was that the issues of DCS Cook breaching the sterile corridor and/or DI Douglas Clarke 'tipping off' Gary Eaton fell short of criminal conduct and that in the absence of evidence to the contrary, believed it amounted to poor practice rather than misconduct.

38. Also, in 2012 the CPS and MPS carried out a joint review of the investigation, which reported in May and was concerned with identifying learning points.
39. In November 2012, a complaint by Jonathan Rees to the IPCC about DCS Cook prompting Mr Eaton resulted in Operation Megan One. This was conducted by the MPS and commenced in January 2014 and it investigated whether DCS Cook attempted to pervert the course of justice. This was re-opened following the finding in the High Court by Mr Justice Mitting that he had attempted to pervert the course of justice. A file was submitted to the CPS and in November 2018, it decided not to prosecute him.
40. In 2014, searches of DCS Cook's address recovered material and correspondence relating to many of the investigations he had managed during his time as a Senior Investigating Officer, which had been improperly removed from police systems; this was investigated by Operation Edison. Following CPS investigative advice in 2020, the MPS decided not to proceed further with it.
41. On 8 January 2015, the MPS referred a complaint made by Jonathan Rees to the IPCC. Jonathan Rees alleged that his confidential information was unlawfully disclosed to the BBC Panorama programme by former DCS Cook and/or officers from the Abelard Two Investigation. The IPCC investigation into Jonathan Rees' complaint was completed in December 2016. In the investigator's opinion DCS Cook would have had a case to answer for gross misconduct had he still been serving but due to his retirement, no proceedings could be brought. No referral was made to the CPS.



# The Daniel Morgan Independent Panel report

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42. On 10 May 2013, the Home Secretary announced that an Independent Panel was to be convened to report on the circumstances of Mr Morgan’s murder, its background, and the handling of the case over the whole period since March 1987.

43. The Daniel Morgan Independent Panel (DMIP) published its report on 15 June 2021. Three main issues were addressed by the DMIP:

“whether there was evidence of police involvement in Daniel Morgan’s murder;

the role played by police corruption in protecting those responsible for the murder from being brought to justice and the failure to confront that corruption; and

the incidence of connections between private investigators, police officers and journalists at the News of the World and other parts of the media, and alleged corruption involved in the linkages between them.”<sup>32</sup>

44. In a statement released at the time of publication, the DMIP stated:

“By not acknowledging or confronting, over the 34 years since the murder, its systemic failings, or the failings of individual officers, by making incorrect assertions about the quality of investigations, and by its lack of candour, which is evident from the materials we have examined we believe the Metropolitan Police’s first objective was to protect itself. In so doing it compounded the suffering and trauma of the family. The Metropolitan Police were not honest in their dealings with Mr Morgan’s family, or the public. The family and the public are owed an apology.”<sup>33</sup>

45. The DMIP report stated that the denial or concealment of the MPS’s failing, in its view, was motivated for the “sake of an organisation’s public image” which it believed, “is dishonesty on the part of the organisation for reputational benefit, and constitutes a form of institutional corruption”<sup>34</sup>.

46. The DMIP also identified that it experienced difficulties because restrictions were imposed on its access to certain documentation by the MPS which significantly delayed the Panel’s work.

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<sup>32</sup> DMIP statement (15 June 2021). Page 2.

<sup>33</sup> DMIP statement (15 June 2021). Page 4.

<sup>34</sup> DMIP statement (15 June 2021). Page 6.

## The IOPC scoping exercise

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47. As explained above, following publication of the DMIP report, the IOPC asked each of the appropriate authorities (AAs) concerned to review the report and identify if there are conduct matters which should be recorded and referred to the IOPC. We asked the AAs to provide us with recorded rationale to explain their decisions. Each of the AAs has now completed that exercise and provided a rationale for its decision making (referred to as the 'assessment'). In each case they have said there are no conduct matters to be recorded.
48. The IOPC is not bound by the AAs' determinations and may exercise the power of initiative (POI) where there is a conduct matter, and it is appropriate to exercise the power. Due to the importance of the DMIP report and its findings, the IOPC asked its investigators to conduct their own review of the report and in some instances underlying material, to identify potential conduct matters. They provided their assessments to the London Regional Director, as the IOPC decision maker, who considered them together with the AAs' rationale to determine whether we exercise the POI.
49. The legal basis for the POI and the criteria applied for determining whether it was appropriate to exercise it, are set out in Appendix Two. For each potential conduct matter identified by an AA and/or IOPC investigators, we first considered whether there is an indication of a breach of the standards of professional behaviour, and if so, whether it required recording because it justified disciplinary proceedings/action or in the case of an officer who retired after 15 December 2017, whether it may amount to gross misconduct. We went on to consider if there were sufficient grounds to exercise POI, taking account, in particular: whether there was a public interest in investigating any identified conduct matter by exercising the POI; whether it had been investigated before; whether the facts had already been made public; whether proceedings could now be brought and whether there was any reasonable prospect of a meaningful outcome from such proceedings.
50. The determinations made by the IOPC for each officer are set out below, grouped by reference to their AA. The determinations summarise and seek to explain the relevant evidence and information but for a full understanding of it, reference should also be made to the DMIP report.

# Mayor's Office for Policing and Crime (MOPAC) strand

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## Commissioner of the MPS, Cressida Dick

51. The report states that Commissioner Dick was appointed to be the senior officer in the MPS with responsibility to support the Panel's work and so was responsible for arranging with the first Panel Chair how material would be provided. She held this role from May 2013 until January 2015. At that time, she held the rank of Assistant Commissioner, but she will be referred throughout as Commissioner Dick, which is the rank she held at retirement on 24 April 2022.
52. The MOPAC conduct assessment identified potential conduct matters for Commissioner Dick as her initial refusal to recognise the necessity for the Panel to have access to HOLMES (a data system which safeguards the integrity of investigations and also enables independent scrutiny to identify failures) and limiting the Panel's access to the most sensitive information. In particular, it identified the criticism that, "The Panel has never received any reasonable explanation for the refusal over seven years by AC Cressida Dick and her successors to permit proper access to the HOLMES accounts to the Daniel Morgan Independent Panel. The consequential major delays to the Panel's work, which inevitably added to the Panel's costs, caused further unnecessary distress to the family of Daniel Morgan"<sup>35</sup>.
53. MOPAC assessed that there were no conduct matters to record. The assessment appears to have accepted the matters set out by Commissioner Dick in her response to the report's criticisms, even where they had been rejected by the Panel. It did not analyse Commissioner Dick's duty to provide full and exceptional disclosure or test the justifications against the underlying evidence. In any event, it is not the role of MOPAC, or the IOPC at this stage, to determine whether DMIP's or Commissioner Dick's is the correct view, but only whether there is an indication there may have been a breach of the standards of professional behaviour which justifies a conduct matter being recorded.
54. Our scoping exercise identified the following potential conduct matters:
- a. failure to oversee ethical issues
  - b. failure to take appropriate action on receipt of information that DCS Cook was disclosing top secret material

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<sup>35</sup> DMIP report (15 June 2021). Volume 3, Chapter 11, page 1132, paragraph 71.

- c. conduct in relation to the Disclosure Protocol
- d. conduct in relation to the HOLMES accounts
- e. conduct in relation to the circulation of an email by MPS to officers about contact with DMIP
- f. the MPS response to the DMIP 'fairness process' in December 2020

## **Failure to oversee ethical issues**

55. Commissioner Dick, then a Commander, had been appointed to a role in the Abelard Two Investigation to attend an 'oversight group' around 'ethical issues'<sup>36</sup>. There is no information available from the DMIP report about what that role required of her. The report states that there was an inaugural meeting on 9 August 2006 but no evidence she was invited to attend any subsequent meetings or that she did so. In any event, the group did not meet after July 2008.
56. The significant ethical issue which it may have been appropriate for her to engage with, was the inappropriate contact between DCS Cook and the witness Gary Eaton during his debrief and whether supervisors took appropriate action when they learnt of it. As explained elsewhere, this contact contributed significantly to the collapse of the trial in 2011 and is the basis for findings made in civil proceedings that DCS Cook had attempted to pervert the course of justice.
57. There is no evidence Commissioner Dick was aware of the contact. By contrast, other officers with direct oversight and management responsibilities, including ones more senior to her at the time, were aware. The governance of the investigation was outside the normal governance procedures, a matter which the Panel found was ultimately the responsibility of Assistant Commissioner John Yates, who was aware of the contact<sup>37</sup>.
58. Commissioner Dick said in her written response to the DMIP criticisms, "...there was no expectation that I would attend future meetings of the Oversight Group unless and until an issue arose which requested specific input from me."<sup>38</sup> There is no evidence from the report to suggest otherwise and no indication that it was her duty to seek to attend meetings that she was not invited to or to instigate them.
59. For the above reasons, we found no indication that there may have been a breach of the standards of professional behaviour on this issue.

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<sup>36</sup> "Ethical Issues" source footnote 133 Communication Abelard Two team, MPS109471001, p38, 09 August 2006.

<sup>37</sup> DMIP report (15 June 2021). Volume 2, Chapter 8, page 681, paragraph 133.

<sup>38</sup> Response of Cressida Dick, Commissioner of the MPS, to Fairness Process Letter, page 7.

## **Failure to take appropriate action on receipt of information that DCS Cook was disclosing top secret material**

60. This concerns a statement made by Mrs Isobel Hulsmann, Daniel Morgan's deceased mother, to DMIP that in July 2014 she telephoned Commissioner Dick's staff officer and told them that DCS Cook had passed 'top secret' material to the family on a thumb drive. The concern was that this was likely to have come to Commissioner Dick's attention and that there was no evidence she took any action.
61. Our scoping exercise obtained and received some additional evidential material from the Panel in connection with this matter. The statement of Mrs Hulsmann does not appear to have been formally recorded and it is unclear how she knew the material was 'top secret'. However, there are contemporaneous records in material we viewed that related to Operation Megan, which support that Commissioner Dick's staff officer was given this information and in fact brought it to the attention of the SIO for Operation Megan on 16 July 2014 (and this may have led to the search of DCS Cook's house in November 2014).
62. Although there is no direct evidence that Commissioner Dick knew of the telephone call, if she did, then the most likely inference is that she supported or instigated her staff officer to bring it to the attention of Operation Megan which was the appropriate action.
63. For the above reasons, we found there was no indication that Commissioner Dick may have breached the standards of professional behaviour in relation to this issue.

## **The disclosure protocol and access to HOLMES**

64. Commissioner Dick's standards of professional behaviour required her to carry out lawful orders and instructions and to be diligent in the exercise of these duties and responsibilities.
65. The Panel's terms of reference included:

"The purpose and remit of the Independent Panel is to shine a light on the circumstances of Daniel Morgan's murder, its background and the handling of the case over the whole period since March 1987. In doing so, the Panel will seek to address the questions arising, including those relating to:

- police involvement in the murder;
- the role played by police corruption in protecting those responsible for the murder from being brought to justice and the failure to confront that corruption; and

- the incidence of connections between private investigators, police officers and journalists at the News of the World and other parts of the media and alleged corruption involved in the linkages between them.”<sup>39</sup>

66. The IOPC has not seen a formal record of the MPS’ agreement to make “exceptional and full disclosure”<sup>40</sup> referred to in the terms of reference but this is also recited in ‘Information Sharing Protocol’. Furthermore, there is evidence Commissioner Dick personally confirmed the MPS’ commitment to it and it has never been disputed that this commitment was given.

67. The Home Office appointed the Panel members (including replacement members) on the basis that they had suitable character, experience and ability to carry out the terms of reference. Although the Panel was not a statutory inquiry and its members did not have formal judicial status, given the background to the inquiry, and the public interest in its independence, in our view the MPS should have treated the Panel as having similar authority. It was for the Panel, not the MPS or Commissioner Dick in person, to decide what material it needed to see in order to fulfil the terms of reference.

68. It follows from the above that Commissioner Dick’s instructions and her duties included to arrange full and exceptional disclosure to the Panel. Failure to do so may amount to failure to follow those instructions and/or to be diligent in the exercise of those duties and so would be in breach of her standards of professional behaviour. The report criticised Commissioner Dick in relation to providing disclosure in terms which if accepted, could amount to a breach of those standards. The starting point for assessing whether there is an indication Commissioner Dick may have breached those standards is that the Panel’s criticisms carry very significant weight, unless they are clearly irrational, inherently unlikely or undermined by the available evidence.

### **The Panel’s criticisms**

69. Regarding the provision of material by the MPS to the Panel, the DMIP report states, “...the Panel considers it was neither necessary nor proportionate for the processes for disclosure and document handling to have taken such a long time to be agreed with the Metropolitan Police. The Panel, having been announced by the Home Secretary in May 2013, did not have access to all the initial documentation, and thus was unable to commence its work properly, until December 2015.”<sup>41</sup>

70. Regarding access to the HOLMES accounts connected to Daniel Morgan’s murder the Panel said, “A central theme of the Panel’s enquiries has been an

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<sup>39</sup> DMIP report (15 June 2021). Annex A, page 1233 – 1235.

<sup>40</sup> DMIP report (15 June 2021). Annex A, pages 1233 – 1235 (point 5c of TOR).

<sup>41</sup> DMIP report (15 June 2021). Volume 3, Chapter 11, pages 1122, paragraph 24.

examination of possible police corruption in the investigations of the murder of Daniel Morgan. Had the Panel omitted to investigate the considerable scope for anyone in a police investigation team to divert an enquiry by manipulating the computerised records, it would have failed in its work.”<sup>42</sup>

71. In conclusion on this issue the DMIP report states, “There can be little doubt that the Metropolitan Police were determined not to permit access to the HOLMES system which would have enabled the Panel to carry out its work far more efficiently and effectively. Very significant resources had to be spent challenging the continuing Metropolitan Police assertions about the difficulties of enabling the requested access to the HOLMES system. This should not have happened. The Panel would have been greatly helped in its work preparing this report and would have been able to complete its report much sooner, had it had access to the HOLMES system in its own offices from September 2013”. The report also states, “The Panel has never received any reasonable explanation for the refusal over seven years by AC Cressida Dick and her successors to permit proper access to the HOLMES accounts to the Daniel Morgan Independent Panel. The consequential major delays to the Panel’s work, which inevitably added to the Panel’s costs, caused further unnecessary distress to the family of Daniel Morgan.”<sup>43</sup>
72. Of further relevance, the DMIP report states, “The Metropolitan Police’s lack of candour manifested itself in the hurdles placed in the path of the Panel, such as AC Cressida Dick’s initial refusal to recognise the necessity for the Panel to have access to HOLMES (the data system which provides safeguards for the integrity of investigations and also enables independent scrutiny to identify failures), as well as limiting access to the most sensitive information (which was not provided at the Panel’s secure premises and was only accessible at a location involving considerable travel time and precluding daily reference and crosschecking... ).”<sup>44</sup>
73. Finally, the DMIP report identified a number of factors which in its view amounted to institutional corruption: “These failings do not all automatically fall within the definition of corruption. Some may result from professional incompetence or poor management. However, when the failures cannot reasonably be explained as genuine error and indicate dishonesty for the benefit of the organisation, in the Panel’s view they amount to institutional corruption. A lack of candour on the part of the Metropolitan Police in respect of its failings is shown by a lack of transparency, as well as prevarication and obfuscation.”<sup>45</sup>

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<sup>42</sup> DMIP report (15 June 2021). Volume 3, Chapter 11, page 1125, paragraph 33.

<sup>43</sup> DMIP report (15 June 2021). Volume 3, Chapter 11, page 1132, paragraphs 70 and 71.

<sup>44</sup> DMIP report (15 June 2021). Volume 3, Chapter 10, page 1060, paragraph 243.

<sup>45</sup> DMIP report (15 June 2021). Volume 3, Chapter 10, page 1021, paragraph 27.

## Assessment of the Panel's criticisms

74. The substance of the dispute between the Panel and MPS was about whether the commitment and exceptional disclosure required:
- a. Disclosure of sensitive material to all the Panel or whether it was sufficient for it to be to the Chair in the first instance, with only material they considered relevant then shared with the rest of the Panel.
  - b. In the case of access to HOLMES:
    - i. Access should not only be for the Panel members but also the inquiry's staff (with suitable security clearance).
    - ii. Access should be provided at the Panel's offices on a standalone laptop.
75. During the scoping exercise we found that some documentary evidence, such as minutes of meetings which would be required to support the statements in the report, were missing or may never have existed. We have seen no evidence that there was any consistent practice of contemporaneously recording minutes of meetings and discussions and to then circulate minutes for agreement between Home Office, the Panel and the MPS. The documents the scoping exercise was able to examine were often not contemporaneous, reflected only one party's recollection, and were sometimes inconsistent with one another and what is in the report.
76. The material which is available suggests there may also have been important misunderstandings between the MPS and the Panel, about for whom, where and under what conditions access to unredacted material was being requested/offered, the difficulties of sanitising the HOLMES accounts, the degree of security redaction provided and how that was affected by the introduction of cloud access. However, we consider there is sufficient material, in the report and the documents examined, to reach a determination about whether there is an indication that there may have been a breach of the standards of professional behaviour in relation to some of the issues in the DMIP report, as set out below.

### Non-sensitive material

77. The report states that non-sensitive material was not made available to the DMIP on Lextranet until January 2015<sup>46</sup>; this appears to be undermined by Annex 1 of Commissioner Dick's response to the criticisms and the references by Baroness O'Loan to being unable to read some of the material provided in the letter of 30 December 2014<sup>47</sup>. There is no basis for believing Commissioner Dick had any responsibility for delays in uploading material handed over by the MPS to the

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<sup>46</sup> The MPS have subsequently said to the IOPC that by 17 December 2014 they had sent and disclosed 131,223 pages of Daniel Morgan case file material to the Panel.

<sup>47</sup> DMIP report (15 June 2021). Volume 3, Chapter 11, page 1122, paragraph 21.



DMIP onto Lextranet. The evidence we have obtained supports that despite issues about the sensitive material being unresolved, the MPS did work in the background to make the non-sensitive material available. For this reason, the scoping exercise has not found sufficient evidence to indicate that there may have been a breach of duty by Commissioner Dick concerning the provision of non-sensitive material to DMIP.

### **Sensitive material**

78. Although DMIP was not a statutory inquiry, this did not mean that there was no statutory framework for providing full and exceptional disclosure of sensitive material. Although that framework permitted disclosure, it was reasonable for MPS to discuss with the Panel how the sensitive material would be handled to be able to keep it secure. It is clear from the evidence that the Panel was prepared to give confidentiality undertakings and were not seeking disclosure of sensitive material to anyone who did not have suitable security clearance. Even so, it is our view that it was reasonable to discuss at the outset whether the duty to provide full and exceptional disclosure of sensitive material could be met by disclosure to the Chair alone, in the first instance, to determine relevance.
79. There is evidence that a draft protocol was sent by the Panel to MPS on 24 October 2013, suggesting that the then Chair, Sir Stanley Brunton, was willing to proceed on the basis of disclosure to himself only in the first instance. The Panel's statement in the report that the protocol was sent only for "better clarity"<sup>48</sup> does not alter this. It cannot therefore indicate a potential breach of duty that Commissioner Dick proposed disclosure to the Chair only in the first instance. It follows that there is no indication that Commissioner Dick may have breached the standards of professional behaviour during the period of negotiation over the protocol from July 2013 to November 2013 when this proposal was being discussed between her and the Chair.
80. It is evident that the other Panel members rejected the proposal to share the sensitive material with the Chair only (in the first instance) at their meeting on 12 November 2013. Sir Stanley Brunton resigned the next day. We accept, as Commissioner Dick set out in her response to the Panel's criticisms, that no concluded disclosure protocol could then be agreed until a new Chair had been appointed and their role commenced. This did not take place until September 2014. It follows that there is no indication there may have been a breach of duty by Commissioner Dick prior to September 2014.
81. The chronology from the material we have viewed does support that the remaining members of the Panel and the Home Office had worked between November 2013 and September 2014 to try and resolve the issues with the MPS and Commissioner Dick in particular, to ensure work could begin quickly when a

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<sup>48</sup> DMIP report (15 June 2021). Volume 3, Chapter 11, page 1120, paragraph 10.

new Chair was appointed. However, the scoping exercise was unable to find evidence to support the statements in the report that the Home Office advised the Panel that Commissioner Dick had agreed to provide sensitive material unredacted to the entire Panel on 23 November 2013 and again on 2 December 2013, or Michael Kellett's later recollection that Commissioner Dick agreed this at the meeting on 5 December 2013. In any event, no formal agreement about access to the material could be made until a new Chair had been formally appointed and commenced work.

82. There is evidence, in the report, from Baroness O'Loan's recollection, that Commissioner Dick agreed to disclosure to the entire Panel in the meeting on 29 April 2014. This issue was clearly important to Baroness O'Loan as she must have been aware of the difficulties it had caused with the previous Chair and she would have been concerned to know if it had been resolved before accepting her appointment as Chair. This discussion does not appear to have been minuted, however, when after a meeting with Commissioner Dick on 17 September 2014 (see below) Baroness O'Loan set out this recollection in an email of 18 September 2014, Commissioner Dick does not appear to have disputed it. In Commissioner Dick's response to this proposed criticism, she said "*...I have seen no record of [the April] meeting and the Panel has not provided me with a copy of the minutes to this meeting. I cannot recall the detail of our discussion...*". That is not sufficient to undermine the indication from the other evidence that she did and there does not appear to be any dispute that in the meeting on 17 September 2014, Commissioner Dick stated she did not agree to disclosure to the entire Panel, therefore going back on agreement made in April. Following further communication, Commissioner Dick then agreed to disclosure to the entire Panel on 16 December 2014<sup>49</sup>.

83. In summary, there is insufficient evidence to indicate Commissioner Dick may have breached her duty to facilitate exceptional and full disclosure, including of the sensitive material between July 2013 and September 2014. However, there is sufficient evidence for an indication that on 29 April 2014, she may have agreed to sensitive material being disclosed to all Panel members, and that she changed her position in 17 September 2014, before agreeing again, approximately twelve weeks later, on 16 December 2014<sup>50</sup>. To that extent, there is an indication she may have changed her mind having agreed on the issue and so there is an indication that she may have breached her standards of professional behaviour by failing to follow instructions and/or to be diligent in the performance of her duty to provide exceptional and full disclosure to the Panel, between September 2014 and December 2014. .

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<sup>49</sup> DMIP report (15 June 2021) Volume 3, Chapter 11, page 1128, footnote 22 says "*The letter was dated 16 November 2014 but sent in an email on 16 December 2014*".

<sup>50</sup> The letter was dated 16 November 2014, but sent in an email on 16 December 2014.

## HOLMES

84. There is evidence that DMIP made clear that it required access to HOLMES in September/October 2013. It is our view that there is at least an indication that the Panel's wish to access HOLMES was reasonable and within its terms of reference<sup>51</sup>.
85. The material we have reviewed supports that initially the MPS, through DCS Mick Duthie with Commissioner Dick's knowledge and endorsement, was supportive of access to HOLMES. The discussion of relevant training was referenced in an email dated 17 October 2013 and on 26 November 2013, when Panel member Michael Kellett arranged to view the accounts. It then became apparent to MPS that sensitive material was contained within HOLMES accounts and that appropriate handling arrangements were required. It was following this that on 5 December 2013, Michael Kellett records Commissioner Dick as being reluctant to allow access.
86. Commissioner Dick's position appears to have hardened by 13 March 2014 when DCS Duthie told Michael Kellett that Commissioner Dick was, "not supportive"<sup>52</sup> of the Panel having access. On 20 March 2014, the Panel responded explaining that it was incompatible with full and exceptional disclosure to refuse access to HOLMES on the grounds it contained sensitive material.
87. Baroness O'Loan says that at their meeting on 29 April 2014, Commissioner Dick agreed that there could be standalone access. As above, Commissioner Dick said in her fairness response to the Panel that she had not been provided with minutes of the meeting and could not recall detail of the discussion, and that agreement could not have been reached until the Panel had independent evidence from its own experts. However, based on Baroness O'Loan's recollection, the evidence is sufficient, for an indication, that she may have agreed to standalone access to HOLMES and then resiled from the agreement in the meeting on 17 September 2014.
88. There followed a period of further communication on this and, as explained above, the material suggests there may have been important misunderstandings between the MPS and the Panel, about for whom, where and under what conditions access to unredacted material was being requested/offered and the difficulties of sanitising the HOLMES accounts. In December 2014, Commissioner Dick agreed to access from MPS premises but the Panel wished to have access from their own premises; at that point AC Hewitt took over from Commissioner Dick's role (see below).

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<sup>51</sup> Explained at DMIP report (15 June 2021). Volume 3, Chapter 11, page 1125, paragraph 33.

<sup>52</sup> DMIP report (15 June 2021). Volume 3, Chapter 11, page 1126, paragraph 41.

89. There is no evidence that Commissioner Dick’s concerns around the difficulties of sanitising the account and/or arranging for suitable security for a laptop were not genuine. However, there is no evidence that providing the Panel or its staff (with suitable security clearance) with the access to the unredacted account, at least on MPS premises, was impractical or impossible. Rather the evidence is that Commissioner Dick did not want to agree to it because in her opinion, “[The Panel] is not there to give a view on how well or badly the investigation was run. The [Terms of Reference are] about why people have not been brought to justice.”<sup>53</sup> She also references in her response to the Panel her view that “access to HOLMES is the same as access to the documentation.”<sup>54</sup> In her response to criticisms she also still maintained that it was unclear to her why the Panel took a different view to her own.
90. It is clear there was confusion between the MPS and the Panel in the correspondence we have seen about where, to whom and under what conditions access was being requested/offered. There was also confusion over whether it was possible for the HOLMES account to be ‘sanitised’ so that the laptop could be provided with only the non-sensitive material. The Panel believed it was possible, but the technical advice to Commissioner Dick was that although the sensitive material could be hidden from users without access rights, it remained on the laptop and was potentially accessible to ‘hackers’ if the device was stolen and fell into the wrong hands. That confusion may itself support that Commissioner Dick’s conduct towards the Panel was inconsistent with demonstrating a commitment to full and exceptional disclosure, resulting in a distrust of the MPS.
91. The difficulties caused by sensitive material being included on the HOLMES accounts, in our view, may not have excused a refusal or reluctance to provide access. At least to the standard of an indication, Commissioner Dick’s duty was to resolve the difficulties and to make the disclosure.
92. For the reasons set out above, it is our view that there is an indication that the manner in which Commissioner Dick conducted herself in making arrangements for the Panel to access HOLMES may have breached the standards of professional behaviour by failing to follow instructions and/or being diligent in her duty to arrange full and exceptional disclosure between September and the beginning of January 2015.

### **Severity of the potential conduct matters**

93. As Commissioner Dick retired in 2022, a conduct matter may be recorded and referred to the IOPC, but only if the alleged breach of the standards of behaviour indicates gross misconduct.

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<sup>53</sup> Response of Cressida Dick, Commissioner of the MPS, to Fairness Process Letter, page 23.

<sup>54</sup> Ditto

94. The College of Police’s Guidance on Outcomes in police misconduct proceedings<sup>55</sup> (the Outcomes Guidance) advises that the seriousness of a breach of the standards of professional behaviour should be carried out by assessing the harm done and the culpability for the misconduct along with mitigating and aggravating features, while keeping in mind the purposes of disciplinary proceedings: to maintain public confidence in policing, uphold high standards, deter misconduct, and protect the public.
95. The Panel has not suggested, and there is no evidence to suggest, that Commissioner Dick’s actions were motivated by any intention to protect corrupt officers. Her motivation for the indicated breaches appears to have been a potential failure to give due regard to the importance of full and exceptional disclosure weighed against the concerns over handling of the sensitive material and the difficulties that caused. While Commissioner Dick’s conduct was deliberate, the Outcomes Guidance recognises as a specific mitigating feature, “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.”<sup>56</sup>
96. Ultimately, it appears the Panel received access to all relevant material and to the HOLMES accounts, which an expert examined and found no evidence of them having been corrupted. The harm resulting from the potential conduct matter was to delay access to HOLMES and the sensitive material being provided to all the Panel, and ultimately delays to the completion of the Panel’s report. Access could not in reality have been provided until the new Chair had been appointed and commenced work in September 2014; the extent of Commissioner Dick’s possible responsibility for delay in access to HOLMES is for the period between then and her leaving the role at the beginning of January 2015, a period of approximately four months, and a slightly shorter period concerning access for all of the Panel to sensitive material. The further delays and difficulty after the beginning of January 2015, in relation to HOLMES access, cannot be Commissioner Dick’s responsibility and is discussed in relation to Assistant Commissioner (AC) Hewitt below. It is unclear how this period of four months contributed to the overall length of time it took the Panel to complete its work, which took a further six years.
97. The Outcomes Guidance also states that aggravating factors may include a significant deviation from instructions, and the scale of concern about the issue. Commissioner Dick’s seniority at the time may also be an aggravating factor. Mitigating features include that the conduct was eight years ago and was not raised as a complaint or conduct matter at the time.

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<sup>55</sup> [Guidance on outcomes in police misconduct proceedings \(college.police.uk\)](https://college.police.uk/guidance-on-outcomes-in-police-misconduct-proceedings)

<sup>56</sup> College of Policing Outcomes guidance paragraph 4.71

98. Taking all these matters into account the indication that Commissioner Dick may have breached the standards of professional behaviour by breaching her duty to provide full and exceptional disclosure to the panel, are not at a level which in our view could justify disciplinary action had she still been serving. In any event for a conduct matter to be recorded now that she has retired would require the severity to be at the level of gross misconduct.

### **Circulation of a notice to all MPS employees in December 2014**

99. DMIP was concerned that the contents of a notice by the MPS to all employees was intended to, or may have had the effect of, deterring potential whistle-blowing and the free flow of information to the Panel. However, there is no evidence the notice was intended to have that effect and none that Commissioner Dick was responsible for it being circulated. Once the DMIP's concern was brought to Commissioner Dick's attention, she acted to make it clear to MPS officers and staff that they could speak to the DMIP directly and in confidence. There is no indication Commissioner Dick may have breached any standard of professional behaviour on this issue and so no question of POI being used.

### **The MPS response to the DMIP 'fairness process' in December 2020**

100. The DMIP's concern was that a relevant policy, the 'London Homicide Manual' was only disclosed to it, many years late, during the fairness process. However, there is no evidence which indicates that Commissioner Dick may have had any personal knowledge of, or played any role in, the failure to disclose this policy earlier. It follows that there is no indication she may have breached the standards of professional behaviour for this issue.

### **Summary for Commissioner Dick**

101. There is an indication that Commissioner Dick may have breached the standards of professional behaviour by failing to follow instructions or to be diligent in carrying out her duty to provide exceptional and full disclosure to the Panel by:

- Failing to agree that sensitive material should be disclosed to all the Panel members (rather than in the first instance to the Chair only) between September 2014 and 16 December 2014.
- Failing to agree access to HOLMES for the Panel and its legal advisers between September 2014 and the beginning of January 2015 and to the Panel's staff (even those with suitable clearance) at all.

102. However, taking into account the culpability and harm, the aggravating and mitigating factors, including her seniority, the impact on public confidence, that

she appears to have believed there was a legitimate purpose for her actions, the conduct was eight years ago and no complaint was made at the time, disciplinary action could not be justified. For these reasons, no conduct matter can be recorded and there are insufficient grounds on which to exercise the power of initiative.

## Lord John Stevens

103. The criticisms of the DMIP are in relation to his evidence to the Leveson Inquiry, that he was unaware of corrupt relations between journalists and police officers; the Panel found it “surprising”<sup>57</sup> that Lord Stevens was unaware of allegations about the illegal trade in police-derived information. At the time of his evidence to that inquiry he was no longer serving with the police. For that reason, the IOPC has no jurisdiction to investigate it.

## Sir Ian Blair

104. The Panel found that a statement Sir Ian Blair made to a meeting of the Metropolitan Police Authority in 2005 was inaccurate because it overstated the extent of past efforts by the MPS to rectify the problems in the Morgan One Investigation.

105. Sir Ian Blair retired in 2008.

106. It is unclear from the report how well-briefed Sir Ian Blair was about the previous investigations prior to attending the meeting. It appears that the remark was an opinion given as part of a discussion and not a formal submission. There is no evidence it was made deliberately or even recklessly to mislead, and he agreed that the MPS would co-operate with the proposal being made which ultimately led to a reinvestigation. For these reasons there is no indication that he may have breached of the standards of professional behaviour and so no question of exercising the power of initiative.

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<sup>57</sup> DMIP report (15 June 2021). Volume 3, Chapter 10, page 1095, paragraph 420.

## Metropolitan Police Service (MPS) strand

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### DCS David Cook

107. DCS Cook was the Senior Investigating Officer (SIO) for the overt Morgan Two Investigation which commenced in May/June 2002, he wrote the 2006 report for the Metropolitan Police Authority about investigations of Mr Morgan's murder to that date and he was the SIO for the Abelard Two Investigation. He retired from the MPS in 2007 and from the Serious and Organised Crime Agency in October 2013.
108. The MPS assessment states that there are conduct matters indicated in the report for DCS Cook, but they have all been previously investigated and there are no grounds on which to reopen those investigations. Our scoping exercise identified the same potential conduct matters.
109. Some of the criticisms in the DMIP report concern poor management, mistakes or misjudgements in relation to the Abelard One Investigation. The report acknowledges there were resource issues in the investigation and in our view many of these criticisms are at the level of poor performance rather than being an indication there may have been misconduct or criminality. However, there were also more serious matters identified, as set out below.
110. The DMIP report sets out that during the Abelard Two Investigation DCS Cook breached the sterile corridor which should exist between the investigators and witnesses who are 'assisting offenders' under the Serious and Organised Crime Act 2005. The sterile corridor is required to prevent the evidence of the assisting offenders being contaminated during their debriefing by officers who are independent of the investigation. The trial judge also found that DCS Cook had prompted the evidence of the witness Gary Eaton in a manner that the High Court and Court of Appeal (civil) found amounted to an attempt to pervert the course of justice. The trial judge excluded Mr Eaton's evidence for these reasons, which led directly to the case against DS Fillery being dismissed.
111. During and after the Abelard Two Investigation, DCS Cook improperly copied investigation material and removed it from police systems, some of which he improperly disclosed to journalists.
112. The evidence supports these criticisms and indicates that DCS Cook may have breached the standards of professional behaviour and committed criminal offences of, at least, attempting to pervert the course of justice and improperly processing and disclosing personal data.
113. It is correct, as the MPS assessment states, that these matters have all been the subject of misconduct and criminal investigations previously. DCS Cook was



referred to the CPS by the IPCC following Operation Longhorn and by the MPS following Operation Edison, concerning his improper removal of police information. The MPS also referred him to CPS following Operation Megan Two, which concerned the breaches of the sterile corridor and prompting of Mr Eaton. Following each referral, the CPS decided not to charge him.

114. The IPCC also determined following its investigation (Operation Longhorn) and the investigation of Jonathan Rees' 'Panorama' complaints that had DCS Cook still been serving he would have had a case to answer for gross misconduct, but no proceedings could then (or can in the future) be brought due to the date on which he retired.

115. The DMIP report does not reveal any new evidence or new considerations which would permit the previous investigations to be reopened. The facts have now been brought to the attention of the public, in court judgments and by the DMIP report. For these reasons, it is our view that it would not be appropriate to use the power of initiative.

## DI Noel Beswick

116. DI Beswick was a senior investigating officer in the Abelard Two Investigation. The report refers to how DI Beswick was also later an Acting Detective Chief Inspector and then a Temporary Detective Chief Inspector. For the purposes of this report, he will be referred to as DI Beswick. There is significant confusion over whether, after DCS Cook's retirement from the MPS to take up a position in the Serious and Organised Crime Agency, DI Beswick or DCS Cook was *the* Senior Investigating Officer. In our view the evidence supports that in practice DCS Cook acted as SIO. However, particularly as DCS Cook was then no longer an MPS officer, DI Beswick had significant responsibility for the investigation and any failings. DI Beswick retired in 2013.

117. The only potential misconduct identified by the MPS in its assessment related to a breach of policy by sending material to DCS Cook, the SIO, at his personal email account. The MPS' view was that since he was encouraged to do this by the SIO it did not amount to misconduct that justified disciplinary action. We accept this view, for the reason given by the MPS. However, the scoping exercise identified other concerns arising out of the criticisms in the DMIP report:

- he failed to quality check the work of officers supervised by him
- the failure by the Abelard Two Investigation to carry out a risk assessment for the witness person J5 or to arrange for the credibility of their evidence to be tested as early as it should have been
- he did not challenge the contents of the report for the CPS prepared by DCS Cook

- he failed to ensure that disclosure of material which may assist the defence or undermine the prosecution case was carried out with diligence
- he was reluctant for the Panel to have access to HOLMES

118. Regarding the first three criticisms noted above, the evidence supports that DI Beswick's workload, and a lack of resources had a significant impact on his ability to supervise the investigation. All significant contact with person J5 was by other officers including the SIO. In these circumstances, a failure to supervise junior officers and/or to challenge his SIO do not, in our view, indicate misconduct which could justify disciplinary proceedings.

119. The failures in disclosure were a substantial reason for the prosecution being brought to an end. The evidence supports that the scale of the task was (in the words of the trial judge) unprecedented. DI Beswick had brought to the attention of his managers the difficulties he faced. The trial judge made no adverse findings about his conduct and nor did the MPS disciplinary investigation which took place following the Abelard Two Investigation. The DMIP report has not revealed any new evidence or considerations in this regard.

120. Regarding the Panel's access to HOLMES, DI Beswick had a role in assisting with disclosure to the Panel, no doubt due to his knowledge of the case. The report notes that he expressed opinions in 2013 that it was unnecessary for the Panel to have access to HOLMES. However, he was not a decision maker in this respect; as explained above in the MOPAC section, the responsibility for making full and exceptional disclosure to the Panel at that time was that of Commissioner Dick.

121. There is no suggestion in the report of any deliberate misconduct or corruption involving DI Beswick and so there is no indication he may have committed criminal offences. As set out above, we do not consider the other criticisms would justify the recording of a conduct matter and in any event, no disciplinary proceedings can now be brought against him. The public interest in bringing the facts to light has been met by publication of the DMIP report and other reports and reviews already in the public domain.

122. For the above reasons, there are no grounds on which to exercise the power of initiative for conduct matters to be recorded for DI Beswick.

## DS Gary Dalby

123. DS Gary Dalby worked on the Abelard Two Investigation and was the case officer with supervision of the disclosure officer. He retired in April 2020.

124. The MPS' assessment identified potential conduct matters relating to sending material to DCS Cook's personal email account, which, as for DCI Beswick,

appears was done at DCS Cook's request. The MPS assessed this did not amount to an indication that he may have breached the standards of professional behaviour at a severity which would justify disciplinary proceedings. It also referred to the report's finding that DS Dalby had given inaccurate information to the Panel on a number of occasions but was of the view the inaccuracies were likely to have been mistakes in recollection, not least because of the amount of information he had been handling.

125. Our scoping exercise identified potential conduct matters arising from the DMIP report under the headings below.

### **Failure to handle exhibits properly**

126. This issue concerns the handling of a pen recovered from Daniel Morgan's car, which was not labelled or handled correctly at the time it was seized during the Morgan One Investigation. As a result, it was unresolved during the investigations what may have happened to Daniel Morgan's pen. When the exhibit bag containing the pen was found in 2014, it was brought to the attention of DS Dalby, however it was not brought to his attention that it contained a pen. At that time, he did not examine the bag but ensured it was retained. When he did examine it in 2016 he found the pen, which he brought to the attention of the DMIP. The DMIP criticises DS Dalby for the delay in examining the contents of the bag. However, he had prevented the exhibit bag from being destroyed and in our view this was poor performance at worst and there is no indication there may have been any breach of the standards of professional behaviour by DS Dalby in connection with this issue.

### **Failure to pass on information about Gary Eaton that he had been hospitalised for mental illness**

127. This concerned the failure to pass on information about Gary Eaton's previous hospitalisation for mental illness to officers who were to carry out his debrief under the 'assisting offender' procedures. The risk assessment was in fact completed by DCS Cook who was also aware of this matter and so there is no indication there may have been a breach of the standards of professional behaviour by DS Dalby in relation to this issue.

### **Disclosure failures**

128. The trial judge made a specific finding in relation to the custody time limits that there was a lack of diligence regarding disclosure. Disclosure failures were a reason given for the prosecution being brought to an end. As DS Dalby was the case officer responsible for the supervision of the disclosure officer and had a duty to be diligent in the exercise of his supervisory duties, these issues indicate there may have been a breach of the standards of professional behaviour.

129. The evidence in the report supports that these failures were due to him being overwhelmed by the amount and complexity of material for disclosure and the inadequacy of resources provided to him. There is no new information in the DMIP report beyond that which was known to the trial judge who made no finding that he had acted with any improper motive (despite suggestions by the defence to the contrary) and nor were any adverse findings made of his conduct by the High Court or Court of Appeal. There was a disciplinary investigation following the collapse of the trial which did not result in conduct matters being recorded for DS Dalby, presumably on the basis that, taking account of all of the circumstances, even though there was an indication the standards of professional behaviour may have been breached, it would not justify disciplinary proceedings.

130. In our view, the disclosure failures indicate there may have been a breach of the standards by DS Dalby. However, there is no evidence of an improper motive; the evidence supports that he was overwhelmed by the amount and complexity of material for disclosure and the inadequacy of resources he had to deal with it. Therefore, in our view it would not justify disciplinary action and in any event, since he retired in 2020, a conduct matter can only be recorded if it justified dismissal. For all these reasons, there are insufficient grounds for exercising the power of initiative.

## Deputy Assistant Commissioner (DAC) Roy Clark

131. DAC Clark had overall responsibility for Operation Nigeria/Two Bridges. He retired in 2001.

132. The MPS assessment describes the DMIP report criticisms of him as being “disagreements” which do not amount to an indication of misconduct or criminality.

133. We agree that there is no allegation or information to suggest that the Operation Nigeria/Two Bridges Investigation was corrupt or improper. Our scoping exercise identified the following potential conduct matters:

- a. There was confusion between the senior officers about where the emphasis lay, between investigating Jonathan Rees and former DS Fillery for having current corrupt relationships with police officers generally and investigating them for Daniel Morgan’s murder.
- b. The decision not to notify the family they were investigating the murder prior to a newspaper article stating it had been re-opened, which had resulted in distress for the family.

- c. That DAC Clark's letter to MPs following the arrest of Jonathan Rees and DC Warnes stating, "enquiries remain very active, are ongoing and involve many investigating officers" was inaccurate<sup>58</sup>.
- d. Daniel's brother, Alistair Morgan's allegation that DAC Clark was scandalously negligent. DAC Clark is said to have referred to him as paranoid, and to have lied to him about the quality of the Morgan One Investigation.

134. The report highlights that the Operation Nigeria/Two Bridges Investigation was proactively seeking intelligence and evidence of both ongoing corrupt relationships between Jonathan Rees and police officers and the murder of Daniel Morgan. The investigation obtained some useful intelligence on the murder and led to the conviction of Jonathan Rees and DC Warnes for unrelated corruption. Confusion on where the emphasis lay cannot, of itself, indicate there may have been a breach of the standards of professional behaviour or an offence committed.

135. The newspaper article was an investigative tactic intended to prompt remarks from the suspects which may be recorded by listening devices and used as evidence or intelligence. DAC Clark explained he was concerned about the possibility of inadvertent leaks if he had let the family know, and the DMIP report acknowledges there were these concerns. Even if mistaken, the decision does not indicate there may have been a breach of the standards of professional behaviour which justifies disciplinary action.

136. The issue about the letter to MPs was that, although Complaints Investigation Bureau 3 (CIB3)/Complaints Investigation Bureau Intelligence Cell (CIBIC) investigation continued after Jonathan Rees' and DC Warnes' arrests, it was investigating corruption within the MPS generally and was not focused on Daniel Morgan's murder. The work in relation to Daniel Morgan's murder was limited to intelligence interviews with two individuals. However, the murder remained a matter of interest and it was always possible that new leads would appear and be followed. The extent to which the statement was inaccurate is therefore open to interpretation. For these reasons there is no indication that there may have been a breach of the standards of professional behaviour.

137. It is unclear what the basis for Alistair Morgan's allegation of scandalous negligence is, or the context of the other remarks.

138. In summary, none of the matters identified indicate there may have been breaches of the discipline code or criminality. Therefore, at present there are insufficient grounds to exercise the power of initiative. If Alistair Morgan is willing

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<sup>58</sup> DMIP report (15 June 2021). Volume 2, Chapter 5, page 446, paragraph 9.

to provide additional information, by way of a formal complaint or otherwise, this decision can be reassessed.

## D Supt Christopher Jarratt and D Supt Robert Quick

139. D Supt Jarratt and D Supt Quick worked within CIB3 at the time of Operation Nigeria/Two Bridges. They retired in 2012 and 2009 respectively.

140. The MPS assessed that there were no criticisms of these officers in the report. We reviewed references to D Supt Jarratt or D Supt Quick in the DMIP report and there is no criticism which in our view, could amount to a conduct matter.

## DS Danny Dwyer

141. DS Dwyer was involved in the Abelard Two Investigation and retired in 2018. The MPS' assessment did not identify any potential conduct matters.

142. The report found that his remarks to witness person J5 were inappropriate, when trying to persuade them to be a witness. Person J5 was being asked to give evidence about someone they had been in a relationship with and their associates, who were suspected of involvement in the murder and other offences. Although it is generally considered a public duty to assist a criminal investigation, person J5 was reluctant. Police officers who seek assistance from those associated with criminals need to exercise their own judgement about how best to persuade them to assist the investigation by providing information. This matter appears to have previously been investigated by Operation Megan and the facts have been brought to light in the report.

143. There is no evidence DS Dwyer had an improper motive in seeking to persuade person J5 to give evidence. Even accepting his remarks were a mistake or a misjudgement, in our view it is insufficient to amount to an indication that he may have committed an offence or breached the standards of professional behaviour, justifying disciplinary proceedings, which due to the date of his retirement would have to be at a level of gross misconduct for a conduct matter to be recorded<sup>59</sup>. As there is no basis for a conduct matter to be recorded, there are no grounds to exercise the power of initiative in his case.

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<sup>59</sup> See Appendix 2, where an officer retired after 15 December 2017 a conduct matter can only be recorded if it is at the level of gross misconduct, additionally as he retired well over 12 months ago a special determination is required.

## Assistant Commissioner (AC) Martin Hewitt

144. On 2 January 2015, DAC Hewitt took over the role as MPS senior officer with responsibility for the DMIP from Commissioner Dick. He remains a serving officer at Assistant Commissioner rank and is presently Chair of the National Police Chiefs' Council. Therefore, he will be referred to as AC Hewitt in this report.

145. The MPS did not identify any potential conduct matters for AC Hewitt. Our scoping exercise identified potential conduct matters under the headings below.

### **Circulation of a notice to all MPS employees in December 2014**

146. This is also referenced in relation to Commissioner Dick and relates to the circulation of a notice to MPS employees asking them to contact the Panel through an MPS point of contact. The Panel believed this may deter officers from speaking and made this objection known. In response to this, the MPS sent an email inviting staff to contact the Panel directly. There is no indication of any improper motive in circulating the notice and in any event, no evidence AC Hewitt had any role in drafting and circulating it. Therefore, there is no indication he may have breached the standards of professional behaviour or criminality in connection with it.

### **Delay by the MPS in sending two letters to retired officers on the Panel's request**

147. The Panel asked the MPS to have these letters delivered to former officers. It appears some part of the delay in sending them was due to the MPS wanting to send a letter in tandem with the Panel's correspondence. The Panel objected to the delay in sending the letters and the MPS letter being sent in tandem. There is no indication AC Hewitt was aware of these matters, until the Panel contacted him to make their objections known. Once he knew of their objections, he arranged for the letters to be sent immediately and it is understood no MPS letters were sent in tandem. It follows there is no indication that AC Hewitt may have breached the standards of professional behaviour on this issue.

### **Failure to ensure that the officer who provided material to the inquiry and who was responsible for security classifications was adequately vetted**

148. There is no indication AC Hewitt had personal knowledge of this and HMICFRS in its recent inspection has identified this as an issue across the MPS and has made recommendations to address it. There is no indication that AC Hewitt may have breached the standards of professional behaviour in relation to this matter.

## **Delays in the Panel being able to access material from Operation Othona and only being able to access it at MPS premises in East London**

149. This concerns highly sensitive intelligence material which was collected by the MPS between 1994 and 2003 and stored on the Bawdsey database, originally believed to have been lost. A hard disk containing it was found in 2013 but it appears that the MPS did not inform the Panel of it until 2016. AC Hewitt was the officer who advised the Panel of its existence. Following the hard disk being found, a computer expert was instructed to carry out work to make it accessible and we understand this work was still taking place in 2016<sup>60</sup>.
150. AC Hewitt offered the Panel access to the material when he told them of its existence in 2016 but that because of its sensitivity, access needed to be at secure MPS premises in East London.
151. It is unclear when AC Hewitt became aware of the existence of this material but there is no evidence he deliberately delayed notification and so there is no indication that he may have breached the standards of professional behaviour.

## **Failure to approve access to HOLMES for the DMIP**

152. This was considered above in connection with Commissioner Dick, our view was that there was an indication that she may have breached the standards of professional behaviour in relation to delaying access to HOLMES.
153. At the point AC Hewitt took over from Commissioner Dick, she had agreed to access for the Panel at MPS premises, but the Panel wished to have access from its offices. DCS Duthie seems to have led interactions with the Panel over this issue and at a meeting on 25 March 2015, he said he would look at some of the options for access and that, "if AC Martin Hewitt told him to arrange access, he would do so". The DMIP report states that on 5 May 2015, the MPS agreed that the DMIP could have access to HOLMES from its offices.
154. Subsequently cost issues regarding the necessary security for HOLMES within the Panel's offices meant that the Panel did not take the MPS up on its offer. There is criticism in the report, that since a laptop was provided in 2020, without those security arrangements being put in place, those security requirements were unnecessary. However, this appears to be based on a misunderstanding; HOLMES had by 2020 been migrated to the cloud and so the account did not have to be stored on the laptop itself, meaning the requirements for physical security for the laptop itself had changed.

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<sup>60</sup> This information is known to the IOPC from another investigation.



155. The evidence indicates that AC Hewitt tried to resolve issues over access to HOLMES once he became aware of them. Criticism about the security requirements for access to HOLMES appear to be based on a misunderstanding and AC Hewitt was not responsible for the issues concerning cost. In these circumstances, it is our view there is no indication there may have been a breach of the standards of professional behaviour.

### **Inaccurate account of roles in Abelard Two Investigation**

156. This is a matter that has been identified by the MPS as a criticism by the Panel which, in its view did not amount to a conduct matter.

157. There is no indication AC Hewitt had personal knowledge of roles in the Abelard Two Investigation, but he provided an account to the Panel as their senior officer liaison, which is likely to have been based on a briefing or research by other officers. The account included that DCS Cook had remained the SIO after he retired from the MPS and went to work at the Serious Organised Crime Agency (SOCA). However, SOCA records suggested his role was to support DCI Beswick as SIO. The DMIP report comments on the confusion about the arrangements for governance and management of the investigation. As set out above in connection with DCI Beswick, on our reading of the DMIP report in its entirety, it is clear that DCS Cook acted as SIO regardless of how his role was described. There is no indication of an intention by AC Hewitt to mislead, and so no indication he may have breached the standards of professional behaviour.

### **DCS David Lamper**

158. DCS Lamper investigated complaints made by Jonathan Rees in a statement dated 31 May 1988, after the Inquest. The MPS have informed us that DCS Lamper is deceased. He retired from the MPS in 1991. The MPS did not consider any potential conduct matters in relation to him.

159. Our scoping exercise identified that the DMIP report criticised DCS Lamper's investigation and in particular that he found that, 'the general complaint of lack of proper investigation [should] be recorded as unsubstantiated'<sup>61</sup>. It appears that in making this finding DCS Lamper may have relied on a review by DCS Shrubsole of the Morgan One Investigation rather than by carrying out his own disciplinary investigation of the issue. It is suggested that had he carried out his own investigation, the failures the Panel has itself identified regarding the Morgan One Investigation would have been apparent and so this may amount to a neglect of duty.

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<sup>61</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 254, paragraph 1010.

160. Even accepting this criticism indicates there may have been a breach of the discipline code, as DCS Lamper is sadly deceased he cannot give an account in his own defence, nor face proceedings of any sort. The public interest in bringing these issues to light has been met by the DMIP report. There are no appropriate grounds on which to exercise the power of initiative.

## PS Phil Barrett

161. PS Barrett had joined the Catford Crime Squad two days before the murder, in 1987, and with the rest of the squad joined the Morgan One murder investigation. He retired in 1998. The MPS assessed there is no indication that he may have breached the discipline code.

162. PS Barrett conducted house to house inquiries on 11 March 1987. The report says that he, together with DS Fillery, was in charge of those inquiries<sup>62</sup>. He failed to disclose that he had been drinking, together with DS Fillery and other officers, with Jonathan Rees and Daniel Morgan on the night before the murder (9 March 1987) at the same pub where he was murdered the following day. He did put this in a witness statement dated 16 March 1987.

163. There is no evidence he had known Jonathan Rees or Daniel Morgan prior to being introduced on 9 March 1987 or that he had any involvement with or knowledge about the murder. However his failure (and that of the others present at the public house on the 9 March 1987<sup>63</sup>) to have given that information immediately after they learnt of the murder may have compromised the investigation. It appears this information was not given until 16 March 1987 when, he and Catford crime squad officers were removed from the investigation, in part at least, because of the concerns of the SIO about the relationship of DS Fillery to Jonathan Rees. It is impossible to know now whether Daniel Morgan's murderers may have been brought to justice had this officer, or others who had been at the public house, disclosed the information about the evening of 9 March 1987 sooner. However, it is reasonable to believe it may have led to Jonathan Rees and DS Fillery being treated as suspects sooner than they were and more robust attempts being made to secure evidence in relation to them.

164. We disagree with the MPS that there is not a conduct matter. The failure of PS Barrett to disclose that he, DS Fillery and others had been drinking with Jonathan Rees and Daniel Morgan the night before the murder, at the scene of the murder, does in our view indicate he may have breached the discipline code, at least, by bringing the force into disrepute. However these facts have been known since 16 March 1987 and could not result in a criminal investigation or prosecution.

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<sup>62</sup> This is disputed by the MPS, who have informed the IOPC that DS Fillery was not engaged on house to house inquiries.

<sup>63</sup> These at least included DS Sidney Fillery, PS Phillip Barrett, PC Alexander Gibbs, PC Michael Latham and PC Maureen Fentiman.

Although it would be possible to record a conduct matter, no disciplinary proceedings can be brought due to the date of his retirement and all the facts have already been brought to light. In these circumstances there are no grounds to exercise the power of initiative. However, we wish to draw the attention of the MPS to our concern about the failure to take appropriate action at the time and the failure, even now, to identify that it was a conduct matter.

## DS Malcom Davidson

165. DS Davidson was the office manager for the Morgan One Investigation but had no training for the role. He retired in 1989.
166. The MPS assessed that some of the criticisms of DS Davidson in the report of the way in which he performed his role were potential conduct matters but they did not record them as no proceedings could be brought due to the date of his retirement and there was no indication of a criminal offence.
167. The IOPC scoping exercise identified the same criticisms, which included not making use of the computer system at all, and poor management of the investigation as potential conduct matters. These criticisms had previously been made in a report by PS Riddell to the Hampshire/PCA Investigation in 1988 and insofar as they relate to criticisms of his supervision of the exhibits officer, by DCS Lamper in his 1988 disciplinary investigation.
168. Our scoping exercise also identified criticism of the loss of the index cards, following closure of the investigation, but it is unknown when these went missing or what responsibility DS Davidson may have for it. Also, that he admitted to PS Riddell destroying the marked-up statements, which despite his later denial, is sufficient to indicate he may have breached regulation 5(b) of the 1985 Discipline Code: "wilfully and without proper authority or through lack of due care destroys or mutilates any record or document made, kept or required for police purposes".
169. We therefore agree with the MPS that there is an indication DS Davidson may have breached the discipline code, but due to the date of his retirement no disciplinary proceedings can now be brought. There is no evidence of criminal intent. The facts have been known since at least 1988 and are set out fully in the DMIP report. In these circumstances, there are no grounds for exercising the power of initiative.

## DS Graham Frost

170. DS Graham Frost was the forensics officer during the Morgan One Investigation. He retired in 1991.

171. The MPS assessment identified that he had been criticised in the DMIP report because his statement regarding his investigation of the scene, dated four months after the murder, lacked detail about where and when exhibits had been stored. The MPS considered that in the present day this would be dealt with by reflective practice but that it did not indicate he may have breached the discipline code.
172. Our scoping exercise identified additional criticisms, that he did not conduct a daylight search of the car park, kept no scene log, took only six pictures, failed to see that exhibits were not kept and recorded correctly and did not follow procedures of the time; the key areas of the body (head/hands) were not protected and no use of protective clothing was noted; the area was not searched properly, was left unguarded, and other cars were known to have been allowed to leave the car park before they were forensically examined. The report says their own independent expert in forensic science stated, “even by the standards of the day it was poor”<sup>64</sup>.
173. There is no suggestion, in the DMIP report or otherwise, of any improper motive and as the report states, decisions about the extent of the examination of the scene and the forensic strategy were the responsibility of the SIO DCS Campbell. Even accepting that the failures were conduct matters, rather than being suitable for reflective practice, no disciplinary proceedings can be brought due to the date of his retirement and the facts have been brought to light by the DMIP report. In these circumstances, there are no grounds on which to exercise the power of initiative.

## DC Clive Blake

174. DC Clive Blake was the officer in charge of exhibits. He retired in 2010. The MPS assessed that by present day standards, the poor quality of his work would indicate he may have breached the standards of professional behaviour (discipline code) but they declined to record conduct matters on the basis that the matter had already been subject to a disciplinary investigation in 1988 by DCS Lamper. After that investigation, DC Blake had received words of advice (rather than being referred for disciplinary proceedings) on account of his inexperience and limited capabilities.
175. We agree that the criticisms made by the Panel of DC Blake’s poor handling of the exhibits indicate he may have breached the discipline code. However, the criticisms were identified in 1988 during the Hampshire/PCA Investigations and, as above, have been dealt with previously in disciplinary procedures. There are

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<sup>64</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 44, paragraph 102.

no grounds to re-open that investigation and so no grounds on which to exercise the power of initiative.

## DS Kinley Davies

176. This officer was involved in the Morgan One Investigation. He retired in 2006.

177. We agree with the MPS assessment that the failure to report that he had seen Mr Ross, a former officer with connections to the media, in the incident room may have been a breach of the discipline code. The information appears to have been known quickly by his managers in any event; they took action against DC Leslie, the officer they believed responsible for bringing him there.

178. There is no indication of criminality by DS Davies and no misconduct proceedings can be brought. The other criticisms of his handling of exhibits and intelligence do not in our view amount to conduct matters in any event. The facts have been brought to attention by the DMIP report. In these circumstances, there are no grounds on which it is appropriate to exercise the power of initiative.

## DS Noel Cosgrave

179. This officer worked on the Morgan One Investigation and retired in 1990. The MPS assessment did not identify any potential conduct matters from the DMIP report for him.

180. Our scoping exercise identified a potential conduct matter that he gave conflicting accounts as to whether he could remember if Daniel Morgan was wearing his Rolex watch when his body was found. The report says that in 1989 (already two years after the murder) he was unable to say if he had been, but in 2002 he was sure he had.

181. That DS Cosgrave was not able to refer to or rely on documentary evidence to answer this question, says much about the failure of Morgan One Investigation to record evidence of the scene. Yet, there is no evidence that it had been DS Cosgrave's duty to record the property on Daniel Morgan's body. That his recollection from between two years and then five years after the murder has varied, does not of itself indicate he may have breached of the discipline code. There are therefore no grounds on which to exercise the power of initiative.

## DC Chris Horne

182. This officer worked on the Morgan One Investigation, retired in 2001, and is now sadly deceased. The MPS assessment identified no potential conduct matters, stating only that he told the Hampshire investigation that in his view the Morgan One Investigation was incompetent.

183. Our scoping exercise identified a criticism that DC Horne had been allocated an action to take a statement from a witness who had seen a man look through the gap into the Golden Lion public house car park on 10 March 1987. Officer A27's view was that there was little point in the statement being taken because it was after the time of the murder. Ultimately no statement was taken and the DMIP report says one should have been because it could have provided investigative opportunities. This criticism involves a question of judgement and even if the decision was mistaken, it would not amount to a conduct matter. Therefore, there are no grounds on which to exercise a power of initiative.

## DC Michael Crofts

184. This officer worked on the Morgan One Investigation and retired in 1999.

185. The MPS assessment and our scoping exercise have identified a potential conduct matter arising from poor exhibit handling. He seized trousers during searches of the Vian brothers' addresses but did not indicate which brother's house they were from, which led to confusion. He also seized a jacket with blood on that was lost.

186. Exhibit handling was investigated in DCS Lamper's disciplinary investigation. It is unclear where the balance lay between individual responsibility for this officer, the SIO and the exhibits officer. In any event, there is no evidence of an improper motive and we agree with MPS, that if it happened today it would most likely be suitable for reflective practice. In any event, the facts have been brought to light and misconduct proceedings cannot be brought, so there are no grounds on which it is appropriate to exercise the power of initiative.

## DS Christine Fowles

187. DS Fowles worked on the Morgan One Investigation and retired in 1993. The MPS did not identify any potential conduct matters arising out of the report for her.

188. Our scoping exercise identified a criticism of DS Fowles in the DMIP report. A barmaid from the Golden Lion pub, where Mr Morgan was murdered, and a customer, person T4, both had their statements taken by DS Fowles. At the Inquest they both said their recollections, about where Daniel Morgan may have been sitting in the pub and his movements, were corrected or clarified by police officers.

189. The report records that the Panel was unable to locate DS Fowles to obtain her account of her interaction with these witnesses but stated that it was improper procedure for police officers to correct or clarify witnesses' recollections. We do not consider this is necessarily so, it may be proper for officers to seek to clarify a

witness' recollection or even to point out that they appear to have made an error by reference to other evidence. However, an officer should not record in a witness statement, or a further witness statement, something that is not in fact the witness' recollection. It is not clear from the DMIP report precisely what the interaction had been.

190. There is no doubt that Daniel Morgan was in the pub and had been in the company of Jonathan Rees. This issue seems to concern where Daniel Morgan had been sitting in the pub and there is no suggestion that anything corrected or clarified by DS Fowles was intended to pervert the course of justice. We consider there is insufficient evidence to indicate there may have been a breach of the discipline code for this former officer and so it would be inappropriate to exercise the power of initiative.

## DCI Ernest Anderson

191. This officer dealt with complaints raised by Alistair Morgan in January 1988 which predominantly focused on material relating to the Belmont Car Auction files being seized by DS Fillery and PC Thorogood without a proper inventory being taken. He retired in 1990 and is sadly deceased. The MPS assessed that there is no conduct to record.

192. The report criticises his decision not to treat the issues raised as formal police complaints, insofar as it included the allegations against PC Stephen Thorogood, as he was still a serving officer (DS Fillery by that time was not a serving officer but was under criminal investigation). It also criticises the disparaging description of Alistair Morgan's concerns as "aspersions"<sup>65</sup>.

193. Whether or not this criticism is capable of being a conduct matter, it is collateral to the underlying issues; it is a criticism about the decision not to investigate complaints about the investigation of the murder. The facts are set out in the DMIP report and no proceedings of any sort can be brought as DCI Anderson is deceased. It is not therefore appropriate to exercise the power of initiative.

## DC Alan Purvis and DC Peter Foley

194. These officers do not appear to have worked on the Morgan One Investigation but were colleagues and associates of DS Fillery. Together with him, they had involvement in Southern Investigations, contracting to provide security at Belmont Car Auctions, which was owned by DC Purvis' uncle.

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<sup>65</sup> DMIP report (15 June 2021). Volume 1, Chapter 3, page 307, paragraph 28.

195. The MPS assessed there were conduct matters for these officers, but they have been subject to a criminal and misconduct investigation already. There is no indication of any new evidence and therefore the MPS assessed no conduct matters should be recorded. DC Purvis retired in 2000 and DC Foley in 2007.
196. Despite national press coverage of the murder, and an internal message sent to every station in the MPS requesting information relating to Daniel Morgan and Southern Investigations, neither these officers (or DS Fillery) had notified D Supt Douglas Campbell of their association with Belmont Car Auctions. DC Purvis and DC Foley were suspected of “moonlighting” by working at Belmont Car Auctions. This led to them becoming suspects in the murder investigation and being arrested. However, they were eliminated as suspects and the DMIP report found there had been no reasonable grounds to arrest them (but that there were for DS Fillery).
197. Once it had been decided not to charge them, DCS Campbell, the SIO for the Morgan One Investigation, reported these officers and DS Fillery for disciplinary investigation for working for Belmont Car Auctions without having declared it to the MPS. The investigation against DS Fillery ended when he retired in March 1988. At the conclusion of his investigation of DC Purvis and DC Foley, D Supt Alec Button recommended strong words of advice for them, on the grounds they had suffered “considerable personal and family trauma”<sup>66</sup> as a result of their arrests on murder charges. The allegation that they had been “moonlighting” was found to be unsubstantiated because although they admitted to being present on auction nights, they had denied they were there on behalf of Southern Investigations and denied being paid. At least by present day standards the IOPC would have expected this evidence, which may have stretched credulity, to be tested at a hearing.
198. We agree there are no grounds to suspect a criminal offence by these officers. There is, however, an indication they may have breached the discipline code, at least by failing to disclose their relationship with Southern Investigations immediately after they knew of the murder. We consider that words of advice were inappropriate; there was sufficient information available at that time to raise very serious concerns that Southern Investigations had been (and continued to be) in corrupt relationships with police officers. The failure by these officers to come forward with their information at the outset may have affected the course of the investigation, although it is impossible to say now whether that may have affected its outcome. This failure in our view, was too serious to be dealt with by words of advice. However even if the investigation could lawfully be re-opened, no disciplinary proceedings can now be brought due to the date of these officers’ retirement and the public interest in bringing the facts to light has been met by the

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<sup>66</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 253, paragraph 989.



DMIP report. In these circumstances there are insufficient grounds for the power of initiative to be exercised.

199. It is of particular concern, in this context, that the HMICFRS inspection following publication of the DMIP report found the MPS's systems and processes still do not do enough to minimise the risk of corrupt police officers pursuing inappropriate business interests.

## DC Duncan Hanrahan

200. DC Hanrahan was a police officer in Catford who worked on the Morgan One Investigation. He retired in 1991. The MPS identified that he associated with Jonathan Rees and that intelligence had been received in 2002 that he may have made a phone call to lure Daniel Morgan to the pub where he was murdered. The MPS assessed that, as the report had concluded there was no corroboration<sup>67</sup> for this information, there was no conduct matter.

201. Our scoping exercise also identified a potential conduct matter arising out of his friendship with Jonathan Rees. During the Morgan One Investigation he was instructed by DCS Campbell to stop seeing Jonathan Rees but carried on doing so. When this came to the attention of DCS Campbell, he did not discipline DC Hanrahan for disobeying his order but instead, made arrangements for him to report back to DCS Campbell on what Jonathan Rees said at their meetings, which he did but the information obtained was of little use. In any event, the DMIP report finds that DCS Campbell should not have attempted to use him in this way as it was unknown where his loyalties lay.

202. Following medical retirement from the police, it appears DC Hanrahan worked for Southern Investigations. In 1999, he was sentenced to eight years imprisonment for serious criminal offences unrelated to the murder.

203. The intelligence that DC Hanrahan may have lured Daniel Morgan to the murder scene was not only uncorroborated but also inconsistent with other evidence about the arrangements he made to be there. However, there was other information to indicate that he may, at least, have known more about the murder than he disclosed; covert recordings during Operation Two Bridges/Nigeria suggested that Jonathan Rees and DS Fillery were concerned about information he might give to the police. The Abelard Two Investigation pursued a number of lines of inquiry in this connection, including placing him under surveillance and speaking to him, but nothing of significance appears to have materialised.

204. We agree with the MPS that the information DC Hanrahan may have been involved in the murder is insufficient to record a conduct matter. His involvement

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<sup>67</sup> DMIP report (15 June 2021). Volume 2, Chapter 6, page 524, paragraph 205.

with Jonathan Rees and Southern Investigations was known to the Morgan One Investigation and investigated by the Abelard Two Investigation and there is no new information or evidence about criminal offences.

205. There is evidence to indicate he may have breached the discipline code by not following the instructions from DCS Campbell not to have contact with Jonathan Rees. However, this has been known for many years and no misconduct proceedings can now be brought due to his retirement date. There are therefore insufficient grounds on which to exercise the power of initiative.

206. As with other officers, the failures by the MPS at the time of the Morgan One Investigation to take appropriate disciplinary action in relation to his association with Southern Investigations raises issues, which the 2022 HMICFRS report says still require addressing by the MPS.

## D Supt Douglas Campbell

207. D Supt Douglas Campbell was the SIO who led the Morgan One Investigation. He retired in 1995.

208. The MPS assessed that D Supt Campbell is criticised numerous times within the DMIP report, which found evidence of a poor investigation by the SIO. In the MPS' view some of these failings would, in the current day, be suitable for reflective practice or performance procedures but others would amount to conduct matters. However, as these matters had already been investigated by the Police Complaints Authority/Hampshire Constabulary Investigation and the former officer regulations do not apply to former D Supt Campbell (meaning no misconduct proceedings can be brought), it did not record conduct matters.

209. Our scoping exercise has also identified the criticisms of the quality of the investigation as potential conduct matters, in particular: inadequate scene management, failures to manage exhibits, failing to record notes when interviewing Jonathan Rees on the night of the murder, failing to seize his clothing, and failing to remove DS Fillery and other officers who had associated with Jonathan Rees and Southern Investigations earlier.

210. During the Hampshire Constabulary/PCA Investigation DCI Farley stated that, "forensically the case was not handled at all professionally and there was obvious neglect probably through either ignorance or incompetence and fragmented involvement. There was an obvious lack of direction, co-ordination, management and supervision. The initial effort must be described as pathetic"<sup>68</sup>.

211. We also identified a potential conduct matter arising from allegations that he may have been drunk when attending the scene on the night of the murder. This

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<sup>68</sup> DMIP report (15 June 2021). Volume 1, Chapter 3, page 323, paragraph 98.

was considered in the DMIP report which agreed with the Hampshire Constabulary/PCA view that there was insufficient evidence to record a conduct matter.

212. We agree that there were serious failures in the Morgan One Investigation. D Supt Campbell was personally responsible for some of them, and others must rest with him as the SIO. Most, if not all, of these failings were identified by the Hampshire Constabulary/PCA Investigation.
213. There is no evidence the failings were motivated by an intention to pervert the course of justice; whatever his mistakes were, the evidence in the report supports that D Supt Campbell was highly motivated to solve the murder. He tried to address, although possibly too late, his concerns about corrupt relations between Jonathan Rees and officers at Catford Police Station and ordered the arrests of DS Fillery, along with DC Purvis and DC Foley, with the other suspects. It follows that there is no indication of suspicion of criminal offences and whilst there is an indication he may have breached the discipline code, no proceedings can now be brought due to his retirement date. The failures were not included in the Hampshire Investigation report or brought to the attention of the family of Daniel Morgan (see below). However they have now been set out, in full, in the DMIP report. For these reasons, there are insufficient grounds to exercise the power of initiative.

## DI Allan Jones

214. This officer was the deputy SIO on the Morgan One Investigation. He retired in 1998. The MPS assessed that the criticisms of this officer mirror those for D Supt Campbell and, similarly, that in the current day whilst some would be suitable for reflective practice/performance, others may amount to conduct matters. However, they do not indicate a criminal offence may have been committed and as no misconduct proceedings can now be brought, the MPS decided not to record any conduct matter.
215. As with the MPS, our scoping exercise identified criticisms of the quality of the investigation which overlapped or mirrored those made of D Supt Campbell. These were: management of the scene, failure to take steps sooner to deal with the conflicts of interest of officers who knew Jonathan Rees (particularly DS Fillery) and failing to take supervisory action over the poor quality of the statement he took from Jonathan Rees. DI Jones was also criticised for not making a contemporaneous note of Jonathan Rees' and his wife's reactions to being told of the murder or bringing them to the attention of D Supt Campbell. It also identified a potential conduct matter, that he had told DS Fillery to take Jonathan Rees for a drink whilst his car was being searched.
216. As in the case of D Supt Campbell, we agree that there were failures, some of which were personal to DI Jones, and others for which he had some

responsibility as the deputy SIO. There is no indication he had any improper motive or may have committed offences. However, some of the failures do indicate he may have breached the discipline code. Those failures have been known about since the Hampshire/PCA Investigation and the public interest in bringing them to attention has now been met by publication of the DMIP report. No misconduct proceedings can now be brought. For these reasons there are insufficient grounds to exercise the power of initiative.

## DCS Douglas Shrubsole

217. DCS Shrubsole was the line manager of D Supt Campbell who carried out a review of the Morgan One Investigation, which was requested by D Supt Campbell, between October and December 1987. He retired in 1993. The MPS assessment identified criticisms in the DMIP report of the quality of DCS Shrubsole's review but did not believe they amounted to a conduct matter.
218. Our scoping exercise identified the criticism of DCS Shrubsole's review as a potential conduct matter. He had recorded following his review that, in his opinion, the investigation had been "completely thorough and professional"<sup>69</sup>. In contrast the DMIP made serious criticisms of the Morgan One Investigation and, consistent with them, that DCS Shrubsole's review was not thorough and did not reflect the evidence available to him.
219. DCS Shrubsole stated he had, "examined every action, message and statement and was satisfied all reasonable lines of enquiry had been identified"<sup>70</sup> but the report says that other than his own statement on the matter they "found no other record of his work on the review in the material that was provided to the Panel"<sup>71</sup>. He was interviewed by the Panel and told them he was unaware of any notes or papers relating to his review.
220. The conduct of DCS Shrubsole is collateral to the Morgan One Investigation. There is no evidence of any criminal intent. Even accepting that his statement, that the investigation had been thorough and professional, indicates that he may have breached the discipline code, no proceedings can now be brought against him. The public interest in bringing the matter to light has been met by the DMIP report. For these reasons there are insufficient grounds for exercising the power of initiative.

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<sup>69</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 251, paragraph 976.

<sup>70</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 251, paragraph 976.

<sup>71</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 251, paragraph 977.

## DS Sidney Fillery

221. DS Fillery was part of the Catford Crime Squad at the time of the murder and associated with Jonathan Rees. As mentioned above, DS Fillery retired in 1988 on medical grounds whilst under investigation for disciplinary offences relating to Belmont Car Auctions<sup>72</sup>. At that time, once an officer retired no disciplinary proceedings could take place. Following retirement, he went to work with Jonathan Rees at Southern Investigations (later renamed Law and Commercial).

222. The MPS assessed there were conduct matters for DS Fillery but these had been investigated previously and as there was no new evidence which could lead to a new criminal investigation and as he is not subject to former officer regulations, they could not be recorded.

223. The MPS and our scoping exercise identified that DS Fillery became a suspect for the murder of Daniel Morgan and for perverting the course of justice during the time he worked on the investigation. The grounds for these suspicions included:

- a. His failure to disclose at the outset that he had been drinking with Jonathan Rees and Daniel Morgan the night before the murder, at the murder scene.
- b. His failure to take an adequate first statement from Jonathan Rees (which he should never have been permitted to take, in any event, and more so had he made full disclosure of his association with him).
- c. His involvement with Jonathan Rees in the Belmont Car Auctions contract, which was believed may have provided a motive for the murder.
- d. Evidence from Southern Investigation's accountant alleging his involvement in the murder, although ultimately the accountant's evidence was considered unreliable.
- e. Suspicion that when seizing documents from Southern Investigations, he may have removed evidence from the Belmont Car Auctions files.
- f. Suspicion he leaked information from the investigation to Jonathan Rees.

224. During the investigations of Mr Morgan's murder, information was received which indicated DS Fillery may also have acted corruptly in ways unconnected with the murder, including passing information from the Police National Computer to Southern Investigations. In 2003 he was convicted of offences of possessing

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<sup>72</sup> The provision of 'security' off duty with other officers.

indecent images of children which had been found on a computer seized from him.

225. DS Fillery was arrested by the Morgan One and Morgan Two/Abelard Two Investigations. In the Abelard Two Investigation he was charged with perverting the course of justice, but no evidence was offered against him after Gary Eaton's evidence was excluded, due to Mr Eaton's mental health issues and that his evidence may have been prompted by DCS Cook. DS Fillery subsequently received compensation for malicious prosecution on account of DCS Cook's conduct.

226. There are, and have been since 1987, indications DS Fillery may have committed offences and/or breached the discipline code. However, no new prosecution can now be brought unless there is compelling new evidence and there is no new evidence in the DMIP report. Similarly, there are no grounds on which to re-open the previous disciplinary investigations, and in any event no disciplinary proceedings can be brought (proceedings can only be brought against officers who retired after 15 December 2017<sup>73</sup>). The evidence concerning DS Fillery has all been made public, not least in the report.

227. In all the circumstances, as set out above, no useful purpose could be served by a further investigation and so there are insufficient grounds to exercise the power of initiative.

## DCS Mick Duthie

228. DCS Duthie was involved in liaising with the Panel over access to HOLMES. DCS Duthie retired from the MPS in 2017. The MPS assessed there are no criticisms of DCS Duthie, and so no conduct matters to record.

229. Our scoping exercise identified that the report is critical of the MPS reluctance to provide access for the Panel to HOLMES. However, the evidence supports that following the initial request by Michael Kellet for the Panel to have access in October 2013, DCS Duthie responded helpfully, offering to arrange training for the Panel.

230. As set out above in the conduct assessment for Commissioner Dick, the later reluctance to agree to the Panel having access seems to have come from her. In any event she, and subsequently DAC Hewitt had ultimate responsibility for agreeing to it or otherwise. We agree with the MPS there is no indication that DCS Duthie may have breached the standards of professional behaviour and so there are insufficient grounds to exercise the power of initiative.

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<sup>73</sup> See Appendix 2

## D Supt Tony O’Sullivan

231. DCI O’Sullivan<sup>74</sup> was the SIO for Operation Edison, which investigated DCS Cook’s removal, retention and disclosure of police information. In this respect, it overlapped with the IPCC investigation Operation Longhorn (concerning a discrete disclosure to a newspaper journalist) and its investigation of Jonathan Rees’ complaint about disclosure of material to Panorama. He is still a serving officer at Detective Superintendent rank and therefore will be referred to as D Supt O’Sullivan in this report .

232. The MPS assessment identified criticisms that the Operation Edison report to the CPS failed to mention misconduct in public office (MIPO) as an offence and also the investigation did not interview DCS Cook. The MPS reviewed the decision log for Operation Edison which it says meticulously recorded detailed rationale for these decisions. In its view, the Operation Edison report to the CPS was thorough and they consider that the CPS was fully able to consider all available charges. It also records that, during the fairness process in 2020, D Supt O’Sullivan identified that some material had not been viewed by the CPS when reaching its opinion not to charge, and so he submitted that further evidence in 2020. The CPS then provided further investigative advice, but it did not change its decision. The MPS decided that the criticisms did not amount to conduct matters which required recording.

233. Our scoping exercise has identified the same criticisms from the DMIP report and the underlying material considered in the scoping review, including:

- a. That there was insufficient consideration of disclosures by DCS Cook unrelated to the Abelard One and Two Investigations and/or attempts to make witnesses of the recipients.
- b. That DCS Cook was not interviewed; D Supt O’Sullivan recorded a rationale for this, including that DCS Cook’s interview from Operation Longhorn was available to him.
- c. That consideration should have been given to offences of MIPO and of offences under Section 8 of the Official Secrets Act 1989 and Section 55 of the Data Protection Act 1998. In his fairness response to the Panel’s criticisms of him, D Supt O’Sullivan said that his report had been a request for investigative advice about what offences may have been committed by DCS Cook and not a referral for a charging decision<sup>75</sup>. Further there had

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<sup>74</sup> In the DMIP report DCI O’Sullivan is referred to as a Detective Chief Inspector, but he has since been promoted and is now a Detective Superintendent.

<sup>75</sup> See section 7 Charging (The Director’s Guidance) 2013 (5th ed. May 2013); investigative advice may be requested during an investigation and is distinct from formal consideration by the CPS to bring charges once an investigation has ended.

been a case conference on 4 December 2019 between the MPS and the CPS to discuss the advice requested and that the evidence provided to the CPS had been sufficiently detailed for them to consider all three offences.

234. D Supt O'Sullivan had no role in the investigation of Daniel Morgan's murder and the potential conduct matters are collateral to it, relating to his investigation of DCS Cook. We understand the DMIP report's concern that despite the clearest of evidence that DCS Cook wrongly removed, retained and disclosed highly sensitive police information, that he has not been charged with any offence. That was the decision of the CPS and there is no indication it is the result of any misconduct by D Supt O'Sullivan, meaning that it did not sufficiently know or understand the evidence to be able to make its decision. For these reasons, we agree with the MPS that there is no indication that D Supt O'Sullivan may have breached the standards of professional behaviour and so no grounds on which to exercise the power of initiative.

## DC Robert Groombridge

235. DC Robert Groombridge worked on the Abelard Two Investigation. We understood he was still a serving officer in September 2021 but the MPS assessment refers to him as 'former' DC Groombridge. The MPS has said there are no criticisms of him in the report and so no conduct matter.

236. Our scoping exercise has identified a criticism, concerning a letter from Daniel Morgan's family, delivered to witness J5 by DC Groombridge. The report says that the effect of the letter was to add pressure on person J5 to become a witness by using the grief and distress of the family. It had been noted by another officer that the letter had been written with strong emotion which clearly affected person J5. The DMIP report states, "it was inappropriate to deliver the letter to Person J5. This should not have happened."<sup>76</sup>

237. The decision to have the letter delivered would have been taken by DC Groombridge's supervisors. The letter had been emailed by Alistair Morgan to DCS Cook the day before and it's reasonable to infer he must have made the decision to have it delivered.

238. As explained above for DCI Beswick, the desire that person J5 should give evidence cannot be criticised. We are not aware of any legal prohibition on delivering letters from a deceased's family to a witness in an effort to persuade them to do so. It is a judgement call, and even if it was wrong or mistaken it does not indicate there may have been misconduct or criminality. In any event this officer was clearly acting under instructions. It follows that there is no indication DC Groombridge may have breached the standards of professional behaviour or

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<sup>76</sup> DMIP report (15 June 2021). Volume 2, Chapter 8, page 816, paragraph 697.



committed an offence and so there are insufficient grounds to exercise the power of initiative.

## DC Nicholas Atherton

239. DC Atherton worked on the Abelard Two Investigation. He retired from the MPS in 2018. The MPS has said there are no criticisms of DC Atherton in the report and so no conduct matters that require recording.

240. Our scoping exercise identified potential criticisms which may amount to potential breaches of the standards of professional behaviour, concerning:

- a. Failing to take appropriate steps to safeguard person J5. DC Atherton and others had attended the meetings with person J5 to try and persuade them to be a witness, but the DMIP report says they failed to make or offer provision for their safety. The criticism appears to be that these arrangements were not offered or made at the time person J5 was providing information but before they had agreed to be a witness. There is evidence person J5 was briefed about their security and the local police were notified that they should treat any calls to their home as urgent. The underlying material seen by us, also shows that DC Atherton provided his own mobile telephone number to person J5. Arrangements were made for their safety once they agreed to be a witness. The report does not identify any breaches of duty when expressing its opinions on these matters which were in any event, matters for which the SIO and Deputy SIO ultimately had responsibility.
- b. Putting pressure on person J5 to become a prosecution witness. This concerns the letter from Daniel Morgan's family, delivered with DC Groombridge. As above there is no evidence that it may have breached any identifiable duty and he was acting under instructions.
- c. Lack of due diligence and expedition in respect of disclosure. DC Atherton was involved in scheduling 18 crates of material, which came to light late during the pre-trial discussions. He and the other two officers had not received the training necessary to carry out a disclosure exercise and were required to schedule the documents for them to be sent to DS Dalby to be reviewed for disclosure. As discussed in connection with DS Dalby, Mr Justice Maddison found that the Abelard Two Investigation had lacked diligence and expedition regarding preparing this material for disclosure, however there is no evidence of any personal failings by DC Atherton regarding his role.

241. For the above reasons, we agree with the MPS that there is no indication DC Atherton may have breached the standards of professional behaviour and so there are insufficient grounds to exercise the power of initiative.

## DS Anthony Moore

242. DS Anthony Moore worked on the Abelard Two Investigation and was one of the officers responsible for debriefing Gary Eaton. He was later promoted to the rank of Detective Inspector (DI). The DMIP report mainly refers to him as DS Moore, so we will do so accordingly. DS Moore retired from the MPS in 2019. The MPS has said there are no criticisms of DS Moore, and so there is no conduct matter that requires recording.

243. Our scoping exercise identified a potential conduct matter concerning complaints made by Gary Eaton against DS Moore. Gary Eaton alleged that he had offered improperly to provide him with a name of a suspect they had just been discussing in the debrief interview and “shown him a face (shown a photograph) at an identification procedure”<sup>77</sup>.

244. These allegations were investigated by the MPS when first made and found to be unsubstantiated. Although the report recites that this complaint was made, it went on to find that Gary Eaton’s account was unreliable and that there is no evidence of any wrongdoing by DS Moore. Also, as referenced above, there were concerns about the reliability of Mr Eaton’s evidence on account of his mental health. It follows that there is insufficient evidence now to indicate DS Moore may have breached of the standards of professional behaviour or committed an offence so that there are insufficient grounds to exercise the power of initiative.

## DI Douglas Clarke

245. DI Clarke worked on the Abelard Two Investigation. We have been informed by the MPS that DI Clarke is still a serving MPS officer.

246. The MPS identified that the DMIP report criticised DI Clarke for breaching the sterile corridor for the assisting offender Gary Eaton. The MPS said this issue had been investigated by Operation Megan which concluded there had been poor practice, but there was no evidence it was done with any ill intent. Therefore the MPS assessed the breach of the sterile corridor, on this occasion, would amount to a performance issue only.

247. Our scoping exercise identified criticisms which were potential conduct matters for DI Clarke under the headings below.

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<sup>77</sup> DMIP report (15 June 2021). Volume 2, Chapter 8, pages 741-742, paragraph 395.

## **Breaching the sterile corridor by contacting Gary Eaton.**

248. In 2007, Gary Eaton had said in his evidence that his father was dead. In July 2008, information was received that he was in fact alive, and this potentially undermined his credibility. Therefore, the Abelard Two Investigation began to investigate if that was so. On 8 July 2008, on DCS Cook's instruction, DI Clarke asked a witness protection officer to ask Gary Eaton (who was then in prison) about this matter. DI Clarke did not inform the debrief manager, DS Moore.
249. In early September 2008, having been informed about the matter, prosecution counsel advised that Gary Eaton should be interviewed formally about it. DI Clarke then spoke to DS Moore who took the view that what had happened in July was a breach of the sterile corridor arrangements and he reported it as wrongdoing. Subsequently Commander Stuart Osborne of the Directorate of Professional Standards recorded that he had considered DS Moore's report and concluded that DCS Cook's instructions appeared to be "justified and appropriate"<sup>78</sup>.
250. Mr Justice Maddison heard evidence about what had happened and found that what had happened amounted to Gary Eaton being tipped off that he had been caught lying about his father's death and thus being given the chance to think of an explanation. However, he said it would not have led him to exclude his evidence because he gave an explanation almost immediately and without a prompt; and the lie did not affect the subject matter of his anticipated evidence. The Judge was critical of DI Clarke's failure to keep a contemporaneous note about the contact but said that DI Clarke accepted in re-examination he should have done and that it had been a learning curve<sup>79</sup>.
251. DI Clarke told the Panel that, while he accepted the criticism that his contact breached the sterile corridor, he was acting upon orders from DCS Cook, whose own evidence had been that he instructed him to do so.
252. Following the collapse of the prosecution Jonathan Rees made complaints which included those related to the breaches of the sterile corridor. These were investigated by Operation Megan and no adverse finding was made about DI Clarke.
253. For the reasons set out above, in our view there is no indication DI Clarke may have breached the standards of behaviour or committed a criminal offence by breaching the sterile corridor. The substance of the matter has been investigated previously, there is no new evidence which justifies re-opening that investigation and the facts of the matter have been brought to light in the report.

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<sup>78</sup> DMIP report (15 June 2021). Volume 2, Chapter 8, page 764, paragraph 494.

<sup>79</sup> DMIP report (15 June 2021). Volume 2, Chapter 8, pages 849-850, paragraph 865.

## **Failure to undertake earlier checks of person J5's credibility.**

254. After becoming an assisting offender, person J5 provided evidence which it was intended to rely on as part of the prosecution case. After the charges had been brought it was found that some of the evidence they gave appeared to have been derived from research on the internet on a laptop and the prosecution decided that they would no longer rely on them. The report criticises the failure to have carried out checks on person J5's credibility earlier. There is no evidence to indicate that DI Clarke was personally responsible for this failure which may be identified more readily with hindsight. In any event it does not indicate there may have been a breach of the standards of professional behaviour or criminality which justifies disciplinary proceedings.

## **Summary for DI Clarke**

255. In the circumstances as set out above, we agree there is no indication that DI Clarke may have breached the standards of professional behaviour or committed an offence and so there are insufficient grounds to exercise the power of initiative.

## **DCI Barry Nicholson**

256. DCI Nicholson was the SIO for Operation Nigeria/Operation Two Bridges. He retired from the MPS in 2019. The MPS decided there were no criticisms of DCI Nicholson, and so no conduct matter that required recording.

257. The IOPC scoping exercise has identified the criticism in the DMIP report of a lack of clarity regarding the remit of Operation Nigeria as a potential conduct matter for DCI Nicholson. We considered this above in relation to DAC Clark who was in overall charge and for the same reasons we have decided there is no indication that DCI Nicholson may have breached the standards of professional behaviour or committed a criminal offence in connection with it and so there are insufficient grounds to exercise the power of initiative.

## **DC Caroline Linfoot**

258. DC Linfoot worked on the Abelard Two Investigation. She retired in April 2018. The MPS identified that she is criticised for the way in which she dealt with person J5 by providing leading information pressuring them to give evidence. The MPS has said there is no other evidence to corroborate this assertion by the Panel. In the absence of this, they assessed it would not amount to a conduct matter and would be suitable for dealing with as a performance matter.

259. Our scoping exercise has also identified the issues concerning her interactions with person J5 as potential conduct matters. These include:

- a. Criticism that when person J5 told DC Linfoot “The man who committed the murder was ‘a nutter, a big bloke from Croydon’ and [J5] thought that ‘he may have worked on the doors at clubs sometimes’<sup>80</sup>”, she had asked if the man could have been ‘Garry or Glenn’, to which person J5 replied it was Glenn. The DMIP report says it was inappropriate for her to be given a possible name or identity of a suspect and this should not have happened. There is no prohibition on asking witnesses leading questions outside of court when seeking an account from them, whether formally or informally, providing it is only intended to elicit the truth as the witness knows or believes it to be. However, as the MPS identify, it may be bad practice as it risks allegations that their evidence has been contaminated and may not truly be their recollection. DC Linfoot’s response appears to have been spontaneous, and there is no evidence it was said with any intent to pervert the course of justice. In these circumstances we agree that whilst it may be poor practice it does not indicate there may have been a breach of the standards of professional behaviour or that an offence may have been committed.
- b. Putting pressure on person J5 to give evidence in a formal witness statement. This included DC Linfoot stating person J5 could be summoned to court to give evidence even without one; being told of concerns that James Cook may be looking for them; advising person J5 that what they had said informally may have to be disclosed in proceedings; arresting person J5 in connection with offences they were suspected of. The evidence supports that the things said were accurate and that the arrest was lawful. As the DMIP report notes, the investigation was anxious to persuade person J5 to give evidence. There was a strong public interest in them doing so if it was believed they were capable of giving truthful evidence to assist in convicting Daniel Morgan’s murderers. How to achieve this was matter of judgement; efforts to persuade someone to give evidence may equally be described as applying pressure. The evidence supports that DC Linfoot’s efforts to persuade person J5 to give evidence were made on instructions of her supervisors. There is no indication she may have committed an offence. Even if her actions were wrong or mistaken, she was a lower ranking officer acting on instructions, therefore there is no indication she may have breached the standards of professional behaviour and the criticisms would be suitable to be dealt with within performance procedures.
- c. Failing to address person J5’s safety concerns. This has been discussed in relation to DC Atherton. Some steps were taken and ultimately these were matters for the SIO and Deputy SIO and so there is no indication she

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<sup>80</sup> DMIP report (15 June 2021). Volume 2, Chapter 8, page 776, paragraph 547.

may have breached the standards of professional behaviour or committed an offence in this respect.

260. For the reasons given above, the criticisms do not amount to conduct matters. The public interest in reporting the facts has been met and so, in all the circumstances, there are insufficient grounds for exercising the power of initiative.

## DCS Shaun Sawyer

261. DCS Sawyer was the line manager of DCI David Zinzan during the covert Abelard One Investigation. He was also part of the Oversight Group in the Abelard Two Investigation. In the DMIP report, DCS Sawyer is, at times, referred to as Commander Sawyer. For the purpose of our report, he will only be referred to as DCS Sawyer. DCS Sawyer retired from the MPS in March 2010. The MPS assessment is that there are no criticisms of DCS Sawyer in the report and so no conduct matters to record.

262. Our scoping exercise identified a criticism that the Gold Group of which DCS Sawyer was a member failed to meet between July 2002 and May 2003, a significant proportion of the Abelard One/Morgan Two Investigation. However, DCS Sawyer was not responsible for convening the meeting. The DMIP report says the SIO, DCI Zinzan regarded himself as well supported by DCS Sawyer.

263. Similar criticisms, with more serious consequences, are made in relation to the Abelard Two Investigation, for which DCS Sawyer also sat on the Oversight Group. The report says Gary Eaton presented significant problems from the outset deriving from his mental health, his perceived abuse of drugs and alcohol, his difficult relationship with person G23, person G23's behaviour, and ongoing breaches of the conditions agreed for being protected by the police. As set out above, the sterile corridor between Gary Eaton and DCS Cook was repeatedly breached. The report says the Oversight Group did not meet for the 33 months in the lead up to the collapse of the trial in 2011 and the Panel found they should have carried out an analysis of the emerging problems.

264. The criticisms regarding the performance of oversight arrangements for the Abelard One and Abelard Two Investigations were not directed at DCS Sawyer personally. There is no evidence to indicate he was responsible for the failure to convene oversight meetings or for failing to take appropriate action for breaches by DCS Cook of the sterile corridor. It follows that there is no indication he may have breached the standards of professional behaviour or committed an offence and so insufficient grounds to exercise the power of initiative.

## DC Christopher Winks

265. DC Winks was serving with the MPS during the Abelard Two Investigation. DC Winks retired from the MPS in 2014. The MPS has said it identified no criticisms of DC Winks in the DMIP report and there is no indication of conduct that requires recording.

266. Our scoping exercise has identified criticisms in the DMIP report as potential conduct matters relating to:

- a. His face-to-face contact with person J5 in the company of DC Linfoot. As noted above, we consider that there are no grounds to exercise the power of initiative in her case (or the other officers in relation to whom this issue has been raised) and there are likewise no grounds for doing so in the case of DC Winks.
- b. DC Winks was also one of the three officers, without disclosure training, who were tasked with scheduling the material prior to it being considered by trained disclosure officers. The trial judge subsequently found that disclosure had not been dealt with expeditiously, but this was directed to the disclosure trained officers. As mentioned for DC Atherton, there is no indication there may have been a breach of the standards of professional behaviour or criminality arising from this issue.

267. In these circumstances, there are insufficient grounds to exercise the power of initiative.

## D Supt Barry Phillips

268. D Supt Phillips was appointed as the Debrief Senior Investigating Officer for Gary Eaton during the Abelard Two Investigation. He retired from the MPS in 2008. The MPS identified the criticism of his rationale for not organising an appropriate adult for Gary Eaton but assessed this was poor decision making and did not amount to a conduct matter which should be recorded.

269. Our scoping exercise identified the above and the following criticisms:

- a. Failure to secure an appropriate adult to safeguard Gary Eaton's well-being during debriefing. On 12 September 2006, a detailed rationale was recorded by D Supt Phillips for this decision, including that counselling and medication were available and that the lawyer who represented him was supportive of not utilising an appropriate adult. There is no evidence of an improper motive. It may, particularly with the benefit of hindsight, have been a misjudgement or mistake amounting to poor performance, but it does not indicate he may have breached the standards of professional behaviour.

- b. That there is no evidence of consideration of the potential significant risk arising from Gary Eaton’s mental health problems. DCS Cook had identified for D Supt Phillips the risk posed by Gary Eaton’s mental health, but had not passed on all the relevant information, including previous hospitalisation. It is clear he had considered Gary Eaton’s mental health, hence recording a rationale about why an appropriate adult was not used. The report’s criticism is that there is “no evidence that there was any consideration of the possible significance of this risk for the forthcoming debrief, or any initial attempt to clarify the situation or to introduce any controls to manage it.”<sup>81</sup> The evidence does not support that this failure materially affected events. When excluding Gary Eaton’s evidence, the Judge suggested he would not have done so because of his mental health alone, it was that in combination with the breaches of the sterile corridor and prompting by DCS Cook that led him to do so.
- c. Management of the breaches of the sterile corridor relating to Gary Eaton. There is no evidence to support that D Supt Phillips encouraged or condoned the breaches of the sterile corridor by DCS Cook. It appears he supported DS Moore raising his concerns about the breach involving DI Clarke. It is not clear who initially raised the concerns about the breaches by DCS Cook which were discussed at the meetings on 20 September 2006 and 19 October 2006, but it appears that he at least supported the agreements put in place to prevent further contact. As set out below, the management of DCS Cook, who held superior rank, was the responsibility of AC Yates. Criticism of him in this regard appears to arise out of DCS Cook’s claim to the Panel that the breaches arose because Gary Eaton was unable to contact D Supt Phillips. Even if that was true it would not justify DCS Cook breaching the sterile corridor and in any event, even if there was evidence to support it, it would not indicate there may have been a breach of the standards of professional behaviour or an offence committed.
- d. Allegations of corrupt behaviour made by James Ward against D Supt Phillips. The report says that on 8 August 2005, DCS Cook reported that James Ward alleged corrupt behaviour by D Supt Phillips, unrelated to the murder of Daniel Morgan. In 2011, prosecution counsel drafted a disclosure note saying, “a report on these allegations was produced by a Detective Constable on 04 May 2006. It noted the report’s conclusion stating that ‘[n]o evidence had been discovered to support allegations that a corrupt relationship existed between Phillips and [...] or that Phillips

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<sup>81</sup> DMIP report (15 June 2021). Volume 2, Chapter 8, page 731, paragraph 347.



had any influence on the trial proceedings.”<sup>82</sup> Due to this, there is no indication that D Supt Phillips may have breached the standards of professional behaviour.

- e. Allegation of conflict of interest made against D Supt Phillips. DCS Cook told the Panel that D Supt Phillips owned a company which typed the transcripts for the debrief of both James Ward and Gary Eaton. It appears from the report that that the company D Supt Phillips’ wife had an interest in, typed up the transcripts of the debrief of Gary Eaton, but not of James Ward. D Supt Phillips told the Panel that he registered his wife’s transcription company with the MPS as a business interest and did not have any involvement with the company until his retirement in 2008. In addition, D Supt Phillips claimed that his wife had no involvement with the management of Gary Eaton’s debrief material, as this was dealt with by a different office. The DMIP report itself states that the Panel found “no evidence of corruption from D Supt Phillips.”<sup>83</sup> In our view there is no indication there may have been a breach of the standards of professional behaviour or an offence committed in relation to this issue. In any event no misconduct proceedings can be brought and to the extent that there is any public interest in DCS Cook’s allegations being brought to light that has been done in the report.

270. It follows from the above that there are insufficient grounds to exercise the power of initiative for D Supt Phillips.

## DI Steve Hagger

271. DI Steve Hagger worked on Operation Nigeria/Two Bridges and the MPS murder review of 2000. He retired from the police service in April 2009. The MPS assessment said that DI Hagger received minor criticisms in the DMIP report in relation to his part in the 2000 murder review and his failure to ask for a document but that it did not amount to a conduct matter which should be recorded.

272. Our scoping review also identified the criticisms of the murder review as a potential conduct matter. In 1998, arrangements were updated for cold case murder reviews. Operation Nigeria/Two Bridges had effectively ended in 1999 and D Supt Quick asked for a report on new investigative opportunities arising out of the intelligence which had been gathered. A report was written and ultimately led to DI Hagger being appointed to conduct a murder review in June 2000. He completed this review in October 2000. It recommended a fresh investigation, which DAC Clark agreed to and which became Morgan

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<sup>82</sup> DMIP report (15 June 2021). Volume 2, Chapter 8, page 734, paragraph 368.

<sup>83</sup> DMIP report (15 June 2021). Volume 3 Chapter 9, page 865 paragraph 35.

Two/Abelard One Investigation. The report said that “In general, the 2000 Murder Review Report’s suggestions for further lines of enquiry in a reinvestigation were both thorough and logical”<sup>84</sup>.

273. The Panel criticised the acceptance of DCS Shrubsole’s findings about the quality of the Morgan One Investigation and lack of analysis of a Letts desk diary, failure to examine exhibits from the Hampshire/PCA Inquiry, failure to find or examine DCI Farley’s report on the forensic failings in the Morgan One Investigation or two filing cabinets of material (only found subsequent to the review). The DMIP report acknowledged that while it had identified these gaps, the murder review was thorough and provided a basis for opening a further investigation employing both covert and overt elements.

274. A cold case review is not an investigation of the murder in its own right and there is an argument that once sufficient opportunities have been identified for reinvestigation, it may not be necessary to go further. In any event, mistakes or misjudgements about some aspects of an otherwise thorough review do not indicate there may have been a breach of the discipline code or an offence committed. In these circumstances no conduct matter can be recorded and there are insufficient grounds for exercising the power of initiative.

## DCS Hamish Campbell

275. DCS Campbell was the line manager for DCI Beswick during the Abelard Two Investigation, after DCS Cook’s retirement from MPS. He retired in 2013. The MPS assessed there were no criticisms of DCS Campbell and so no conduct matter that required recording.

276. The DMIP report found that the governance structure for the investigation was confused. In its view, the reality was that DCS Campbell was limited in his involvement in governance of the investigation by AC Yates’ determination to remain in control.

277. Our scoping exercise identified two potential concerns:

- a. DCS Cook told the Panel that DCS Campbell tried to stop the investigation from doing things, because he was worried about the cost. However, the report found no evidence that “DCS Hamish Campbell subsequently wrongly sought to limit the investigation”<sup>85</sup>.
- b. In November 2009, DCS Campbell attended a meeting with AC Yates, DCS Cook and DCI Beswick, and the Directorate of Professional Standards to discuss the 18 crates of material which had been found. The

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<sup>84</sup> DMIP report (15 June 2021). Volume 2, Chapter 5, page 471, paragraph 128.

<sup>85</sup> DMIP report (15 June 2021). Volume 2, Chapter 8, pages 767-768, paragraphs 507-508.

report says it is not known what happened at this meeting, but from then they were aware of a possible major problem with disclosure. This was not made known to the Court or those acting for the defendants. As discussed elsewhere, the Court found subsequently that there was a lack of diligence assessing this material for disclosure. However, there was no finding by the Judge, the subsequent disciplinary review, the joint CPS and MPS review, or the civil courts of any fault on behalf of DCS Campbell.

278. It follows from the above that neither criticism can amount to an indication there may have been a breach of the standards of professional behaviour or any offence committed. Therefore, no conduct matter can be recorded and so there are insufficient grounds to exercise the power of initiative.

## DCI David Zinzan

279. DCI Zinzan was a serving officer during the Abelard One/Morgan One Investigation in 2001/2002. During this period, he was temporarily promoted to the rank of Detective Superintendent. For the purpose of this report, he will be referred to as DCI Zinzan. He retired in 2012. The MPS assessed there were no criticisms of DCI Zinzan and no conduct matter that required recording. Our scoping exercise agreed that there were no criticisms that were potential conduct matters. In these circumstances there are no grounds to exercise the power of initiative.

## AC Alan Brown

280. AC Brown was the line manager for DCS Cooke when he was tasked to prepare the 2006 report by the Metropolitan Police Authority. AC Brown retired in 2006. The MPS assessment recorded there were no criticisms of AC Brown and no conduct matters that required recording. Our scoping exercise agreed that there were no criticisms that were potential conduct matters. In these circumstances there are no grounds to exercise the power of initiative.

## AC John Yates

281. AC Yates had oversight of the Abelard Two Investigation. He retired from the MPS in 2011. AC Yates also held the rank of DAC, but for the purpose of our report he will be referred throughout as AC Yates. The MPS identified that AC Yates received much criticism for lack of oversight and failing to resource the investigation sufficiently, in particular, the Panel criticised the fact he did not remove DSC Cook as SIO. The MPS considered AC Yates' actions may amount to poor decision making and that it was arguable that at his level, he should have recognised the need to have more oversight. However, in its view, under the

current regulations it would be dealt with as reflective practice<sup>86</sup> and so there was no conduct matter to record.

282. Our scoping exercise identified criticisms which were potential conduct matters and which are set out under separate headings below.

### **Lack of proper governance structure for the Abelard Two Investigation; failure to act over the breach of the sterile corridors**

283. The DMIP report criticises the appointment of DCS Cook as the SIO when he was on secondment to the Serious Organised Crime Agency (SOCA); causing confusion of roles and responsibilities of the parties involved. This was exacerbated when he retired from the MPS and joined SOCA in 2007 following which the report says there was no proper oversight of him. The report says AC Yates insisted that DCS Cook reported directly to him. In 2007, other senior officers had raised concerns about governance and the reputational risks to the MPS and DAC Williams made proposals to change the arrangements to provide better oversight, but AC Yates rejected them, stating he was “very conscious that final accountability and responsibility for ABELARD are mine. I neither wish nor would it be appropriate for me to step back from this in any way and it will get the oversight and attention that it requires.”<sup>87</sup>

284. The DMIP report states DCS Cook told the Panel that his contact with AC Yates varied, and that sometimes there was a need to meet him, so he did. DCS Cook said that on other occasions AC Yates was busy, so meetings occurred every month or couple of months. DCS Cook referenced that when AC Yates became Assistant Commissioner it was more difficult to meet him and so, on a number of occasions, he had been unable to get access to AC Yates either in person or by telephone. The DMIP report states that AC Yates did not keep note of their meetings when they did meet and, as discussed elsewhere, Gold Group meetings did not take place in the 33 months prior to the collapse of the prosecution.

285. As discussed elsewhere, DCS Cook repeatedly breached the sterile corridor that should have existed between him and Gary Eaton. This, and the fact that he then broke agreements or commitments to prevent it happening further, became known to managers and was discussed at the meetings referenced above under the section relating to Commander Sawyer in September and October 2006. The

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<sup>86</sup> An officer reflecting on their actions is a formal process reflected in legislation. The reflective practice review process consists of a fact-finding stage and a discussion stage, followed by the production of a reflective review development report. The discussion must include, in particular:

- a discussion of the practice requiring improvement and related circumstances that have been identified, and
- the identification of key lessons to be learnt by the participating officer, line management or police force concerned, to address the matter and prevent a reoccurrence of the matter.

<sup>87</sup> DMIP report (15 June 2021). Volume 2, Chapter 8, page 668, paragraph 120.

DMIP report says AC Yates should have instructed former DCS Cook to change his mobile telephone number and should have ensured that Gary Eaton received a new number as well and that “This contact was a matter which should have been dealt with effectively by AC John Yates, who had refused to change the unusual process through which DCS David Cook reported to him and had not provided for normal line management and oversight of the investigation. Former DCS Cook should have been removed from the investigation.”<sup>88</sup>

286. We do not agree with the MPS that under the current regulations these failings would be dealt with as reflective practice. The evidence supports that the arrangements for the governance of a such a sensitive and complex investigation were inappropriate and that despite the risks being drawn to his attention, AC Yates did not agree to proposed alternative arrangements which may have been better suited. This was on the basis he accepted responsibility and that it would get the oversight and attention that it required. However, the evidence supports that he did not provide the oversight and attention it required, resulting in the exclusion of Gary Eaton’s evidence being “inevitable”<sup>89</sup>. In our view there is no indication that a criminal offence may have been committed but there is an indication AC Yates may have breached his standards of professional behaviour: to challenge DCS Cook’s behaviour; not to bring the police into discredit; and to be diligent in his own duty to provide oversight to the investigation. The degree of harm and culpability for those breaches is in our view serious enough to justify disciplinary proceedings and a conduct matter could be recorded.

### **Failure to provide adequate resources and to negotiate a longer time frame for the 2006 report to the Metropolitan Police Authority**

287. The DMIP report states there was a failure to provide adequate resources and to negotiate a longer time frame for the production of the 2006 report to ensure the terms of reference were fulfilled. The DMIP report states DCS Cook was faced with a huge task within a very tight deadline, particularly since he had been asked to complete this while working full time for the SOCA. It said it had seen no evidence that AC Yates considered whether additional resources were required to meet the deadline nor alert the Metropolitan Police Authority (MPA) to the fact that it would be difficult to meet the proposed deadline. The first version of the 2006 report was rejected by the MPA in January 2006, and a revised version was submitted in April 2006 which was accepted. In our view, at worst this was a mistake or misjudgement, and this criticism does not indicate there may have been a breach of the standards of professional behaviour or an offence committed.

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<sup>88</sup> DMIP report (15 June 2021). Volume 2, Chapter 8, page 761 paragraph 477.

<sup>89</sup> DMIP report (15 June 2021). Volume 2, Chapter 8, page 761, paragraph 477.

## **Failure to provide adequate resources for the Abelard Two Investigation.**

288. The report comments that DCS Cook gave DS Summers very similar multiple responsibilities to those held by DS Davidson some 19 years earlier during the Morgan One Investigation. This resulted in similar consequences in terms of failure to follow through on investigative issues and to quality assure the results of work which had been completed. The DMIP accepted that there are unavoidable constraints on resources and arrangements for any criminal investigation. However, it said “the absence of the normal reporting arrangements by the Senior Investigating Officer to the Commander of Homicide and Serious Crime Command meant there was no regular route through which such matters could be addressed.”<sup>90</sup>

289. The report also identified related failures which may have been due to the lack of resources: to impose a proper management structure in respect of investigating other crimes that came to light during the debriefing of witnesses and to deal with disclosure with due expedition.

290. This criticism is a facet or consequence of the unusual governance structure referred to above. Those arrangements were agreed within the MPS and failures by AC Yates then to secure adequate resources on account of them, do not of themselves indicate he may have breached the standards of professional behaviour or committed an offence and so do not amount to a conduct matter.

### **Other criticisms**

291. Our scoping exercise also identified potential conduct matters unrelated to the management of the investigation. These were:

- An allegation made by DCS Cooke, that AC Yates may have been passing information to the journalist Michael Sullivan. The report says it did not see any information to support this suggestion.
- Allegations he may have conducted an inadequate review of the investigation into alleged hacking of telephones of some members of the Royal Family however there is no evidence to support any deliberate cover-up by him.

292. There is insufficient evidence on these matters to indicate that there may have been a breach of the standards of professional behaviour, or an offence committed, and therefore no conduct matter could be recorded.

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<sup>90</sup> DMIP report (15 June 2021). Volume 2, Chapter 8, page 662, paragraph 48.

## Summary for AC Yates

293. In our view there is an indication AC Yates may have breached standards of professional behaviour during the Abelard Two Investigation, by failing to be diligent in managing and providing oversight of the investigation and failing to challenge or take appropriate action about DCS Cook breaching the sterile corridor. The degree of harm and culpability for those breaches is in our view serious enough to justify disciplinary proceedings and so a conduct matter could be recorded.

294. As the MPS have not recorded and referred a conduct matter we have to consider whether to exercise the power of initiative. It is not clear if the 2012 disciplinary investigation or Operation Megan investigated AC Yates' role and responsibility in connection with DCS Cook's breaches of the sterile corridor. Even if there was a basis for re-opening the disciplinary investigations, AC Yates is not subject to the former officer regulations and no disciplinary proceedings can now be brought. The public interest in bringing the facts to light has been met by the DMIP report. Taking all these circumstances into account there are insufficient grounds to exercise the power of initiative.

## DS Peter Summers

295. DS Summers was the Office Manager for the Abelard Two Investigation. He retired in 2013.

296. The MPS assessment was that there were no criticisms of DS Summers and no indication of conduct that requires recording. Our scoping exercise identified criticisms that were potential breaches of the standards of professional behaviour outlined below.

## Investigative action regarding the relationships between Margaret Harrison and Jonathan Rees and Daniel Morgan

297. The report states that DS Summers was allocated an investigative action to, "research all actions, results and evidence known to the enquiry about the three-way affair of Margaret Harrison, Jonathan Rees and Daniel Morgan"<sup>91</sup>, as jealousy about Daniel Morgan's continuing relationship with Margaret Harrison was thought to have been a motive for Jonathan Rees to murder his business partner.

298. The DMIP report highlights that three 'major' pieces of information relating to the relationship, which were available in the files, were not identified by DS Summers.

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<sup>91</sup> DMIP report (15 June 2021). Volume 2, Chapter 8, page 663, footnote 81.

299. The report points out that DS Summers was the only officer trained in the use of the HOLMES system and that no one checked his work. A policy decision was made that he should undertake many of the Major Incident Room tasks, and that staffing levels would not be filled as per usual. The report acknowledges this must have affected his ability to carry out investigative work.

300. Even accepting his work on this action was poor, there is no evidence of any improper motive. The likely explanation is that he had too many tasks to perform to be able to do them well. Even if there is an indication he may have breached the standards of professional behaviour, in these circumstances, it would not justify disciplinary proceedings and there is no indication any offence was committed. As no conduct matter could be recorded there are insufficient grounds to exercise the power of initiative.

### **HOLMES system ‘quality issues’**

301. DS Summers was responsible for the use of HOLMES and the report identified that at an Oversight Gold meeting on 7 July 2008, reference was made to there being quality issues with the HOLMES account, “as a consequence of staff retirement and transfer”<sup>92</sup>. However, there is no detailed information about what those issues were and who was responsible for them. As above, even if there was evidence that DS Summers may have been responsible, in the circumstances it would not amount to an indication he may have breached the standards of professional behaviour or committed an offence. It follows that no conduct matter could be recorded and so there are insufficient grounds to exercise the power of initiative.

### **DC Donald Leslie**

302. DC Leslie worked on the Morgan One Investigation. He retired from the MPS in 1990.

303. The MPS assessment does not refer to DC Leslie. However, we identified a potential conduct matter from the DMIP report concerning whether he was responsible for a leak to the press, so that it was, “very probable that some, if not all, of those arrested had warning of the arrests, which would have enabled them to take any action they thought necessary prior to the arrests and afforded them the opportunity to ensure that no incriminating material, should such have existed, was to be found in property owned by them.”<sup>93</sup>

304. The DMIP report explains that DC Leslie was close friends with a former officer with links to the press. DI Carpenter from the Hampshire Constabulary

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<sup>92</sup> DMIP report (15 June 2021): Volume 2, Chapter 8, page 666, paragraph 70

<sup>93</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 140, paragraph 540.



Investigation says that DS Davidson had told him that DC Leslie had brought the former officer into the Morgan One Investigation Major Incident Room on what was likely to have been 2 April 1987, the day before the first arrests. On that day, a journalist called Southern Investigations about the impending operation which the journalist accepted, “may well have warned REES of the impending operation”<sup>94</sup>. The report says this was a major compromise of the investigation and that the leaking of the information to journalists was a corrupt act.

305. DC Leslie was removed from the investigation on 16 April 1987. D Supt Campbell recorded that this was because he had contact with, “ex Police Officers who may be connected with Southern Investigations”<sup>95</sup>.

306. In 1988 Jonathan Rees made a complaint, alleging he had been told that DC Leslie had provided the information to the journalist and that he had been paid for the information. This was investigated by DCS Lamper but he found the complaint unsubstantiated because there was no evidence to support it; the Today newspaper had declined to comment on how it had received the information.

307. This issue was also investigated by the Hampshire Investigation in 1989. DI Carpenter, from the Hampshire Investigation interviewed DC Leslie and recorded that, “[DC Donald Leslie] was well aware of why he was taken off of the squad, having been told by D Supt CAMPBELL, that he (CAMPBELL) had 3 sources of information concerning LESLEY [sic] ‘leaking’ information to the media concerning the investigation. LESLEY [sic] completely denied the allegation and still does, although he was far from convincing. LESLEY [sic] was a personal friend of a John ROSS, a private detective, and ex Det Sgt in the MPD [sic - John Ross was a former MPS officer]. ROSS had numerous contacts in Fleet St, and worked from an office at ‘Briefs’ Wine Bar, where his brother was a partner with a solicitor who is now serving a term of imprisonment for his involvement in the Brinksmat [sic] enquiry.”<sup>96</sup>

308. DC Leslie told the Hampshire inquiry that, “During the enquiry I met Ex-DS John ROSS who is now a Private Detective and has an office at Briefs Wine Bar, Southwark. He knew DS FILLERY previously and I recall having discussions with John ROSS regarding DS FILLERY. On one occasion I went with John to the Sydenham Incident Room [Morgan One Investigation room] where we met DS DAVIDSON.”<sup>97</sup> He did not say when that occurred.

309. On the information set out above, there is an indication that DC Leslie may have breached the discipline code, by bringing the police into discredit and that

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<sup>94</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, pages 139-140, paragraph 538.

<sup>95</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 140, paragraph 543.

<sup>96</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 142, paragraph 553.

<sup>97</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 141, paragraph 551.

he may have committed an offence by selling or facilitating the “leaking” of police information. However, these matters have been investigated twice previously and there is no new information in the DMIP report which could justify re-opening them. For this reason, there are insufficient grounds to exercise the power of initiative.

310. We agree with the Panel’s view that this matter should have been referred for investigation as soon as the information about the former officer’s presence in the Morgan One Investigation Major Incident Room came to attention and that “the failure to do so was indicative of the failure by police management to confront corrupt behaviour.”<sup>98</sup>

## PC Dean Vian

311. The MPS assessment does not refer to former PC Dean Vian. He was the stepson of Garry Vian. The DMIP report says he was a serving MPS officer from 2003 until he resigned on 18 August 2009.

312. During the Abelard Two Investigation he was arrested on 21 April 2008 and suspended from duty. He was referred to the IPCC which decided there should be a supervised investigation by the MPS. He was investigated for misconduct in public office, theft and breach of the Data Protection Act: he had failed to report the discovery of a covert listening device which had been placed at Glenn Vian’s home and he had been overheard offering to conduct an unlawful check on the Police National Computer for Glenn Vian and Kim Vian, although checks showed that he had not actually done so.

313. PC Vian’s case was referred to the Crown Prosecution Service following the investigation, which decided there was insufficient evidence to prosecute him on 21 August 2008<sup>99</sup>. Whether because of disciplinary proceedings or not, he resigned from MPS on 10 September 2009<sup>100</sup>.

314. During the investigation, in July 2008 he had offered to assist the Abelard Two Investigation and in June 2009 he provided a witness statement, saying that Glen Vian and James Cook had carried out the murder for Jonathan Rees who had paid them each £8,000. He said that DS Fillery had been there to “mop it up from

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<sup>98</sup> DMIP report (15 June 2021). Volume 1, Chapter 1, page 143, paragraph 557.

<sup>99</sup> The MPS have informed the IOPC that it appears conduct matters of “whilst employed as a serving police officer offered to conduct unauthorised checks on the pnc” and “having identified that a covert investigation had been compromised you failed to bring this to the attention of a supervising officer” were “substantiated” but not progressed due to his retirement.

<sup>100</sup> This is the date given to the IOPC by the MPS recently, it is given in the DMIP report, Chapter 8, Page 825, footnote 1303 as 18 August 2009 which comes from the Closing Report Operation Abelard II by DS Gary Dalby, MPS109597001 p4, 16 September 2011.

the police point of view”<sup>101</sup>. Although it is unclear from the DMIP report when he had first learnt this information, it is reasonable to believe he had known it prior to his suspension and had failed to bring it to the attention of his superiors. Had the trial taken place he would have been called as a witness by the prosecution.

315. It follows from the above that there are indications that PC Vian may have breached the standards of professional behaviour and/or committed offences. However, those matters have been previously investigated, and there is no new evidence which would justify re-opening the investigation. No misconduct proceedings can now be brought due to the date of his retirement and the facts have been brought to light in the DMIP report. For these reasons although there were conduct matters, there are insufficient grounds to exercise the power of initiative.

316. There were obvious concerns raised during the misconduct investigation about the extent to which PC Vian’s relationship to Gary Vian was declared or otherwise known about as a result of vetting procedures. The MPS were unable to get to the bottom of this issue because his vetting file, along with approximately 50,000 others, had been shredded contrary to Association of Chief Police Officers (ACPO)<sup>102</sup> guidance. A learning report was produced drawing attention to this issue in December 2008. We note with concern that the HMICFRS report published in March 2022 found respects in which current Approved Professional Practice on vetting, issued by the College of Policing, was not being followed by the MPS.

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<sup>101</sup> DMIP report (15 June 2021). Volume 2, Chapter 8, page 825, paragraph 736.

<sup>102</sup> The Association of Chief Police Officers has been replaced by the National Police Chiefs’ Council.

# Hampshire Constabulary strand

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## Background

317. Hampshire Constabulary's involvement with the investigation of Daniel Morgan's murder commenced in June 1988 when it began to "investigate allegations that police were involved in the murder of Daniel Morgan and any matters arising therefrom"<sup>103</sup>, under the supervision of the Police Complaints Authority. It appears that from July 1988, it also investigated all lines of inquiry to identify who the murderers were, whether or not they were police officers.
318. The first phase of investigation was known as Operation Drake. On 2 February 1989 civilian suspects Jonathan Rees and Paul Goodridge were charged with the murder of Daniel Morgan while Jean Wisden was charged with perverting the course of justice. Three months later, the prosecution was discontinued by the Director of Public Prosecutions (DPP) on the grounds there was insufficient evidence. After that, the investigation became known as Operation Plymouth and focused on the investigation of possible police involvement in the murder. However, no further investigative actions were raised after 10 July 1989 and it ended abruptly.
319. The DMIP report found that members of the investigation were, on the whole, competent investigators, who worked hard to gather and develop a great deal of relevant information. In addition, Major Incident Room Standard Administrative Procedures (MIRSAP) were largely applied which contributed to its effectiveness, DCS Alan Wheeler's use of forensic resources was good and the Major Incident Room was administered in a far more competent way than that of the Morgan One Investigation. However, it did identify particular concerns about the conduct of the investigation, which undermined its integrity. We understand this not to be a comment on the integrity or honesty of the officers, but on whether the investigation could be considered complete and to have been independent.
320. The key officers involved in the Hampshire Constabulary Investigation were DCS Alan Wheeler, DCI Paul Blaker, DCI Terence Farley and DS John Riddell.
321. On 1 November 2021, the appropriate authority (AA) for Hampshire Constabulary decided that no conduct matters would be recorded and referred.

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<sup>103</sup> DMIP report (15 June 2021): Volume 1, Chapter 3, page 310, paragraph 39.

## Potential conduct matters identified by Hampshire Constabulary

322. The Hampshire assessment identified a number of criticisms of the Hampshire/PCA Investigation in the DMIP report.

- a. A lack of independence concerning DCS Wheeler reporting to the MPS Assistant Commissioner (as well as Roland Moyle the Deputy Chair of the PCA) and the role played by D Supt Alan Lewis of the MPS in the investigation, including that he had access to its database. There is no suggestion that this had any detrimental effect on the investigation and the report acknowledges that the concept of independence has developed considerably since then.
- b. An alleged departure from MIRSAP<sup>104</sup>. This concerned the policy decision that investigative actions be approved by DCS Wheeler and his deputy, DCI Blaker. DCI Blaker said this was to keep tight lines of enquiry but the report disagreed and said MIRSAP should have been followed. The AA appear to challenge whether this was a departure from the procedures in force at the time.
- c. That too much time and effort was spent on investigating the alibis of the civilian murder suspects Jonathan Rees, Paul Goodridge and Jean Wisden. The Police Complaints Authority agreed to DCS Wheeler taking over the murder investigation from the Morgan One Investigation and the DMIP report acknowledges that investigating whether there had been police involvement in the murder inevitably meant investigating who had committed it, to find out whether they were police officers or not. However it is not clear that resources were increased in proportion to the increase in the breadth of the investigation. There is no evidence to support that investigating these suspects' alibis was motivated by any bad faith.
- d. There was no serious effort to pursue information in an anonymous letter reporting that the civilian murder suspects had fraternised with local police officers in a public house (although evidence about associations between DS Fillery and other officers in at Catford Police Station and Southern Investigations plainly was collected).
- e. DCS Wheeler failed fully to pursue lines of enquiry that may have helped to establish the truth of the allegations against DS Fillery by the family of Daniel Morgan. This concerned evidence that he may have removed files from the office of Southern Investigations following the murder.

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<sup>104</sup> Major Incident Room Standard Administrative Procedures, is guidance on how a major incident room should operate.

- f. That DCS Wheeler spent insufficient time on lines of enquiry to corroborate Kevin Lennon's account. Kevin Lennon had been the bookkeeper at Southern Investigations who had given evidence Jonathan Rees had tried to recruit someone to murder Daniel Morgan. The DMIP report says, "While he spent considerable time examining the strength of the evidence given by Kevin Lennon that former DS Fillery and other police officers had been part of a plot to kill Daniel Morgan, DCS Wheeler failed to take simple steps that may have assisted in corroborating or negating the evidence, such as having Kevin Lennon's girlfriend interviewed, making enquiries about the burglary in which Kevin Lennon's diary, which supposedly contained relevant information, had allegedly been stolen and enquiring into the possibility that attempts had been made to have Daniel Morgan breathalysed."<sup>105</sup>
- g. That there is no evidence that disciplinary matters or criminality were followed up or referred to the MPS. This includes allegations concerning DS Fillery stealing gas stamps, D Supt Campbell attending the murder scene drunk and evidence that both Margaret Harrison and Jonathan Rees had lied about the relationship between them (which may have provided a motive for Jonathan Rees to murder Daniel Morgan) and which could have resulted in prosecution for murder and/or perjury. The AA has suggested the latter matter is still capable of criminal investigation (but this would be outside the IOPC's jurisdiction as they are civilians).
- h. DCS Wheeler failed to properly follow up 'nomination' of former police officer Z31 as a murder suspect. The report states, "While there was no direct evidence linking former police officer Z31 to the murder of Daniel Morgan, and the information in the possession of the Hampshire/Police Complaints Authority Investigation may have amounted to nothing more than coincidence, there was ample justification to have regarded him as a suspect."<sup>106</sup> Subsequent inquiries have found no evidence to link former police officer Z31 to the murder and he is now deceased. The report did recommend the MPS should consider exploring the possibility of obtaining samples of DNA from former police officer Z31's relatives to compare it with the outstanding DNA recovered from the axe<sup>107</sup>.
- i. DCS Wheeler did not report in writing the findings of PS Riddell and DI Farley regarding their poor assessment of the MPS Murder Incident Room procedures, during the Morgan One Investigation and forensic management of the crime scene.

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<sup>105</sup> DMIP report (15 June 2021). Volume 1, Chapter 3, page 416 - 417, paragraph 529.

<sup>106</sup> DMIP report (15 June 2021). Volume 1, Chapter 3, page 400, paragraph 450.

<sup>107</sup> The IOPC understands that the MPS has completed this work and former police officer Z31's DNA was not found.

- j. DCS Wheeler made positive remarks about the MPS Morgan One Investigation that the Panel feel were unwarranted and misled others regarding the effectiveness of that investigation. The report's findings indicated not only did DCS Wheeler not report on the criticism, but because he included positive comments about other facets of the Morgan One Investigation it, at least, permitted a misleading impression to be given about its quality.

323. Hampshire AA assessed that none of these criticisms amounted to conduct matters which should be recorded. The IOPC scoping review carried out its own review. It did not identify any criticisms in the DMIP report of DCI Farley or DS Riddell. Neither the DMIP report nor the conduct assessment completed by the AA, clearly separate out what may have been the responsibility of DCS Wheeler from that of DCI Blaker. The report refers to a policy decision that only one or the other could authorise investigative actions, which may indicate a shared responsibility for any failures in pursuing lines of inquiry. For this reason the potential conduct matters for the two officers are considered together.

324. DCS Wheeler is now sadly deceased. DCI Blaker retired in November 1995. The IOPC scoping review identified the same criticisms as Hampshire AA (see a-e below) but also additional criticisms which were potential conduct matters (see f-o below):

- a. A lack of independence of the Hampshire Constabulary/PCA Investigation from the MPS.
- b. The failure of the final report written by DCS Wheeler to criticise the quality of the Morgan One Investigation.
- c. Failure to investigate or action lines of enquiry in connection with former police officer Z31.
- d. Failure to investigate sufficiently the evidence from Mr Kevin Lennon.
- e. Failure to pursue an investigation of Jonathan Rees and Margaret Harrison which could have resulted in their referral to the CPS for a charging decision regarding perjury and/or attempting to pervert the course of justice, in connection with their denial they were in a relationship.
- f. The failure of the final report written by DCS Wheeler to include allegations suggesting MPS officers were involved in the murder. DCS Wheeler recorded information which alleged that MPS officers were involved in the murder. There is evidence that DCS Wheeler verbally shared this information with the Police Complaints Authority and to his own Assistant Chief Constable and that it may have been considered as sensitive information. The report raises concerns that he did not make an entry in his policy file, nor did he record the reasons for not including the information in his report. However, the DMIP report also records that there

was an entry in DCS Wheeler’s notebook, that “because of the nature of the information passed to him... it would not be processed in the usual way and that he would keep it secret to the members of his team”. DCI Blaker was asked by the Panel why this information had not been followed up. He stated he could not remember and since DCS Wheeler was now deceased, “we can’t have a conversation to jog my memory”<sup>108</sup>.

- g. Failure to update the family of Daniel Morgan about the terms of reference changing. This concerned advising them that Hampshire Constabulary had taken over investigating the murder from the Morgan One Investigation and the failure to make arrangements over whether the final report would be provided to them.
- h. Failure to investigate or action lines of enquiry following receipt of DCI Farley’s report. This report criticised the Morgan One Investigation’s handling of forensic evidence (referred to above). He had also offered to elaborate to DCS Wheeler his opinion of a number of matters including, “the known and suspected criminal involvement by police officers”<sup>109</sup>. The report found no evidence this was done, although it is our view that it is reasonable to suppose there would have been opportunity for the two to have a conversation which would not necessarily be recorded in HOLMES.
- i. Failure to investigate adequately information from PC Grattan-Kane. This concerned allegations against DS Fillery, his involvement with Southern Investigations and in criminal activity generally. A number of investigative actions arising from this information were carried out including interviews with his brother (also an officer) and the two officers who had given the information to PC Grattan-Kane. Other actions to ‘assess’ this evidence were marked for no further action. In the report’s view, the quality of the actions which were carried out was poor and the other actions should not have been cancelled by DCS Wheeler. The report also criticises the failure to have referred the allegations against DS Fillery, unconnected with the murder, for investigation by the MPS/PCA.
- j. Failure to investigate adequately information from person M12 and friend. This concerned a statement that Daniel Morgan owed money to a “high ranking police officer” whose identity he did not know. The report accepted that information provided was vague and potentially difficult to follow up, especially as the witness had told the Morgan One Investigation that he had destroyed all the notes he had made in connection with the matter. However, there was no evidence that the investigation asked the family, friends or associates of Daniel Morgan whether they knew anything about his allegedly owing a large sum of money to a police officer.

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<sup>108</sup> DMIP report (15 June 2021). Volume 1, Chapter 3, page 388, paragraph 388.

<sup>109</sup> DMIP report (15 June 2021). Volume 2, Chapter 5, page 466, paragraph 107.



- k. Instigating charges of murder against Jonathan Rees, Paul Goodridge and Jean Wisden. This relates to the report's finding that the charges were unjustified. However, the report does not suggest the decision to charge was made in bad faith and the sufficiency of evidence is a matter about which, in our view, there can be genuine differences.
- l. That Operation Drake actions were closed without investigation. This concerns the report's finding that DCS Wheeler failed to ensure the completion of the outstanding 115 investigative actions. It appears these actions were marked as 'no further action' when the investigation ended abruptly in July 1989. As the investigation was being supervised by the PCA, it seems likely that ending it would have required its agreement, and that of the Chief Officers of the MPS and Hampshire Constabulary.
- m. Failure to adequately investigate relevant lines of enquiry concerning information given to the Morgan One Investigation by 'U25' that a named person had been in possession of a tape recording of police officers from Catford, planning a murder of someone in Sydenham before Daniel Morgan's death.
- n. Failure to attempt to speak to journalists who had been involved in the leak of information about the arrests by the Morgan One Investigation. It is clear as set out above in respect of DC Leslie that this matter was investigated by the Hampshire Investigation and also that the Today newspaper did not co-operate with DCS Lamper's investigation of the same matter.
- o. Failure to investigate adequately the account of Peter Newby. This concerned an allegation that police officers and Jonathan Rees had made false statements in connection with an insurance claim following a fire at a listed building in Plumstead. The report says there was insufficient investigation of these allegations, little was done and what was done took an inexplicably long time. It comments that if it was outside the terms of reference of their investigation, it should have been passed to the MPS or the PCA to investigate.

325. In assessing these matters it is right to take into account that all investigations are constrained by resources, investigators may make mistakes and overlook important matters, and their decisions may be wrong whether judged by the information available at the time and/or with hindsight.

326. There are additional difficulties when making judgements about the conduct of an investigation many years afterwards from the records alone. Records are rarely complete, and decisions are often made against a background of discussion which is not itself recorded and may have contained important context which is now missing. Where, as in this case, the Senior Investigating Officer is deceased, it not only prevents obtaining an account from them but as DCI Blaker

stated, also makes it impossible to hold a conversation which may have assisted in jogging either or both of their recollections. Where records are incomplete, great care needs to be taken before an inference from the absence of records can be made.

327. The potential conduct matters listed above fall into three broad areas which are grouped together under the headings below.

## The arrangements for the investigation

328. Arrangements for governance of the investigation to maintain independence were a matter for the PCA and Chief Officers of Hampshire Constabulary and the MPS rather than the SIO and/or Deputy SIO.

329. In a similar investigation today, we would expect to see far more detailed terms of reference, making clear what the demarcation was between the Morgan One Investigation and the Hampshire Constabulary Investigation. A memorandum of understanding would set out which had primacy over the different areas for investigation, how to resolve issues where there was overlap and a protocol for sharing information between the two investigations. We would also expect policy decisions to have been recorded about how independence was to be assured, while also reporting to the MPS the progress of an investigation in its area of policing.

330. Even accepting it was appropriate for D Supt Alan Lewis of the MPS to have a prominent role, detailed consideration should have been given to maintaining the security of information about possible corruption of MPS officers, to prevent leaks which could prejudice the investigation of it. We would also expect clear arrangements to have been in place about how to deal with evidence of corruption or criminality which were not connected to the murder.

331. Even allowing for differences in the way things were conducted 30 years ago, the failure to address and record these matters seems extraordinary. However, there is no evidence this failure was motivated by bad faith, and it may also be that consideration was given to these issues which is not apparent from the records. For instance, it is clear that DCS Wheeler did have in mind the need to be independent when he said, "I had to be independent. Because of REES' conduct with policemen, I felt I had to keep the original Metropolitan Investigation Team at arms [sic] length."<sup>110</sup>

332. The duties on police to engage with the family of a murder victim and provide them with updates on the progress of their investigation at the time of the Hampshire Constabulary Investigation was not as well developed as today. The Victims' Code was introduced by the Domestic Violence, Crime and Victims Act in

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<sup>110</sup> DMIP report (15 June 2021). Volume 1, Chapter 3, page 316, paragraph 71.

2004. The report did find that the fact and general intention of, and arrangements for, the Hampshire Constabulary/Police Complaints Authority Investigation were explained to the family of Daniel Morgan, and particularly to his mother and brother but that it could have been done sooner.

333. There is no evidence of any improper motive in connection with these criticisms. The overall arrangements for the investigation, its governance, how independence was to be maintained and the terms of reference were ultimately a matter for the PCA and Chief Officers of the forces involved rather than DCI Blaker and/or DCS Wheeler. In our view none of these criticisms amount to an indication that DCS Wheeler and/or DCI Blaker may have breached the standards of professional behaviour or committed an offence and so we agree with the AA that no conduct matter should be recorded in relation to them.

## Failures to pursue lines of investigation

334. Inevitably a review or inquiry into an investigation, which is seeking to definitively answer matters which the investigation was unable to, will focus on the granular details of the areas within the investigation which may be incomplete. They will then receive greater coverage in the report than matters which were completely and satisfactorily addressed. That approach is helpful because it may highlight areas which still merit investigation. However, when assessing if the omissions, flaws or failures justify disciplinary proceedings against the senior investigating officers, they need to be looked at in the context of the overall quality of the investigation. In this regard the DMIP report found that the Hampshire Inquiry team were “on the whole, competent investigators, who worked hard and gathered and developed a great deal of relevant information” in the Hampshire/PCS Investigation<sup>111</sup>, the incident room was administered competently, national policy and procedures were applied, and the use of forensic resources was good.

335. As in any professional disciplinary regime, mistakes and misjudgements will not ordinarily justify disciplinary proceeding in the absence of evidence of deliberate bad faith. In this case, there is no finding in the report that the failure to pursue lines of inquiry was a deliberate attempt to thwart the investigation by DCS Wheeler and/or DCI Blaker; as explained above we understand the concerns about the investigation’s integrity not to be a comment on the integrity or honesty of the officers, but on whether the investigation could be considered complete and independent. The criticisms appear to be about judgement calls which may have been wrong, mistakes or of no further action being taken because of the DPP’s discontinuance and the abrupt end of Operation Plymouth.

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<sup>111</sup> DMIP report (15 June 2021). Volume 1, Chapter 3, page 415, paragraph 525.

336. In relation to the allegation that MPS officers were involved in the murder, DCS Wheeler's notebook did not record how the information was processed. Due to DCS Wheeler having sadly passed away, it is now impossible to establish how it was processed and in all the circumstances, it cannot be inferred that there may have been a breach of the discipline code.

337. For the reasons given above there is no indication that these officers may have breached the discipline code in a manner which justified disciplinary proceedings or committed an offence and so there is no conduct matter to record for either officer.

## Giving a misleading impression of the quality of the Morgan One Investigation

338. The final report of the investigation was authored by DCS Wheeler and there is no evidence DCI Blaker had any significant role in drafting it. Therefore, in the case of this criticism, the potential conduct matter concerns DCS Wheeler only.

339. There is clear evidence that DCI Farley and PS Riddell criticised the standard of the Morgan One Investigation. Their criticisms were, in essence the same as found by the report that, "the management and administration of the investigation was poor, and in many respects was not compliant with relevant policies and procedures."<sup>112</sup> DCS Wheeler plainly knew of those criticisms and appears to have agreed with them, as is evident from his remarks in 1991 that, "we found lots of irregularities but found no evidence of police involvement. Only police inefficiency."<sup>113</sup> The report also addresses that his stated views on this matter have been inconsistent over time.

340. The evidence is clear that these criticisms of the Morgan One Investigation were not included in DCS Wheeler's final report which stated only that the "manner in which the investigation was conducted by the Metropolitan Police showed determination to bring those responsible before the court"<sup>114</sup>.

341. The report found that the PCA and Hampshire Constabulary (along with MPS) agreed, "whether tacitly or expressly, to hide from the family of Daniel Morgan and from the public in general, the fact that the original Metropolitan Police investigation into the murder of Daniel Morgan had been ineffective and, in many respects, incompetent."<sup>115</sup> The IOPC has no powers to make conclusions about the conduct of PCA members and the report has not identified who at the MPS may have agreed to hide it. Therefore our consideration of whether there are

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<sup>112</sup> DMIP report (15 June 2021). Volume 1, Introduction, page 4, paragraph 8.

<sup>113</sup> DMIP report (15 June 2021). Volume 1, Chapter 3, page 412, paragraph 509.

<sup>114</sup> DMIP report (15 June 2021). Volume 1, Chapter 3, page 409, paragraph 496.

<sup>115</sup> DMIP report (15 June 2021). Volume 1, Chapter 3, page 418, paragraph 531.

conduct matters which should be recorded in connection with this criticism is limited to the Hampshire Constabulary Officers.

342. The report explains that the terms of reference of DCS Wheeler's investigation did not expressly include that he should comment on the quality of the Morgan One Investigation and we agree with the view that it was not appropriate to "apportion blame for pernicky reasons"<sup>116</sup>. However we do consider that there was an expectation it would report justified criticisms and in any event, it would be a potential conduct matter if the report were to be misleading about the quality of the investigation.

343. On its own, to say that the Morgan One Investigation had shown determination to bring those responsible before the Court and to make other positive statements about it, may not have been incompatible with the criticisms. However, we agree that the failure to include the criticisms also made the report, at least, unbalanced and so that it became "part of the foundations of the increasingly strong public assertions made over the years"<sup>117</sup> that the Morgan One Investigation had been a sound and thorough investigation.

344. We agree there is evidence, "DCS Wheeler was anxious that criticism of the Metropolitan Police Service investigation was at the very least kept to a minimum, if not entirely suppressed"<sup>118</sup> and that the failure to include the evidence of the inefficiency of the Morgan One Investigation resulted in the report being misleading. There is no indication an offence may have been committed but there is an indication that DCS Wheeler may have breached the discipline code in a manner which justified disciplinary proceedings by neglect of duty and/or making a misleading statement.

## Conclusion in respect of DCS Wheeler and DCI Blaker

345. As set out above there is a conduct matter for DCS Wheeler which could be recorded: that he may have breached the discipline code in a manner which justified disciplinary proceedings by neglect of duty and/or making a misleading statement, by failing to include the evidence of the inefficiency of the Morgan One Investigation in his final report. Due to the date of his retirement, no disciplinary proceedings can in fact be brought and as he is sadly deceased, any attempt to investigate and reach determinative conclusions may be unfair as he is unable to challenge the indication that he may have breached the discipline code. The DMIP report has brought this matter to light.

346. In the case of DCI Blaker there are no conduct matters to be recorded. In any event, he is not subject to the former officer regulations and so no disciplinary

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<sup>116</sup> DMIP report (15 June 2021). Volume 1, Chapter 3, page 409, paragraph 492.

<sup>117</sup> DMIP report (15 June 2021). Volume 1, Chapter 3, page 417, paragraph 529 xiv.

<sup>118</sup> DMIP report (15 June 2021). Volume 1, Chapter 3, page 324, paragraph 106.

proceedings could be brought. As he has pointed out to the Panel, in the absence of DCS Wheeler being able to assist by giving evidence to answer questions or to jog his memory, any investigation of him may also be unfair.

347. For all the reasons explained above, although we have disagreed with the AA in respect of DCS Wheeler, and are of the view there is a conduct matter in relation to his failure to include the evidence of inefficiency by the Morgan One Investigation in his final report, there are insufficient grounds to exercise the power of initiative.

# Appendices

## Appendix 1: Terms of reference

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The Terms of Reference (TOR) for the scoping exercise to review the DMIP report were approved by the decision maker on 29 June 2021 and were:

1. To review the information within the Daniel Morgan Independent Panel's report in order to determine:
  - a. If, in the view of the IOPC, there are any matters raised which they feel indicate that any police officer or member of police staff may have breached the standards of professional behaviour.
  - b. If, in the view of the IOPC, there are any matters raised which would give rise to suspicion that any officer or police staff member may have committed a criminal offence.
  - c. If in relation to a) and b), either indication(s) of conduct and/or suspicion of criminal offence(s) are identified, to ascertain if they are new matters. If they are not new matters and have previously been identified, the review will assess to what extent the matter may have been previously investigated and, whether there is any indication that there may be new evidence which could result in a prosecution or a case to answer.
  - d. If any officer(s) and/or police staff members who are identified as having potentially breached the standards of professional behaviour and/or are suspected of committing a criminal offence(s), are still serving with the police.
2. To complete a briefing document detailing the review findings in relation to TOR 1 a) – d) and present this to the decision maker to determine next steps.

## Appendix 2: Relevant legislation

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### The Police Disciplinary Regime

1. The IOPC powers and duties are set out in the Police Reform Act 2002 (PRA). The PRA, in particular Schedule 3, regulations and guidance, create a detailed regime (the PRA regime) for the investigation of public complaints against the police, cases where police contact with members of the public may have contributed to their death or serious injury (DSI) and misconduct and/or criminality by police officers which adversely affects members of the public (conduct matters).
2. This scoping exercise has not resulted from a complaint or DSI, what is being considered is whether any of the criticisms of officers in the Daniel Morgan Independent Panel's report (DMIP report) may amount to conduct matters.
3. Under the PRA regime, to be investigated by the IOPC, conduct matters must normally be recorded by the appropriate authority (AA)<sup>119</sup> and referred to the IOPC. Where a conduct matter comes to the attention of the IOPC which in its view requires investigation but the AA has not recorded and referred it, since, 1 February 2020, the IOPC has been able to exercise a Power of Initiative (POI) under paragraph 13A to Schedule 3 of the PRA and to treat the matter as if it has been recorded and referred.
4. In this case, although matters concern events before the 1 February 2020, they were treated as having come to the attention of the AA when the report was published, on 15 June 2021 and therefore the IOPC considered that POI was available if there were sufficient grounds.
5. Where potential conduct matters referred to in the DMIP report have in fact been investigated previously (by the IOPC or its predecessor organisations, the Independent Police Complaints Commission (the IPCC) and the Police Complaints Authority (the PCA)) consideration may also be required about whether there is a power to re-open. In the case of misconduct allegations this would usually require compelling reasons, such as significant new information with a real possibility that it may lead to a different outcome<sup>120</sup>. For a criminal matter, the law regarding "abuse of process" and "autrefois acquit" will apply in the same as in any other case. In general, it may be an abuse of process to prosecute long after the matters first came to light without fresh evidence. Where

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<sup>119</sup> The appropriate authority is usually the Chief Officer under whose direction and control the officer worked, the powers may be delegated to another senior officer. In the case of Chief Officers it is the Local Policing Body (usually a Police and Crime Commissioner, but in the case of the Commissioner of Police for the Metropolis, the Mayors Office for Policing and Crime), see Regulation 1 Police (Complaints and Misconduct) Regulations 2020.

<sup>120</sup> See section 13B Police Reform Act 2002.



there has been an acquittal in a trial on indictment, there cannot be a further prosecution without the acquittal being quashed by the Court of Appeal which would require new evidence.

6. As set out in the introduction, the IOPC scoping review identified potential conduct matters arising out of the criticisms in the DMIP report and the IOPC decision maker first had to determine if there was a conduct matter which should be recorded (or treated as such under the POI because the AA had failed to do so).

## Definition of a Conduct Matter

7. As explained above the grounds for exercising POI require first that a conduct matter has come to the attention of the IOPC otherwise than by the AA recording and referring it.
8. A conduct matter is defined in Section 12 PRA as any matter which is not and has not been the subject of a complaint, but in the case of which there is an indication (whether from the circumstances or otherwise) that a person serving with the police may have (a) committed a criminal offence; or (b) behaved in a manner which would justify the bringing of disciplinary proceedings.
9. Under paragraph 11 Schedule 3 PRA, conduct matters must be recorded where:  
(a) it appears to have resulted in the death of any person or in serious injury to any person; (b) a member of the public has been adversely affected by it; or (c) it is of a description specified for the purposes of this sub-paragraph in regulations made by the Secretary of State. In this case the members of DMIP may be considered members of the public and have stated that believe that the conduct of some or all of these officers delayed completion of their Inquiry<sup>121</sup>.
10. The regulations made under 11(2)(c) are contained in Regulation 7 Police (Complaints and Misconduct) Regulations 2020:

### 7.— Recording and reference of conduct matters

(1) The descriptions of conduct specified for the purposes of paragraph 11(2)(c) of Schedule 3 (recording etc. of conduct matters in other cases) are—

- (a) a serious assault, as determined in guidance issued by the Director General;
- (b) a serious sexual offence, as determined in guidance issued by the Director General;

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<sup>121</sup> DMIP report (15 June 2021). Volume 3, Chapter 11, page 1122, paragraph 24 and page 1132, paragraph 71.

- (c) serious corruption, including abuse of position for a sexual purpose or the purpose of pursuing an improper emotional relationship, as determined in guidance issued by the Director General;
- (d) a criminal offence or behaviour which is liable to lead to disciplinary proceedings and which, in either case, was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion or other status as determined in guidance issued by the Director General;
- (e) a relevant offence;
- (f) conduct whose gravity or other exceptional circumstances make it appropriate to record the matter in which the conduct is involved;
- (g) conduct of a chief officer or the Deputy Commissioner of Police of the Metropolis;
- (h) conduct which is alleged to have taken place in the same incident as one in which conduct within sub-paragraphs (a) to (e) is alleged.

11. For the purposes of 7(1)(c) the relevant guidance is at paragraphs 9.15-16 of the IOPC Statutory Guidance 2020<sup>122</sup>:

### **Serious corruption**

9.15 The term serious corruption refers to conduct that includes:

- any conduct that could fall within the definition of the statutory offence of 'corruption or other improper exercise of police powers and privileges'
- perverting the course of justice or other conduct that is likely to seriously harm the administration of justice, in particular the criminal justice system
- payments or other benefits or favours received in connection with the performance of duties amounting to an offence for which the individual concerned, if convicted, would be likely to receive a sentence of more than six months
- abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship

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<sup>122</sup> <https://www.policeconduct.gov.uk/complaints-reviews-and-appeals/statutory-guidance>

- corrupt controller, handler or covert human intelligence source (CHIS) relationships
- provision of confidential information in return for payment or other benefits or favours where the conduct could lead to a possible prosecution for an offence under Section 170 of the Data Protection Act 2018, or a more serious offence
- extraction and supply of seized controlled drugs, firearms or other material
- any other abuse of position, or
- attempts, conspiracies, incitements, assistance or encouragement to do any of the above

**9.16** A police constable commits the offence of ‘corruption or other improper exercise of police powers and privileges’ if they:

- exercise the powers and privileges of a constable improperly (i.e. for the purpose of obtaining a benefit for themselves or a benefit or detriment for someone else and a reasonable person would not expect the power or privilege to be exercised for that purpose), and
- they know or ought to have known that the exercise is improper

Exercising the powers and privileges of a constable improperly includes a failure to, or a threat to, exercise a power or privilege.

12. The Standards of Professional Behaviour are now set out in Schedule 2 to the Police (Conduct) Regulations 2020. Many of the potential conduct matters in this case concern events that took place before the enactment of the PRA, when police standards of behaviour were set out in the Discipline Code, in Schedule 1 of the Police Discipline Regulations 1985. When determining if there is a conduct matter, the IOPC have considered if there is an indication the officer may have breached the standards of professional behaviour under the standards/code that was applicable at the time of the conduct.

## “Indication” and “justifying disciplinary proceedings”

13. In considering if there is an indication an officer may have committed an offence or breached the standards of professional behaviour in a manner which justifies

disciplinary proceedings, Paragraph 4.15 of the Home Office Guidance<sup>123</sup> provides as follows:-

“The threshold for meeting the definition of a conduct matter is low. There need only be an indication that the person serving with the police may have committed a criminal offence or behaved in a manner that would justify disciplinary proceedings. However, not all conduct that comes to the attention of the appropriate authority will meet this threshold. For example, an indication that there has been a breach of the Standards of Professional Behaviour is not necessarily sufficient to meet the definition of a conduct matter, if disciplinary proceedings would not be justified. If the appropriate authority considers that there is no indication that the behaviour of the person in question may amount to a criminal offence or warrant disciplinary proceedings, the conduct can be dealt with outside of the formal conduct regime.”

14. When assessing if there is an indication, it is not usually appropriate to seek to resolve factual disputes, that will usually be a matter to be considered following the investigation, to the case to answer standard and ultimately for a tribunal to determine on the balance of probabilities. However, the IOPC or an AA is not limited to considering only the allegation (in this case the criticisms in the report); the decision maker is entitled to consider all the circumstances and evidence available when making their decision and to consider whether the allegations/criticisms are undermined by other material or are inherently unlikely<sup>124</sup>.
15. Whether a breach of the standards of professional behaviour justifies disciplinary proceedings means that at least a written warning would be the appropriate outcome if the breach is proved<sup>125</sup> and that it cannot appropriately be dealt with by reflective practice or performance procedures<sup>126</sup>. For this to be the case the conduct must usually, to some degree, be “morally blameworthy and would convey a degree of opprobrium to the ordinary intelligent citizen”<sup>127</sup>. In determining whether disciplinary proceedings are justified, the investigator should

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<sup>123</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/863820/Home\\_Office\\_Statutory\\_Guidance\\_0502.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863820/Home_Office_Statutory_Guidance_0502.pdf)

<sup>124</sup> See R (On the Application of Yavuz) v Chief Constable of West Yorkshire [2016] EWHC 2054 (Admin). This concerned whether a complaint should be made subject to special requirements under the 2012 regime but plainly reads across to determining if there is conduct matter which is applying the same test.

<sup>125</sup> See paragraph 19A, Schedule 3, PRA 2002, and Regulation 16 Police (Complaints and Misconduct) Regulations 2020.

<sup>126</sup> Police (Performance) Regulations 2020

<sup>127</sup> R (On the Application of Shaw) v General Osteopathic Council [2015] EWHC 2721 (Admin), concerning an osteopath, at paragraph 47, approving Spencer v General Osteopathic Council [2012] EWHC 3147.

have regard to the College of Policing Guidance on Outcomes in Police Misconduct Proceedings<sup>128</sup>.

16. A breach of the standards of professional behaviour which does not justify disciplinary action may still be dealt with, outside of disciplinary proceedings, through learning, informal supervision, a Reflective Practice Review Process under part 6 of the Police (Conduct) Regulations 2020 (which replaced Management Action under the pre-2020 disciplinary regime) or procedures under the Police (Performance) Regulations 2020 (but only for officers at the rank of Chief superintendent or below). In the case of Chief Officers, there may be circumstances where such breaches call into question their capabilities as a leader and result in their Police and Crime Commissioners seeking to remove them on the grounds they have lost public confidence. None of these apply to an officer who has retired (see below).

## Former Officers

17. It appears that prior to the PRA regime where an officer retired, any investigation of their misconduct ceased, criminal offences could still be investigated and prosecuted.
18. Under the PRA regime former officers can be investigated and criminal offences prosecuted but whether conduct matters can be investigated and disciplinary proceedings brought varies, due to changes in the legislation, according to the date on which they resigned. Those provisions are now set out in Part 2 of the Police (Complaints and Misconduct) Regulations 2020. In summary:
  - a. If an officer retired before 15 December 2017 they may be investigated for any conduct matter, criminal proceedings may be brought but no disciplinary proceedings. Where a conduct matter does not indicate criminal offences may have been committed, the IOPC would not usually consider it necessary to investigate the matter unless there is a public interest in bringing the facts to light for the first time.
  - b. If an officer retired after 15 December 2017, they may only be investigated if the severity assessment is at the level of gross misconduct, proceedings may then be brought for gross misconduct and if proved the former officer may be barred from further employment in the police service. Where the former retired more than 12 months before the matter came to light there must also be a special determination that it would be reasonable and proportionate to bring proceedings.

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<sup>128</sup> [guidance\\_on\\_outcomes\\_in\\_police\\_misconduct\\_proceedings-1-.pdf \(paas-s3-broker-prod-lon-6453d964-1d1a-432a-9260-5e0ba7d2fc51.s3.eu-west-2.amazonaws.com\)](https://paas-s3-broker-prod-lon-6453d964-1d1a-432a-9260-5e0ba7d2fc51.s3.eu-west-2.amazonaws.com/guidance_on_outcomes_in_police_misconduct_proceedings-1-.pdf)

## Exercising the Power of Initiative (POI)

19. In the IOPC the decision to exercise the power of initiative is delegated by the Director General to Regional Directors (RDs). Whether to exercise the POI is always at the RD's discretion but any decision must be public law reasonable. There are no detailed criteria in legislation or policy for how the discretion should be exercised but the IOPC Operations Manual includes as relevant considerations:

- Is there a public interest in the IOPC being able to act promptly in respect of the matter?
- Has the AA been given reasonable time to refer the matter voluntarily?
- Has the AA indicated that they will not refer the matter unless required to do so?

20. This guidance has limited relevance to the decisions required about the criticisms in the DMIP report which may be potential conduct matters because the AAs have each provided a written assessment explaining they will not be recording and referring conduct matters. In the absence of any more detailed guidance the IOPC has had regard to:

- a. The purposes of the police disciplinary regime: confidence in policing, upholding high standards and deterring misconduct, and protecting of the public<sup>129</sup>.
- b. Its duties under section 10 PRA, in particular to secure public confidence in the disciplinary regime and that it is efficient and effective.

21. In general, it would be an inefficient and ineffective use of IOPC resources to investigate matters which have already been brought to light, no disciplinary proceedings could now be brought and/or there is no realistic prospect of criminal proceedings. In these circumstances even though there may be a conduct matter, there would be insufficient grounds to exercise the POI.

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<sup>129</sup> These are most conveniently set out in the College of Policing's Outcomes Guidance at 2.3

Published August 2022

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in an alternative format, you can contact us in a number of ways:

**Independent Office for Police Conduct (IOPC)**  
**10 South Colonnade Canary Wharf London E14 4PU**  
Tel: **0300 020 0096**  
Email: [enquiries@policeconduct.gov.uk](mailto:enquiries@policeconduct.gov.uk)  
Website: [www.policeconduct.gov.uk](http://www.policeconduct.gov.uk)  
Text relay: **18001 020 8104 1220**

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