Neutral Citation Number: [2016] EWHC 1367 (QB)

Case No: 2YM19995 & Others

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
CARDIFF DISTRICT REGISTRY

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/06/2016

Before:

MR JUSTICE WYN WILLIAMS

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Between:

(1) Graham Mouncher
(2) Richard Keith Powell **Claimants**
(3) Peter Edward Greenwood
(4) Rachel Edith O'Brien
(5) Wayne Stephen Pugh
(6) Paul Jennings
(7) Paul Arthur Stephen
(8) John Stuart Seaford
(9) Michael Raymond Daniels
(10) Brian Gillard
(11) Thomas Page
(12) Stephen Hicks
(13) John Howard Murray
(14) Adrian Morgan
(15) Erica Coliandris

- and -

The Chief Constable of South Wales Police **Defendant**

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Mr Anthony Metzer QC, Mr Nick James & Ms Leah Pollard (instructed by **Slater & Gordon Solicitors**) for **Claimant 1**
Mr Anthony Metzer QC, Mr Nick James, & Ms Leah Pollard (instructed by **CJCHC Solicitors**) for **Claimants 2, 3, 4, 5, 6, 7 and 8**
Mr Stephen Simblet & Ms Una Morris (instructed by **Goldstones Solicitors**) for **Claimants 9 and 10**
Mr Lelie Thomas QC & Mr Nick Scott (instructed by **Goldstones Solicitors**) for **Claimants 11 and 12**
Mr Stephen Cragg QC (instructed by **Slater & Gordon Solicitors**) for **Claimant 13**
Mr Nicholas Bowen QC (instructed by **Confreys Solicitors**) for **Claimant 14**
Mr Stephen Cragg QC (instructed by **Quality Solicitors**) for **Claimant 15**
Mr Jeremy Johnson QC, Mr Alan Payne, Ms Beatrice Collier & Ms Cicely Hayward (instructed by **Richard Leighton Hill, Head of special Legal Casework, South Wales Police)** for the **Defendant**

Hearing dates: 12 October 2015 – 17 December 2015

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Judgment

Mr Justice Wyn Williams:

Introduction

1. Just before 9pm on Sunday 14 February 1988, a young woman called Leanne Vilday (LV) walked into the Butetown police station in Cardiff and told the officers present that she was concerned for the safety of her friend Lynette White. She asked the officers to go with her to a flat which she had been renting at 7 James Street which was situated a short distance away. Two police officers agreed to accompany her to the flat. Once inside, the two officers went into the bedroom where they discovered the mutilated body of Lynette (as I shall call her in the remainder of this judgment). It was obvious to the officers that Lynette had been subjected to a brutal and sustained attack with a knife or knives.

2. That same night South Wales Police (SWP) launched an extensive investigation. All the Claimants in these proceedings were then serving police officers of SWP and they all participated to a greater or lesser extent in the investigation as it unfolded.

3. On 7 December 1988 six men were arrested and detained; they were Stephen Miller (SM), Anthony Miller (AM), Ronald Actie (RA), Yusef Abdullahi (YA), Martin Tucker (MT) and Rashid Omar (RO). On 9 December two more men, Anthony (Tony) Paris (TP) and John Actie (JA) were arrested and detained. All these men were interviewed under caution at length.

4. In due course, AM, MT and RO were released without charge. However, on 11 December 1988 the other five men were charged with Lynette's murder. In the remainder of this judgment, when it is appropriate to do so, these five men are referred to collectively as "the original defendants".

5. In October 1989 their trial began at the Swansea Crown Court. Just before he was due to sum up, the trial judge, McNeill J, died suddenly. A second trial took place between April 1990 and November 1990; the trial judge was Leonard J. After a long period of deliberation the jury convicted SM, TP and YA of murder and acquitted JA and RA. The three convicted defendants appealed to the Court of Appeal (Criminal Division). Their convictions were quashed in December 1992.

6. In 1999 a decision was made by the then Chief Constable of SWP to commission an independent review of the investigation which had led to the prosecution of the original defendants. The review commenced in June 1999 and was carried out by two experienced retired senior police officers unconnected with SWP, namely William Hacking and John Thornley. They reported their findings in May 2000. Traditionally, this investigation has been referred to as LW1 but in this judgment I will refer to the investigation as the "Hacking and Thornley Review" and the report which followed it as the "Hacking and Thornley Report". On 23 August 2000, SWP formed an inquiry team to reinvestigate the murder of Lynette. The reinvestigation was given the name "Operation Mistral". Subsequently this investigation also became known as LW2 although I shall refer to it as Operation Mistral.

7. As a consequence of Operation Mistral a man called Jeffery Gafoor (JG) was charged with Lynette's murder. On 4 July 2003, before Royce J sitting in the Crown Court at Cardiff, JG pleaded guilty as charged.

8. Very shortly after JG's plea, Sir Anthony Burden, then Chief Constable of SWP, decided that there should be an investigation into the events which had led to the charging and prosecution of the original defendants. Initially, the terms of reference of the investigation were:

> "To identify and investigate any criminal or disciplinary offences arising from the Original Investigation."

This investigation became known as LW3. The investigation began, in earnest, within days of JG's conviction.

9. On various dates in 2005 all the Claimants, except Mr Hicks, were arrested on suspicion that they had committed the offences of conspiracy to pervert the course of public justice, misconduct in public office and false imprisonment during the course of carrying out their duties in the original investigation. The Claimant, Mr Hicks, was arrested on suspicion of having committed those offences on 26 June 2007. For ease of reference, hereinafter, I will refer to the original investigation as LW1. I hope this will not cause confusion to those who are used to describing the "Hacking and Thornley Review" as LW1.

10. On 2 March 2009 a prosecution was launched against all the Claimants save for Mrs Coliandris and Mr Morgan. All the prosecuted Claimants were jointly charged with the offence of conspiracy to pervert the course of public justice. Mr Mouncher was also charged with offences of perjury. The following year a decision was taken not to continue with the prosecution against Mrs O'Brien on account of her ill-health.

11. On 4 July 2011 a trial began before Sweeney J and a jury; the defendants in that trial were the Claimants Messrs Mouncher, Powell, Jennings, Stephen, Seaford, Greenwood, Daniels and Page together with 2 other persons, Violet Perriam and Ian Massey, who had been witnesses in the trials of the original defendants. On 1 December 2011 leading counsel for the prosecution informed the trial judge that no further evidence was to be offered against those persons and verdicts of not guilty were duly recorded. On 8 December 2011 the Crown Prosecution Service withdrew the charges it had laid against Messrs Gillard, Pugh, Murray and Hicks.

12. In these proceedings the Claimants allege the following:-

(a) Claimants 1 to 8, inclusive, allege that officers under the control of the Defendant who participated in LW3 committed against them the torts of false imprisonment and misfeasance in public office;

(b) Claimants 9, 10, 11 and 12 also allege that they were the victims of those torts but allege, additionally, that they were victims of the tort of malicious prosecution;

(c) Claimant 13 alleges that he was the victim of misfeasance in public office and false imprisonment;

(d) Claimants 14 and 15 allege they were victims of false imprisonment and, additionally, they pursue claims under the Human Rights Act 1998.

All Claimants claim compensatory, exemplary and aggravated damages but my task is to adjudicate upon the issue of liability. To the extent that liability and causation overlap it will be necessary to consider both issues together.

13. I stress at the outset of this judgment that my task is to reach conclusions about whether the Claimants have been the victims of the wrongs they allege as formulated and particularised in their pleadings. I accept, of course, that in order to make a judgment about whether the Claimants were the victims of the torts they allege it will be necessary to relate in some detail the evidence adduced before me relating to LW1 and Operation Mistral. I also accept that to a limited extent it will be necessary for me to reach conclusions about some of the events which are said to have occurred during the course of those investigations. However, I cannot emphasise too strongly that it is not my task to adjudicate upon the guilt or innocence of the Claimants in respect of the offences for which they were all arrested or upon the guilt or innocence of Claimants 1 to 13 in relation to the offences with which they were charged and in respect of which they were prosecuted. It is the conduct of the police officers who were engaged in investigating the Claimants as part of LW3 which is, primarily, under the microscope in these proceedings. Stripped to its essentials, I have to make a number of judgments about the thought processes, decisions, acts and omissions of those officers as LW3 ran its course.

14. I heard oral evidence over many weeks. Each of the Claimants gave evidence before me (apart from Mrs O'Brien) as did many of the principal decision makers involved in LW3. I also heard evidence from a number of police officers who had discrete roles within LW3. As I hope will be obvious I have taken full and proper account of the written and oral evidence given by these persons. However, in my judgment, by far the most important source of evidence available to me upon which to reach a judgment about the acts and/or omissions of the officers who participated in LW3 is the voluminous documentation generated in the successive investigations, LW1, Operation Mistral and LW3. During the course of this judgment I will, of necessity, refer to a significant amount of documentation. Even so, the documentation referred to by me will be a comparatively small percentage of the documents generated in those investigations.

15. During the course of cross-examination of some of the police officers who gave evidence on behalf of the Defendant but who were not officers of SWP it emerged that their witness statements had been drafted by lawyers. I do not find that surprising but, of course, I have scrutinised the statements with care so as to ensure that they are not attempts to re-write history. As it happens, the important aspects of those officers' evidence related to the arrests of the Claimants and the reasons for the arrests. Upon those issues, there is a large amount of contemporaneous or near contemporaneous documentation which provides a reasonably sure guide as to why particular Claimants were arrested and what happened when they were arrested.

16. I propose to identify the original defendants and a number of other persons who feature, repeatedly, throughout this judgment by their initials. That is simply for ease of reference. Since none of the Claimants are now serving police officers I propose to refer to them as Mr or Mrs as the case may be even when describing their roles and activities in LW1. I will adopt the same practice in relation to the police officers involved in Operation Mistral and LW3; I do that simply to avoid any confusion which might arise about their rank at the time of the investigation compared with their

rank at the present time. One of the important witnesses for the defence during the trial before me was His Honour Judge Dean QC. Throughout the trial (including when he was giving evidence) he was referred to as Mr Dean. He was content to be so addressed and I will refer to him as Mr Dean in this judgment.

17. This judgment is in 10 sections. Section 1 contains details about the careers of the Claimants. Its relevance will become clear as this judgment unfolds. Section 2 describes the course of LW1, the prosecution of the original defendants and the appeals of SM, TP and YA. Section 3 is concerned with the salient features of Operation Mistral. Section 4 describes the main investigative steps undertaken in LW3 and the main decisions made during the course of the investigation. The time period covered in this section is July 2003 to 2 March 2009. Section 5 is a description of the main events leading to the trial before Sweeney J, the trial itself and other events which occurred before and after the commencement of these proceedings. In Section 6, I will set out the law which is applicable in this case. Section 7 contains my analysis of the claims for misfeasance in public office. In section 8, I consider each claim for false imprisonment. In section 9 I consider the remaining claims, namely the claims for malicious prosecution brought by Mr Daniels, Mr Gillard, Mr Page and Mr Hicks and the claims under the Human Rights Act 1998 brought or proposed to be brought by Mrs Coliandris and Mr Morgan. Section 10 contains my conclusions in summary form.

18. I have received a huge amount of assistance from the teams of lawyers in this case. They have produced very detailed, helpful written submissions. Their conduct during the hearing was always designed to assist me to achieve a just result in this case, albeit, quite properly, they advanced their respective cases with vigour and skill. I have taken account, as I said I would, of all the written material which counsel produced. I say now, however, that given the extent of the material produced it will not be possible to refer to many of the points made during the course of this judgment. I have attempted to highlight what I regard as the strongest points made by each party in support of their respective cases but to go beyond that would lengthen this judgment beyond acceptable bounds.

Section 1

19. In this section I describe, in summary form, the careers of all the Claimants. I will deal with each Claimant in the order that they appear in the heading to this judgment.

20. Mr Mouncher joined SWP as a police constable on 6 November 1970. In 1974 he became a detective. He remained a detective for most of the remainder of his career. By July 1988, Mr Mouncher had become a detective inspector. He was then assigned to the Serious Crime Squad (East) and, more or less simultaneously, he joined LW1. He was given the role of an "action allocator". As that description suggests Mr Mouncher's main role was to ensure that decisions made by his superiors were allocated appropriately and carried into effect. Mr Mouncher performed that role in the months leading to the arrest and charge of the original defendants. After his involvement in LW1 had come to an end, Mr Mouncher engaged in a number of different roles. He retired from the police force in 2001 with the rank of detective chief inspector.

21. Mr Powell became a police constable with SWP in 1972. In the decade that followed he undertook a number of different roles and by 1983 he had become an inspector in uniform. In 1984 Mr Powell joined the CID based at Cardiff Central police station. Following the discovery of Lynette's body Mr Powell was the first senior officer to attend the murder scene. He was assigned to LW1 from the outset. His main role was to oversee the officers who were responsible for interviewing and obtaining witness statements. In the early months of the investigation Mr Powell was heavily engaged in this aspect of the investigation.

22. It is common ground that there came a point in time in the summer of 1988 when Mr Powell was replaced by Mr Mouncher. It is also common ground that in early December Mr Powell returned to active involvement in LW1. Whether or not Mr Powell was also actively involved in LW1 during October and November 1988 is an issue to be considered in this case.

23. In 1989 Mr Powell was promoted to the rank of detective chief inspector. In the years that followed he undertook a variety of important roles within SWP and on the date of his retirement (7 June 2002) Mr Powell held the rank of superintendent.

24. Mr Greenwood joined Cardiff City Police in March 1969. He became an officer of SWP upon the amalgamation of the City Police with the Glamorgan Police. In 1974 Mr Greenwood became a detective constable. Over many years, thereafter, he undertook a variety of roles. On 19 February 1988 Mr Greenwood became a member of the Serious Crime Squad (East). On or about that date he was assigned to LW1.

25. Upon joining LW1 Mr Greenwood was partnered with Mr Seaford and they were both part of the "house to house" team. They answered to Detective Chief Inspector Ludlow to whom I will refer in due course. After a few months in the house to house team Mr Greenwood joined the "blood" team. This involved tracking down the clients of prostitutes who were known to work in the Butetown area. Once a client was tracked down a blood sample would be taken so that it could be compared with blood which had been found at the murder scene. By November 1988 Mr Greenwood had become involved in the "ground actions" team. The actions allocated to him varied in nature but they included tracing and interviewing witnesses and suspects. Mr Greenwood says in his witness statement that throughout LW1 he was partnered with Mr Seaford and there is no reason to doubt what he says.

26. Following his involvement in LW1 Mr Greenwood remained a detective constable for a number of years. He retired as a police officer on 24 April 1998.

27. Mrs O'Brien joined the Glamorgan Police in June 1966 and became an officer of SWP upon the amalgamation to which I have referred. After some years as a uniform officer she became a detective. As I understand it, by about the mid-1980's she had become a detective assigned to the Serious Crime Squad (East). At the date when LW1 began Mrs O'Brien was part of the Major Crime Support Unit.

28. I have not been provided with specific details about Mrs O'Brien's role in LW1. That is because she now suffers from a very significant illness and she has made no witness statement in these proceedings. I do know, however, that she was assigned to LW1 for many months and that during her deployment she worked at least part of the time in the Major Incident Room (MIR) which had been set up following the discovery of

Lynette's body. Mrs O'Brien remained a police officer for approximately 9 years after her role in LW1 had ceased. Thereafter she worked as a civilian investigator until about 2004 both in the private sector and for SWP.

29. Mr Pugh joined SWP on 1 September 1972. He became a detective in August 1981 and he remained a detective constable throughout his career. In 1987 Mr Pugh was assigned to the Serious Crime Squad (East) and he was working within that squad on the date of Lynette's murder. On Monday 15 February Mr Pugh was assigned to LW1. He was given the role of an indexer in the MIR. His role involved collating and categorising all the information which was fed into the MIR. One of the persons with whom he worked for a time was Mrs O'Brien. As I understand Mr Pugh's witness statement his primary role throughout LW1 was working within the MIR although he accepts that from time to time he carried out other duties. Mr Pugh retired from SWP in October 2002. The following month he was engaged by the Legal Services Department of SWP as a caseworker. He was undertaking that role in 2005 at the time of his arrest.

30. Mr Jennings joined SWP on 8 November 1976. He remained an officer in uniform for about 10 years whereupon he transferred to the CID. Mr Jennings was assigned to LW1 within days of Lynette's murder. He was first assigned to the house to house team but later he joined a team of officers who were conducting investigations into the prostitutes who worked in the Butetown area and their clients.

31. On 6 February 1989, i.e. after the decision to charge the original defendants had been taken, Mr Jennings joined the Serious Crime Squad (East). He remained a detective within that squad for approximately 10 years and then took up a post, in uniform, at Cardiff Central police station. In 2001 he was appointed CID office manager at the Cardiff Basic Command Unit and he was undertaking that role at the time of his arrest. Throughout his career he received a number of commendations; he also received the Police Long Service and Good Conduct Medal in October 1999. He received two of his commendations after his arrest.

32. Mr Stephen joined SWP in 1978. He became a detective in or about 1983 and he became a member of the Serious Crime Squad (East) in November 1987. He was assigned to LW1 virtually from the outset of the investigation. Initially he was an indexer/telephonist/message-taker in the MIR. Subsequently he became part of the team which undertook enquiries and obtained witness statements.

33. I have not been provided with detailed information about Mr Stephen's career following his involvement in LW1. However, at the time of his arrest in 2005 he was still a serving police officer with SWP holding the rank of detective sergeant.

34. Mr Seaford became a police constable with Cardiff City Police in January 1966. Upon the formation of SWP Mr Seaford became a temporary detective and, shortly thereafter, his status as a detective became permanent. By 1982 Mr Seaford had become a member of the Serious Crime Squad (East).

35. Mr Seaford joined LW1 in March 1988. He was by then a very experienced detective – he had worked on at least 50 murders and serious incidents. At the outset Mr Seaford's role was "outside actions"; he had a particular remit to deal with individuals who were known to use prostitutes. Later in the investigation he became involved in

taking witness statements from specific witnesses. Following his involvement in LW1 Mr Seaford became a member of the Fraud Squad. He was still assigned to that Squad when he retired from SWP in January 1996.

36. Mr Daniels joined Glamorgan Police on 22 August 1966. He became a detective constable in July 1973 and for many years thereafter he worked for Special Branch in South Wales. In 1985 Mr Daniels became a member of the Serious Crime Squad (East). That assignment lasted until 1987 when he became a member of the Serious Crime Squad (West). On 15 February 1988 he was seconded to LW1. Initially he was deployed in the MIR. In or about October 1988 he was transferred to outside enquiry duties and from that time onwards, at least, he usually partnered Mr Gillard.

37. Mr Daniels retired from SWP on 2 September 1996. Upon retirement he received an exemplary conduct certificate and during the course of his career he received a number of commendations for his work. In the years following his retirement Mr Daniels undertook investigative work. In August 1998 he began working for an investigation company known as RB Investigations although much of his work was involved with assisting SWP. He was working for RB Investigations but based at Cowbridge police station on the day that he was arrested.

38. Mr Gillard became a police officer on 5 December 1969. Until his deployment to LW1 he worked in and around the Swansea area. He became a detective in 1973. In 1986 Mr Gillard joined the Serious Crime Squad (West). He was deployed to LW1 immediately after the murder was discovered. Initially Mr Gillard was deployed in the MIR. In October 1988 he and other officers (including Mr Daniels) were transferred to outside enquiry duties in which capacity he took a number of important witness statements. Mr Gillard retired in 1999. He, too, was given a certificate of exemplary service. Unlike some of his colleagues he did not involve himself in investigative work following his retirement.

39. Mr Page began his career in the police on 25 March 1966. I have not been provided with the details of Mr Page's career in the police save that during the course of his service he received 26 commendations and by his retirement on 12 June 1997 he had reached the rank of chief inspector and acting deputy divisional commander.

40. Mr Page was an inspector in uniform during 1988. He was based at the Butetown police station – indeed, he was responsible for its day to day running. He was seconded to LW1 on three or four occasions between Lynette's murder and 31 December 1988 when Mr Page left the Butetown police station to join the Regional Crime Squad. His secondment to LW1 sometimes lasted a few weeks; sometimes it was no more than a few days. His last secondment was at or about the time when the original defendants were arrested and charged.

41. Mr Hicks was a police officer with SWP between 1971 and 31 March 2006. At the end of his career he had obtained the rank of detective sergeant and he was working within the Child Protection Unit at Cardiff Central police station. His conduct during his career had been described as exemplary.

42. Mr Hicks became part of LW1 on the day Lynette's murder was discovered. He remained part of the investigating team (apart from a week or so early on) until about May 1988. In that period Mr Hicks was engaged in house to house enquires. Mr

Hicks maintains that he returned to LW1 in early December 1988. That is not now disputed. He says that between 6 December and 11 December his role was essentially focused upon one individual, MT, although, as I will relate, Mr Hicks was also present with Mrs Coliandris on 11 December 1988 when a witness statement was taken from LV.

43. Mr Murray began his career in SWP in 1985. He had previously served in the army. By the time of Lynette's murder Mr Murray was a detective working from a police station in Llanedeyrn, a suburb of Cardiff. Mr Murray was assigned to LW1 on 2 March 1988. His role was to carry out the actions which were assigned to him. He carried out those duties from 2 March 1988 to 27 August 1988. On that date Mr Murray returned to his base at Llanedeyrn police station.

44. It is now accepted that Mr Murray returned to work with LW1 in December 1988. On or about 5 December, during the evening, he received a telephone call to report to LW1 the following morning. That morning a number of officers, including Mr Murray, received a briefing from Mr Morgan. Mr Murray remained part of LW1 until February 1989. He was still a serving officer, holding the rank of detective constable, upon the date that he was arrested.

45. Mr Morgan became a police officer on 24 January 1963. By the time of his retirement in 1994 he had received some 15 commendations from judges and chief constables and upon his retirement he was awarded a certificate of exemplary conduct.

46. By the time of his involvement in LW1 Mr Morgan was a detective chief inspector. He had been promoted to that rank early in 1988 and he was given overall responsibility for the Regional Criminal Intelligence Office and other police agencies within Wales. His work was "office based" and administrative in nature.

47. On 17 October 1988 Mr Morgan was transferred to the Serious Crime Squad (East). He was immediately appointed as the Office Manager of the MIR. He succeeded DCI Young who, in turn, had succeeded DCI Ludlow. Mr Morgan was the Office Manager for LW1 over the ensuing months.

48. Mrs Coliandris joined SWP in 1978. She was a police constable in uniform in 1988 and she was then based at Cardiff Central police station. She had no role in LW1 except for some hours on 11 December 1988. Mrs Coliandris retired as a police constable in 1995 "with a certificate from the Chief Constable of [her] very good service".

49. It seems clear that none of the Claimants knew each other very well by February 1988 although some of them were acquainted with each other through work. However, throughout 1988 Mr Page worked from the Butetown police station and all the other Claimants (except Mrs Coliandris) were deployed to LW1 for some months, at least. It seems clear to me that all the police officers responsible for taking crucial witness statements during November and December 1988 (apart from Mrs Coliandris) must, by then, have become well known to each other.

Section 2

1988

50. Lynette was a prostitute who plied her trade in Butetown, the area of the city of Cardiff which adjoins the docks. She was 20 years of age when she was killed. Her death met with a great deal of consternation locally. It provoked a great deal of publicity both locally and nationally.

51. In the hours that followed the discovery of her body a large scale investigation was set in motion. A MIR was set up at Cardiff Central Police Station. Detective Chief Superintendent John Williams, then the most senior detective within SWP, was appointed the Senior Investigating Officer ("the SIO") and Detective Superintendent Ken Davies was appointed as his deputy ("the deputy SIO").

52. Certain lines of enquiry were obvious. There was a need to identify, locate and interview the large number of people who would likely know or have dealings with Lynette. Such persons would obviously include those who lived in Flats 2 and 3 at 7 James Street and those who regularly frequented clubs and pubs such as the North Star, the Casablanca, the Montmerence, the Dowlais, the Custom House and the Glendower (these being clubs and pubs frequented by Lynette, other prostitutes and men who associated with prostitutes). There was a need to identify any persons having any connection with 7 James Street, particularly in the days leading to Lynette's death. There was a need to examine the murder scene and preserve any relevant evidence for forensic examination and there was a need to obtain pathological evidence. All these lines of enquiry began within hours of the discovery of Lynette's body.

53. In the early hours of Monday 15 February Doctor John Whiteside, an experienced forensic scientist, and Professor Bernard Knight, a distinguished Home Office pathologist, attended the flat in which Lynette's body was discovered. Lynette's body was still in the position in which it had been found. It was clear to both Dr. Whiteside and Professor Knight that Lynette had been murdered in the bedroom of the flat in which she was discovered although her body had been moved within that room. A very thorough forensic investigation of the room and the flat was recognised to be vital. That investigation began during 15 February and continued throughout the days that followed.

54. Very early on Professor Knight was asked for an opinion about the likely time when death had occurred. He could not be precise. Nonetheless both the police and he soon formed the working hypothesis that death had occurred in the early hours of Sunday morning i.e. about 24 hours prior to the Professor's examination. In all the years since that time, the view has remained that Lynette was murdered in the early hours of Sunday 14 February 1988. Nothing I heard or saw in the evidence adduced before me cast any doubt upon that view.

55. Many police officers were deployed to the investigation. As I have explained, many of the Claimants were involved from the outset or shortly after the investigation had begun. Their roles were as I have described.

56. Many lines of enquiry were pursued and many leads were followed up. I do not propose to set out details of all those leads and the persons who were considered suspects in the early days since such a narrative would be peripheral to the issues which I have to decide. Rather, in the paragraphs that follow, I will describe how the original defendants came to be suspects. I should, however, mention one strand of information which was provided to the police very early on; during the afternoon of Sunday 14 February a man with a cut hand was seen in the vicinity of 7 James Street. The identity of that person was never discovered during the course of LW1.

57. Very quickly, i.e. on the night Lynette's body was discovered, evidence came to light that she was in a relationship with SM and that he acted as her pimp. That same night LV volunteered that she was Lynette's close friend. It was soon established that the other two flats at 7 James Street were occupied; the tenant of Flat 2 was a man called Mark Grommek (MG) and Flat 3 was occupied by a woman called Johanna or Joanne Smith (Ms Smith).

58. Within hours of Lynette's body being found, SM was traced and interviewed at length. His home and car were searched and his clothing was seized for forensic examination. Essentially, in those very early stages, SM was treated as a suspect. However, in the weeks that followed SM gave a number of witness statements to the police which were not incriminating in any way and for a number of months after that the police ceased to regard him as a suspect. Witness statements were taken from LV and MG on the night of 14 February; a statement was obtained from Ms Smith on 15 February. Each of them asserted they knew nothing of the murder.

59. In February 1988 LV was aged 19. She had a young child and she was a prostitute. In her first witness statement she said that she had been living at 19 St Clair Court, West Bute Street for a "couple of months" before February 1988. West Bute Street was and is very close to James Street.

60. The tenant of the flat in St Clair Court was Angela Psaila (AP). She was also a young woman and a prostitute. A witness statement was taken from her on 16 February; she said that she knew nothing of the murder. Other persons from whom statements were taken in those very early days included a man called Jack Ellis (statement taken on 16 February) who was a taxi driver who often provided taxi services in Butetown and Paul Atkins (PA), a friend of MG who provided a statement on 26 February. None of the persons so far mentioned provided any information to the police which suggested that they had any knowledge of the circumstances surrounding Lynette's murder.

61. There is no doubt that at a very early stage of the investigation it was suspected that LV knew more than she was prepared to disclose to the police. At the very least, officers suspected that she had discovered that Lynette's body was lying in the flat before she reported her concerns to the police. I should also record that MG had apparently provided information to the press which was not necessarily consistent with his denial to the police that he had any relevant information about the murder. On 17 February an article appeared in a local newspaper which related that MG had "heard noises, doors slamming and men's and women's voices throughout the night" coming from the flat in which Lynette was found.

62. Over the course of the next few months many statements were taken from LV, AP and MG and in those early months they said nothing to the police which incriminated

anyone in Lynette's murder. However, as the investigation progressed, information was being provided to the police which tended to suggest that LV knew more about the circumstances of the murder than she had divulged. For example, the police obtained witness statements from Claire and Julia Thomas, young women who were friends/acquaintances of both Lynette and LV. In those statements they suggested that on the morning after Lynette's body had been discovered LV had told them that she had seen Lynette's body lying in the flat at James Street before she had gone to the Butetown Police Station. Claire and Julia Thomas were former residents of the flat in which the murder took place. Perhaps more importantly, a woman by the name of Maxine Campbell made a witness statement on 31 May 1988 in which she recounted a conversation with LV in which she (LV) had informed her that she knew who had killed Lynette and she named SM and YA. Miss Campbell told the police that although LV was drunk at the time of this conversation she appeared serious about what she had said.

63. At some stage towards the end of May or in early June Mr Powell suggested to LV that she should be asked questions about her knowledge of the murder under hypnosis. LV agreed to be questioned under hypnosis and the session took place; however she revealed no information which incriminated either SM or YA (or for that matter any one else). On 11 June LV made a witness statement (her 13th statement) in which she explained how it came to be that she was questioned under hypnosis. She also explained why she made accusations about SM and YA to Maxine Campbell. She said that she had been "really pissed" and that she had accused SM "just I suppose to get at Miller (Stephen) because he's away and not getting any hassle and I hate him anyway".

64. By this point in time AP had made five statements. She did not suggest in any of them that she had any knowledge of the circumstances surrounding the murder of Lynette.

65. MG provided seven witness statements between 14 February 1988 and 25 May. The statements were to an extent contradictory insofar as they concerned his movements on Saturday 13 February and Sunday 14 February. That said, MG consistently denied having any knowledge of the circumstances surrounding Lynette's murder. He certainly did not repeat what was attributed to him in the newspaper article of 17 February. In his statement dated 25 May MG asserted that he had returned to his flat at 7 James Street and, after taking medication, he had slept soundly all night. Further, he claimed to be alone in his flat and said that he had heard nothing from the flat below.

66. In the first statement which he made (26 February) PA denied seeing Lynette at any time over the weekend when she was murdered. In his fourth statement, dated 18 May, he gave a detailed account of his movements over that weekend. The account he then gave contradicted earlier accounts of his movements but nothing he said suggested that he had any knowledge of the circumstances surrounding the murder of Lynette.

67. That was in sharp contrast to information which PA had provided to Detective Chief Inspector Ludlow on 10 April. On that day Mr Ludlow interviewed PA at length at the Butetown police station. On 11 May Mr Ludlow made a comprehensive witness statement setting out what PA had said. Essentially, PA had given a number of

different accounts of the events of Sunday 14 February but each of them suggested that he had very important information about the murder. PA first told Mr Ludlow that he had gone to MG's flat at about 1.00am on Sunday 14 February. They had drunk some coffee and then gone to bed together (they were both homosexual men). PA said that after about ten minutes he heard loud screams coming from the flat below. He had got up to investigate. While he had been standing outside Flat 1 he had seen two persons whom he named as Barry (a homosexual man from Bristol) and a girl whom he described but did not name (although the description was consistent with it being LV). The girl told him that she had seen a body and that he should get the police. When Mr Ludlow challenged PA as to whether he was telling the truth he gave a different account. In this second account he suggested that MG had killed Lynette after having had sex with her and having robbed her of £45. When challenged about this account, PA provided further and, to an extent, contradictory details but still maintained that MG had killed Lynette. At this point in the interview Mr Ludlow involved Mr Powell. Both men spoke to PA and made it clear to him that they did not believe what he had told them. At that point PA broke down and gave a third account in which he admitted killing Lynette. He said that he had gone to her flat, that he had wrestled her to the ground, sat astride her and then "stabbed her repeatedly in the chest, abdomen and both arms". PA said that Lynette had put her arms up across the front of her face to defend herself. He said, too, that when she was dead he had cut both her wrists and then her throat and when the blood started to spurt out he walked out of the flat and downstairs and out onto James Street.

68. The officers did not believe any of PA's three accounts. They put to him questions about what Lynette had been wearing at the time she was killed and what furniture had been in the flat. PA's answers were clearly and obviously wrong and when this was pointed out to him he admitted that he had been telling lies all along. That said, he went on to assert that he had obtained knowledge of the stab wounds sustained by Lynette from speaking to LV which, no doubt, reinforced the view of the police officers in LW1 that LV had not disclosed all that she knew to the police.

69. On 15 April a witness statement was taken from a woman named Jane Elizabeth Sandrone. Ms Sandrone was one of three partners who owned and/or operated the Dowlais Club which was situated near James Street. In her statement she recounted a conversation which she said had taken place about three weeks after the murder between Noreen Amiel (one of her business partners) and a man whom she described as a "half caste" and who was known to her by the name "Dulla". According to Ms Sandrone this person had told Noreen Amiel that he had killed Lynette and that he had cut his own hands in the process. On the face of it, this evidence implicated YA in the murder. However before Ms Sandrone's account could be checked with Ms Amiel, information emerged which tended to suggest that over the weekend when Lynette was murdered YA had been working on board a ship known as "The Coral Sea" which was berthed at Barry Dock.

70. YA made a witness statement on 19 May. He acknowledged knowing Lynette but said that during the course of the weekend when she was killed he was working aboard the Coral Sea. Indeed he said that he worked on board the ship between Tuesday 9 February and Monday 15 February and that during that period he had left the ship on one night only which was either the Wednesday or Thursday night.

71. On 27 May a witness statement was taken from Mrs Amiel. In it she recounted a conversation she had with YA approximately two weeks after the murder. She did not suggest that he had admitted killing Lynette. Her account was that YA had told her that the police were looking for him in connection with the murder and that as a consequence he was going to leave the Cardiff area by taking a job on a ship. The statement taken from Mrs Amiel also described a conversation she had with YA on 19 May – the day he had given his witness statement to the police. In this conversation YA described how he had been "pulled in" by the police and how this had frightened him. Although Mrs Amiel provided the information which I have summarised above on 27 May and a statement was written out on that date Mrs Amiel would not sign it. The statement was not signed until 1 February 1989 following a conversation she had with Mr Mouncher.

72. It can be seen, therefore, that as at late May/June 1988 information had been provided to the police which had the potential for implicating SM and YA in the murder of Lynette. PA had made suggestions about the murder which the police had rejected as untrue and information had been provided to the police which suggested that LV knew more about the circumstances surrounding the murder than she had been prepared to divulge in her witness statements. LV, AP, MG and PA had given a number of witness statements to the police. In due course these four persons became known as the "core four" for reasons which will become obvious. I will use that phrase when it is necessary to refer to them collectively.

73. The attitude of the investigating officers at this time is encapsulated in a document to which it is now convenient to refer. Very soon after the investigation began the SIO began a log known as "the SIO policy log". The idea was that all important policy decisions made by the SIO would be reduced to writing in a log which would then be a readily available record of those decisions. To distinguish this log from the SIO policy log which came into existence in LW3 I will refer to it as the "LW1 policy log". The log for late May records :-

> "24.5.88……talk amongst prostitutes still tends to implicate Miller and associates and those in the North Star will be closely monitored.
>
> 27/5/88. A full conference of all personnel engaged on the enquiry was held at 5.00pm at the incident room. Yusef Abdullahi was discussed and is being researched and enquiries into as he may now fall into a strong suspect category for this enquiry."

74. By this stage there was very little if anything to connect RA, JA and TP to the murder. RA had made a witness statement on 11 March. He admitted that he had known Lynette and LV; indeed he admitted having a relationship with LV. He gave a full account of his movements over 13/14 February. JA had been seen early on by police officers conducting house-to-house inquiries but had not been interviewed after that time. TP had been interviewed on or about 23 February following the discovery of a knife and an axe at his home after his arrest for stealing. He made a statement in which he readily admitted knowing Lynette and SM and he accounted for his movements on 13/14 February.

75. On or about 21 June 1988 the SIO, Mr Williams, had a conference with Professor Canter of Surrey University. The Professor's speciality was the psychological profiling of suspects in criminal cases. Over the course of the following few months the Professor made an assessment of the profile of the person most likely to be Lynette's assailant. A convenient summary of Professor Canter's views found its way into a report which Mr Mouncher prepared for the Deputy SIO on 25 October 1988. I need not set out the detail; the Professor's view was that the killer was likely to have been a lone assailant who was a client or former client of Lynette.

76. As I indicated earlier, there was an extensive investigation of the murder scene which began in the hours after Lynette's body was discovered and which continued for some time thereafter. Following this investigation there was a detailed forensic assessment of what had been discovered.

77. The examination of the scene was particularly concerned with the search for fingerprints. No less than 1747 finger marks were lifted for comparison purposes during the course of the scene examinations. Finger marks were found in the flat which matched the fingerprints of LV and PA. In itself, this was not significant since LV was the tenant of the flat at the material time and PA had disclosed at an early stage that he had been a visitor to the flat when Julia and Claire Thomas had been the tenants in 1987. No finger marks were discovered which matched the finger prints of AP, MG, the original defendants or the other men who were subsequently arrested but not charged.

78. Lynette's clothing had been heavily bloodstained as was to be expected. Forensic examination of the blood was undertaken. Much of the blood found on Lynette's clothing was her own. However, there was smeared blood staining on the legs of her jeans and on the ankle of her right sock which was not her blood. Further, there was blood found behind a curtain and on a skirting board in the bedroom of the flat. This blood was not Lynette's but it was the same group as the blood deposited on Lynette's jeans.

79. In the early months of the investigation the belief was that this "foreign" blood had been deposited by a male and, very likely, by a man who had been involved in the attack upon Lynette. The opinion that this blood was that of a man was founded upon the discovery by the forensic scientists that there was a "Y" chromosome within the blood (indicating the blood belonged to a male). The working assumption was that this blood had been deposited by a male attacker who had, himself, been injured during the course of the attack on Lynette. In due course the "foreign blood" was compared with samples of the blood of the original defendants. The comparison showed that it was not their blood.

80. I need not dwell on the pathological evidence which was obtained from Professor Knight at this stage. More than 50 stab/slash wounds were discovered on Lynette's body. Her throat had been cut and it was very likely that it was the cut(s) to the throat which had caused her death.

81. I turn, next, to the most crucial time period within LW1 namely, late October to 11 December. On 20 October, Violet Perriam (also known as Wendy Perriam) provided information to DC Mitchell which he recorded as follows:-

> "Wendy Perriam, 4 The Drive, Fairwater, 569721 secretary of local boat club drove past 7 James Street at 0130 hours 14/2/88 and saw four coloured males arguing heatedly outside the premises. She believes one to be an associate of Actie another to be an associate of Peggy Farrugia."

82. Some days later – on 10 November 1988 – Mr Seaford took a witness statement from Mrs Perriam. In it she described how she worked at the Butetown Health Centre and at the Cardiff Yacht Club which was also situated in Butetown. She went on to say that during the evening of Saturday 13 February she had worked behind the bar at the Yacht Club and left to go home at about 1.30am on the Sunday morning. Her route home took her along James Street and as she drove along that street she saw four men whom she described as "four coloured males" standing in the middle of the road. They were in close proximity to the location of number 7. She estimated that the time when she saw these men was between 1.30am and 1.40am on Sunday 14 February.

83. Mrs Perriam's statement contained a description of the four men as follows:-

> "Because I work in the Health Centre I am familiar with a lot of people from the Docks area. The faces of two of the persons were familiar to me. One was a Somali and another had long scruffy hair. I may recognise them again. The four men were between 20 and 30 years of age. One of them who had his back to me was tall and well built. The two I have mentioned and the other one were all shorter and about the same height. I cannot describe what they were wearing."

84. After he had taken this statement Mr Seaford made a written record of his dealings with Mrs Perriam. He wrote:-

> "Statement obtained from Violet Elizabeth Perriam. Her daughters Katherine and Michelle cannot assist enquiry. Mrs Perriam is petrified of John Actie and it may be that he is one of the persons she saw. It may also be that she knows the identity of the other person but is afraid to say. She was very reluctant to make a statement. Suggest we leave her for a few days and I'll see her again re identification."

85. Not surprisingly, the statement made by Mrs Perriam was considered to be of some importance to the investigation. The LW1 policy log for 10 November recorded the need to re-interview Mrs Perriam in relation to the identity of the men she had seen. It also recorded the need to re-appraise the evidence of MG and PA.

86. On 16 November Mr Seaford took a second witness statement from Mrs Perriam. It was a short statement and the relevant part is as follows:-

> "I made a previous statement on 10 November 1988. In this statement I mentioned seeing four coloured persons in James Street about 1.30am on Sunday 14 February 1988.

> Because I work in the docks area I have been concerned about my own safety. For this reason I have not wanted to name persons I did recognise on this date.
>
> One of the persons was Rashid Omar who I know from the Butetown Health Centre. I am almost certain one of the others was John Actie. On this night I didn't see his face but he is a very big person and he stands out because of his description.
>
> He was wearing a black leather jacket which he always wears.
>
> I know that these two persons were friendly until some weeks ago when I saw them arguing outside the Health Centre. I didn't see them together for a few weeks until the day before yesterday when I saw them outside the Health Centre.
>
> I did not recognise the other two persons. Because it was dark and the fact that I only saw these men for a matter of seconds, identification was difficult.
>
> I can definitely say that Stephen Miller was not one of them. I know Miller's nickname is 'Pineapple' and I have seen him at the Health Centre."

87. In summary, therefore, by 16 November Mrs Perriam had told the police that she had seen four men together in the vicinity of 7 James Street shortly after 1.30am on 14 February. One of those present was RO; almost certainly another was JA. She could not positively identify the other two men but they did not include SM. On her account none of the men were white.

88. In February 1988 a woman called Pamela Mathews had been living in the same block of flats (St Clair Court) as AP. Ms Mathews made a statement to the police on 12 April 1988 in which she described how she had gone out with a friend, Gwyneth Williams, on Friday 12 February and how the two women had spent the night together at the Bosun Public House. On returning to her flat at approximately 2.00am on Saturday 13 February Ms Mathews had seen AP "looking scared and nervous" on the landing outside the door to her flat. On 1 November 1988 Mrs Mathews made a second statement to the police in which she said that her visit to the Bosun had been on Saturday night so that she had seen AP in the early hours of Sunday morning. In a third statement, made on 15 November and written by Mr Daniels, Mrs Mathews confirmed that her sighting of AP had occurred at about 2.15am on Sunday 14 February.

89. In 1988, the names of persons attending a police station either because they were potential suspects or because they were significant witnesses were normally recorded in a book known as "the B59". The B59 kept at the Butetown police station in 1988 still exists. It shows that on 17 November AP attended the police station at 10.20am and remained there until 6.55pm and it is common ground that while she was at the police station she was interviewed on two occasions by Messrs Daniels and Gillard. AP was not interviewed under caution but Mr Daniels and Mr Gillard were instructed to make a contemporaneous record of the questions that they asked and the answers

that she gave. Both Mr Daniels and Mr Gillard told me that they acted in accordance with their instructions when the written record was made and that, so far as possible, the precise words spoken were recorded. The Defendant does not necessarily accept that this is what occurred. There is no dispute that at some stage after the written records had been made typed versions were produced which accurately re-produced the written versions. In the remainder of this judgment all my references to statements or contemporaneous records are references to the typed versions contained within the Trial Bundles.

90. The record shows that the first interview commenced at 11.20 am and ended at 2.18pm; it also shows that there were no formal breaks although cups of tea and a meal were provided to AP during various stages of the session.

91. In this interview AP explained that during the night of 13/14 February she had been in her flat at St Clair Court babysitting for LV. She agreed that she had gone outside the flat for a short period of time at about 2.15am and that she had seen her neighbour Ms Matthews and her friend, Ms Williams. AP also agreed that she was then nervous and she explained this by saying that at about 2.00am SM had called at her flat with "other docks boys" whom she could not identify. He had come to her flat to look for Lynette. He had threatened her because he believed that Lynette was staying with her in her flat. She went on to describe how at about 3.00am she had been looking out of the window of her flat towards 7 James Street. She had seen a flickering light on the first floor above the betting shop. She had also seen a car in the street below. The driver was a white man and he had no passengers. When asked what kind of car she had seen AP replied "a taxi black and white like a city centre taxi like a Cortina like they've got" although she also said the car did not have a taxi sign on the roof. When AP was asked why she had not mentioned the taxi in her previous statements she said that it was because she was afraid of SM. When Mr Daniels asked AP the specific question whether JA was one of the men she had seen she replied "no" – the men had been younger.

92. The second interview began at 4.05pm and ended at 5.50pm. Between the two interviews Mr Mouncher spoke to AP. There was no attempt at the time to hide the fact that the conversation had taken place. The record of the second interview begins by setting out that AP and Mr Mouncher had spoken together in the break.

93. I do not propose to set out in detail the questions and answers recorded. It suffices that I say that AP alleged that (a) she had always known the persons who had come to her flat were SM, JA, RA, YA and a man called Tony Brace (b) these men and, in particular, SM, JA and RA were in James Street in the vicinity of No 7 for quite some time during the early hours of the Sunday morning (c) sometime after the men had visited her flat she had heard screams apparently coming from 7 James Street and at the time when she heard screaming SM, JA and RA were in the vicinity (d) approximately 30 minutes after the screaming had ended a taxi had arrived in James Street driven by Jack Ellis (e) at some point RA had entered 7 James Street after being let into the building by a man whom she thought had come from Flat 2 and (f) TP was also present from time to time in James Street in the sense that he was "coming back and forth" as if he was selling drugs to the others. Just before the interview concluded Mr Gillard asked AP whether LV had been with her when SM arrived at about 2.00am. AP replied that LV had not been in the flat; according to AP, LV had not

been in the flat that night although she had come to the flat at about 9.00am on the Sunday morning.

94. As I have said, there is no dispute that AP spoke to Mr Mouncher before that interview started. Mr Mouncher wrote a summary of what was said in his pocket notebook. The relevant part reads as follows:-

> "Confer DC Daniels Gillard re Psaila re protection ..…threats to her well-being from those responsible for murder of Lynette White. Assured her she would be protected by every possible means."

95. The effect of what AP is recorded as saying on 17 November could not be clearer. She had been alone in her flat during the night of 13/14 February. SM and four other men had visited her flat at about 2 am on 14 February; three of the four men were JA, RA and YA. All the original defendants were in and around James Street in the early hours of 14 February. At some stage there had been screaming coming from number 7. RA had entered the building apparently having been let into the building by someone from Flat 2 and Jack Ellis' taxi had also been in James Street that night.

96. On 22 November AP returned to the Butetown police station. On this occasion she was present between 3.40pm and 5.25pm. She made a short statement in which she changed the account which she had given on 17 November about whether LV had been with her during the night of 13/14 February. She said:-

> "Firstly in my last interview I said that Leanne Vilday wasn't in my flat when I heard screams, this wasn't true. In fact Leanne went to the Red Onion to fetch food as I've said but she didn't go back out straightaway. We were eating the food that Leanne had fetched when we heard the screaming. Both of us heard the screams as Leanne left the flat to see what had happened. I watched her from the window of the flat and saw her going towards Babs Bistro. I didn't see her again until about ten minutes later when she came back to my flat. She said "Lynette's dead". I said "what do you mean?" and she said "you know she's dead she's been stabbed several times."

97. PA and MG were also at the Butetown police station on 22 November but for much longer periods of time. The B59 shows that PA arrived at the station at 8.12am. At 9.15am Messrs Jennings and Stephen began a question and answer session. The interview ended at 5pm although substantial breaks were taken when refreshments were provided to PA. Mr Jennings told me he recorded the words spoken contemporaneously. Thereafter, a typed version of the written record was produced.

98. In summary, the interview began with questions about PA's whereabouts on 13/14 February. PA's answers were not wholly consistent with accounts he had given in previous statements but they were consistent to the extent that PA denied being in or in the vicinity of 7 James Street at any material time. There followed a break of almost an hour. In the next session PA changed his account quite dramatically. PA said that he had gone to MG's flat at around midnight on 13/14 February. There came a point in time when someone rang the doorbell at the front entrance to 7 James

Street. MG left his flat to open the front door and then returned. Shortly after, PA heard a scream. He left MG's flat almost immediately and saw a "girl" coming through the front door from the street. PA described how "the girl" forced open the door of Flat 1, went inside and then came out to say that someone had been murdered in the flat. PA returned to MG's flat and at about the time that dawn was breaking he went to the flat of Julie and Claire Thomas.

99. Following these revelations there was another break of approximately one hour. In the session which followed Messers Jennings and Stephen challenged PA about why his account before the break had been so different to any previous account he had given. He claimed that he had been frightened to tell the truth previously. PA was then pressed as to whether his account before the break was truthful and he was invited to tell the officers yet again what had happened. Much of what he then said was consistent with his account before the break. Additionally, however, he said that approximately 1½ hours after arriving at MG's flat he heard male voices in the street. It was shortly after this that MG had gone to open the front door. Upon his return, PA asked MG who had been at the door. MG refused to say. Next, PA heard a scream. PA repeated that he left MG's flat to see what had happened and then he had seen a girl coming up the stairs. He maintained that he did not know her name but he described her and where she lived; he was obviously describing LV. According to PA the girl forced open the door of Flat 1 and both she and PA when into the flat. They discovered the body. PA was asked about the lighting in the flat. He said that the only source of light was from the street lights outside. However, he added a detail to the effect that "the girl" had asked him to put the light on and he had found a switch. However, when he had turned it on no light was produced. After leaving the flat PA returned to the flat of MG. He was so distressed by what he had seen that he was physically sick in the toilet of MG's flat.

100. This session ended at 5.00pm. The written record was then read to PA who signed it at 5.30pm. Shortly before 9.00pm that day PA signed a witness statement which had been written by Mr Stephen. The statement was countersigned by an Inspector, Colin Raybould, under the following caption:-

> "This statement was read over to Paul Atkins page by page and he signed the bottom of each page as being a true record. At the conclusion of this statement I asked Mr Atkins if he was satisfied as to the authenticity of his statement and he agreed he was so satisfied."

101. The B59 does not record the time when PA left the police station on 22 November. On any view, however, he could not have left until sometime after 9pm which means that he was at the police station for a period in excess of 13 hours.

102. MG arrived at the police station at 10am. The B59 does not record when he left. An interview with him began at 11.45am and ended at 1.15pm. The officers conducting this interview were Messrs Greenwood and Seaford and it was a question and answer session. Mr Greenwood told me that he wrote down the questions asked and the answers given and that later an accurate typed version was produced.

103. In this interview MG said that he had returned to his flat at about midnight on 13/14 February and had then gone to bed. He was alone throughout the night and heard no

noise in the street and no screaming from the flat below. He explained that he had been taking medication for depression in February and that he slept very heavily when under the influence of that medication.

104. A second interview began at 5.05pm that afternoon. On this occasion the interviewing officers were Messrs Seaford and Pugh and it was Mr Pugh who made a written record of what was said (which was later typed up). In his oral evidence Mr Pugh told me that between the first and second interview he had a conversation with MG in which MG told him the substance of what he was later to disclose in the second interview. This conversation was not recorded in interview format. It had been an "informal conversation" and, according to Mr Pugh, MG had decided to confide in Mr Pugh because the two men had built up some kind of rapport because they both came from the South Wales Valleys. Mr Pugh's pocket book for 22 November has long since been destroyed. Accordingly, if Mr Pugh made a record of the conversation it no longer exists and there is now no written record which confirms that the conversation took place. That said, it is possible and, indeed, plausible that such a conversation did take place, not least because Mr Pugh was involved in the interview which then followed.

105. In the second interview, MG acknowledged for the first time that PA had been at his flat from about 12.30am on the Sunday morning. He is recorded as saying-

> "I invited him in for a chat and the next thing I knew was my doorbell rang again about half one a quarter to two. I then went down to answer the door again and there was three or four people outside. One person I now know to be Abdullah asked me if anyone was in Flat No 1 and I said "Not that I know of". With Dullah was a tall black guy, a fellow who I now know as Ronnie Actie, someone who I think looked like a boy called "Tucker". I am almost certain it was him."

106. MG was next questioned about the sequence of events after he had opened the door. He replied:-

> "The person Dullah asked me if anyone was in Flat No 1 and I said "Not as far as I know". I turned, walked away from the door and walked up the stairs but left the door open. Looking back I seen Abdullah entering the premises. I went into my flat and I was in there about two maybe three minutes explained to Paul that I had opened the door to some boys and the next thing I knew there was raised voices and there was horrible screams. After about five minutes after everything went quiet Paul ran down to the flat below, almost immediately he came back up to my flat, he was as white as a ghost and he said "someone had been murdered downstairs" I said "who?" and he said a girl. He then went into my toilet and was very sick. I then became petrified myself because I had let the boys into the building. Paul stayed with me until about 5.30, 6.00am. I let him out through the front door and went back to my flat. ……"

107. MG was then asked to elaborate on this account. During the course of providing further details he described how he thought that there had been a black taxi parked outside the betting shop which he had seen either when he answered the door to PA or when he answered the door to "Abdullah". At the time he had seen this vehicle it was not occupied. Later that day, MG made a witness statement which was written by Mr Seaford. I will return to this witness statement later in this judgement.

108. The fourth person of potential significance to be interviewed at the Butetown police station on 22 November was Ms Smith, the tenant of Flat 3. She was interviewed by Messrs Daniels and Gillard. She told them that she was in her flat throughout the Saturday/Sunday night. She maintained that she heard no screams from Flat 1 or anywhere else and that she had not been aware that anyone had rung the front doorbell.

109. I pause at this point to summarise the key strands of the information provided to the police on 22 November and the sequence in which it was provided. PA's interview spanned a very long period but came to an end at 5pm. He accepted being at MG's flat over a number of hours during the night of 13/14 February. He was in the flat when there were male voices in the street, when MG had apparently let a person or persons into the building and when he had heard a scream from the flat below. He had left the flat to investigate the screams and he had then seen a girl in the building whom he did not identify by name but whom he described and said that she lived nearby. Both the girl and he had entered Flat 1 and seen Lynette's dead body. In an interview during the morning, MG had denied having any knowledge of any of the circumstances described by PA; MG had been alone and asleep in his flat. However, in the interview which began just minutes after the interview with PA had ended, MG confirmed that he had opened the front door as described by PA and that there were three or four men at the door two of whom he knew to be YA and RA and a third, almost certainly, was MT. Meanwhile between 3.40 and 5.25 AP was at the police station making a statement in which she said that LV was with her in her flat during the night of 13/14 February but that after hearing screams from the vicinity of 7 James Street LV had gone out to investigate and upon her return had said that Lynette had been murdered.

110. It is clear that the information provided to the police by AP on 17 November (to some extent) and by MG on 22 November (to a greater extent) had the potential to implicate YA in Lynette's murder. Yet YA had made a statement to the police in May to the effect that he was working on the Coral Sea in the early hours of Sunday morning. Further, quite early on in the course of LW1 police officers had made contact with at least two persons, Mr Peter McCarthy and Mr Lawrence Mann, who had worked on the Coral Sea in February. Mr McCarthy had told the police that he had worked on the ship over the night 13/14 February and had also suggested that YA had been on board during that time. In a witness statement dated 8 June Mr Mann had suggested that he had worked on the ship from midday on Sunday and that "Dullah" had been present from that time. The police had also taken statements from Ms Jacqueline Harris who was YA's partner and the daughter of Peter McCarthy. She had said nothing to contradict YA's assertion that he was on the Coral Sea during the night 13/14 February. Indeed in her statement of 6 June she had said that her father had picked him up to work on a ship on the morning of Friday 12 February and that he had returned to their home on the Monday or Tuesday.

111. Not surprisingly, however, as information about YA's possible involvement in the murder began to emerge steps were taken to obtain further evidence as to his whereabouts at the material time. On 29 November Mr Daniels took a witness statement from a man called Sidney Harrop. Mr Harrop was a welder who resided in Oxton, near Birkenhead. He had travelled to South Wales in the early hours of Saturday February 13, in the company of his brother-in- law, Ian Moore and a man called John Hulse in order to work on the Coral Sea. Mr Harrop estimated that the men arrived in Barry Docks at about 11.00am and boarded the ship at that time. He told Mr Daniels that he worked until about 10.00pm when he went ashore to have a meal and then continued working from about 11.00pm to 3.00am on the Sunday morning when he went ashore again. After a period of about 5 hours ashore Mr Harrop returned to the ship and then remained on the ship until Friday 19 February during which period the ship sailed to and from La Rochelle in France. In this witness statement Mr Harrop described a number of people who were present on the Coral Sea. He also mentioned some men by name. The statement did not specify whether Mr Harrop knew YA and, if so, whether YA had been aboard the ship at the same time as Mr. Harrop.

112. Sometime after Mr Harrop completed making his statement he was shown a photograph of YA. He did not recognise him at all. Thereafter Mr Harrop made a very short second witness statement, taken by Mr Gillard, in which he confirmed that he had never seen YA previously and that he had not been working on the Coral Sea at the same time as Mr Harrop.

113. On 30 November Mr Daniels took two witness statements from Mr Moore. It suffices that I say in his second short witness statement Mr Moore confirmed that he had never seen YA previously and that he had not been working on the Coral Sea at the same time as Mr Moore. According to his first, main statement Mr Moore worked on the Coral Sea from about midday on Saturday 13 February to about 10.00pm on Sunday 14 February.

114. The same day Mr Gillard took witness statements from Mr Hulse. Mr Hulse, too, confirmed that he had never seen YA and that he had not been working on the Coral Sea over the weekend 13/14 February.

115. On 2 December AP made a complaint of rape. A blood sample was taken from her. Dr Whiteside, the forensic scientist, arranged for her blood to be analysed and it was discovered that her blood was the same, comparatively rare, group as the blood which had been found on parts of Lynette's clothing (the foreign blood).

116. On 6 December PA, MG and AP attended the Butetown police station yet again. On this date LV was also present at the police station. PA arrived at 10.37am and departed at 11.15pm. AP arrived at 10.45am and departed at 11.00pm. LV arrived at 12.45pm and departed at 11.30pm and MG arrived at 1.08pm and left at 11.15pm.

117. PA provided a witness statement which he signed as being accurate in the presence of Inspector Pengilley at 8.45pm that night. The witness statement was taken by Mr Stephen although it is common ground that Mr Jennings was also present when the statement was made. PA repeated some of the information about the night of 13/14 February which he had provided on 22 November but with additional details. First, he disclosed that he had looked out of the window of MG's flat when he heard the

doorbell ring. When he did so he saw four male persons standing outside 7 James Street although he did not recognise any of them and could not describe them. Second, he revealed that the girl whom he had seen in 7 James Street was LV. Third, PA described how, when he was leaving the bedroom of Flat 1, he was confronted by a man. He could give no detailed description of the man but, according to PA, the man threatened that he (PA) would be killed if he divulged to the police what he had seen.

118. AP made a witness statement in the presence of Messrs Daniels and Gillard and written by Mr Gillard. The statement was consistent in many respects with the record of interview of 22 November but there were differences of detail. First, AP described looking out of her flat window after SM's visit to her flat. She saw SM, JA, YA, TP and Tony Brace. They were all in the vicinity of James Street and near No 7. Second, a short time later, she saw her neighbour Ms Mathews and at about that time she also saw a car pull up outside 7 James Street which was a dark coloured Ford Cortina and "similar to those used by taxi firms". Third, at some stage in this sequence of events LV returned to her flat. While the two women were together in the flat they heard screaming coming from the direction of 7 James Street. LV went to investigate and AP watched from the window. She saw RA and YA coming out of the front door of 7 James Street.

119. LV made a witness statement which was written by Mrs O'Brien. In it she asserted that her previous statements were true but that important facts had been omitted from her previous accounts. She then went on to describe how, at about 1.00am on the Sunday morning, while she was in AP's flat, she heard three screams which she described as terrifying. They came from the direction of her flat in James Street and she decided to go the flat to investigate. The first thing that she noticed was a car which she recognised as belonging to RA parked in the street near No 7. She entered the front door of No 7 and ran up the stairs to her flat. She saw MT and then PA. She entered her flat and saw RA, SM, YA and another black male whom she did not recognise. She saw Lynette lying on the floor on her back with one foot resting on the bed which was in the room. She realised that Lynette was dead. She ran out of the building and returned to AP's flat. She did not tell AP what she had seen. She bathed and then left the flat and walked to the North Star Club. When she arrived at the Club, RA was there but none of the other men whom she had seen in the flat.

120. Towards the end of her statement LV described an incident involving MT which had occurred a week or so prior to 6 December. The details of the incident are unimportant; what is of some significance is that when describing the incident LV disclosed that she "hated" MT.

121. MG made a statement which was taken by Mr Pugh. In it he described how the front doorbell had been rung on a number of occasions at or about 1.30am before he decided to open it. When he did, eventually, open the door he saw that there were four persons outside. He recognised YA and RA and a person whom he knew as "Tucker" (MT) and he went on to give a description of the fourth male. MG saw YA enter the building before returning to his own flat. Some short time later he heard the raised voices of more than one male followed by hysterical screams from a female. The noise came from Flat 1. PA went to investigate and MG stood on the landing outside his flat from which point he saw LV standing on the landing outside Flat 1.

When PA returned he told MG that there had been a murder. Shortly afterwards MG saw YA walking in James Street.

122. Two days later MG made another statement. There is no mention in the B59 of MG attending the Butetown police station on 8 December but there is no dispute that a statement was taken from MG on that day by Mr Hughes. It is unnecessary to summarise much of the detail contained in that statement. It suffices that I record that MG again named three of the four males who had been outside 7 James Street when he opened the door to them as RA, YA and MT.

123. There was another person of interest to the police at the Butetown police station on 6 December. That was Jack Ellis, the taxi driver. According to the B59 he was present at the station between 10.45am and 9.15pm. In a witness statement made to LW3 officers dated 19 May 2004 Mr Ellis gave a vivid description of the events which he said occurred during the course of his "third contact" with the police which, I am invited to conclude, was on 6 December. Be that as it may, what seems clear is that Mr Ellis was at the police station for the purpose of being interviewed. The B59 records the name of the interviewing officer as "B Tooby". Mr Ellis was at the police station for a period in excess of 10 hours and yet no witness statement was taken from him and, as far as I am aware, no written record of any kind was made about what he said. What seems clear, however, is that Mr Ellis denied being in James Street in his taxi in the early hours of 14 February.

124. SM, YA and RA were arrested on 7 December. Three other men, Anthony Miller (AM), SM's brother, MT and RO were also arrested on that date. Tony Brace, named by AP as being at her flat and in James Street during the night of 13/14 February, had died as a consequence of a road traffic accident some short time before the date of the arrests.

125. Let me pause, again, to summarise the new information which the core four provided on 6 December. I deal first with PA. He acknowledged looking out of the window of MG's flat immediately after hearing the doorbell. He saw four males standing outside 7 James Street; according to him he did not know them and he could not describe them. PA also acknowledged that the girl he had seen inside 7 James Street was LV. AP was also looking out onto James Street that night. She said that after SM, JA, RA, TP and Tony Brace had visited her at about 2.00am she saw them in the street in the vicinity of 7 James Street. A short time later a car pulled up outside 7 James Street; it was similar to the type of car used by taxi firms. That, of course, was a different account to the one she had given in her second interview on 22 November when she claimed to have seen a taxi pulling up in James Street which was driven by Jack Ellis and which had arrived after she had heard screams from LV's flat. Until 6 December LV had never acknowledged being in James Street on the night of 13/14 February. Her account of what she saw and heard that night is set out at paragraph 119 above and no purpose would be served by repeating it. MG's account was very similar to that which he provided in his second interview on 22 November. However, in his statement of 6 December MG acknowledged that after hearing the screaming he had gone to stand on the landing outside flat and while he was there he had seen LV on the landing below, near the front door of Flat 1.

126. In summary, by the evening of 6 December the evidence provided by LV had the potential to implicate SM, YA, RA and MT – she had described a fifth man whom she

did not recognise but who was present in her flat at the time of the attack upon Lynette. The evidence of AP had the potential to implicate SM, JA, YA, TP and Tony Brace; the evidence of MG implicated YA, RA and MT and a fourth male whom he could not identify and PA had named none of the persons whom he had seen except that he had acknowledged seeing LV.

127. In the light of the evidence of the core four and Mrs Perriam it is easy to understand why SM, YA, RA, MT and RO were arrested on 7 December. It is more difficult to understand why AM was arrested. He had not been named as a person involved in Lynette's death by any of the core four and he had not been implicated, directly, in Lynette's murder by any other person. I can only presume that notwithstanding the fact that Mrs Perriam and AP had said that JA had been in James Street at the relevant time a decision was taken that it was more likely that AM was the unidentified male whom LV had described as being present in the flat upon her arrival.

128. Following their arrests, the six men were interviewed under caution. Each interview was tape recorded (save for the first interviews of SM and MT) and transcripts of what had been said were produced.

129. SM was interviewed on nineteen separate occasions between 7 and 11 December. In total the interviews lasted approximately 13 hours over that period. Although SM engaged a solicitor as soon as he had been arrested the solicitor was not permitted to be present during the first two interviews on 7 December. From the third interview onwards (which took place on 8 December) a solicitor was present. In interviews 1, 2, 6 and 7 the interviewing officers were Messrs Greenwood and Seaford. In all other interviews except interviews 16 and 17 the interviewing officers were Mr Evans and Mr Murray. In interviews 16 and 17 Mr Toogood replaced Mr Murray.

130. In summary, SM denied presence at the murder scene during interviews 1 to 7. In interviews 8 and 9 he began to accept that he was present at the murder scene. In interview 18 SM made what the prosecution was to allege at his trial were admissions to stabbing Lynette. During the course of some of the interviews SM implicated TP and YA.

131. YA was interviewed under caution on 20 separate occasions between 7 and 11 December. The total time over which he was interviewed was in excess of 12 hours. Throughout each interview he maintained that he had no involvement in the murder of Lynette and that he had been working on the Coral Sea in the early hours of 14 February.

132. RA was interviewed under caution on 12 separate occasions over a period of about 8 hours 30 minutes. He maintained throughout that he had no involvement in Lynette's murder.

133. The B59 records that TP attended at Butetown police station voluntarily at 7.45am on 9 December and that he was arrested at 11.45am the same day while he was still at that police station. He was then conveyed to Caerphilly police station to be interviewed under caution – there being no facilities for tape recorded interviews under caution at Butetown police station at that time. The parties do not agree about whether this is an accurate record of what occurred. The case for the Defendant, based upon various accounts given by TP, is that TP believed himself to be under arrest

from about 7.30 am when he was collected from his home by Mr Greenwood, Mr Seaford, Mr Jennings and Mr Stephen and forced to go with them to the Butetown police station. Those Claimants deny that allegation; they maintain that the B59 accurately records what occurred. The LW1 policy log is silent on the subject. However, Mr Morgan's diary entry for that day reads thus:-

> "6.45 a.m. On duty – Docks Incident Room. Confer Inspt. PAGE & teams to arrest John ACTIE and Anthony PARIS.
>
> 9.30 a.m. Confer D/C/SUPT WILLIAMS. ACTIE & PARIS after initially being brought to station as potential witnesses & interviewed, they were arrested & conveyed to a designated station for further interviews "

The obvious reading of this diary entry is that, so far as Mr Morgan was concerned, at least, TP (and for that matter JA) were to be arrested at their home as soon as they could be located.

134. It would not be appropriate for me to seek to determine this factual issue in the absence of oral evidence from TP. In any event, the issue which arises in these proceedings is not whether TP was arrested at 7.30am or 11.30am as a matter of fact but rather whether it was reasonable to suspect that TP had been compelled to accompany the officers to Butetown police station without having been arrested in the formal sense – referred to hereinafter as "the sham arrest".

135. Between 9 and 11 December TP was interviewed under caution on 10 separate occasions and in each interview he maintained that he had no involvement in Lynette's murder.

136. According to the B59, JA also attended Butetown police station voluntarily on 9 December at 7.45am. Although I was not shown it specifically during the course of the trial there are a number of strands of evidence which suggest that JA made a witness statement at the police station that morning in which he described his whereabouts during the night of 13/14 February. The B59 records that he was arrested at 11.45 while he was at the police station. Thereafter he was interviewed under caution on 9 separate occasions between 9 and 11 December. In each interview he denied any involvement in Lynette's murder.

137. On 11 December the original defendants were charged with murder. RO, MT and AM were released on bail on what is called a "deferred charge".

138. While the original defendants were in police custody further important witness statements were obtained. On 8 December Mrs O'Brien took a statement from Jacqueline Harris. In it, Ms Harris maintained that as far as she was aware YA had been working on the Coral Sea over the whole of the Saturday and Sunday and that he had returned home on the Monday. However, she also went on to describe a conversation she had with YA in September (shortly before she left him) in which YA had admitted killing Lynette. In her statement Ms Harris described how she had been concerned by this revelation; she believed that YA had been on the Coral Sea yet YA was telling her that he had killed Lynette. Ms Harris sought to resolve this dilemma

by asking her father Mr McCarthy about YA's whereabouts at the time of the murder. He told her that YA had been on board ship.

139. On 10 December a witness statement was taken from a woman then called Helen Prance. She had made a number of witness statements previously in which she had described her relationship with TP. Essentially, he had been her boyfriend and then her pimp. In this statement Ms Prance described a conversation she had with TP in October in which he claimed to know who had murdered Lynette and suggested that this person would be known to Ms Prance as well.

140. It was also on 10 December that Mr Mann made a further witness statement. The statement was taken by Mrs O'Brien and in it Mr Mann claimed that he had begun working on the Coral Sea on Sunday 14 February at about 12 noon. He also said that YA had first come to the ship on the Monday night so far as he was aware.

141. One of the issues fiercely debated in this case is whether or not a witness statement was taken from Mrs Perriam by Mr Page on 10 December. The Defendant does not admit that any such statement came into existence on that date. I will need to return to this issue in detail later in this judgment when dealing with the specifics of the claim brought by Mr Page. What is clear is that there exists a document which purports to be a witness statement taken from Mrs Perriam and which is dated 10 February 1988. That date must be wrong; the murder had not then occurred. The case for Mr Page is that the statement was taken from Mrs Perriam on 10 December and that the date recorded on the statement is an innocent error.

142. On 11 December further witness statements were taken from AP and LV. The B59 records that AP arrived at the Butetown police station at 10.15pm on 10 December and remained at the station until 11.00am the following day. The B59 purports to show that LV arrived at the station at 2.15am on 10 December and remained at the station until 7.30pm on 11 December; however it is clear that this a mistake and that LV's arrival at the police station was in the early hours of the morning of 11 December.

143. The statement made by AP was her ninth. In it she claimed (for the first time) that when LV had left her flat to go to 7 James Street after hearing screams she, AP, accompanied her. She did not, as she had previously stated, remain in her flat. In the remainder of her statement AP gave a vivid description of what she saw and did after LV and she had gone into 7 James St. A summary will suffice. First, she saw six men in or in the vicinity of LV's flat. They were the original defendants and AM. Second, all the men except JA were actually in the bedroom at the flat at one time or another while she was present and all the men except JA stabbed Lynette on a number of occasions. On AP's account JA was standing outside the flat, or, at least, outside the bedroom within the flat when the stabbing was taking place. Third, Lynette was still alive when LV and AP arrived. She was then being attacked by TP. LV and AP tried to help her but to no avail. At this point, according to AP, she was punched in the mouth, causing her to bleed. Fourth, for most of the time when she was being attacked Lynette was still alive. According to AP Lynette was struggling and trying to escape. Fifth, LV and she were told that they had to join in the attack upon Lynette. AP did not describe what, if anything LV did. However, she described her own involvement in the following terms:-

> "One of the Miller brothers, I don't know which one then put a knife in my hand and he held on to my hand and guided my hand which he held quite tightly and forced me to cut Lynette's wrist. While I was doing this I had a knife in my back. Whilst I was being made to do this I was feeling faint and sick and very frightened for my life."

144. This witness statement was written by Mr Daniels. Mr Gillard was present when it was made. The statement must have been completed by 11.00am on 11 December (if what is recorded in the B59 is correct and no one suggests that it is not).

145. In their evidence before me both Mr Daniels and Mr Gillard said that when AP disclosed that she had been forced to cut Lynette they suspended their interview with her. They wanted advice/direction from a senior officer about whether AP should be treated as a suspect or a witness. Neither Mr Daniels nor Mr Gillard made a written record to this effect. However, having heard oral evidence from a number of sources about this issue, I accept that Mr Gillard sought advice from Mr Morgan who (having taken advice himself) told Mr Gillard that AP should not be treated as a suspect and that Mr Daniels and he should continue to take a witness statement from her.

146. As I have said LV attended at the police station at 2.15am on the morning of 11 December. In due course she made two witness statements that day; one a reasonably lengthy statement; the second was a statement of no more than a few lines. Each of the statements was written by Mrs Coliandris and it is now agreed that Mr Hicks was also present when the statements were taken although there is nothing on the face of the statements or within the B59 which shows his involvement. These statements were, respectively, the 18th and 19th statements made by LV. It is also common ground that LV's statements were taken during the course of the afternoon of 11 December i.e. after AP had left the police station. However, it is not possible to know that or deduce it from the statements themselves.

147. I need only summarise the contents of the detailed statement. For the first time, LV asserted that she had gone to 7 James Street with AP and that the two women had gone into LV's flat together. When they first arrived JA was outside the flat (although he was within the building) but after they had entered the bedroom he followed them in. At that point the persons in the bedroom were Lynette, the original defendants, AP and LV. She did not know whether Lynette was alive or dead. She saw TP stabbing Lynette; however, it was clear to her from what was said that all the men present had participated in an attack upon Lynette. She said that RA, JA and TP forced her to cut Lynette's wrist with a knife. She was also told by SM to cut Lynette's throat but she refused to do it. She described how AP was "chopsing" at the men. In consequence, either JA or TP punched AP to her mouth and caused her to bleed. LV said, in terms, that MT was not present in the bedroom during these events and she made no mention of AM. She did not remember seeing either PA or MG outside or inside the flat.

148. The Defendant alleges that some time during the course of 9 December officers engaged in LW1 became aware that the "foreign blood" found at the scene matched the blood group of AP. That appears to be correct given a further entry in Mr Morgan's diary for 9 December. In any event, the Claimants do not seriously contest the Defendant's suggestion and I am satisfied on balance on probabilities that LW1

officers had become aware on 9 or, at the latest on 10 December that the blood group of the "foreign blood" matched that of AP.

149. On any view, the accounts provided by AP and LV were markedly different to anything which they had said before. They were claiming to be eyewitnesses to the murder of Lynette or its immediate aftermath and they were acknowledging that they had engaged in cutting her wrists. Both of them named the original defendants as being within 7 James Street at or about the time of the murder. LV had previously mentioned MT being present but he was not mentioned in her statement of 11 December. AP maintained that JA remained outside the flat although within the building. She had AM as one of the persons attacking Lynette. AP's description of events was consistent with Lynette being alive when LV and AP got to the flat and being subjected to a ferocious attack in their presence. LV's account was much more consistent with Lynette having been killed before the two women arrived. On her account, only one person, TP, engaged in stabbing Lynette while the two persons were present. Both women said that they had been forced to cut Lynette. They had each cut a wrist. Both women said that AP had been struck to the mouth by one of the original defendants causing her to bleed although they described the circumstances in which the assault occurred in very different terms.

150. At this stage it is convenient to introduce Mr Hywel Hughes into the chronology of events. In December 1988 he was employed by the CPS as a Branch Crown Prosecutor at its Cardiff office. His name appears for the first time in the LW1 policy log on 7 December. The log for that day records that Mr Morgan discussed the case with him and that Mr Hughes agreed that "the arrest of the suspects without access to a solicitor was in order".

151. I am satisfied from the evidence given to me by Mr Hughes himself and also by Mr Morgan that there were many discussions between Mr Hughes and police officers spanning the period 7 December to the committal hearing which took place early in the next year. In particular, the evidence from Mr Hughes satisfies me that when AP told Mr Daniels and Mr Gillard that she had participated in the attack upon Lynette, Mr Hughes' advice was sought by Mr Morgan about whether AP should be treated as a witness or a suspect. I am satisfied, too, that it was upon Mr Hughes' advice to Mr Morgan (passed on to Mr Daniels and Mr Gillard) that Mr Daniels and Mr Gillard continued to treat her as a witness notwithstanding what she had said. The precise time when the various conversations took place cannot be identified; nonetheless I am satisfied that they occurred.

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152. Notwithstanding that the original Defendants had been charged evidence gathering continued over many months. On 5 January 1989 Mr Seaford took another witness statement from Ms Prance. On the same date Mrs Perriam made another witness statement. It began by reciting that she had made two previous statements to the police relating to her sighting of four men in James Street at about 1.30am on 14 February – which would not be consistent with her having made a statement on 10 December 1988. She went on to explain that she was not certain that RO was one of the persons she had seen but expressed herself to be "quite satisfied" that she had seen JA. On 5 January, too, yet another statement (written by Mr Murray) was taken from MG. It added nothing of substance to MG's account of the night of the murder

although it confirmed the accuracy of what he had said in interview and in statement form on 22 November 1988 and it confirmed that PA had gone to the murder scene after hearing screams. Additionally, the statement described discussions which had occurred between MG and YA, RA and others in the period after 22 November. In particular, he recounted a conversation with YA in which YA had asserted that he knew MG. That led MG to believe, so he said, that YA was saying that he knew MG because he had let him into 7 James Street on the night of the murder. On 9 January a witness statement was taken from Teresa Sidoric. In this statement Ms Sidoric described going to visit SM at Cardiff prison on 17 December 1988. She was accompanied by Deborah Taylor and SM's sister, a young girl called Nicole Gordon. The pertinent passage in Ms Sidoric's witness statement reads as follows:-

> "We went into the prison and we saw Stephen Miller …..
>
> I asked Stephen outright "I want the truth out of you, did you do that girl in?" He said using a lot of oaths that he didn't do it, he didn't touch her. He said, "I was the last one to find out where she was". He then said they were all there, he described them as crazy animals.
>
> I can't remember his exact words and he had also started to whisper. The only name he mentioned was Paris.
>
> Miller then said to me that Paris had said "if you can't control your women I'll show you how"
>
> Stephen Miller told me that he then ran off because he was frightened and that he also had younger brothers and sisters at home in London. I told him that he should have told the police the truth at the beginning but said he was frightened."

Mr Greenwood took a witness statement from Deborah Taylor on 17 January. In it she asserted that she was the girlfriend of SM and after dealing with a number of matters she described the prison visit on 17 December. It suffices that I say that her description of the conversation with SM was broadly similar to that of Ms Sidoric. The next day a witness statement was taken from Nicole Gordon. She was just 12 years old but she, too, gave an account of the conversation with SM which was broadly similar to that given by Miss Sidoric.

153. On or about 10 January Mr Mouncher and other police officers travelled to the Birkenhead area to take further witness statements from Messrs Harrop, Moore and Hulse. It should be noted that Mr Daniels and Mr Gillard did not travel to Birkenhead despite their earlier involvement in taking statements from those witnesses. Mr Mouncher took the statements from Mr Harrop and Mr Hulse; Mr Moore's statement was taken by Mr Fish. Mr Harrop's statement was taken on 11 January. This witness statement provided much greater detail than the witness statement which he had provided on 29 November 1988. Further, in this witness statement Mr Harrop accepted that YA had been working on the Coral Sea; however, he said that he had not seen him working on the Coral Sea on Saturday 13 February or Sunday 14 February. Mr Harrop's recollection was that he first saw YA working on the Coral Sea on Tuesday 16 February. Mr Moore's statement was also made on 11 January.

This statement was in similar terms (albeit in more detail) to the statement he had provided on 30 November 1988. Mr Mouncher took a further statement from Mr Hulse on 12 January. This statement contained substantially more detail than Mr Hulse's statement of 30 November. He acknowledged that he had seen YA at some point over the weekend when he had been working on the Coral Sea. His recollection was that he had seen him early on the Saturday evening (i.e. 13 February) when a group of men from the Coral Sea had left the ship to go for something to eat in a nearby restaurant. The relevant passage in Mr Hulse's statement reads:-

> "I can remember that Mr Abdullahi did work on board the ship the Coral Sea sometime during the period it was berthed at Barry Docks. Although I can recall seeing him I can't be certain but I have a feeling I just saw him in the restaurant Saturday evening and I also believe Peter McCarthy was there as well. I don't know if Mr Abdullahi returned to the ship from the restaurant but I am positive he didn't work continually with me during Saturday night through to the early hours of Sunday morning. I cannot recall seeing him at all whilst we worked though the night on Saturday."

154. On 1 February 1989 a witness statement was made by Dr Peter David Gill, a forensic scientist then based at the Home Office Central Research and Support Establishment at Aldermaston. His statement described how he was seeking to ascertain whether blood present on Lynette's jeans had been blood from a male or, alternatively, constituted a mixture of blood from a male and female. The statement expressed no conclusion on this issue.

155. On 3 March 1989 Mr Lawrence Mann made a further statement. This statement was taken by Mr Robert Tooby and it contradicted the statement which Mr Mann had made on 10 December 1988 in that it asserted that he had gone to work on the Coral Sea on Saturday 13 September not Sunday 14 September. Mr Mann also explained that he believed that he had first seen YA on board the Coral Sea at about 11.30pm on 13 February when, so Mr Mann believed, YA first went on board. He was not able to say when he had last seen YA on board before he himself left the ship at around 2.00am on Sunday 14 February.

156. On 20 March 1989 Mr Greenwood, Mr Seaford, Mr Jennings and Mr Stephen made witness statements. Parts of those statements concerned their involvement with TP on the morning of 9 December 1988. Each part of their statements which deals with this issue is to similar effect. The most detailed account was that given by Mr Greenwood:-

> "At 7.30 a.m. (07.30) on Friday, 9 December 1988 (09/12/1988), together with Detective Constables John Seaford, Paul Jennings and Paul Stephen, we went to 109, Nelson House, Loudoun Square, Cardiff, to the home of Anthony Paris.
>
> At the house we had a conversation with Mr Paris who voluntarily agreed to accompany us to the Butetown Police

> Station, to assist our enquiries into the murder of Lynette White.
>
> Following his arrival at Butetown police station, together with Detective Constable Jennings, I interviewed him in his capacity as a witness regarding his movements on Saturday night and Sunday morning the 13/14 February, 1988 (13/14/02/1988). During the course of the interview Mr Paris maintained he had no knowledge of the events that occurred at 7 St James Street, where Lynette White was murdered and at the time of the murder he was working as a doorman at the Casablanca Club. His explanation of his movements that night contradicted statements made by another witness and at 11.45 a.m. (11.45) the same day, I said to him, "I am arresting you for being involved in the murder of Lynette White". When cautioned Mr Paris did not reply."

All four officers were clear in their statements that Mr Paris had attended Butetown police station voluntarily and that his arrest had occurred in the circumstances described by Mr Greenwood.

157. On 22 April 1989 Mr William Neil made a statement to Stuart Hutton, a solicitor. Mr Neil was an acquaintance of AP; although his statement was referred to during the course of the trial before me I do not believe that the circumstances in which it came to be made were either explored or explained. Be that as it may, in his statement Mr Neil described how on an occasion in October 1988, when he was in company with AP at his flat, she had said that she had cut Lynette's wrist because she had been made to do so. The statement then described a further conversation a couple of days later:-

> "At my flat she again mentioned Lynette White. This was after she had first been questioned by the police she said she went over to the flat after Lynette White that "they" put a knife in her hands and made her cut Lynette's wrist. That there was another girl whose name she mentioned, who cut Lynette's throat. She mentioned several male names of people I had not heard of before. I have known John Actie since he was a youngster and she did <u>not</u> mention John Actie's name but she named other people."

Mr Neil's statement ended with this paragraph:-

> "She told me when I saw her again that she had been interviewed by the police who had wanted her to name John Actie and Tony Paris it was as if the police wanted those two names to be mentioned. When she first told me about this incident and had named the five names John Actie and Tony Paris were not mentioned by her then."

158. I should also record that in the period January to October a number of police officers made witness statements either to supplement earlier statements or for the first time.

At this stage it is necessary to refer only to statements made by Mr Page, Mr Hicks and Mrs Coliandris. Mr Page made a statement on 10 October; it was a short statement in which he said that he had taken a witness statement from Mrs Perriam on 11 December 1988 but wrongly dated it 11 February 1988. On 25 October Mr Hicks and Mrs Coliandris made statements describing their involvement in taking a statement from LV on 11 December 1988. The statements are short but important to some of the issues I have to decide. Mrs Coliandris statements reads:-

> "At 1.45 (13.45) on Sunday, 11 December 1988 (1/12/1988) I was on duty at the Central Police Station, when I was requested to attend at the Butetown police station. Upon arrival at the station I saw Leanne Vilday sitting in an interview room. I introduced myself and we had a short conversation. A short time later Detective Sergeant Stephen Hicks entered the room and he and Miss Vilday had a conversation. She then asked if she could make a statement regarding the murder of Lynette White. I wrote the statement at her dictation and she read it through and signed it. A short while after this, Miss Vilday, asked if she could make another statement. Detective Sergeant Hicks returned to the room and I wrote another statement which she again read and signed. At approximately 6.00 p.m. (18.00) the same day, together with Detective Sergeant Adrian Kendall, I conveyed Miss Vilday to her home address."

Mr Hicks' statement was equally succinct and to the point. It reads:-

> "I am a police sergeant presently stationed at Rumney police station Cardiff. On Sunday 11 December, 1988 (11/12/1988) I was one of a number of officers attached to the Incident Room at the Docks police station, Cardiff. My tour of duty was from 9.00 a.m. (09.00) until 5.00 p.m. (17.00) but in fact I did not complete my tour of duty until 8.00 p.m. (20.00). On that day, toward mid afternoon after having been to the Central police station, Cardiff, on my return I entered the main incident room where I was requested by one of the Incident Room Officers to go to another room at the police station and take an unprompted statement from a lady named Leanne Vilday. I went to the room where I saw Miss Vilday accompanied by a policewoman, Erica Coliandris. In the event, Miss Coliandris wrote a statement at the dictation of Miss Vilday. On its completion Miss Vilday signed it after which I read it. As an after-thought by me regarding a specific point a short further statement was taken by Miss Coliandris from Miss Vilday. In total I think I spent approximately one hour with Miss Vilday, always in the presence of Miss Coliandris."

159. I now turn to the involvement of Mr Mouncher with a man called Ian Massey. On 25 September Mr Mouncher took a witness statement from Mr Massey while he, Mr Massey, was serving a sentence of imprisonment for an offence of robbery. Reduced to its essentials, Mr Massey's witness statement described conversations he had with TP while they were both in prison which had the effect of implicating TP in Lynette's

murder. The witness statement was made after Mr Mouncher had made a number of visits to Mr Massey.

160. The contact between Mr Mouncher and Mr Massey was documented. On 11 August 1989, Mr Mouncher wrote a detailed report to the Deputy SIO in which he set out relevant information about Mr Massey, the fact that Mr Mouncher had made contact with him and the possibility that Mr Massey would be prepared to make a witness statement. The report ended with Mr Mouncher requesting that guidance be obtained from prosecuting counsel as to how the matter should be progressed.

161. The original defendants were committed for trial in February. AP, LV, MG and PA gave oral evidence at the committal proceedings. At that early stage it was recognised that their evidence was crucial; no doubt that is why, as I have said, they became known as the core four.

162. On 5 April the Deputy SIO, Mr Davies, made a written report to Mr John Williams, the SIO, which provided an overview of the investigation and the proceedings to that time. In his report Mr Davies summarised the effect of the witness statements obtained from the core four and, further, he made a detailed assessment of their likely impact as witnesses referring to their personal circumstances, their previous convictions and personality. He described AP as "volatile and unstable in temperament". She was said to have an "in-built animal cunning which has held her in good stead in the profession she carries out". He noted that AP's evidence at the committal hearing had been, to an extent, inconsistent with the contents of her witness statement. LV was said to be in fear of all the accused; she would require careful handling by the officers looking after her to ensure that she came 'up to scratch' at the Crown Court. However, the Deputy SIO concluded that if LV was handled properly and she was in the right frame of mind she would make a good witness. MG was assessed as being, potentially, a very good witness who would give his evidence "in a strong forceful manner". PA, however, was assessed to be a very poor witness who would say whatever was required of him and under cross-examination would capitulate.

163. Mr Davies' report is instructive, too, because it contains a section dealing with the forensic evidence which had been obtained by this time particularly as it related to the "foreign" blood found at the scene. Mr Davies described how at first the forensic scientists involved considered that the blood was that of a male because it contained the Y chromosome. Later the possibility that the blood may have come from a mixture of male and female blood was considered. That, of course, was consistent with the investigation which was being undertaken in February by Mr Gill – see paragraph 154 above. By the time he wrote his report Mr Davies felt able to assert that "there is no doubt that the blood on the jeans and sock is Angela Psaila's". Mr Davies did not explain how he had come to this conclusion. Immediately after expressing it Mr Davies quoted from a statement of Mr Gill which did no more than suggest the possibility that the blood staining on the legs of Lynette's jeans could have contained a mixture of male and female blood.

164. After the committal proceedings were concluded SWP provided AP and LV with accommodation in safe surroundings since they both claimed to be in fear of the original defendants, their families and associates. AP remained in this accommodation for about a week; LV, however, was in "safe" accommodation until

the second trial of the original defendants had come to an end. The process of protecting AP and LV was known as "Operation Safehouse"; a number of officers were involved and a diary was kept at the accommodation which recorded movements in and out of the accommodation and also the names of the officers who visited as well as those who were charged with the responsibility of keeping LV safe. It is common ground some of the Claimants and, in particular, Messrs Morgan and Mouncher visited LV from time to time.

165. On 5 October 1989 the first trial of the original defendants began before McNeill J and a jury at the Crown Court at Swansea. Many witnesses were called by the prosecution; they included LV, AP and MG, the pathologist, Professor Knight, the forensic scientist, Dr Whiteside, other experts and some of the Claimants. All the witness statements to which I have referred in this section of my judgment (apart from the statement of Mr Neil) were either served by the prosecution or formed part of the unused material. The trial ended on 26 February 1990 with the discharge of the jury due to the untimely death of the trial judge. PA did not give evidence; he was considered to be too unreliable to be called on behalf of the prosecution.

1990 and the following years

166. Prior to the start of the re-trial Mr Massey's probation officer wrote to Mr Williams, the SIO, asking him whether he would be prepared to make a favourable report upon Mr Massey for a hearing which was soon to take place before the Parole Board at which a decision would be made about Mr Massey's release from custody. I need not describe in any detail what followed. Many years later, however, as we shall see, LW3 officers suspected and then became convinced that Mr Mouncher had told Mr Massey in some of their meetings that he/SWP would help Mr Massey with his parole application and that this "inducement" was at least one of the reasons why Mr Massey had made his witness statement incriminating TP and thereafter given evidence to the same effect at the trials of the original defendants.

167. On 14 May 1990 the re-trial started before Leonard J; it concluded on 22 November 1990. Most, if not all, of the prosecution witnesses gave evidence for a second time. As in the first trial the evidence of LV, AP and MG was a very important part of the prosecution case. In general terms, at least, the three gave evidence in accordance with the statements they had made to the police in November/December 1988. Mrs Perriam and Mr Massey gave evidence in accordance with their witness statements – as did a number of other persons. Expert evidence was called from Professor Knight, Dr Whiteside and Dr Gill.

168. Professor Knight gave evidence about the injuries sustained by Lynette. He expressed the opinion that Lynette had been the victim of more than 50 stab/slash wounds. Some, perhaps a good many, of the stabs/slashes had been inflicted after death. In Professor Knight's view, the cause of Lynette's death was a large wound to her throat and multiple stab wounds. The knife which had been used to cut Lynette's throat had severed the carotid artery. There were other important features of his evidence. First, the Professor expressed the clear view that a knife which had been in the possession of TP and which had been seized by the police was not the knife which had caused Lynette's wounds. Second, it was at least likely that Lynette's throat had been cut quite early on in the attack upon her and that unconsciousness and death had followed quite quickly – an opinion which was not consistent with the evidence given by LV

and AP about what they had seen of Lynette's state when they had gone into the flat as they said they had. Third, however, in an important detail the Professor's evidence supported that given by LV and AP. He told the jury that both of Lynette's wrists had been cut.

169. Dr Whiteside and Dr Gill gave evidence relating to the blood discovered at the scene and upon Lynette's clothing. Dr Whiteside gave opinion evidence to the effect that the "foreign blood" may have been that of AP coupled with some blood or fluid from an unknown male. That would explain the Y chromosome. The alternative possibility was that the blood was that of a male person but who had the same blood group as AP. The suggestion was put forcibly on behalf of the defence that the "foreign" blood was that of a male (and, therefore, not that of AP) and that it did not match the blood of any of the original defendants (which was correct) but Dr Whiteside would not be deflected from his view that it was possible that the blood was that of AP but that somehow it had become mixed with the blood or fluid of an unknown male. Dr Gill also supported the possibility that the blood was that of AP but it had become mixed with blood or fluid of an unknown male.

170. An application was made to exclude the interviews under caution of SM – an application which the trial judge rejected. The original defendants all gave evidence and denied presence at the murder scene and participation in the murder. YA called evidence to support his contention that he had been working on the Coral Sea at the time of the murder.

171. Leonard J began his summing up on Thursday 8 November and finished it on Thursday 15 November. The summing up included a very detailed appraisal of all the evidence which was given at the trial. It would be impossible to précis the effect of the summing up in this judgment. As is obvious, however, the transcript of the summing up is a very fruitful source of information as to the evidence adduced at the trial of the original defendants and the Judge's assessment of the credibility of the important witnesses who had given evidence.

172. There can be no doubt that the credibility of the core four and the integrity of the investigation were central issues in the trial. Very early on in his summing-up Leonard J gave an overview as to the quality of the evidence given by AP, LV and MG. He said this:-

> "The prosecution case has been criticised in general and in particular for the poor quality of the witnesses upon whom it relies. You may agree in particular cases or indeed in general. Nevertheless bear in mind (as I am sure you will) that the killing of a prostitute in an unlighted room which she used for her profession in the middle of the night is unlikely to have been witnessed by the local clergy or any other respected local figure. You may think that the police had to do the best they could.
>
> The result is that two of their witnesses, Vilday and Psaila, admit to having taken part – they say they did so under threat – that they took part in the events which occurred in the room. Grommek makes no such admission and indeed denies that he

> even entered the room. But you may conclude from the material before you that he is lying about that, and that he did go in.
>
> The case against each defendant depends on the evidence of Vilday and Psaila. They have told lies and contradicted themselves and each other, both in interviews with the police and at the various stages of these proceedings.
>
> Grommek's evidence only affects Ronald Actie and Abdullahi, connecting them (if you believe it) with the premises at 7 James Street on the night of the murder. Grommek too has lied, and you may think is lying still in denying that he entered the murder flat.
>
> It is for you to decide in the light of your understanding of the circumstances of this case, and your commonsense, whether you can rely on what these witnesses say implicating a particular defendant whose case you are considering."

Almost in the next breath the Judge alerted the jury to the possibility that the police had behaved improperly in obtaining evidence from AP, LV and MG:-

> "In this case, members of the jury, the methods and motives of the investigating police officers have been placed under the microscope and analysed to a degree which is certainly unusual if not unique. It is largely for that reason that the case has taken as long as it has – not exclusively, but largely. You may well come to the conclusion that the police exerted pressure on Vilday and Psaila and on Grommek to give their accounts, and that they continued to do so as those accounts began to emerge and develop. You may think that the police believed that those witnesses had something to tell and were determined to elicit their versions of what they saw. And you will ask yourselves whether that was simply the proper zeal of professional investigators trying to do their duty by solving a brutal and (for other people) frightening crime. On the other hand, some defence counsel have suggested that the police went beyond what was proper, that they shut their eyes to the witnesses' involvement and treated them as witnesses when they should have been treated as suspects. On the other hand you may think that realistically the police needed witnesses, and had to make a decision whom to use as witnesses and whom to charge amongst those people they believed to have been present at the time of the murder. It has even been suggested that the police were deliberately putting words and names into the mouths of the witnesses and giving them versions of the events to retail. We will look at all those allegations and in some detail later on."

173. As I have said already, in the first trial before McNeill J PA had not been called as a witness. In the re-trial the learned judge, himself, called PA at the request of defence counsel so that they could cross-examine him on behalf of each of the original defendants. In his summing-up the Judge's assessment of PA was in trenchant terms:-

> "Now what about Mr Atkins? You may come to the conclusion that you are unable to rely on any positive assertion made by him with regard to the facts of this case. His account has varied throughout his interviews with the police, throughout his evidence when he was called by Mrs Gibbs at the magistrates' court, and in the witness box in this trial. He has admitted playing games with counsel at the magistrates' court when he changed his story about essential matters from time to time; and he said (as I have reminded you) that he had played the fool since the day of the murder. You will have formed an impression of him which may not be much in dispute with that description of himself.
>
> Bear in mind that you could only act on his evidence before you, not on what he has said elsewhere, and ultimately his evidence before you is that he was not there; and his evidence in any event has contradicted itself fundamentally. Bear in mind that the Crown did not call Mr Atkins, and they do not of course put him forward as a witness whom you can believe. It would therefore be impossible to regard his evidence in answer to Mr Evans as being capable of confirming Grommek's evidence that Ronald Actie and Abdullahi came to 7, James Street on the night of the murder.
>
> You may think that the proper approach to Atkins evidence is to consider whether it undermines the prosecution case in any way. First there is the suggestion that he was himself involved in the murder: does that (even if it may be true) affect the case against these defendants? Secondly, does his evidence – taken as a whole – undermine Grommek's? He goes in two different directions. And, members of the jury, you may find it impossible to say which is the right way."

174. As the transcript of the Judge's summing up reveals, Leonard J was faithful to his promise to the jury that he would deal with the various lies, contradictions and inconsistencies in the evidence given by the core four. The important aspects of their evidence were analysed and each part of it which was unsatisfactory was highlighted to the jury.

175. As I have said, the jury convicted SM, TP and YA. JA and RA were acquitted. Those convicted launched an appeal to the Court of Appeal (Criminal Division).

176. In September 1991 Mr Hywel Hughes, the CPS prosecutor, and Mr Gordon Jones, a colleague of his from the CPS in Cardiff gave lectures at training days held at Keele and Loughborough Universities. They lectured about the investigation of Lynette's murder and the subsequent prosecution. The two retained their lecture notes, or, at

least, the notes were retained by someone. Many years later the notes were still in existence and they came to light during LW3.

177. Following the verdicts, as was to be expected, there was a good deal of media interest. MG was interviewed by journalists working on a Panorama programme (somewhat antagonistically) but he maintained that the evidence which he had given in court was truthful and accurate.

178. As I have said, SM, TP and YA appealed against their convictions. The appeal was heard on 10 December 1992. At the conclusion of the oral argument the Court allowed the appeals and quashed the convictions. On 16 December the Court provided detailed written reasons for allowing the appeal.

179. At the forefront of the appeal on behalf of SM was the contention that his interviews under caution had been conducted oppressively and, accordingly should not have been admitted in evidence before the jury by virtue of Section 76(2) of the Police and Criminal Evidence Act 1984 (hereinafter referred to as "PACE"). There was a particular focus upon an interviewed conducted by Messes Greenwood and Seaford which came to be known as "Tape 7".

180. The judgment of the Court was delivered by Lord Taylor LCJ. His views were expressed in forthright terms.

> "We have read the transcripts of the tapes and have heard a number of them played in open court. It became clear that the two pairs of officers employed different methods. Greenwood and Seaford were tough and confrontational. Evans and Murray were milder in manner, aiming to gain the appellant's confidence and persuade him to accept their version of the facts.
>
> We are bound to say that on hearing Tape 7, each member of this court was horrified. Miller was bullied and heckled. The officers, particularly Detective Constable Greenwood, were not questioning him so much as shouting at him what they wanted him to say. Short of physical violence, it is hard to conceive of a more hostile and intimidating approach by officers to a suspect. It is impossible to convey on the printed page the pace, force and menace of the officer's delivery, but a short passage may give something of the flavour……."

181. Later in the judgment the court concluded:-

> "Having considered the tenor and length of these interviews taken as a whole, we are of opinion that they would have been oppressive and confessions obtained in consequence of them would have been unreliable even with a suspect of normal mental capacity. In fact, there was evidence on the voire dire from Dr Gudjonsson, called on behalf of Miller, that he was on the borderline of mental handicap with an IQ of 75, a mental age of eleven and a reading age of eight……..

> In the upshot, it is sufficient to say that in our judgment, the Crown did not and could not discharge the burden upon them to prove beyond reasonable doubt that the confessions were not obtained by oppression or by interviews which were likely to render them unreliable. Accordingly, in our view these interviews ought not to have been admitted in evidence."

182. Having so decided the court concluded that SM's conviction was unsafe and quashed his conviction.

183. As I set out earlier in this judgment aspects of what SM said in interview incriminated TP and YA. In the light of its view about the oppressive nature of the interviews of SM and its decision that the interviews should not have been admitted in evidence the Court of Appeal went on to conclude that the convictions of TP and YA were also unsafe. The court was not satisfied that the interviews with SM played no part in the reasoning process which led the jury to convict TP and YA.

184. Shortly before the hearing in the Court of Appeal a number of affidavits were submitted to the court in support of the appeal. They were affidavits from Ms Harris, Ms Amiel, Mr McCarthy, Mr Mann, Mr Harrop, Mr Moore and Mr Hulse. I do not propose to set out in any detail what those affidavits contained. It suffices that I say that each of those persons complained about the behaviour of the police towards them in relation to the making of witness statements. The affidavits were not subject to scrutiny during the hearing before the Court of Appeal; the focus of the appeal was as I have described above. Nonetheless each of the affidavits contained allegations which, if true, constituted improper conduct on the part of police officers involved with those witnesses.

185. Following the quashing of the convictions of SM, TP and YA the then Chief Constable issued a public statement in which he appeared to rule out any re-investigation of the murder. I do not propose to set out the Chief Constable's views on what occurred in the Court of Appeal although he commented in some detail. It suffices that I say the impression given was that the police remained of the view that the convictions of SM, TP and YA were justified.

186. On any view, certainly by the standards of the day, LW1 was a massive investigation. In total, 3561 persons completed house to house questionnaires, 2884 witness statements were taken (which number did not include supplementary statements), 1747 sets of fingerprints were taken for comparison purposes and 6426 actions were raised during the course of the investigation. There was an understandable focus upon persons involved with prostitution and the locations in which prostitutes plied their trade; of the persons from whom statements were taken well in excess of a thousand constituted prostitutes, taxi drivers, curb crawlers and persons having an association with the pubs and clubs known to be frequented by Lynette. Approximately 20,000 nominal cards were generated during the course of the inquiry.

187. Despite the views expressed by the Chief Constable following the successful appeals of SM, TP and YA there remained grumblings of discontent about LW1. No doubt these rumblings were given a degree of focus by a book written by Mr Satish Sekar entitled "Fitted In: The Cardiff 3 and the Lynette White Inquiry 1998". This book was published in 1998. As its title suggests its theme was that the convictions of SM,

TP and YA were miscarriages of justice which had been brought about by the conduct of a number of officers who had been serving with SWP during the course of LW1. In summary, Mr Sekar's thesis was that a number of officers within LW1 had begun to believe in the guilt of the original defendants. Driven by that belief, they had moulded and manipulated the evidence gathered during the investigation so as to make it "fit in" with the assumed guilt of the original defendants. I will have more to say about this book as my judgment unfolds.

Section 3

188. In June 1999 SWP began a full review of the investigation into Lynette's murder. Two experienced investigators independent of SWP were appointed namely Messrs Hacking and Thornley. From the outset they were assisted by Chief Inspector Verma, a member of the Black Police Association who was involved so as to advise on any racial aspects of the investigation and Mr Andrew Barclay and Dr Angela Gallop who were asked to consider all aspects of the forensic evidence. The agreed objectives and terms of reference of the review were:-

> "To evaluate the conduct of the investigation to ensure:-
>
> - No investigative opportunities have been overlooked.
> - The investigation is thorough
> - To identify good practices in order to assist future investigations.
> - It has been conducted with integrity and objectivity, whilst acknowledging the developments in technology and operationally since 1988.
>
> The reviewing officer should examine any aspect of the enquiry which he considers relevant to achieving these objectives and should formulate his recommendations/observations accordingly. He should, however, pay particular attention to determining:-
>
> - The effectiveness of the initial police response and examination of the scene.
> - That all relevant lines of enquiry have been identified, pursued and completed.
> - That policy decisions made to pursue or curtail identified lines of enquiry are justified.
> - Whether additional lines of enquiry can be identified and the extent to which they could be usefully pursued.
> - To examine the initial use of the Forensic Science Service in the murder enquiry and how now forensic

issues can be best progressed acknowledging that science technologies have advanced.

- To examine the evidence surrounding the suspects originally charged, any other suspects or unidentified persons of interest to the enquiry.

- To examine the involvement of the main witnesses in the case.

- To examine the media strategy employed at the time of the original investigation and up to this date.

- To examine the detail of the previous review in to the Panorama programme and the subsequent impact of that review.

- Examine the possibility of corporate failure around the investigation.

- To establish whether or not there was any aspect of Racism involved in the previous investigation into the murder of Lynette WHITE."

189. Messrs Hacking and Thornley produced their Report in the summer of 2000. They addressed in detail all the issues raised in the Terms of Reference. The Report ran to 477 pages and it made 107 recommendations. No purpose would be served by an attempt to summarise the Report's findings. It suffices that I make the following observations. First, a number of the Claimants were interviewed. Second, Messrs Hacking and Thornley were clearly concerned that one or more of the core four may have committed perjury during the course of the committal proceedings and/or the trial(s) in which they gave evidence. Third, they were also concerned that aspects of the investigation may have lacked integrity – i.e. that some officers may have committed disciplinary offences or even criminal offences. On receipt of the Report, SWP immediately launched Operation Mistral.

190. Shortly after Messers Hacking and Thornley had been instructed to review LW1, an organisation known as National Crime Facility (NCF) was instructed by SWP to conduct research into the likely profile of the person or persons responsible for Lynette's murder. NCF concluded that the most likely scenario was that Lynette had been killed by one person acting alone who was likely to be a white male. This, of course, was a similar conclusion to that which had been reached by Professor Canter in 1988.

191. Between the summer of 2000 and early 2003 extensive forensic investigations were undertaken. Those investigations produced a DNA profile from the "foreign blood" at the murder scene. Painstaking inquiries by those in Operation Mistral led to the possibility that JG was the person who had deposited the "foreign blood" at the murder scene. It is unnecessary to describe the evidential trail which led to this conclusion. On 27 February 2003 Mr Clayton met JG at his place of work; JG voluntarily provided a sample of his DNA. That same day it was confirmed that his

DNA matched the DNA profile which had been obtained from the "foreign blood" found at the murder scene. The next day, 28 February, JG was arrested. The arrest took place at hospital because within hours of giving a sample of his DNA JG had taken an overdose of drugs.

192. I will summarise the sequence of events leading from JG's arrest to his conviction in due course. First, however, let me return to the core four. Each of them was asked whether they would consent to be interviewed by officers from Operation Mistral. AP, MG and PA consented but LV declined. In due course AP and MG were interviewed in the presence of their solicitors and PA was interviewed in the presence of an appropriate adult. No cautions were administered before any of the interviews.

193. AP was interviewed on 7 October 2002. There were three interviews that day. In the first interview AP provided what can loosely be described as information about her circumstances and whereabouts in and about February 1988. Insofar as AP provided information about the events during the night that Lynette was murdered she said that she had not left her flat. In her second interview AP maintained that she had remained in her flat on the night of the murder although she accepted that LV had gone out. She said that she told LV of the murder on her return. During the third interview it was suggested to AP that she had no first hand knowledge of the events surrounding Lynette's murder – a suggestion with which she agreed. There followed an exchange between AP and her solicitor about the conduct of the police officers who had taken her statements during November and December during which AP said this:-

> "…..the officers well detectives they were writing things down, they were writing statements and they didn't say that I was free to leave at any time they mentioned that they found my blood at the flat, they didn't give me the opportunity or ask me how my blood was found in that flat, otherwise I would have explained to them, they threatened me, they put a lot of pressure on me. They told me I must sign the statements, that it was the law, I must sign the statements. Like I said they put a lot of pressure on me, they said if I didn't sign the statements, they would charge me, along with the five boys with Lynette's murder."

AP went on to say that she had asked for Mr Malekin, her solicitor of choice, during the period when she was being pressurised in the police station but he had not appeared. Further she said that at one point she had asked to leave but that she had been refused. During this interview AP was asked whether she knew the names of any of the police officers involved in improper conduct or whether she would be able to identify them. To those questions she answered no.

194. MG was interviewed on two occasions on 9 October 2002. In the first interview MG said that the statements which he had made to the police and which formed the basis of his evidence in court were false; he said that he had made those statements "under a lot of duress and harassment of certain police officers to say what they wanted me to say….." He named an officer – "Don Powell" – as being one of the officers who had pressurised him and he said that this person was an inspector at the time. According to MG on the night of the murder he heard nothing and saw nothing and, in particular, he did not open the front door to 7 James Street to a group of men which consisted of or included the original defendants. In his second interview he maintained that PA

had not visited him on the night of the murder, although he acknowledged knowing him. He continued to maintain that he had heard nothing and seen nothing of relevance on the night of the murder.

195. Officers interviewed PA on 15 October. He was not arrested and he was not cautioned. An appropriate adult was present throughout the interview. The transcript reveals that the officers had considerable difficulty in obtaining a coherent and sequential account of PA's movements over the weekend when Lynette was murdered. However, according to PA he was never at James Street over that weekend and his first knowledge of the murder was when he was told about it on the Monday evening by Claire and Julia Thomas who had read about it in the newspaper. More or less at the beginning of the interview PA was asked to give an account of what he knew about the murder. In a long answer, which is difficult to follow, PA said first that he had no direct knowledge of the murder. He then sought to explain how he came to tell LW1 officers the names of persons involved in the murder. He recalled that he had named himself, MG and RA as being responsible for the murder. He said that he had done this because he was pressurised into so doing by police officers. At various points in this answer he suggested that the police were putting words into his mouth. He suggested, further, that they led him to believe that if he did not tell the truth, as they believed it to be, he would be charged with murder.

196. As I have said, between 2000 and early 2003 detailed and extensive forensic investigations were undertaken. Two forensic scientists, in particular, were very heavily involved; they were Dr Angela Gallop and Mr Andrew McDonald. They both made comprehensive witness statements dated 30 May 2003 which contained an account of the various investigations undertaken. It was the extensive forensic investigation which led, ultimately, to the arrest of JG.

197. Following his arrest JG remained in hospital for some days. During this period he made what amounted to admissions of his involvement in Lynette's murder. Police officers present at the hospital made a written record of what he said. On 5 and 6 March 2003 JG was interviewed under caution. The interviews were recorded and videoed. It suffices to say that throughout the interviews JG refused to speak about the murder.

198. On 6 March JG was charged with Lynette's murder. Shortly afterwards JG had a short conversation with one of the officers who had interviewed him, Mr Clayton, in which he agreed to be interviewed again once the proceedings against him had been concluded. This conversation was recorded in a witness statement made by Mr Clayton dated 16 September.

199. On 4 July 2003, at the Crown Court at Cardiff before Royce J JG pleaded guilty to Lynette's murder. That same day JG was sentenced to life imprisonment which, of course, was the only sentence available to the judge.

200. In advance of sentencing, Royce J was addressed by Mr John Charles Rees QC, JG's leading counsel. A number of points made by Mr Rees are pertinent to the issues before me.

201. Mr Rees QC began his submissions with the following remarks:-

> "My Lord, may I say straightaway that the defendant accepts full responsibility for the killing of Lynette White. He accepts that he will receive a life sentence and accepts that he will spend many years in prison and, as he said to the police, he knows he deserves it. He has pleaded guilty to murder, and I ask your Lordship to take that into account. He also asks me to state, and perhaps I can use his words, that he is very sorry for the killing of Lynette White, taking such a young life. He is very sorry for the hurt and suffering caused to her family, and he is also very sorry for the five men who were falsely accused of her murder, who stood trial and were incarcerated for a long period of time, some for up to four years in prison.
>
> I should say a little more about that. As Mr Harrington said, there is great public concern about this case. Those men stood trials, he said, on two occasions. Somehow, after many hours of interview, the police managed to obtain a confession from one of them. They also obtained evidence from a fellow prisoner to the effect that one had confessed to him, and they also obtained evidence from lay persons, members of the public, who said that they witnessed those five men killing Lynette White. I say that for this reason: although two of them were acquitted at the end of the trial and three were acquitted by the Court of Appeal some two years later, those men have been stigmatised ever since. I want to say on Mr Gafoor's instructions that they had absolutely nothing to do with the killing of Lynette White."

Later in his submissions Mr Rees dealt with the circumstances in which the killing had taken place. He said:-

> "Firstly, this was not a premeditated killing. Secondly, it was not a sexual killing. There was no sexual motive, and indeed there was no sexual contact between him and Lynette White on the night in question.
>
> He went to the Docks area of Cardiff, which was known for prostitution at that time, to seek out the services of a prostitute. He met Lynette White. They agreed to do business, to use the vernacular, and they went back to the flat at 7 James Street. He handed over to her the money that she asked. His recollection is that it was £30. Before they had an opportunity to undress, he changed his mind and he indicated that he did not want to go through with it, he did not want sex and he wanted his money back. That led to an argument between them. She refused to give the money back. He insisted that she should, and the argument progressed.
>
> My Lord, he had a knife with him. There were two reasons for that. Firstly, in general terms, the Docks area of Cardiff was a fairly dangerous place to go at night alone, and so he had it for

> protection. Secondly, on a more specific point, he had been robbed some months before by three prostitutes in the Butetown area. In the course of the argument, which was becoming more volatile and aggressive, he took out the knife and threatened her with it in an attempt to get his money back. She refused. In fact, she grabbed hold of the knife. There was a struggle, during the course of which she was stabbed. He does not really know why what followed did in fact follow. He says it was a combination of mixed emotions: shame, panic, because he now realised he was in serious trouble, and there was a frenzied attack with the knife. He accepts that he stabbed her, as your Lordship sees in the photographs. Those are the simple facts of this matter. The motive, as I have indicated, began with a row over money and escalated in the way in which I have described."

202. In due course, Royce J was called upon to fix the minimum term that JG was to serve before being considered eligible for parole. I mention that only because in the written judgment which Royce J provided to justify the term he specified he made it clear that he regarded it as an aggravating factor of considerable significance that JG had been content to "allow innocent men to be arrested, to stand their trial and be convicted of a murder he knew he had committed." That expression of view by Royce J encapsulated what was, in effect, an agreed position between prosecution and defence throughout the proceedings against JG namely that JG had acted alone when he killed Lynette and that the original defendants had no involvement in the killing.

203. Following the conclusion of the proceedings against JG, Mr Rees QC prepared a case assessment which he sent to the taxing officer who was charged with fixing his fees for representing JG. The prosecuted Claimants attach considerable significance to this document and I will return to it later in this judgment.

Section 4

204. On the first working day after JG had been sentenced, Sir Anthony Burden, then Chief Constable of SWP, issued a written apology to the original defendants. That same day the Chief Constable instigated an investigation into what had occurred in 1988 (LW3). Initially, the terms of reference were to identify and investigate any criminal offences arising from the 1988 investigation but shortly thereafter the terms of reference were widened to include the investigation of any disciplinary offences which may have been committed (later revised again to exclude disciplinary offences which did not constitute a crime). Assistant Chief Constable Cahill was appointed to oversee the investigation; Mr Christopher Coutts, then a detective superintendent, was appointed to be the Senior Investigating Officer by Mr Cahill. Mr Coutts' appointment as the SIO and the precise terms of reference of the investigation were set out in a letter from Mr Cahill to Mr Coutts dated 21 July 2003.

205. Immediately upon his appointment Mr Coutts initiated a SIO Policy Log which is referred to hereafter as the "LW3 policy log". The log is an important contemporaneous or near contemporaneous record of the decision-making process as LW3 unfolded. As I understand it, the decisions recorded in the policy log were

made by Mr Coutts or approved by him. Further, the log was available for inspection by Mr Cahill.

206. Although Mr Coutts was the SIO there was a command structure above him. A "Gold Group" was constituted which consisted of Mr Cahill, the head of the Professional Standards department, SWP's legal advisor and Mr Coutts. This group met regularly and considered "emerging findings" as and when appropriate. The phrase emerging findings was used to describe the documentation which was created on a regular basis to log new findings as and when they arose.

207. During the course of Operation Mistral an Independent Advisory Group ("the IAG") had been set up to provide independent insight into that investigation. In Mistral there had been five members of the group; the LW3 policy log for 10 July shows that one of the first decisions taken by Mr Coutts and approved by Mr Cahill was to invite the IAG to continue as part of LW3. It was decided that the existing members would be asked to continue; consideration would also be given to increasing their number.

208. Over some time following the launch of the investigation, a team of officers was assembled to carry it out. Mr Penhale, then a detective inspector, was appointed to be Mr Coutts' deputy (the Deputy SIO). The two men had worked together previously. Mr Penhale remained the Deputy SIO throughout LW3 although between May 2007 and about July 2011 he was also carrying out wholly separate duties for the Home Office and his participation in LW3 was less "hands on". Some of the officers who had participated in Operation Mistral were invited to join LW3. A number agreed. However, Mr Coutts told me that he also wished to introduce fresh blood to provide a new perspective on the information then available. Mr Penhale estimated that about half of the officers originally allocated to LW3 had been involved in Operation Mistral with the other half being unconnected to any previous investigation relating to Lynette's murder. Two incident rooms were set up; one was at Rumney police station, near Cardiff; the second was at Taibach police station near Port Talbot. I was not provided with precise numbers of officers who worked at those stations in connection with LW3. The impression I have from witness statements such as that of Mr Monks is that in the early years of LW3 there were about 20 persons in total (including some civilian staff) working on the investigation.

209. From more or less the outset it was decided that the HOLMES Computer Programme would be used to facilitate the investigation. HOLMES is an acronym for Home Office Large Major Enquiry System. Fortunately, it is unnecessary for me to seek to explain details of the programme. Officers were appointed to supervise and advise upon the use of that programme. The aim was that all documentation already in existence as a consequence of LW1 and Operation Mistral together with documentation generated during the course of LW3 would be stored electronically.

210. From a very early stage Mr Coutts decided that persons with whom LW3 officers would be in contact were to be categorised. Broadly, there were to be four categories; victims, witnesses, persons of interest and suspects. A person would be designated as "of interest" if his involvement in LW1 suggested that he should no longer be treated as a witness but be the subject of further scrutiny. A person of interest would become a suspect if there were reasonable grounds to suspect that he had committed a crime.

211. For much of the period between his appointment and 1 September Mr Coutts and his team were familiarising themselves with the information then available to the investigation. There was some fencing between Mr Metzer QC and Mr Coutts about the length of time in which this was occurring but I readily accept that there was substantial "reading in" during this period. In reality there must have been.

212. There is a need for some caution when describing the information which was available to LW3 officers as at the commencement of the investigation. Self-evidently there was a very large amount of material in existence. How much was readily available to the officers engaged in LW3 at this stage is more difficult to determine. Certainly, however, LW3 officers had available to them the documents which were provided to the CPS in September.

213. I should also record that Mr Coutts did more than just read the written information which was available. On 21 July he met with members of the Operation Mistral team and received a two part presentation in respect of that investigation. One part was an over-view; the second part related, specifically, to the forensic evidence which had been crucial in identifying JG as the person who had deposited the "foreign blood" at the murder scene.

214. On 1 September 2003 Mr Coutts designated eight persons as victims: they were the original defendants, RO, AM and AT. On the same date he set lines of enquiry for the first time. He concluded that the priority should be to engage with and/or interview the original key witnesses i.e. the core four, to interview JG, to interview the victims and to interview some of Lynette's close family members.

215. It was also on 1 September that Mr Coutts designated the core four as suspects; he suspected that they had committed the offences of perjury and perverting the course of justice. He tasked Mr Penhale with preparing an arrest strategy in respect of those persons – a task which Mr Penhale completed over the following weeks.

216. On 10 September a meeting took place between police officers and the IAG. The police officers present were Mr Cahill, Mr Coutts and Mr Lewis; the IAG had five members as at the date of the meeting and its chair was Professor Margaret Griffiths. A written agenda was produced in advance of the meeting and a written record was made of the topics which were discussed. Two of the issues discussed were the independence of the investigating team (given that they were all serving officers of SWP) and whether or not contact had been or was to be made with Satish Sekar the author to whom I referred at paragraph 187 above.

217. Early on Mr Coutts had decided that there should be regular contact between LW3 officers and the CPS as the investigation unfolded. He met Mr Huw Haycock, the Chief Crown Prosecutor for South Wales, in July. On 11 September a meeting took place at police headquarters, Bridgend, between Mr Cahill, Mr Coutts and Mr Penhale and two employees of the CPS, one of whom was Mr Ian Thomas who had been an employee of the CPS since 1986 and who was a very experienced prosecutor. At this time Mr Thomas was a member of the Casework Directorate – the department of the CPS responsible for giving advice about and prosecuting the most sensitive and complex cases throughout England and Wales. One of the issues discussed at this meeting was the role of the CPS during the course of LW3. It was made clear by the

police officers that the police would be seeking guidance throughout the investigation and a comprehensive review following its completion.

218. On 15 September Mr Coutts wrote to Mr Thomas to confirm the documentation which had been provided by the police to the CPS and to identify further documentation which was being provided under cover of the letter. It is important to identify, now, what was provided by the police to the CPS at this early stage of investigation. The police provided (a) Mr Sekar's book "Fitted In", (b) a briefing file containing documentation about the strategies which had been developed by Mr Coutts and his team relating to such things as interviewing and arresting suspects (c) the Hacking and Thornley Report (d) statements obtained from AP during the course of the original investigation together with transcripts of the October 2002 interviews (e) statements made by LV during the course of the original investigation (f) statements made by MG during the course of the original investigation and transcripts of the interviews with him on 9 October 2002 and (g) the statements made by PA during the course of the original investigation together with transcripts of his interviews on 15 October 2002.

219. On or about 17 September Mr Coutts wrote to each of the core four. The letter informed them that there were reasonable grounds to suspect that they had committed the offences of perjury and perverting the course of justice. They were each asked to attend Swansea Police Station on 1 October 2003 at 10.00am (accompanied by a legal representative) and told that following their arrival at the station they would be arrested and interviewed under caution. Under cover of their letters each of the core four was provided with copies of the witness statements which they had made during the course of LW1 and AP, MG and PA were provided with transcripts of their interviews in October 2002.

220. Before dealing with the events of 1 October, I should mention a letter dated 30 September written by TP's solicitors. The letter was sent to Sir Anthony Burden; it was a letter of claim on behalf of TP relating to his arrest and prosecution for the murder of Lynette. The letter is long and detailed. Its significance in this case is the assertion in the second paragraph that on 9 December 1988 TP "was visited in his then home address…. at 7.30am" by Messers Greenwood, Seaford, Stephen and Jennings and that TP "voluntarily agreed to accompany the officers to Butetown Police Station." The letter went on to assert that upon arrival at the station TP was interviewed by Messers Greenwood and Jennings and that during the course of this interview he was arrested on suspicion of being involved in the murder of Lynette. Mr Greenwood, Mr Jennings and Mr Stephen, in particular, attach considerable significance to this letter; the reason will become clear when I consider their individual cases in Section 8.

221. The core four attended at Swansea Police Station on 1 October. The intention had been to interview each of them under caution that day but, as I will explain, that did not happen in the case of AP and PA.

222. AP attended the police station at 2pm together with her solicitor. Shortly thereafter, she was arrested by Mr House who was in company with Ms Sian Lewis-Williams. At the custody suite and before any interview under caution could begin AP's solicitor made representations to the effect that AP was not fit to be interviewed on account of her mental health. Ms Lewis-Williams contacted a psychologist, Dr

Harris, with a view to an assessment being made there and then but Dr Harris decided that he should carry out an assessment upon AP away from the police station. Accordingly, AP was bailed to return to the police station at a later date which was subsequently fixed for 12 November. In the event, no interview under caution took place on that date. By then a psychological assessment had been obtained which concluded that AP was an individual with learning disabilities and a low level of literacy and it was decided that AP would be interviewed under caution early in 2004.

223. LV attended at the police station shortly before 10am in company with her solicitor Mr Jongman. She was arrested by Mr Gavin Lewis who was in company with Ms Jayne Hill. Later that day two interviews under caution took place, both conducted by Mr Lewis and Ms Hill. During the first interview LV's solicitor, Mr Colin Jongman, produced a typed statement signed by LV which was read into the record of interview. I summarise below the content of the statement so far as is relevant.

224. LV began by asserting that the witness statements which she made between February and August 1988 were truthful, although she accepted, too, that there were inaccuracies within them. She went on to claim that on 6 December 1988 she was taken to Butetown Police Station by officers whom she had not seen before and who told her that a witness had claimed that she had been in the room with Lynette on the night of her murder. She claimed that the officers were "pressurising her heavily" – see paragraph 19 of the statement. That same day, or possibly on 11 December when LV was again at the police station, LV asked the officers then with her to "bring Angela to see [me]" because she did not believe what they were telling her. AP was brought into the room and said "we were there Leanne" and was then taken away immediately – see paragraph 20. In that same paragraph LV explained how immediately afterwards an officer had said to her "Why don't you just say you went there to help. If not, you will be done for murder because you've been put there".

225. Either on 6 or 11 December Mr Mouncher "cracked" her. According to LV, Mr Mouncher showed her lots of photographs of very sad children saying that they were children whose mothers were in prison. This made LV very frightened since she had a very young child and accordingly she said to Mr Mouncher "alright you tell me and I'll say I was there".

226. At paragraph 24 LV described the circumstances in which she was taken to the police station in the early hours of the morning of 11 December. Once at the police station she was put into a room with Mrs O'Brien. She described how from time to time Mr Mouncher would come into the room and shout at her "just tell us the truth about what happened".

227. Paragraph 25 of the statement reads:-

> "At that stage, I had been told that Angela's blood was found in the room, that she had implicated me as being there, and so I made up a complete story. I said for example that she was punched in the mouth in order to explain why her blood was there. I was told that Lynette's wrists and neck were cut, and I was asked "what were you forced to do?" I think at that stage I indicated that I had cut one of her wrists, and Angela cut the other one, but at each stage of the questioning a lot of matters

> were put to me. In the beginning, no statement was taken, and lots of questions were asked. There were obviously others involved, but the only names of officers I can remember are Mouncher and O'Brien. I basically made up the statement which was total rubbish in order to explain the questions I was asked. That was my statement of 11 December. Very little of that is true."

228. LV ended her statement by accepting that she had given misleading information to the police and that she had given perjured evidence on at least three occasions i.e. at the committal hearing and during the course of two trials.

229. In her second interview under caution that day LV was taken through a number of the statements which she had made in 1988. In this interview she recalled the names of three police officers, Mike Cullen, Richard Powell and Rachel O'Brien, with whom she had dealt in 1988 but she did not expressly criticise any of the three. Following the interview LV was bailed to return to the police station on 12 November 2003.

230. On 12 November LV attended Swansea Central Police Station with her solicitor. That day she was interviewed under caution on seven separate occasions by Mr Gavin Lewis and Ms Hill. Mr Jongman, LV's solicitor, was present throughout each interview. At the commencement of the first interview Mr Jongman produced another written statement which had been made by LV. Its effect was similar to that which he had produced during the course of the interview under caution on 1 October. Mr Mouncher was accused of "breaking" her and Mrs O'Brien was accused of being with her in a room when Mr Mouncher was shouting at her. LV maintained that the statements she had made on 6 and 11 December 1988 were untrue insofar as they related to her knowledge of Lynette's murder. In the interviews which followed LV maintained that all her statements to the police prior to those made in December were truthful albeit there may have been contradictions and inaccuracies within them. Although she recalled the names of officers other than Mr Mouncher e.g. Mike Cullen and Mr Powell she did not make direct accusations against them.

231. On 26 November there were yet further interviews under caution with LV. These interviews were specific to what had occurred on 11 December 1988. LV did not produce a prepared statement or statements. She maintained that the statement made on 11 December was untrue insofar as it related to her knowledge of Lynette's murder. It was pointed out to her that Mrs Coliandris was the police officer who had written out that statement. LV's response was to say that although she had some memory of Mrs Coliandris she had no memory of her taking the statement. Her description of Mrs Coliandris was imprecise and in large measure inaccurate. She made no allegation of improper behaviour against Mrs Coliandris.

232. MG attended the police station at about 10.30 am on 1 October. He was arrested by Mr Stephen Evans who was in company with Mr Rees. A number of interviews under caution followed which were conducted by Messers Evans and Rees at which MG's solicitor, Ms Nadia Hughes and an appropriate adult, Mr Martin Shepherd, were also present. In his first interview MG admitted giving false evidence in court but explained it by saying that he was pressurised by the police at the time he was being interviewed by them and/or when he was making written statements. He told the interviewing officers that on the night of Lynette's murder he had not seen or heard

anything which was relevant to the murder. Those parts of his witness statements which had suggested that he had witnessed material events were untrue. When asked questions about the identity of the officers who had exerted pressure upon him he named Mr Powell and he mentioned two other officers one of whom, he said, had a beard and a moustache and who was thick set in build. MG said that this officer and another who was neither named nor identified acted as a team – one officer being tough the other being "the nice guy".

233. In the second interview MG continued to name Mr Powell as an officer who had pressurised him; in this interview he also made reference to an officer whom he named as "Mountjoy" or "Mouncher". MG was asked about the statements which he made up to the end of May 1988. He said that they were all truthful accounts albeit that some of the accounts must have been inaccurate since they differed as to detail. He was asked whether the name "Murray" meant anything to him; it was pointed out to him that it was a DC Murray who had taken a statement from him on 25 May 1988. MG replied by saying that Mr Murray was the officer with a beard and moustache to whom he had referred earlier.

234. In the third interview the officers asked questions about the accounts which MG had given on 22 November and 6 December 1988 and 5 January 1989. MG accepted, without qualification, that the accounts he had given which suggested that he had relevant information about the murder were untrue. He said that he had succumbed to police pressure; he maintained that he was told repeatedly that PA and LV had given information which demonstrated that he had been at 7 James Street at the time of the murder and he was told by police officers that he would be imprisoned unless he told the truth. According to MG police officers were "putting words in his mouth". When he was asked to identify or describe the officers involved in this behaviour he named Mr Powell. At one point in this interview MG also named Mr Murray. He said that it may have been to Mr Murray that he first related the untrue account that he was present in 7 James Street and seen the relevant events. However MG did not, in terms, suggest that Murray was involved in pressurising him; the only officer about whom he made a direct allegation of improper conduct during this interview was Mr Powell.

235. MG was reminded that the persons who had interviewed him on 22 November 1988 were, first, Messrs Greenwood and Seaford and then Messrs Seaford and Pugh. MG had no recollection of Messrs Greenwood and Seaford and his only recollection of Mr Pugh related to the time which he spent in "a safe house" in 1989. According to MG, Mr Pugh was involved in ensuring his welfare during that time. MG made no allegation of improper behaviour against Mr Pugh relating to the interviews which took place on 22 November.

236. The fourth interview was concerned, primarily, with the statement which MG had made on 6 December 1988. MG readily accepted that those parts of the statement which suggested that he had knowledge of the circumstances of the murder were untrue. He maintained that he was, in effect, told what to say by police officers and in the early part of the interview named Mr Powell as the officer who was behaving improperly.

237. In the early part of this interview MG was asked direct questions about whether Mr Pugh engaged in improper behaviour on 6 December 1988; MG repeated that his only

memory of Mr Pugh related to the time when he was staying in accommodation provided by the police. As the interview progressed MG was asked whether Mr Murray or Mr Mouncher were involved in improper behaviour. MG's response was that there had been a number of officers who pressurised him but the only one that he could identify was Mr Powell.

238. PA was arrested at his home on 1 October by Mr Stephen Williams and then conveyed to Swansea Police Station. An interview under caution began that afternoon in the presence of PA's solicitor and an appropriate adult. However, after a very short period of time the interview was terminated because there was doubt about whether PA understood the caution. While PA was at the police station he was examined by Dr Harris who recommended that PA should undergo a psychological assessment away from the police station. Accordingly PA was released on bail with a view to his attending the police station at a later date. There were no further attempts to interview PA under caution during 2003.

239. In summary, by the end of November LV and MG had been interviewed under caution on a number of occasions. They had both admitted, quite unequivocally, that they had given false evidence during the course of the trials of the original defendants. They explained this conduct by asserting that accounts which they had given in November and December 1988 had been obtained by improper conduct on the part of police officers and they had felt pressurised into maintaining those false accounts when giving evidence in court. Neither AP nor PA had been interviewed under caution; in each case this was on account of their mental condition.

240. On 6 November Mrs Perriam was interviewed under caution on a number of occasions, having been arrested previously. She was interviewed by Ms Hill and Mr Gavin Lewis on each occasion and she was accompanied by her solicitor and an appropriate adult. Essentially, Mrs Perriam answered no comment to the majority of questions put to her. In particular, she declined to answer questions relating to the statement which is dated 11 February 1988 but which was alleged to have been made on 11 December 1988.

241. As I have said, Mr Ian Thomas was a senior employee of the CPS in 2003. At some point quite early on in LW3 he became "the reviewing lawyer" i.e. the lawyer within the CPS who would be responsible for making the decision as to whether anyone should be prosecuted. He remained the reviewing lawyer until his retirement in 2007. Mr Thomas gave evidence before me on behalf of the Defendant. Just prior to giving his evidence he produced a significant bundle of documentation which, in the main, consisted of contemporaneous or near contemporaneous notes of meetings, briefing notes and records of decisions taken by the CPS. I shall refer to this bundle as "the Thomas Bundle" to distinguish it from another file of documentation produced by another former employee of the CPS, Mr Gaon Hart, who gave evidence before me on behalf of the Claimants. I will refer to his bundle as "the Hart Bundle".

242. The first document produced by Mr Thomas was a briefing note for the Attorney General. The document was not dated but it can be inferred from its contents that it was written in late 2003. The document is of some significance because it is clear from its terms that it was then contemplated as a possibility that, in due course, the CPS would be asked to consider whether police officers who had been involved with LW1 should be prosecuted. That said, the note also stated in terms that the

information available to the CPS as at this time (late 2003) did not permit of any firm conclusions about whether LW1 officers should be prosecuted.

243. On 2 December, Mr Coutts designated a number of "civilian" persons as suspects. These were persons who had been witnesses in the trials of the original defendants and/or had given witness statements to LW1 officers. These suspects included Mr Massey. On 19 December four persons (at least two of whom were police officers) were designated persons of interest. They included Ms Carole Evans then a senior police officer who was for some time a claimant in these proceedings.

244. It was also in late 2003 that Mr Coutts initiated the forensic examination of the critical witness statements which had been generated during the course of LW1. In these proceedings this was referred to as "ESDA Evidence". A very short explanation of this type of evidence is all that is necessary. When a person writes on a sheet of paper which is resting on top of other sheets the act of writing will often produce visible impressions on the sheet directly below the sheet being written upon and, depending on a variety of circumstances, it may also produce invisible impressions on sheets further down in the pile. A process has been developed whereby those invisible impressions can be made visible; use is made of electro-static detection apparatus (ESDA).

245. In these proceedings and in much of the contemporaneous documentation such as the LW3 policy log evidence relating to forensic examination of the statements generated in LW1 was referred to as the "ESDA evidence". I shall adopt the same phrase as a convenient short-hand. The expert first involved in the ESDA investigation was Mr Mathew Richardson who was an experienced forensic document examiner. He produced a witness statement dated 30 December which was the first of a number of statements made by him during the process of the ESDA investigation. In the Defendant's chronology it is said that Dr Richardson produced no less than 62 witness statements in the period 30 December to 8 March 2005. Be that as it may, all I need do in this judgment is to identify the state of the ESDA evidence at two critical points; first in 2005 at the time when all the Claimants except Mr Hicks were arrested and second in 2010 i.e. some months before the commencement of the trial before Sweeney J.

2004

246. On 12 January AP attended Cockett Police Station in Swansea in accordance with her bail requirements. Thereafter she was interviewed under caution by Mr House and Ms Lewis-Williams in the presence of her solicitor and Mr Dermot Jones, a social worker trained in mental health issues who was acting as an appropriate adult. There were three interviews on that date. In the first of the interviews AP accepted that she had not been at 7 James Street on the night that Lynette was murdered and that the evidence which she had given to the opposite effect during the course of the committal proceedings and the trials was false. She explained herself thus quite early on in her interview:

> "It's a disgrace because that, at the end of the day they wanted a conviction and they were willing to go, well to go to any length to, to get that conviction so much so that they threatened me, they was um writing, writing things down and they told me

> I had to sign statements. When I asked to see the statement they wouldn't let me. I asked the reason why they said there was no need for me to see the statements and it was law that I had to sign them. They threatened to um, to charge me with the murder of Lynette WHITE along with those, along with the boys they were, uh charging, it ws obviously a um, not a cons, you know conspiracy but you know these, these, like I said these blokes they you know they just don't, they don't care. They really don't, don't care what they do or how they do it and you know I'm sorry for what happened to these boys but you know to turn round and say to me for perjury and perverting the course and justice and I didn't put myself in that situation, they put me in that situation……
>
> By using threats and is it uh I think mouth is, they mean verbal abuse or you know they, they put me there in that room when I wasn't there, because that night I was baby sitting for Leanne's little boy uh Craig, that night. I remember a candle, it was the night, it could have been a flick of a lighter or a candle but then I realised there was no electric in that flat so but um you know they, they, they, they put me there, you know Sian I don't know if you understand what I'm trying to say to you or if it, if it makes any sense to you I don't know."

247. In the second interview AP was asked whether she could identify any of the police officers who had pressurised her but she was unable to do so. In her third interview she described how in December 1988 she had been told by LW1 officers that her blood had been found at the murder scene. She maintained that this had been her understanding throughout the years that had followed and that she had only become aware that her blood had not been found at the murder scene when told the true position during the course of this interview.

248. AP returned to the police station on 15 January. There were six interviews under caution on that date conducted by the same two police officers and all in the presence of AP's solicitor and an appropriate adult. In those interviews she was asked detailed questions about the statements she had made to police officers during the course of LW1. It suffices that I say that AP acknowledged that much of what she had said in statements made on 17 November 1988 and thereafter was false. She maintained that she had given false accounts in response to pressure from the police but she was unable to identify any officer who had engaged in this conduct. When asked specific questions about Mr Daniels and Mr Gillard she said that she had no memory of those two officers. There were no more interviews under caution with AP during 2004. It is clear from the witness statement of Ms Lewis-Williams that there was considerable concern about AP's mental health during the course of the year.

249. There were further interviews under caution with LV in September. The two interviewing officers were Ms Hill and Mr Stephen Williams. No doubt through an oversight the witness statements of those officers does not contain any evidence about those interviews and it is not entirely clear to me how many interviews took place. What I do know is that there were at least 2 interviews under caution on 1 September. In an interview which commenced at 12.10pm LV was questioned, mainly, about her

contact with LW1 officers during Operation Safehouse. In answer to these questions she maintained that she had been visited by Mr Ken Davies, Mr Morgan and Mr Mouncher although she denied that any of them had acted improperly in any way during those visits. In an interview which commenced at 4.11pm LV was pressed as to why she had implicated YA and SM in statements she had made in June 1988. Her response was somewhat equivocal about YA but LV was clear that she had implicated SM because she disliked him. She was also asked to explain why she had not reported the pressure exerted upon her by Mr Mouncher to a superior officer e.g. to Mr Morgan. Her response was to repeat on a number of occasions that she had been young and "too scared".

250. MG was interviewed under caution on three occasions on 5 February by Messers Evans and Rees. During the first of those interviews MG was asked questions about the identity of the officers taking witness statements during the course of LW1. The only name that MG provided was that of Mr Powell. In the second interview MG was asked a number of specific questions about the interview which had taken place on 22 November 1988 and which had been conducted by Messrs Seaford and Pugh. MG said that on that day he had been threatened with life imprisonment and bullied. That was his explanation for saying that PA had come to his flat during the night that Lynette was murdered. He said that Mr Seaford was the officer who did most of the talking during this interview although he did not say, expressly, that it was Mr Seaford who had threatened him. In the third interview MG was questioned, again, about the interview on 22 November 1988. He admitted that his account of the night of Lynette's murder was a fabrication. In this interview MG mentioned Mr Mouncher; he said that he had come into the interview room from time to time and said that if MG did not tell the officers what they wanted to know he would have to remain at the police station.

251. There were further interviews under caution with MG on 7 September and 1 October. The interviewing officers on those dates were Mr Evans and Mr Cranswick. After the interviews in September had concluded MG was given transcripts of his evidence in the trials of the original defendants so that he could be questioned about them on 1 October. On that date there were two interviews under caution during which MG readily admitted that the evidence which he had given at the trials of the original defendants as to his knowledge of Lynette's murder was false. He also admitted that his answers to Mr Mangold for the Panorama programme had been untrue; those answers, he said, were a continuation of the lies he had told in evidence because he was frightened.

252. PA was interviewed under caution on a number of occasions in 2004. On each occasion his solicitor and an appropriate adult were present. He was first interviewed on 2 February by Mr Ian Williams and Mr Stephen Williams. During the course of three interviews under caution that day PA declined to answer the question put to him or said "no comment". He was interviewed under caution again on 16 July and 20 December by the same officers; during each interview his solicitor and an appropriate adult were present and PA declined to answer the questions put to him or answered "no comment".

253. On 19 January Messrs Rees and Evans conducted interviews with JG at Cockett Police Station. JG was interviewed as a potential witness. In advance of the interviews written material was disclosed to him including a transcript of the speech

in mitigation which had been made by John Charles Rees QC at the sentencing hearing. In answer to questions, JG asserted that he and he alone was responsible for Lynette's murder. He gave an account of the circumstances of the murder which was very similar to that which Mr Rees had advanced in mitigation. When asked, specifically, whether he knew any of the original defendants JG replied that he did not and he also claimed that he had no knowledge of the core four and other witnesses who had given evidence tending to incriminate the original defendants.

254. Following these interviews a witness statement was drafted on behalf of JG by a police officer, probably Mr Evans. On 24 March the witness statement was shown to him and after some prevarication JG signed it. In the statement he made it clear that that he had never spoken to or met the original defendants or the core four. He described the circumstances leading to Lynette's murder in the following terms:-

> "Lynette WHITE was a prostitute in the docks area of Cardiff. I do not recall how I met this woman and as far as I can remember it was just the once in order to procure her services, however I changed my mind which led to a fracas, which led to violence, which led to murder.
>
> I would like it known that I am the sole person responsible for the murder of Lynette WHITE and no one else was involved before or after.
>
> On the night of the murder I attended a flat above a bookies, I recollect that I paid her £30 (thirty pounds) at some time and before we had an opportunity to undress, I changed my mind and indicated that I didn't want to go through with it. I wanted my money back, which led to an argument, she refused, I had a knife with me as a result of being mugged on previous occasions.
>
> I was probably wearing a long coat, which I probably washed at the launderette if there was blood on it, the laundrette was near Malefant Stores, I washed all my own clothes.
>
> I recall cutting myself during the argument on my wrists and knuckles, I have scars to show where I had cut myself, I didn't seek any medical attention as they weren't serious.
>
> The weapon that I used was a knife. I used to collect knives, fancy knives and pen knives.
>
> I don't remember if I had been drinking but I probably would have, as I wouldn't pick up a prostitute if I had been sober.
>
> I can recall that there wasn't any lighting in the flat I recall a bed and windows. I only recall it was above a betting office from the media.

> I can't recall seeing anybody else there at the flat when I arrived or when I left, I didn't hear any movements from other flats.
>
> The argument we had was quite loud and if anybody else was on the premises then I believe they would have heard.
>
> I have a recollection of leaving the flat by going down some stairs, it was similar to where I used to live, I probably still had the knife on me as it was part of my collection.
>
> I don't know what time it was on leaving the flat or where I went, but I may have gone to the pub or straight home."

255. The process by which evidence was obtained from JG was the subject of a written report from Mr Evans to Mr Coutts. The report made no mention of the fact that JG had demonstrated a marked reluctance to sign his witness statement on 24 March although it did record the fact that the events of 24 March were the subject of audio recording. I was shown a transcript of the recording. The transcript reveals that JG took issue with parts of the statement as it had been drafted originally; it also shows that JG was reluctant to sign the statement although he did so after taking advice from his legal representative.

256. On 28 January Mrs Perriam was interviewed under caution in the presence of her solicitor and an appropriate adult. Her solicitor produced a prepared statement but Mrs Perriam declined to answer any of the questions put to her except to identify her signature on some statements. There were a number of further interviews later in the year; again Mrs Perriam declined to answer the questions which were put to her.

257. On 25 February Mr Massey was arrested. It suffices that I say now that Mr Massey has always maintained that the account which he gave during the course of the trials of the original defendants of his conversations with TP were true and that the statements which he had made to the police about these matters were also true.

258. In his witness statement for these proceedings (see paragraph 56) Mr Coutts describes a number of investigative steps which he initiated in early 2004. On 9 March Messrs Coutts and Huw Lewis met Mr Andrew Postlethwaite, the managing director, of a company known as Virtual Reconstruction Limited to ascertain whether the company would be able to provide reconstructions of a number of possible scenarios relating to Lynette's murder. In due course Mr Lewis made minutes of what was said. Under the heading "Line of Enquiry" Mr Lewis wrote:-

> "Detective Superintendent Coutts stated that one of the main Lines of Enquiry would be to utilise Virtual Reconstruction Limited to visually reconstruct the following:-
>
> - A model of the scene including Flat 1, 7 James Street, the immediate street and adjacent properties and police station.
>
> - To model Lynette's body and illustrate her wounds.

- To visually represent forensic evidence at the scene.

- To illustrate various events depicted within the evolving witness accounts of Grommek, Atkins, Psaila and [LV].

- To illustrate events depicted from Stephen Miller's interview and testimony.

Detective Superintendent Coutts explained that the purpose for this was to confirm or disprove the accuracy of the accounts given by Jeffrey Gafoor and the aforementioned people."

259. In due course (2005) Mr Postlethwaite made a witness statement and exhibited a large number of appendices which provided the various reconstructions which had been sought by Mr Coutts. It was also in 2004 that Professor Coulthard and Dr Hardcastle were instructed to consider a number of aspects relating to the language used in witness statements and contemporaneous records involving the core four and the length of time taken to produce the statements and records and Professor Edward Cape was instructed to consider the events surrounding the arrest and detention of the original defendants, Each of them produced reports or witness statements to which I will refer later in this judgment.

260. Two of the original defendants, TP and JA, were interviewed as witnesses in 2004. TP was interviewed extensively on 20 and 21 May. The ground covered in the interviews was wide ranging and no useful purpose would be served by an attempt at a précis. It suffices to mention two points. First TP denied that he had admitted involvement in the murder to Mr Massey. Second, he maintained that on 9 December 1988 he had been arrested at his home; he maintained this allegation notwithstanding being shown the B59 and a statement from Mr Greenwood which suggested that TP had attended Butetown police station voluntarily and that he had been arrested at that police station sometime after his arrival there. JA was interviewed on 10 June. The interviewing officers were Mr House and Ms Lewis-Williams. JA was treated as a vulnerable witness i.e. his interviews were video recorded with a view to the recordings being played as evidence- in-chief in any subsequent trial. Three video recordings were made. A summary of what was said is contained in the witness statement of Ms Lewis-Williams (see paragraphs 56 to 65). Essentially, JA complained that he had been "fitted up" by officers within LW1; he named Messrs Powell, Page and Mouncher as being the officers responsible.

261. In the spring of 2004 Mr Cahill decided that it would be of benefit to LW3 if independent investigative consultants were involved. On 4 May 2004 he had a meeting with three proposed consultants, namely Messrs Ross, McGookin and Pyke – former police officers with considerable investigative experience. Following a briefing at the meeting the three agreed to act as independent consultants to LW3. On 10 May they wrote to Mr Cahill setting out their views on the investigation as it then stood. I should stress that it was never intended that the independent consultants would become embroiled in the fine detail of the investigation. The role of the consultants was to offer advice on strategic and operational issues as the letter of 10 May demonstrates.

262. On 24 October Mr Coutts provided an update to Messrs Ross and McGookin (Mr Pyke being unable to attend the meeting) as to the progress of LW3. On 8 November 2004 the three consultants wrote a detailed letter dealing with many issues relating to the investigation. Their views were supportive of the direction in which the investigation was moving.

263. To a degree, at least, IAG was active in 2004. However, it is clear from the documentation and, indeed, from the oral evidence given to me by Professor Griffiths, the chair of IAG at all material times, that IAG was not expected to engage with the detail of the investigative process.

264. There was significant contact between LW3 officers and the CPS during the course of 2004. Minutes were taken of all the meetings, invariably by an employee of the CPS. The meetings were always attended by Mr Coutts or Mr Penhale (and very often both) and Mr Thomas.

265. At a meeting on 23 March a large number of documents were supplied by Mr Coutts to Mr Thomas. They were interim files in respect of a number of suspects including the core four and Mrs Perriam, documents in respect of persons of interest including Ms Amiel, Ms Mathews, Ms Sidoric and Mr Ellis and a witness package in respect of JG. A number of discrete issues were discussed and considered. By way of example only, there was a discussion about whether exculpatory evidence from Jack Ellis had been disclosed at the trial of the original defendants and there was a discussion about the ESDA evidence as it related to witness statements made by Mrs Perriam.

266. In August, Mr Thomas instructed counsel; he chose Mr James Bennett who was then a comparatively junior barrister practising from Guildhall Chambers in Bristol. Mr Bennett's initial instructions from Mr Thomas are included in the Thomas Bundle. At a meeting on 14 September Mr Bennett was introduced to LW3 officers and Mr Thomas outlined the role which he expected Mr Bennett to perform in the course of the investigation.

267. On 24 August the LW3 investigation was referred to the Independent Police Complaints Commission (IPCC). The Commission quickly decided that SWP should carry on with the investigation albeit subject to its supervision. This decision and its implications was the subject of discussion at a meeting on 22 September as were various other matters relating to file preparation and disclosure.

268. On 9 November there was a meeting of some significance at which a number of issues were discussed in detail including the ESDA evidence as it then stood and the preparation of files. The effect of the ESDA evidence was reduced to writing and the document provided to CPS.

269. On 22 November the police provided a further tranche of significant documentation to the CPS. First, a "significant witness" core bundle. Second, the transcripts of the interviews which had taken place with TP and JA earlier that year. Third, the previous convictions of a number of persons including the core four, Ms Harris, Mr Massey and Mr Lawrence Mann. Fourth, a transcript of the evidence of Ms Harris given in the second trial of the original defendants. Fifth, witness statements made by Mr Mathew Richardson, the documents examiner and sixth, a substantial amount of

written material recovered from the Swansea Crown Court, the Court of Appeal and the CPS.

270. Four days later (26 November) a meeting took place at which officers of LW3, members of the IPCC and representatives of the CPS were present. Extensive minutes were taken of the meeting by Mr Bishop, a CPS employee. It is clear from what he wrote that all those present were, by now, contemplating the possibility that officers from LW1 would be prosecuted. I do not propose to set out or seek to summarise the minutes of this meeting since they are very detailed. However, Mr Penhale was recorded as saying that an arrest of a certain level of officer would be seen "as a success by the Cardiff five" and, further, that he had helped JA in relation to other matters and "we have a good relationship". I will return to the significance of these remarks in due course.

271. In December, the police provided further documentation to the CPS. Transcripts of the interviews of AP, MG and PA with officers from Operation Mistral were provided on 2 December. On 6 December lists of court transcripts relating to the first and second trials of the original defendants were provided. On 9 December, the police provided actual transcripts of named witnesses. On 13 December and 21 December medical reports relating to AP and Ms Harris were supplied.

272. The last meeting of which I am aware between police officers and representatives of the CPS during the course of 2004 took place at Mr Bennett's chambers on 20 December. Mr Coutts informed those present at the meeting that there were then 33 serving/retired police officers who had been identified as persons of interest during the course of LW3.

273. I am able to be precise about the dates when documents were provided by LW3 officers to the CPS because those dates were recorded in a log/document entitled "Management of Case File Preparation" a copy of which appears at Volume 10 of the Core Bundles at pages 7288 – 7308. As I understand it, this document was created with the specific aim of recording the date when documents were provided by the police to the CPS and the nature of the documents so provided. In the remainder of this judgment I will refer to this document as the "Management Case File".

2005

274. All the Claimants, except Mr Hicks, were arrested during the course of 2005. They were each arrested on suspicion of having committed the offences of conspiracy to pervert the course of justice, false imprisonment and misconduct in public office. The operation to arrest the Claimants and other retired and serving police officers was given the name "Operation Rubicon." No doubt, that name was chosen quite deliberately since there would indeed be a "crossing of the Rubicon" once police suspects were arrested.

275. The LW3 policy log shows that on 25 January 2005 Mr Coutts decided that Mr Daniels, Mr Gillard, Mrs O'Brien, Mr Page and Mr Seaford should be designated as suspects and arrested. These were to be the "first phase" of arrests. In advance of Mr Coutts' decision, Mr Penhale had prepared "person of interest packages" in respect of each of the persons to be arrested. In sections 7 and 8, as appropriate, I will consider these packages and those produced in respect of the other Claimants in detail. At this

stage it suffices that I say that all the packages produced contained an assessment by Mr Penhale (and later by another officer Mr Gavin Lewis) of whether reasonable grounds existed to justify the arrest of each suspect (hereinafter referred to as "the grounds for arrest"), a document which considered whether the suspects should be invited for interview under caution or whether they should be arrested and, if arrested, how the arrests should be carried out (the "Arrest Strategy") and a document prepared to justify applications for search warrants in respect of each of the suspect's homes ("the search grounds").

276. The following day, Mr Coutts decided to convene what he called an "adversarial briefing". Mr Coutts envisaged a meeting at which the participants would be or include Mr Cahill, Mr Penhale and himself, representatives of the IPCC, the Independent Consultants and IAG members. He recorded the reason for convening the meeting in the LW3 Policy Log for 26 January in the following words:-

> "Recognise the complexity scale and gravity of Op Rubicon there may be value in convening a briefing to bring an independent perspective in order to challenge the findings and to ensure the Investigation Team + I have not over emphasised or underplayed the evidence."

277. Before that meeting was convened steps were taken to select the police officers who would carry out the arrests. Mr Cahill made contact with senior officers in the Dorset, Gloucestershire and Hampshire Constabularies who chose officers with relevant experience. Officers with appropriate experience of search techniques were recruited from Avon and Somerset. The officers who were chosen to arrest police officer suspects were Messrs Kerley, Keech, Rawles and Parry from Dorset, Messrs North, Prentice and Stephens from Gloucestershire and Messrs Taylor, Pitchford and Boulton from Wiltshire. When appropriate, hereafter, I will refer to these officers either by name or as "the arresting officers".

278. Between 28 February and 2 March all the arresting officers attended a briefing at the Hilton Hotel, Swindon. During the course of the briefing Mr Coutts and Mr Penhale gave presentations aimed at providing the officers with an overview of the investigation. Although only five police suspects had been earmarked for arrest by this stage it seems clear from the evidence as a whole that the officers were told that other arrests of police suspects would occur as the year unfolded. Dr Barr and Mr Richardson provided briefings on the ESDA evidence which had been obtained by this time and their presentation was subsequently given to the officers on a disc. At the conclusion of the briefing the officers were provided with a disc onto which "Fitted-In" had been downloaded and a number of other documents including the Hacking and Thornley Report.

279. The adversarial briefing took place on 10 March. The agenda for that meeting demonstrates that the discussion was intended to be wide ranging. I was not shown any minutes of the meeting but in his witness statement Mr Penhale explains that LW3 officers made a presentation of the main strands of the evidence against the police suspects and gave a detailed description of the planned arrest strategy. He says that it was stressed to all participants that the purpose of the meeting was to invite challenge about the strength of the evidence and the arrest strategy (see paragraph 159 of his witness statement). On 19 March the Independent Consultants wrote to Mr

Cahill to put on record their views as to some of the matters which had been discussed at the meeting. A substantial part of the letter was concerned with operational issues relating to the arrests of the suspects, the search of their premises and interviews under caution. The terms of the letter demonstrate quite clearly, however, that Mr Penhale had given a detailed account of "investigative issues" during the briefing and, further, that there had been a detailed account of the forensic evidence which had been obtained which was described as "most compelling".

280. The arresting officers were given a further briefing at the Hilton Hotel, Swindon between 14 March and 24 March. The officers were divided into pairs and each pair was given the responsibility of arresting a particular suspect. While the briefing was ongoing four more former police officers were made suspects; they were Mr Greenwood, Mr Pugh, Mrs Coliandris and Ms Cuddihy. Mr Coutts decided that their arrests would take place in a second phase shortly after the first phase had been carried out. Each of these persons was allocated to a pair of arresting officers. It seems clear that the arresting officers were provided with information about why the suspects were being arrested, when they were to be arrested, and the documentation which was to be completed at the time of arrest and, subsequently, when a suspect was presented to the custody officer. It was always intended that the officers responsible for arresting a particular suspect would also conduct the interviews under caution with that suspect. Accordingly, during the course of the briefing period the arresting officers devised interview plans.

281. The arresting officers were also given instructions about the information which was to be disclosed to suspects prior to the commencement of interviews under caution. Messrs Coutts and Penhale made it clear that disclosure of information would be carried out in a phased manner so that, for example, a suspect would be told of the line of questioning to be followed in say the first interview but would be told nothing of what would occur in the next interview until the first interview was complete.

282. On 12 April Mr Penhale appeared before a District Judge (Magistrates) sitting in the Bristol Magistrates' Court in order to apply for search warrants to authorise searches of the homes of the persons to be arrested in the first phase of arrests. The warrants were granted. On 20 April Mr Penhale was, again, successful in persuading the District Judge to grant search warrants to search the homes of the persons to be arrested in the second phase.

283. On 13 April Mr Daniels, Mr Gillard, Mrs O'Brien, Mr Page and Mr Seaford were arrested. Shortly thereafter, on 21 April, the second phase of arrests took place. The persons arrested in this phase were Mr Greenwood, Mr Pugh, Mrs Coliandris and Ms Cuddihy. It is necessary to describe, in summary form, what happened when each of these persons was arrested, what property, if any, was seized in the searches of their homes and what transpired when they were interviewed under caution.

284. Mr Daniels was arrested at his home at 6.15am by Mr Boulton who was in company with Mr Stephens. Following his arrest Mr Daniels' home was searched and documents dating back to 1988 were seized although it turned out that nothing of any evidential value was recovered. That same day Mr Daniels was interviewed under caution on two separate occasions. Prior to the commencement of each interview Mr Daniels and his solicitor were provided with information about the line of questioning to be followed in each interview. As was his right, Mr Daniels answered "no

comment" to the questions asked of him. On 14 April there were further interviews under caution. During each interview which took place that day he answered "no comment" to the questions put to him.

285. Mr Gillard was arrested at home at about 6.25am. After caution Mr Gillard replied:-

"I understand, but I have absolutely no idea what you are talking about."

286. The arresting officer in his case was Mr Rawles who was accompanied by Mr Parry. Following the arrest Mr Gillard's home was searched. Documents dating back to the time of LW1 were found in the attic of his home and seized. The documents seized included his diary for 1988. During the course of 13 and 14 April Mr Gillard was interviewed under caution in the presence of his solicitor on eight separate occasions. The interviewing officers were Messrs Rawles and Parry. In each interview Mr Gillard declined to answer the questions which were put to him; however, in all, he produced 5 written statements prepared by his solicitor. The statements were read out as part of the interview process. In advance of each interview the interviewing officers disclosed to Mr Gillard and his solicitor the topics about which questions would be asked in the interview which was to follow. In the main the focus of the interviews were upon Mr Gillard's dealings with AP.

287. Mr Gillard's prepared statements contained a number of complaints about the absence of disclosure of relevant material. They complained, too, that in the absence of contemporaneous documentation Mr Gillard was unable to remember many details relating to LW1. That said, Mr Gillard denied, absolutely, that he had behaved in any way improperly towards AP.

288. Mrs O'Brien was arrested at about 6.15am at her home. The arresting officer was Mr Kerley who was in company with Mr Keech. Following her arrest and caution Mrs O'Brien responded by saying "I do understand, I've done absolutely nothing wrong".

289. Following her arrest her home was searched and a number of items seized although none turned out to be significant evidentially. During the course of 13 April Messrs Kerley and Keech interviewed Mrs O'Brien on five occasions. She was not legally represented in any of the interviews. She answered all the questions which were put to her. She said nothing to incriminate herself.

290. On 14 April Mrs O'Brien was legally represented. Her solicitor was present in all the interviews which took place. Mrs O'Brien answered all the questions which were put to her and when allegations of wrongdoing were made she denied them. In advance of some of the interviews the interviewing officers disclosed the topics about which they proposed to ask questions.

291. Mr Page was arrested by Mr Prentice (who was in company with Mr North) at his home at about 6.15am. After being cautioned Mr Page said:-

> "I am totally innocent of any charges, my only part in this alleged conspiracy was that I forwarded a list of names given to me by Mrs Perriam to the Incident Room. I would have willingly attended any police station and co-operated but in

> view of the fact that I have now been arrested like a common criminal I do not intend to co-operate at all."

292. Mr Page's reference to his willingness to attend a police station voluntarily and co-operate was, no doubt, a reference to a letter written by his solicitor to Mr Coutts on 11 April 2005. In that letter, Mr Prowel, the solicitor, wrote that Mr Page had been "given to understand" that he was to be arrested and interviewed under caution. He went on to express his client's willingness to attend at a police station at a time to be arranged. On 12 April Mr Coutts replied. He informed Mr Prowel that he was considering the proposal that Mr Page should attend a police station voluntarily on a date which was convenient. He also enquired whether Mr Page would divulge how it was that he believed his arrest was imminent. There had been no further exchange of correspondence between Mr Coutts and Mr Prowel by the time of Mr Page's arrest on 13 April.

293. Following Mr Page's arrest his home was searched. A number of items were seized. They included a number of Police Federation Diaries for the years 1991 to 1997 and numerous pieces of burnt paper which were found in Mr Page's garden.

294. Between 4.00pm and 4.14pm Messrs Prentice and North interviewed Mr Page under caution in the presence of his solicitor. The solicitor read out a prepared statement on behalf of Mr Page in which Mr Page gave an account of his involvement in LW1 and in which he denied in trenchant terms that he had behaved improperly in any way. His statement had this to say about his dealings with Mrs Perriam:-

> "I also confirm that I was approached by a witness called Violet PERRIAM with information that she had seen certain people outside Lynette WHITE'S home on the night of the murder. Violet PERRIAM gave me a, sorry gave me several names which I immediately passed to the Incident Room. I cannot recall when she approached me, but with regard to every stage of my involvement in the Lynette WHITE case everything would have been recorded in my official police pocket books. I confirm that I saw Violet PERRIAM on the 11th of December 1988 (11/12/1988), to verify her sighting of a person named Rachid OMAR. I took a statement from her. I placed no pressure upon her. It was her statement dated the 11th of December 1988 (11/12/1988), in her words. Again I was asked to take the statement by the Murder Incident Room."

295. The next day Messrs Prentice and North conducted seven interviews under caution with Mr Page in the presence of his solicitor. During the course of the first two interviews Mr Page answered "no comment" to each question which was put. In the third interview he produced a prepared statement. In it he explained that his pocket books from 1988, once completed, would have been stored at Merthyr Tydfil police station, retained for 7 years and then destroyed in accordance with SWP policy. He went on to explain that the burnt paper found in his garden were the remnants of very old diaries and pocket books (from the 1960s and 1970s) which he had decided to destroy because he was moving home. He maintained that he had destroyed nothing relating to LW1 and that he had burnt the diaries/pocket books 5 or 6 weeks before his arrest. In the fourth, fifth and sixth interviews he answered no comment to most

questions which were put. Such answers as were provided by Mr Page amounted to a denial of any wrongdoing. The seventh interview under caution related, specifically, to the ESDA examination of the statement made by Mrs Perriam which was dated 11 February 1988. A summary of the ESDA findings was provided to Mr Page in advance of the interview. During the course of this interview Mr Page answered all the questions which were put to him. He maintained that the statement was authentic and a true account of what Mrs Perriam had said. He denied any suggestion of wrongdoing in relation to the writing or taking of the statement and suggested that the error in the dating of the statement was just that – an unfortunate error.

296. Mr Seaford was arrested at his home at about 6.15am by Mr Taylor who was accompanied by Mr Pitchford. A search of his home was undertaken. No documents of any kind were seized. During the course of 13 April Mr Seaford was interviewed under caution by Messrs Taylor and Pitchford on six occasions. Mr Seaford was not legally represented during any of the interviews. He answered all questions which were put to him and he denied any wrongdoing. The questioning was wide-ranging but no useful purpose would be served by a summary of the questions and answers.

297. The next day there were seven interviews under caution. Again, Mr Seaford was not legally represented. He answered all questions which were put to him. Mr Seaford denied any wrongdoing throughout each of the interviews. In the first of the interviews that day Mr Seaford volunteered that he had spilt coffee over a page of MG's statement of 22 November and he had re-written that page. The last of the interviews concentrated upon ESDA evidence. A power-point presentation was shown to him. In particular, Mr Seaford was shown the evidence which demonstrated that page 3 of MG's witness statement of November 22 had been re-written and that the substitute page contained a more positive identification of RA, YA and MT than had been written in the original page. Mr Seaford appeared to acknowledge that this was so but asserted that he must have made a mistake when re-writing the page. When asked to explain why the substitute page was linked to LV's statement of 6 December (impressions of the page appeared on pages of LV's statement) Mr Seaford denied any wrongdoing and was adamant that he had re-written page 3 of MG's statement on 22 November.

298. During the course of one of the interviews which took place Mr Seaford was asked to recall the circumstances of TP's arrest on 9 December 1988. His recollection at this time was that TP had been arrested at his home but it is to be noted that no documents were provided to Mr Seaford to refresh his memory on this point.

299. All 5 suspects were released on bail at various times on 14 April. Some weeks later they returned to Swansea police station and further interviews under caution took place. Messrs Gillard and Daniels were interviewed respectively on 13 and 23 May, Mrs O'Brien and Mr Page were interviewed, respectively, on 2 June and 28 June and Mr Seaford was interviewed on 12 July. Before describing the second phase of arrests let me summarise what, if anything, emerged from these later interviews.

300. During his interview on 13 May, Mr Gillard produced a sixth prepared statement which dealt with his involvement with AP on 11 December 1988. He acknowledged that he had been present when her statement of that date had been taken but he denied writing it. He said that when AP had disclosed that she had been present when Lynette was being attacked and that she had been forced to cut her, the interview had been

suspended so that advice could be taken upon whether AP should be arrested on suspicion of murder. He, Mr Gillard, had sought advice from Mr Morgan and he believed that Mr Morgan had, in turn, sought advice from Mr Hywel Hughes of the CPS. Whatever had occurred between Mr Hughes and Mr Morgan Mr Gillard was told that AP's statement should be completed and that Mr Daniels and he should continue to treat her as a witness.

301. Nothing emerged from the further interviews of Mr Daniels. He declined to answer the questions put to him.

302. In her interviews on 2 June Mrs O'Brien was asked a number of questions about 11th December 1988. She acknowledged that she had interviewed LV on that day; she was unable to remember why she had not taken LV's statements. She denied pressurising LV and she denied any knowledge of her being pressurised by any other officer.

303. There were three interviews with Mr Page on 28 June. In advance of each interview the interviewing officer provided Mr Page with information about the questioning which he would face. In the first of those interviews Mr Page denied arresting JA at his home at 9 December 1988. He maintained that JA had gone voluntarily to the police station that morning. In the second interview which took place Mr Page described how, from time to time, he was asked to assist the enquiry as an "extra hand". He acknowledged that he had taken witness statements from Ms Perriam, Mr McCarthy, Mr Ronald Williams and Mr David Orton. He denied allegations which had been made by Mr McCarthy, Mr Orton and Mr Williams about his conduct.

304. Prior to Mr Page's third interview he was arrested on suspicion of perverting the course of justice. This arrest did not relate to Mr Page's alleged behaviour in 1988. This arrest came about because the arresting officers suspected that Mr Page had been engaged in unlawful conduct relating to his assertion that he had known, in advance, that he was to be arrested by officers involved in LW3. It also related to his conduct in burning documents shortly prior to his arrest on 13 April. In interview Mr Page was questioned about these matters. He denied any wrongdoing of any kind. He explained that he had known of his arrest because "it was the worst kept secret and they were talking about it down the pub". He maintained, steadfastly, that he had not burnt any documents of any evidential value.

305. When Mr Seaford was interviewed on 12 July he was accompanied by a solicitor. There were two interviews and at the commencement of each Mr Seaford produced prepared statements. In the second of the two prepared statements Mr Seaford described how his recollection of the circumstances in which TP had been arrested on 9 December 1988 was poor and that he wished to rely on the statement which he had made on 9 March 1989 which, by then, had been disclosed to him and which, of course, suggested that TP had gone to the police station voluntarily.

306. Mr Greenwood, Mr Pugh and Mrs Coliandris were arrested on 21 April. The plan had been to arrest those three persons at the same time together with Ms Carole Evans and Ms Cuddihy although the arrest of Ms Evans did not, in the event, take place on that date. In respect of all five, Mr Penhale had prepared person of interest packages and Mr Coutts had made the decision that they should be arrested. Exactly the same procedure was adopted for these arrests as had been followed during the course of the arrests on 13 April.

307. Mr Greenwood was arrested at his home by Mr Stephens at 6.10 am. He said nothing of significance immediately following his arrest. No documents of evidential significance were seized during the search of his home which followed his arrest.

308. There were three interviews under caution with Mr Greenwood on 21 April. The interviewing officers were Messrs Stephens and Boulton and the interviews took place in the presence of Mr Greenwood's solicitor. In advance of the first two interviews Mr Greenwood was provided with information about the line of questioning to be followed in each interview. Mr Greenwood answered all the questions which were put to him; he was not accused, directly, of improper conduct. In his third interview he accepted that he had been present with Mr Seaford when he had taken a statement from Mrs Perriam on 16 November (the statement in which she had named JA).

309. The following day there were a total of five interviews. Before the first interview Mr Greenwood was provided with a number of documents, namely his original witness statements, the contemporaneous record of interview with MG on 22 November 1988 and a copy of the B59 relating to MG's attendance at the police station on that date. During the course of the three interviews that followed the disclosure briefing Mr Greenwood denied any wrongdoing. When asked for his recollection about the circumstances of TP's arrest he suggested that the arrest had taken place at TP's home. However, when he was shown his statement of 9 March 1989 he said that he must have been mistaken and he then insisted that TP had attended the police station voluntarily on 9 December 1988. The two final interviews were concerned with ESDA evidence. In advance of the first of those two interviews Mr Greenwood was provided with a briefing, in particular, about that part of the ESDA evidence which suggested that Mr Seaford had re-written a page of MG's statement of 22 November. In the interviews which then followed Mr Greenwood denied being present when Mr Seaford had taken the statement from MG. He declined to offer an opinion on the ESDA evidence. He maintained his stance that he had done nothing wrong in the course of his involvement with LW1.

310. Mr Pitchford arrested Mr Pugh at 6.12am at his home. Mr Pugh said nothing of significance following his arrest. The subsequent search of his home revealed nothing of evidential value. Mr Pugh was interviewed under caution in the presence of his solicitor on three occasions on 21 April. The interviewing officers were Messrs Pitchford and Taylor and in advance of the first two interviews Mr Pugh was provided with a summary of the line of questioning to be followed. Mr Pugh answered all the questions which were put to him. The following day there were a total of eight interviews under caution. They were all conducted by Messrs Pitchford and Taylor. In advance of some of the interviews the interviewing officers described the line of questioning which would be followed. When Mr Pugh was asked direct questions about his involvement in the contemporaneous interview with MG which took place during the afternoon of 22 November 1988 he acknowledged that he had made the written record. He asserted that he had built up a rapport with MG and that was why MG had made disclosures to him which he had not revealed previously. He said that he had no reason to doubt the information which MG provided that afternoon. He denied any wrongdoing of any kind. He, too, was shown the ESDA evidence relating to page 3 of MG's witness statement of 22 November. He maintained that he had no knowledge of the circumstances in which Mr Seaford had written the witness

statement; he said, too, that he had no knowledge of Mr Seaford spilling coffee over one of the pages of the statement.

311. Mrs Coliandris was arrested at her home at 6.15am by Mr Kerley who was in company with Mr Keech. Following her arrest and caution she said "Yes, I understand perfectly". Some minutes later she volunteered "All I did was take a statement". Her home was searched and police pocket books covering the period 25 February 1980 to 18 May 1989 were found and seized. All the interviews under caution immediately following Mrs Coliandris' arrest took place on 21 April. Mrs Coliandris answered all questions which were put to her. She explained that in 1988 she had been a uniformed police constable with no connection to LW1. On 11 December 1988, out of the blue so far as she was concerned, she was directed to go from Cardiff Central police station to the Butetown station to take a witness statement. The order to go to Butetown police station had come at about 1.45pm. Once she had begun to take LV's statement she had simply written down what LV had told her. There had been no other officer present during the time that she was writing out what LV had said.

312. Mrs Coliandris was interviewed under caution on two further occasions, on 9 June and 29 November; Mr Greenwood was interviewed on 7 February 2006. There were no further interviews with Mr Pugh. Nothing new or of particular significance emerged in the further interviews with Mrs Coliandris and Mr Greenwood although I should record that Mrs Coliandris again asserted that she had been alone with LV when she had taken her statements on 11 December 1998.

313. On 4 May Mr Thomas met with Messrs Penhale, Gavin Lewis and Monks to discuss the information/material which had been gathered as a consequence of the searches of the homes and interviews under caution of the suspects arrested in phases 1 and 2. Minutes of the meeting were produced; they demonstrate quite clearly that this was not a detailed briefing although there was a discussion about each of the police suspects who had been arrested. It is worth mentioning the minutes as they relate to the interviews with Mrs Coliandris. They reveal, quite clearly, that it had not been apparent to Mr Penhale or the other officers present at the meeting that Mrs Coliandris had been with LV only during the afternoon of 11 December 1988.

314. On 7 May Mr Coutts decided that Messrs Jennings, Stephens and Murray should be raised to suspect status and arrested. Prior to making his decision Mr Coutts considered person of interest packages prepared by Mr Penhale. This was to be the third phase of arrests.

315. Just two days later a solicitor acting on behalf of Mr Jennings and Mr Stephen wrote to Mr Cahill. The letter in respect of each was identical in its terms. It pointed out that Mr Jennings and Mr Stephen were serving police officers and it indicated that they did not wish to be arrested at their home. Mr Cahill was informed that they would willingly attend any nominated police station to answer questions; he was informed, too, that they would agree to searches of their homes. On 11 May Mr Penhale replied. He raised queries about whether the solicitor had a conflict of interest. He maintained, too, that if LW3 officers were to engage with Mr Jennings or Mr Stephen "the response adopted [would] be both measured and proportionate". In due course, the arrest strategy adopted for Mr Jennings, Mr Stephen and Mr Murray was identical to that which had been followed in the earlier phases of arrests.

316. On 17 May Mr Penhale appeared before the District Judge at Bristol Magistrates' Court to make applications for warrants to search the homes of Mr Jennings, Mr Stephen and Mr Murray. As on the two previous occasions that Mr Penhale had applied for warrants, the District Judge granted his application.

317. Mr Jennings was arrested at his home at approximately 6.15am. The arresting officer was Mr Kerley who was in company with Mr Keech. Following caution Mr Jennings said:-

> "I do, I am completely innocent. These events as you describe did not take place in this manner."

Shortly after his arrest Mr Jennings made an unsolicited comment to the effect that a search of his home would constitute a trespass because he had written to SWP to indicate that he would consent to a search of his home in the absence of his children. Nonetheless, his home was searched; nothing of evidential value was recovered.

318. During the course of 19 May Mr Jennings was interviewed under caution on a number of occasions in the presence of his solicitor. In advance of most of the interviews the interviewing officers, Messrs Kerley and Keech, disclosed the line of questioning which they proposed to take. Mr Jennings answered all questions which were put to him and denied any wrongdoing. In the main the questions asked of him focussed on his dealings with PA although he was also asked questions about the circumstances of TP's arrest on 9 December 1988. Mr Jennings was clear in his recollection that TP had attended the Butetown police station voluntarily and that he had been arrested while at that station.

319. Mr Stephen was arrested at approximately 6.13am at his home by Mr Rawles who was accompanied by Mr Parry. His home was searched but no property was seized. Before the first interview commenced Mr Stephen and his solicitor were given a disclosure briefing and he was informed that one of the major topics to be covered would be Mr Stephen's contact with PA. There followed three interviews under caution. Mr Stephen was questioned about PA primarily although other topics were also covered.

320. During the course of the afternoon Mr Stephen was given another disclosure briefing. He was told that he would be asked questions about PA and the B59. There followed two further interviews which covered those topics. Throughout all the interviews on 19 May Mr Stephen denied any wrongdoing.

321. Mr Stephen was bailed overnight and returned to Swansea Police Station the following day. Two further interviews took place and, in the main, the focus of those interviews was the arrest of TP on 9 December 1988. In advance of questioning Mr Stephen was made aware that he had made a witness statement dated 20 March 1989 dealing with this issue and he was allowed to refresh his memory from it. Like Mr Jennings his account was that TP had attended the Butetown police station voluntarily and that he had been arrested at that station some hours after his arrival.

322. Mr Murray was arrested at 6.30am by Mr Boulton. Immediately following his arrest his home was searched. Various items were removed from the property including a diary referable to the period of LW1, evidential notes prepared at the time of the

original trials and a number of photographs including a photograph of Mr Murray taken outside Llanishen Police Station at a time when he sported a beard.

323. Mr Murray was interviewed under caution in the presence of his solicitor on three occasions on 19 May. In advance of the interviews he was told what topics would be covered. The topics were quite wide ranging; Mr Murray answered all questions put to him.

324. There were a total of six interviews under caution on the following day all in the presence of Mr Murray's solicitor. In the first interview Mr Murray was asked about his involvement in LW1. He explained that he had left the investigation for some months after the initial stages but returned after Mrs Perriam had provided her evidence in November 1988. In the three interviews that followed he was asked about his contact with MG. Primarily, the focus was upon the events which occurred on 6 December but events on 22 November and 5 January 1989 were also touched upon. The sixth interview with Mr Murray followed disclosure of ESDA evidence. Mr Murray denied any wrongdoing of any kind.

325. There were no further interviews under caution with Mr Murray after 20 May. Mr Jennings was interviewed again on 12 July; Mr Stephen was interviewed on 12 July and again on 8 February 2006.

326. In the late spring/early summer Mr Thomas instructed Mr Nicholas Dean QC (as he then was) as leading counsel for the prosecution. The ambit of Mr Dean's instructions at the outset of his engagement was comparatively narrow but it was soon to change. On 16 June Mr Dean attended a conference with Mr Bennett and Mr Thomas at which Mr Coutts and Mr Penhale were also present. A number of issues were discussed as the minutes of the conference show; it is worth noting that at this very early stage of his involvement Mr Dean expressed the view that there would probably be a need for two trials; one trial in which civilians would be tried for perjury followed by a second trial involving police officer suspects.

327. On 22 June 2005 a decision was taken that Mr Powell and Mr Mouncher should be raised to suspect status and arrested. As I understand it, this decision was taken by Mr Penhale because Mr Coutts was involved in an unrelated investigation at that time. Certainly, the person of interest packages in respect of Messrs Mouncher and Powell were prepared by Mr Gavin Lewis and sent to Mr Penhale on 17 June. There is no evidence in the documentation which I have seen to suggest other than that Mr Penhale then decided that Messrs Mouncher and Powell should be arrested. Their arrest and that of Ms Carole Evans took place on 20 July.

328. There had been correspondence in April between Mr Coutts and Mr Mouncher's solicitor about the possibility of his arrest. On 11 April 2005 Mr Prowel wrote to Mr Coutts separately about Mr Mouncher. Mr Prowel indicated that Mr Mouncher would attend a police station voluntarily in order to be interviewed under caution. Mr Prowel's letter went on to indicate that Mr Mouncher wanted to "make it clear" that he was not in possession of any relevant material relating to LW1. Notwithstanding these representations Mr Coutts did not accept the offer of voluntary attendance either in April or at any other time and, as I have said, in June Mr Penhale decided that Mr Mouncher should be arrested without prior warning and without prior disclosure.

329. The arrest took place at Mr Mouncher's home at approximately 6.15am on 20 July 2005. Mr Mouncher was dressed in a suit and, apparently, awaiting the arrival of the arresting officers who were Messrs Pitchford and Taylor. Not unnaturally, the officers suspected that Mr Mouncher had been tipped off about the arrest. Following the arrest Mr Mouncher was conveyed to Swansea Police Station and his home was searched. During the course of the search officers discovered diaries relating to the period of Mr Mouncher's involvement in LW1. Those diaries were seized together with other items.

330. Prior to the commencement of the first interview under caution the interviewing officers, Messrs Pitchford and Taylor held a disclosure briefing with Mr Mouncher's solicitor. During the course of the day there were two further disclosure briefings prior to interviews under caution. At the outset of the first interview under caution Mr Mouncher read a prepared statement in the following terms:-

> "During the course of the Lynette White enquiry I did not participate in any activity which was unlawful and I consider that I always acted with integrity….. I emphatically and categorically deny that I entered into any conspiracy to pervert the course of justice, any false imprisonment, or any misconduct in public office. I am aware of your primary disclosure and your interview objectives at this moment in time and at this moment in time I intend to remain silent."

Thereafter during the course of seven interviews under caution Mr Mouncher declined to answer any questions which were put to him (save one).

331. Mr Mouncher was bailed overnight. On 21 July further disclosure briefings were provided and there were five interviews under caution. Mr Mouncher exercised his right to remain silent in all the interviews except that at the conclusion of the last interview Mr Mouncher's solicitor read a prepared statement which was in the following terms:-

> "With, with regard to the disclosures that have been made to me today, I wish to emphasise that during the Lynette WHITE murder enquiry I did not participate in, or instigate any activity which I believed was unjust, unfair, unlawful or intimidatory. At no stage, when witnesses were interviewed, did I involve myself in any conduct which was aggressive or inappropriate and I categorically refute any suggestion that I used behaviour which could, in any way, cause any person to fabricate evidence. With regards to the ESDA findings, I have no recollection of officers appraising me of the difficulties encountered when writing and reading statements over to the persons who sought to change specifics. Albeit that the witnesses in this case were difficult, contradictory and required a lot of patience. I would however state that to my knowledge, that whilst it was not common practice to rewrite statements on individual pages when errors or changes in an account occurred, it is evident that some officers preferred to do this rather than add in alterations at the end of a statement following

> it being read. At that time the Criminal Investigations and Proceedings Act was not in being, which would have prevented such a practice, or the loss of the appropriate subject matter. In the case of this enquiry, I do not believe there was anything sinister involved and the evidence was subjected to the neutral scrutiny of a court. In relation to the recovery of my diary, it is fortuitous that it has been found by the POLSA search team, for I honestly believed that I did not possess any documentation which could assist the enquiry at my home and it now affords me a more accurate synopsis of my actions at the time of the enquiry."

332. Mr Powell was arrested at his home by Mr Rawles at 6.20am on 20 July 2005. Following caution Mr Powell replied:-

> "It's an absolute long time ago. I can remember virtually nothing about it. Coming here at this time of the morning I find intimidation. It is bullying tactics by senior officers of South Wales Police. I have absolutely no confidence in the way the investigation has been carried out."

333. Following his arrest Mr Powell's home was searched. Nothing of evidential significance was recovered.

334. There were four interviews under caution on 20 July in the presence of Mr Powell's solicitor. They were preceded by disclosure briefings. The fourth interview focused upon MG's allegation that Mr Powell had threatened and pressured him until MG had said what the police wanted to hear. Mr Powell strongly denied the allegation. He asserted that MG's allegations were "a complete fabrication" and he described MG as a "proven liar".

335. Mr Powell was bailed overnight and he returned to Swansea Police Station on 21 July. There were two further disclosure briefings and two further interviews under caution. The first disclosure briefing concentrated upon the ESDA evidence; when Mr Powell was asked about the ESDA evidence in interview he stressed that he had no direct involvement in taking statements and no supervisory role in relation to the taking of statements.

336. During the course of one interview Mr Powell made a remark to the effect that had LW3 officers treated him as a witness and not a suspect there would have been quite a lot that he could have said; as it was his recollection was very poor. Perhaps not surprisingly, some significance is attached to this remark by Mr Johnson QC and his team.

337. The last Claimant to be arrested during 2005 was Mr Morgan. On 28 April 2005 solicitors acting on behalf of Mr Morgan had written to Mr Coutts to indicate that Mr Morgan would be happy to attend for interview on a voluntary basis. In his witness statement in these proceedings Mr Morgan told me (and I accept) that on the same date he deposited his diaries for the period of his involvement in LW1 with his solicitor, although there was no mention that this had occurred in the letter to Mr Coutts. An exchange of correspondence took place between Mr Penhale and Mr

Morgan's solicitors over the course of the next few weeks but all that Mr Penhale would say was that Mr Morgan would be dealt with in a measured and proportionate manner. At this point in time i.e. the spring and early summer of 2005 the probability is that Mr Morgan was not a suspect. Certainly, that is my reading of the relevant sections of the LW3 Policy Log.

338. On 21 September 2005 Mr Gavin Lewis sent Mr Penhale a person of interest package in respect of Mr Morgan. It recommended that he should be arrested; it also recommended that he should be arrested without pre-disclosure or warning. In this case there is no doubt that it was Mr Penhale who made the decisions about Mr Morgan's arrest; Mr Penhale recorded his decisions in his own handwriting in the person of interest package.

339. Mr Morgan was arrested by Mr Pitchford at approximately 6.40am on 12 October 2005. During the course of that day there were five interviews under caution in the presence of Mr Morgan's solicitor. Messrs Pitchford and Taylor were the interviewing officers and there were two separate disclosure briefings. Mr Morgan answered all the questions which were put to him. During the course of the third interview Mr Morgan stressed that during the latter stages of the period leading up to the arrest of the original defendants he had spoken frequently with Mr Hywel Hughes whom Mr Morgan described as a Branch Crown Prosecutor and the CPS Liaison Officer although he did not specify in detail what the conservations had been about.

340. The next day there were five further interviews under caution in the presence of Mr Morgan's solicitor. There were further disclosure briefings in advance of some of the interviews. Throughout Mr Morgan denied any wrongdoing or being aware of any wrongdoing on the part of any of the LW1 officers.

341. There were three further interviews with Mr Morgan on 23 November 2005. Mr Mouncher was interviewed, again, on 14 December and 9 February 2006. There were no further interviews with Mr Powell.

342. There was one further arrest of a police suspect in 2005. Some weeks after Mr Morgan's arrest Ms Joy Lott, was arrested. Mrs Lott had been heavily involved in Operation Safehouse.

343. Throughout 2005, the police provided the CPS with substantial further documentation. What follows is a chronology taken from the Management Case File. I detail only those documents which are most relevant to these claims. On 13 January 2005 the police provided a file of evidence in respect of LV together with a copy of the most recent "emerging findings" document. On 1 February person of interest/suspect packages were provided in respect of Mr Daniels, Mr Gillard, Mrs O'Brien, Mr Page and Mr Seaford. On 23 February a file of evidence was provided in respect of MG together with statements made by Dr Richardson. On 17 March files of evidence were provided in respect of three civilian suspects, including PA. On 2 June 2005 the most up to date "emerging findings" document in respect of Mr Page was provided to the CPS. On the same date the police provided a number of other documents relating to the arrest and interview of Mr Page and Mrs Perriam. On 18 July the police provided a copy of the lecture programme which had been devised by Mr Hywel Hughes for lectures which he had delivered at universities in 1991. On 27

October interim reports were provided in respect of a number of the Claimants and Ms Cuddihy.

344. It was also in 2005 that the CPS began to get to grips with 54 boxes of documents which had been located at its Cardiff Office which related to the trials of the original defendants. Throughout the year work was carried out by the CPS to schedule all the documents and to ensure that they were preserved in a manageable form.

345. There was comparatively little direct contact between police officers and the original defendants during 2005. RA was due to attend a meeting (accompanied by his solicitors) on 7 June but he failed to attend. Such attempts as there were to arrange meetings with TP, JA and YA were unsuccessful. There were, however, meetings with SM. During the course of the summer, a decision was taken that SM should be treated as a vulnerable witness on account of his psychiatric/psychological state. Ms Jayne Hill was given the task of taking a witness statement from him. On 7 September four interviews with SM took place. The interviewing officers were Ms Hill and Mr Monks; SM was accompanied by his solicitor, Mr Gold, his girlfriend Olivia and Dr Harris, the clinical psychologist. The interviews were video recorded. On 9 September a further three interviews took place which were also video recorded and at which the same persons were present.

346. A summary of SM's answers to questions in each interview can be found in the witness statement of Ms Hill at paragraphs 135 to 143. The effect of what SM alleged was that he had been "framed" by police officers, some of whom had behaved aggressively towards him. He recalled that he had been interviewed under caution in 1988 by two pairs of officers. He alleged that Messrs Greenwood and Seaford had acted aggressively towards him whereas Messrs Evans and Murray had been "the nice guys". SM said that as a consequence of aggressive interviewing he made admissions which were false. He expressed the belief that Messrs Powell and Mouncher were the driving forces behind the investigation.

347. During the course of 2005 there was contact between Mr Coutts and/or Mr Penhale and representatives of the IPCC, the IAG and the Independent Investigative Consultants. In particular there was a meeting on 26 September which was attended by Messrs Coutts, Penhale, Ross and Pyke. (Mr McGookin was unable to be present). On 1 October Messrs Ross and Pyke wrote a detailed letter to Mr Cahill. They offered their views on the justification for the arrest policy which had been adopted in respect of the police suspects (they fully supported it); they encouraged LW3 officers to persist in attempts to interview RA and YA and they expressed themselves in robust terms about a forensic review which was ongoing into the forensic evidence which had been submitted at the trial of the original defendants.

348. On 22 December a decision was made that Mr John Williams should be made a suspect and that he should be arrested early in 2006.

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349. Both Mr John Williams and Mr Ken Davies were arrested and their homes searched. Mr Williams was arrested on 12 January and interviewed under caution following his arrest. Mr Davies was arrested on 12 April and interviewed under caution on that day and also on the 14th.

350. At some stage which is not pin-pointed precisely in the evidence Mr Thomas instructed Mr Dean and Mr Bennett to undertake a review of the case against all or, at least the vast majority of, those persons, civilians and former/serving police officers, who had been arrested. 32 suspects were considered; 13 civilians and 19 police officers/former officers. In accordance with their instructions Messrs Dean and Bennett produced a comprehensive written review on 9 August. In the course of the trial this document was often referred to as "the Dean Review" (a phrase which I shall adopt) although I should record that significant parts were written by Mr Bennett.

351. The Dean Review is in six parts and it runs to 251 pages (see Volume 13 Core Bundles pages 9000 – 9251). I cannot possibly do justice to this document by attempting a précis. It suffices that I state its conclusions, baldly, at this stage and leave some of the detail to be dealt with when I consider individual cases. First, the evidence available did not support the conclusion that LW1 officers had conspired together to "frame" the original defendants i.e. there was no plan "to set them up as defendants in the knowledge or belief that they were innocent". Rather it was much more likely that rumour gained a foothold amongst officers which, in turn, became a belief that the original defendants were responsible for Lynette's murder. The evidence was then "moulded" to substantiate that belief. Second, the core four, Mrs Perriam and Mr Massey should be charged. Counsel advised that all those persons (with the exception of PA) should be charged with perjury; PA should be charged either with providing false witness statements to the police or perverting the course of justice. Third, a number of the police suspects who had been arrested should not be charged: they were Messrs John Williams, Ken Davies, Ms Carole Evans, Ms Cuddihy, Ms Lott, Mr Morgan Mr Greenwood and Mrs Coliandris. Fourth, Messrs Mouncher, Powell, Pugh, Jennings, Stephen, Seaford, Daniels, Gillard, Page, Murray and Mrs O'Brien should be charged; counsel recommended that those suspects should be charged with conspiracy to pervert the course of public justice. Fifth, as had been foreshadowed from the beginning of Mr Dean's involvement, there should be two trials. The first trial would involve the core four; the second trial would involve the police suspects named above together with Mrs Perriam and Mr Massey.

352. The Dean Review made it very clear that the prosecution of the core four was justified only because this would be the best way to ensure that the core four would be prepared to give evidence against the police suspects whom counsel recommended for prosecution. Counsel were very clear in their view that there would be no proper basis for prosecuting the police suspects unless the core four gave evidence against them. They were equally clear that it would not be in the public interest to prosecute the core four alone i.e. with no police officers facing prosecution.

353. For some months prior to the date of the Dean Review there had been regular meetings between counsel, Mr Thomas and other employees of the CPS and LW3 officers. During the course of the trial I was shown minutes of meetings which took place on 6 March 2006, 6 June 2006, 29 June 2006 and 24 July 2006. Many issues relevant to the Dean Review were discussed by the persons present at those meetings. One of the issues discussed was whether the suggestion should be made to the core four that the CPS would be willing to enter into agreements under the newly enacted Serious Organised Crime and Police Act 2005.

354. I need not delve into the detail of this statute. It is sufficient to say that there is a provision within the Act (section 73) which permits an offender who pleads guilty to

an offence to enter into a formal agreement with the prosecutor to provide assistance to the prosecution either in relation to that offence or any other offence. If such an agreement is concluded the judge sentencing the offender may reduce what would otherwise be an appropriate sentence to reflect the assistance given.

355. Over many months from about June onwards the possibility of an agreement under the 2005 Act was actively explored, particularly with LV and MG and their lawyers. Ultimately none of the core four concluded such an agreement. However both LV and MG were interviewed on a number of occasions in the latter part of 2006 as a precursor to them making formal witness statements which, in due course, would have been relied upon in the prosecution of the Claimants.

356. On 17 September 2006 a number of LW3 officers met with Mr Dean, Mr Bennett, Mr Thomas and another CPS lawyer, Mr Howard Cohen, in order to discuss aspects of the Dean Review. Mr Cohen was also a senior employee of the CPS. Originally he was named as potential witness for the Defendant, but, in the event, he did not give evidence. His precise role in relation to LW3 was not described in evidence but he was, clearly, a senior lawyer who played an important part in the decision making process leading to the charging of the police suspects. The LW3 officers who were present included Messrs Coutts and Penhale but there were also in attendance those officers who had been responsible for investigating and interviewing under caution those of the police suspects who had not been recommended for prosecution. No doubt Mr Coutts had arranged for those officers to be present so that they could provide their view as to the strength of the case against those suspects. It seems clear that Messers Coutts and Penhale and the officers from LW3 who had investigated Mr Morgan, Mr Greenwood Ms Lott and Mrs Coliandris were not content to accept the advice of counsel that those suspects should not be prosecuted. They asked that the lawyers should reconsider the position of those suspects.

357. On 27 September Mr Thomas produced his own written comments on the Dean Review. His views upon the public interest in prosecuting the core four were somewhat different to those which had been expressed in the Review. However, he, too, concluded that if there was no prospect of prosecuting police officers the core four should not be prosecuted. He expressed the clear view that unless there was to be a prosecution of police officers no civilian should be prosecuted.

358. On 19 October Mr Newell, a principal legal adviser to the Director of Public Prosecutions ("the DPP") and, therefore, a very senior lawyer, prepared a briefing note for the DPP. He referred to the Dean Review and Mr Thomas' comments on it and expressed himself in agreement with the proposal that the core four should be prosecuted and that thereafter they should be called to give evidence against those police suspects whom counsel had recommended for prosecution. Mr Newell also considered other possibilities. He expressed himself thus :-

> "9. It seems to me that the only alternatives to the suggested way forward are:
>
> (i) To seek to draw a line under the whole sorry saga and decide that no one should be prosecuted for anything. This, in my opinion, is not acceptable – and anyway, it would not

> work. Such a decision would certainly not draw a line under the whole sorry saga; or
>
> (ii) To decide not to prosecute the four core witnesses and merely call them as witnesses. For the reasons set out at length in counsel's Draft Review Note, this approach would not be likely to result in a successful prosecution of police officers.
>
> 10. For these reasons, I agree with the proposed way forward in relation to the four core witnesses: that is, to their prosecution on the back of section 73 agreements. As already mentioned, this is a step-by-step approach, which will need to be reviewed at each key stage."

359. The Independent Investigative Consultants were kept informed about this proposed approach; on 6 November 2006 they were briefed at a meeting with LW3 officers. As was their custom, they wrote to Mr Coutts shortly thereafter setting out their views on this and other issues which had been discussed. (Volume 15 Core Bundles pages 10799 to 10800).

360. On 4 December Mr Thomas prepared a briefing note for the DPP. He then anticipated that LV and MG would conclude agreements with the CPS under the 2005 Act. By this time draft witness statements had been prepared. However, on 7 December Mr Bennett advised that the draft statements were inadequate because their wording/structure was too vague and generalised, there was important explanatory evidence missing and important incriminating evidence was also missing. On 10 December the draft statements were discussed further at a conference attended by Mr Dean, Mr Bennett, Mr Thomas, Mr Howard Cohen, Mr Coutts and Mr Penhale. The draft statement of LV was discussed again in conference with Mr Bennett on 4 January 2007.

361. For completeness, I should record that during 2006 significant further documentation was provided by the police to the CPS. In particular significant material from the original investigation was supplied; the documents are all identified in the Management Case File (see Core Bundles volume 10, pages 7301 to 7304).

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362. In January and February draft statements for LV and MG were finalised. There were consultations with Mr Dean which involved CPS representatives and police officers. On 23 January Mr Thomas sent instructions to Mr Dean and Mr Bennett with a view to counsel advising in conference and thereafter in writing upon the adequacy of the draft statements of LV and MG. Three days later further instructions were sent asking Counsel to consider the case as a whole. In response, Counsel provided two advices, dated 8 and 10 February. Counsels' advices were considered at a conference held on 12 February attended by Messrs Coutts, Penhale, Monks, Dean, Bennett, Thomas, Cohen and other employees of the CPS. On 14 February Mr Thomas wrote a briefing note which was circulated to senior lawyers within the CPS (Ms Carmen Dowd, Mr Askar Husain and Mr Cohen). Having set out the pros and cons surrounding a prosecution of the core four and how this might impact upon a prosecution of the

police suspects Mr Thomas expressed the clear and unequivocal view that the core four should be prosecuted and charged at the first available opportunity. On 16 February Mr Thomas provided a further briefing note to Ms Dowd (copied to Mr Cohen) and on 19 February he provided a briefing note to the DPP and Mr Newell (copied to Ms Dowd). It is necessary to set out that briefing note in full:

> "Following the receipt of Counsel's written Advice (attached), the position of all remaining 23 suspects was discussed in conference on 12 February, 2007.
>
> At that conference it was agreed that:
>
> - The evidence provided in the draft witness statements of GROMMEK and VILDAY, which is in accordance with what they have already said in interview, provides sufficient evidence to disclose a realistic prospect of conviction against 6 police officers and one civilian in relation to offences of conspiracy to pervert the course of justice;
>
> - The evidence disclosed in the interviews of PSAILA and/or ATKINS would (if available) provide sufficient evidence against a further six suspects (5 police officers and 1 further civilian). This can be summarised as follows:
>
> (i) Evidence from VILDAY and GROMMEK only – 6 police officers and 1 civilian (Massey);
>
> (ii) Evidence from VILDAY, GROMMEK and PSAILA – 8 police officers and 1 civilian (Massey);
>
> (iii) Evidence from VILDAY, GROMMEK and ATKINS – 8 police officers and 1 civilian (Massey); and
>
> (iv) Evidence from all four – 11 police officers and 2 civilians (Massey and Perriam).
>
> - The evidence currently available does not disclose sufficient evidence against the remaining six suspects.
>
> The draft SOCPA statements of Grommek and Vilday are now in the hands of their representatives, to be agreed. The process for Vilday's solicitor is a lengthy one but there is no reason to believe that this will not be completed shortly. However, it appears that GROMMEK has been advised to "sit and wait" – on the advice of Counsel. It is clear that he has been advised to see if he is charged before formally agreeing to assist. VILDAY may well come to the same position as GROMMEK (as we know their solicitors have been in contact).

The conclusions that can be drawn from speaking to GROMMEK's Solicitor are that:

- Unless charged, GROMMEK will not assist
- GROMMEK accepts that he will be charged
- GROMMEK has no alternative but to plead guilty
- If charged GROMMEK will request Assisting Offender status
- GROMMEK is prepared to call our bluff.

Agreement has already been reached that if the four core witnesses were the only individuals likely to be prosecuted, then the public interest would, in such circumstances, marginally favour none being prosecuted. At the present time, there is still a reasonable prospect that others, particularly police officers could be charged at some point.

The only issue is whether, we should in the absence of the agreed statements and S73 agreements with VILDAY and GROMMEK, authorise the charging of the four core witnesses. This was discussed with Counsel and it is fair to say that there is a divergence of opinion. Counsel and I believe that we should proceed to charging the four on 27 February, 2007 (Howard believes charging should wait until the SOCPA statements are agreed). Given the GROMMEK position outlined above – this is unlikely to occur – and therefore the whole case fails.

The impact on the local community cannot be underestimated. It is an unattractive option to have to re-bail all of the suspects again in the hope that VILDAY's solicitors concludes his task of agreeing the statements and that GROMMEK gets tired of waiting.

At the moment, all of the attention is focused on the 27 February and lack of progress will start to have a negative impact – the IPCC, the Welsh Assembly and local MPs are all actively following the case as are sections of the national media (Daily Mail most notably) – and we will have to provide some explanation.

Proposal

CPS to authorise charge of all four core witnesses with offences of perjury on 27 February.

> To notify the police of the intention to give this authority by the close of play on 20 February (to allow time for the mechanics of the charging process to be put in place).
>
> The press strategy will make it clear that this is the next part of the decision making process and that review will be continuous.
>
> We will keep everything under the closest scrutiny."

363. On the same date Ms Dowd sent an email to the DPP and Mr Newell in which she expressed her agreement with the proposal that the core four should be charged. The next day an email was sent to Ms Dowd and Mr Newell on behalf of the DPP. It reads:-

> "Carmen,
>
> Chris Newell has considered Ian Thomas' review note and he has advised the Director as follows:
>
> *"This case remains extremely difficult – and I know that you remain extremely concerned by it. Our strategy has, for sometime, been to press the four core witnesses as hard as we can, in order to secure their evidence against the police officers behind the original convictions. We, in turn, are being pressed by the core witnesses – but this proposed course of action remains consistent with our agreed strategy. The future of the case is fraught with difficulties; but I am still of the view that to do nothing, in relation to what was undoubtedly an appalling miscarriage of justice, would be unacceptable. With no lack of foreboding, I agree that the four should be charged."*
>
> The Director has responded: "*I continue to have serious concerns about this case. However for the reasons set out by Chris Newell, I approve this step.*""

364. On 27 February the core four were charged with offences of perjury. AP, LV and MG were charged with three offences relating to the evidence which they had given at the committal hearing and the first and second trials of the original defendants; PA was charged with two offences relating to his evidence at the committal proceedings and the second trial.

365. It was also on 27 February that Mr Coutts wrote to Mr Greenwood, Mr Morgan and Mrs Coliandris to inform them that they would not be prosecuted. The letter to each was in identical terms as follows:-

> "Re: Lynette White –Re-investigation Phase III
>
> I am writing to inform you that the Crown Prosecution Service has made the decision not to prosecute you in respect of the above investigation. This decision has been taken because

> there is insufficient evidence to provide a realistic prospect of conviction.
>
> This decision has been taken on the evidence and information provided to the Crown Prosecution Service as at the date of this letter. If more significant evidence and/or information is discovered at a later date the decision not to prosecute may be reconsidered.
>
> In rare cases a decision not to prosecute may be reconsidered if a new look at the decision shows that it was clearly wrong and should not be allowed to stand."

366. For most of the remainder of the year the focus of LW3 was upon the prosecution of the core four. However on 23 April 2007 Mr Coutts made the decision that Mr Hicks should be made a suspect and that he should be arrested. Unlike the other Claimants Mr Hicks was not arrested at his home. He was invited to attend the Swansea Police Station on 26 June and, following his arrival at the police station, he was arrested by Mr Morris who was in company with Mr Kerley.

367. In July Mr Thomas ceased to be the reviewing lawyer. His replacement was Mr Gaon Hart. Mr Hart gave evidence before me on behalf of the Claimants. He, too, produced a bundle of documents which, as I have said, I will refer to, when appropriate, as "The Hart Bundle". It is divided into six sections. The Bundle, as a whole, spans the period from Mr Hart's appointment in the summer of 2007 to 30 November 2010.

368. Throughout 2007 there was growing unrest on the part of the Claimants who were subsequently prosecuted about the length of time which they had been on bail. In April six of the Claimants threatened a claim for judicial review. In a reply dated 1 May Mr Leighton Hill, then the Assistant Director of Legal Services for SWP, replied in detail and said in terms:-

> "Following regular meetings with the Director of Public Prosecutions, leading and junior counsel for the Crown, a decision has been made that a final decision as to whether your clients should be charged will not be made until the conclusion of the criminal prosecution of Leanne Vilday, Angela Psaila, Mark Grommek and Paul Atkins. Once this prosecution has concluded, leading counsel will be instructed to advise on the evidence against your clients. This process is, however, under continuous review."

In a letter dated 5 November 2007 from Mr Hart to Mr Coutts Mr Hart made it clear that no charging decision would be made in respect of any of the police officer suspects until the conclusion of the trial of the core four.

369. As 2007 unfolded LW3 officers sought to get to grips with disclosure in the proceedings against the core four. At some stage a major incident room was set up at premises owned by the Ministry of Defence at RAF St Athan. A number of LW3 officers were located at those premises from that time onwards. It is common ground

that the documents to be considered were voluminous. In July, Mr James Haskell, a barrister and a colleague of Mr Bennett in Chambers in Bristol, was instructed specifically to assist the police in managing disclosure. To use Mr Haskell's words he was instructed "as disclosure Counsel". As he describes in his witness statement the process of disclosure was already underway; Mr Thomas was in control of the process and Ms Hill was the lead disclosure officer. I do not propose to describe the process of disclosure in the proceedings against the core four. It is sufficient to observe that many of the practices adopted in the proceedings against the core four informed the management and process of disclosure once proceedings were instigated against the prosecuted Claimants – as to which see below.

2008

370. Between 7 and 9 January 2008 a hearing took place at the Cardiff Crown Court at which the core four applied to stay the proceedings against them on the grounds of abuse of process. The application failed.

371. During 2008 there was growing concern about whether PA could properly be tried on account of his mental condition. Specifically it was being asserted by his lawyers that he was unfit to plead in accordance with what lawyers call "the Pritchard Criteria" – see *R –v- Pritchard* (1836) S7 C&P 303. Under cover of a letter dated 15 May PA's solicitors disclosed reports from Dr Kahtan, a consultant forensic psychiatrist and Dr Kirkby, a consultant forensic clinical psychologist which justified those assertions.

372. Faced with this evidence Mr Cohen instructed Dr Philip Joseph, a consultant forensic psychiatrist and Dr Julian Walker, a consultant forensic psychologist to prepare reports upon PA on behalf of the prosecution. By 4 July Dr Joseph had furnished the CPS with his report. On that date Mr Hart wrote an email about the contents of Dr Joseph's report. The email was sent to Mr Simon Clements who was head of the Special Crime Division at the CPS and a number of other people including Mr Dean QC, Mr Bennett and Mr Cohen. Mr Hart wrote:-

> "We have just received our Psychiatrist's Report (Dr Philip Joseph) after his examination of Mr Atkins.
>
> He concludes that Mr Atkins is unfit to plead and stand trial. He also concludes that Mr Atkins is under such a disability that he could not form the specific intent for the offence of perjury. He states that he is unable to resist suggestions made to him in cross-examination and as Mr Atkins only perjured himself under cross-examination he could not have formed the requisite intent. He finally respectfully recommends to us that the case against the defendant is discontinued.
>
> This obviously causes us considerable concern with regard to our prosecution, particularly coming from our own expert. Realistically his comments probably go beyond his expertise (as to the element of 'wilfully' within the legal definition of perjury), but cannot be ignored.
>
> …….

> In any event this requires thought and consideration and hence I have suggested that if possible we cancel Monday's examination of Mr Atkins by the Psychologist and save ourselves the fees until such time as we have had an opportunity to review this new evidence……."

On the same day Mr Cohen cancelled the appointment with Dr Walker.

373. On 7 July Mr Clements emailed Mr Hart suggesting that he should discuss Dr Joseph's views with Mr Cohen and then prepare a short options paper. On the same day Mr Hart sent the first draft of that paper to Mr Cohen. They must have worked together very promptly because later that same day their finalised version was sent to Mr Clements – (see pages 39 to 44 of section A of the Hart Bundle). In this judgment it is sufficient to set out the summary which Messrs Hart and Cohen provided at the end of their document. It reads:-

> "Dr Joseph's findings, within his area of expertise, are credible and must be accepted and it is not proposed to contest the defence application that Mr Atkins is unfit to plead.
>
> Dr Joseph's comments on areas, outside of his expertise, are not relevant. Both reviewing lawyers agree to this point. However, reviewing lawyers wish for consideration of two opposing contentions:
>
> 1. That despite potential criticism from the court, it is considered in the public interest to pursue this case further and it is for the court to decide whether they should proceed to a trial of the facts. Public interest factors include: the victims and society's interests in the Crown pursuing such serious offending fully; the fact that a trial is to take place in any event and the consideration as to the impact on the case against co-defendants. This is whether or not the court will ultimately order an absolute discharge.
>
> 2. That Dr Joseph should be asked to produce a further report indicating his ultimate recommendation to a court and if he recommends an absolute discharge then the case should be discontinued against Mr Atkins."

374. The case against the core four was due to be discussed at a "Director's Case Management Panel" on 9 July. It is clear from the documentation that Mr Hart was anxious that a decision should be taken about PA at this meeting. Unfortunately, however, neither Mr Dean QC nor Mr Coutts had considered Dr Joseph's report by the time the meeting took place on 9 July.

375. At just after 6.00am on 9 July Mr Bennett sent Mr Hart an email asking what time the Panel was due to meet and informing him that Mr Dean would be back in the UK on 10 July. At about 7.30am Mr Hart replied:-

> "12.00pm (finished by 12:01 probably!)."

376. At 11.48am Mr Bennett emailed Mr Hart providing "some brief thoughts" although, in reality, the email was a reasonably detailed analysis of the various possibilities which arose as a consequence of Dr Joseph's opinion. It is of some note that the email began by suggesting to Mr Hart that there should be no knee jerk reaction and that any decision about PA should be deferred until Mr Dean's input had been secured.

377. The Panel convened at the appointed time. It was constituted by the DPP, Mr Newell, Mr Clements and a Mr Przybylski. Messrs Hart and Cohen were invited to attend but, for whatever reason, Mr Cohen was absent.

378. Minutes of the meeting were taken. The Panel concluded that in the light of Dr Joseph's report it was not in the public interest to continue the prosecution against PA. Actions were agreed as follows:-

- "Prosecution to offer no evidence against the defendant Atkins.
- The matter should be listed formally in order to explain to the Court the basis of the decision.
- If Counsel take the view that the Report of Dr Joseph should be disclosed then they should provide that Advice in writing to the Panel.
- An urgent review of the evidence against the officers should be made."

379. It is something of an understatement to say that Messrs Coutts and Dean disagreed with the decision which had been taken by the Director's Panel. Mr Coutts registered a number of complaints many of which related to the process by which the decision was made. Mr Dean felt that no decision should have been taken until a consultation had been arranged with Dr Joseph so that his views were thoroughly explored. I have no doubt that Messrs Coutts and Dean were exasperated with the decision and also with Mr Hart whom they believed had driven the decision making process.

380. Their exasperation was compounded over the course of the next few days. In that period Mr Hart made it clear that his view was that those of the Claimants who were implicated in criminal conduct solely or at least mainly by reason of their contact with PA during LW1 should be notified that no further action should be taken against them. That suggestion on the part of Mr Hart provoked email correspondence between Mr Dean and Mr Hart which was, on one view, robust but on another, barely civil.

381. On 17 July a meeting was convened and attended by Messrs Dean, Bennett, Coutts, Monks, Cohen, Hart and a Mr MacKenzie (an employee of the CPS). The meeting had been arranged, specifically, to identify the way forward following the decision relating to PA. In the Hart Bundle there are two versions of the minutes. In one version there came a point when Mr Coutts was "shouting furiously" at Mr Hart. Whether or not that is strictly accurate matters not; it is clear to me that the meeting, at least in parts, was acrimonious. Despite the acrimony, however, those at the

meeting identified that those police suspects who were implicated most by PA were Mr Jennings and Mr Stephen. It was agreed that Mr Dean would write an opinion in which he made an assessment of the case against them.

382. Mr Dean advised in writing on 21 July 2008. The advice was sent to Mr Cohen because Mr Dean believed Mr Hart to be on holiday. In fact Mr Hart commented upon the advice in an email sent on 21 July to Messrs Cohen, Husain and Clements. The email was critical of the advice. It suggested, in terms, that Mr Dean was unhappy that decisions were being made by Mr Hart/the CPS when, hitherto, decisions in relation to the case had been made by Mr Dean in consultation with Mr Coutts and other LW3 officers.

383. On 23 July, at a hearing at Cardiff Crown Court, the prosecution formally offered no evidence against PA. It explained the basis of that decision to the court namely that medical evidence which had been obtained on behalf of PA and the prosecution was in agreement and to the effect that PA was not fit to plead. Contrary to expectations, leading counsel for PA asked that the indictment against him should be put so that there could be directed verdicts of not guilty. The Judge refused to accede to that course. As I understand it, he directed that the indictment should be marked "not to be proceeded with without the leave of the court or the Court of Appeal", an order which is sometimes made in circumstances such as these.

384. On 24 July Messrs Hart and Cohen provided a briefing note for the DPP. There is no hiding the fact that they expressed substantial criticism of Mr Dean's advice of 21 July in this report. Despite that, they expressed the view that their debate with leading counsel and Mr Coutts had not led to a complete breakdown in relations and, so it was said, the concerns of Mr Dean and Mr Coutts about the decision in relation to PA had passed.

385. Mr Hart was very anxious that Mr Dean's advice of 21 July should not be sent to LW3 officers. During the time that Mr Thomas had been the reviewing lawyer it had been standard practice for advices and or notes produced by counsel to be sent to Mr Coutts. Mr Hart considered that this practice was against departmental instructions. The sharing of counsel's advice with the police was to become a bone of contention later in the year.

386. The trial of PA, LV and MG was due to begin on 7 October. On that date and before a jury was sworn AP and LV pleaded guilty to one count of perjury; that count which related to their evidence in the re-trial of the original defendants. Their pleas were accepted by the prosecution. MG pleaded not guilty to all counts against him and his trial began and continued over some days. After a legal argument about whether the defence of duress was open to him, MG, too, decided to plead guilty – in his case he pleaded guilty to all counts laid against him. Sentence on all three was adjourned to December.

387. Sometime after AP, LV and MG had been convicted Messrs Dean and Bennett were asked to provide a further review of the case against the police suspects. They provided that review together with a draft indictment on 5 November. This document has been referred to as the "Dean Update" and I too will use that phrase. The Dean Update reaffirmed that the police suspects recommended for prosecution in the Dean Review should be prosecuted for perverting the course of justice. The update

suggested that the position of Mr Greenwood should be looked at again in conference. On 7 November counsel produced a document which was headed "Note on Indictment and Legal Review". The document set out to justify the form of the draft indictment which Mr Dean and Mr Bennett had provided.

388. On 11 November a conference took place in two parts. In the first part, those present were a number of CPS lawyers and Messrs Dean and Bennett; in the second part the lawyers were joined by Messrs Coutts, Penhale and Monks. The meeting amongst the lawyers began with Mr Husain explaining that copies of advices from counsel should not be sent to the police. Mr Dean registered his disagreement. There followed a discussion about the charge or charges which should be laid against the police suspects. Mr Dean was asked to provide a written advice about the appropriateness of particular charges. When the police officers joined the conference Mr Dean asked Mr Husain to explain why it was that counsels' advices would not be sent to the police in the future. There followed a discussion which, according to the minutes, became very acrimonious. Further acrimony was engendered when Mr Hart suggested that the core four should be interviewed yet again with a view to making comprehensive witness statements. Messrs Dean, Coutts and Penhale opposed that suggestion.

389. Towards the end of the meeting Mr Cahill and Mr Tom Davis from the IPCC joined the meeting. They were told that a number of decisions had been agreed; in particular it had been agreed that Messrs Hart and Bennett were to prepare a file of possible defendants by the end of the year and that Mr Dean was to prepare a review by 16 January 2009. Mr Cohen explained to the meeting that Mr Hart, as the reviewing lawyer, aimed to complete a review of the case and reach a decision about which, if any, suspects were to be charged by early March 2009.

390. In the aftermath of this meeting there was a good deal of email correspondence particularly about the issue of whether comprehensive witness statements should be taken from the core four. Initially, Mr Hart wanted the statements to be taken by CPS personnel who were specifically trained not just in taking statements but in assessing the credibility of the persons from whom statements were being taken. This suggestion was opposed by Messrs Dean and Coutts. Ultimately, it was agreed that the core four should make comprehensive witness statements but that they should be taken by LW3 officers.

391. AP, LV and MG were sentenced on 19 December 2008. The sentencing judge was Maddison J. Mr Dean opened the case on behalf of the prosecution and counsel for AP, LV and MG made detailed submissions in mitigation. It was common ground between prosecution and defence, as recorded in the judge's sentencing remarks, that AP, LV and MG had committed the offences of perjury because they were "seriously hounded, bullied, threatened, abused and manipulated by the police during a period of several months leading up to late 1988."

392. In his witness statement Mr Bennett describes a conversation he had with Mr Hart almost immediately following that hearing. Mr Hart explained to Mr Bennett that he had reached the view that no further suspects should be charged because of concerns about the reliability of the core four. He asked Mr Bennett to assist on the issue of the credibility of the core four and it was agreed that Mr Bennett would produce, in writing, an analysis of their credibility.

393. In early January Mr Bennett produced a document in two parts. Part 1 is headed "Credibility of the Core Four". Part II is headed "Specific Suspect Analysis". On any view this was an extensive piece of work. As Mr Bennett acknowledges in his witness statement, an assessment of the credibility of the core four was a complicated task. I can do no better than quote his words as to what he did:-

> "65. Analysing the credibility of the core four was a complicated task. It was a substantial piece of work. It was clear to me that the CPS wanted an extremely thorough and 'warts and all' analysis to inform their charging decision. I included all matters that I believed capable of undermining their credibility. I decided to break it down into two parts. Part 1 the credibility of the core four and Part II specific suspect analysis ……..My view was that it was wrong simply to consider weaknesses in the characters of the core four. An assessment could not be made of their reliability on evidential matters without looking more widely at what independent support and corroboration existed. I maintain my earlier view that the evidential test was passed for the police and civilian suspects who were later charged and this included Mr Greenwood. During the process of drafting I called for documents and information from the police relevant to the issues at hand. I recall in particular needing help to find medical reports. I first sent a draft version of both Part I and Part II to [Mr Dean]. I recall that he did not invite me to make any changes. I then sent both documents to the CPS who shared them with the police.
>
> 66. On 25 January 2009 I completed Part I Credibility of the Core Four. I conducted individual reviews of each of the Core Four. The Review systematically went through each of the Core Four's identification of each of the police suspects and identified inconsistencies and vulnerabilities in the accounts given where they had maintained their accounts from the original trials and other matters such as medical issues. I reached the conclusion as to the credibility of the individual's evidence against a particular suspect."

394. Mr Bennett's conclusion was that all the officers subsequently prosecuted should be charged together with Mrs Perriam and Mr Massey. However, prior to Mr Bennett finalising his document, a conference took place at the Hotel du Vin in Birmingham. The conference was attended by representatives of the CPS, the police, the IPCC and by leading and junior counsel. The minutes of that meeting run to 12, closely typed, pages and they record that the meeting lasted between 11.00am and 7.00pm. A number of aspects were discussed in detail. In particular there was a very detailed discussion about the evidence to be given by each of the core four and about the ESDA evidence. The minutes record tension between Mr Coutts and Mr Hart particularly when the ESDA evidence was being discussed. Before the meeting concluded Mr Hart floated three possible explanations of what had occurred in 1988. They were:-

> "1. It was a conspiracy by the police to coerce the core four to make false statements which were consistent with each other and implicated the five victims. The conspiracy was co-ordinated by Mouncher and Powell. Without the involvement of all the officers, there would not have been sufficient movement of information and amendments to the statements. It was the most likely explanation;
>
> 2. The core four colluded with each other and invented a story to stop the police harassing them. They made up information to fit in with the version of events put forward by the police. They felt pressure from the public as well as the police. It involved detailed collusion and was unlikely;
>
> 3. There was no conspiracy to commit illegal acts. There was no co-ordinated conspiracy to manipulate the evidence and events unfolded as a result of Chinese whispers or stealth. Again this was unlikely."

395. Both Mr Dean and Mr Coutts expressed the view that Options 2 and 3 were incredible. In their view Option 1 was the only credible explanation for what had occurred in 1988.

396. On 12 February Mr Hart produced a document entitled "A Review as to Charge" (the Hart Review). The Review runs to 189 pages. Its conclusion was that no further persons should be charged. Mr Hart's view was that MG and PA could not be put forward as witnesses of truth; that it was difficult to put LV forward as a witness of truth and AP's evidence was so undermined by ambiguities so as to make it impossible to say whether a jury could rely upon it.

397. Parts of the Hart Review were critical of the approach which Mr Dean had adopted. Essentially, those parts suggested that Mr Dean's approach was too broad brush and he had failed to give appropriate weight to evidence which undermined the credibility of the core four. Mr Dean responded in trenchant terms in a document dated 24 February 2009. His criticisms of the Hart Review were clear and forceful.

398. It was also on 24 February that Mr Coutts provided a response to the Hart Review. He had tasked those LW3 officers with particular knowledge of the case against each suspect to provide a commentary which was incorporated into his response.

399. So it was that by the end of February Mr Hart had provided a comprehensive review in which he had concluded that no further persons were to be charged while Mr Dean, Mr Bennett and the senior and at least many junior officers of LW3 considered, equally strongly, that a number of police suspects, together with Mrs Perriam and Mr Massey should be prosecuted.

400. On 25 February Mr Clements, Mr Husain, Mr Cohen, Mr Hart and Ms Meader met with Mr Dean and Mr Bennett. The purpose of the meeting and its outcome is described in the witness statement of Mr Clements in the following terms:-

> "22. On 25 February 2009 I convened a meeting for lawyers only, to consider whether there was any middle ground between the view of leading counsel and Mr Hart as to the credibility of the core four and the strength of the evidence identified as supporting their accounts. I did not invite the police to this meeting because the police annotated response had been circulated to all lawyers in advance so that the police views were well known. The discussion was to be a purely legal one. At the conclusion of that meeting there remained a difference of opinion. I shared Mr Dean's view as to the strength of the prosecution case on the basis of all the available evidence, including the evidence of the core four. I considered that there was a realistic prospect of conviction against 15 of the remaining suspects."

401. The Panel duly convened on the appointed date. It consisted of the DPP, Mr Newell, Mr Przybylski and Mr Clements. Mr Hart, Mr Cohen, Ms Meader, Mr Dean and Mr Bennett attended. The minutes demonstrate that the Panel had considered a number of documents in advance of the meeting which included the Hart Review and Mr Dean's response to it dated 24 February. The DPP expressed a personal view which was that the suspects identified by counsel should be prosecuted. However, he also indicated that the decision about whether to charge any of the suspects was to be made by Mr Clements. Mr Clements indicated, during the course of the meeting, that he supported a prosecution of the suspects identified by counsel. In due course, Mr Clements produced a document – "the charging decision" - in which he explained why he was authorising a prosecution against the suspects recommended for prosecution by counsel and what charges should be brought against each suspect. He authorised a joint charge of conspiracy to do acts tending and intended to pervert the course of public justice against all the police suspects. He authorised charges of perjury against Mrs Perriam, Mr Massey and Mr Mouncher (the charges against Mr Mouncher related to the evidence which he gave at the trials of the original defendants about his dealings with Mr Massey). On 2 March 2009 Mr Coutts appeared before District Judge Wickham at the Westminster Magistrates' Court to provide information to the District Judge to justify the issuing of summonses against each of the suspects.

402. Following their sentencing the core four had been asked to provide comprehensive witness statements. MG and PA refused to co-operate with the police; AP and LV agreed to make statements. In February LW3 officers interviewed AP and LV on a number of occasions and draft witness statements were produced on the strength of the interviews. My understanding is that as of 2 March LV had made a witness statement but AP's was still in draft.

Section 5

403. The Claimants (together with Mr Massey and Mrs Perriam) first appeared in court on 24 April; there was a further hearing on 5 June. On 13 July the CPS served a file of evidence. I believe this was done electronically although nothing turns upon whether that is correct. Four days later Messrs Dean, Bennett and Haskell produced a document entitled "Case Summary/Prosecution Case Statement". That statement set out, in quite some detail, the case against each of the prosecuted Claimants as well as the case against Mr Massey and Mrs Perriam.

404. The process of disclosing unused material began in late 2009. On 14 October a tranche of documentation was disclosed; further disclosure was given on 26 November.

2010

405. There was further disclosure of unused material on 16 February, 5 May, 14 July, 4 August and 14 September. On 15 April the Attorney General entered a *nolle prosequi* against Mrs O'Brien bringing the proceedings against her to an end on the grounds of her ill health.

406. During September defence case statements was served. The statements were accompanied by many requests for specific disclosure. Responses to those requests were provided on 31 October. Between 16 November and 2 December Sweeney J heard applications to dismiss the proceedings. Messrs Powell, Jennings, Stephen, Greenwood, Pugh, Murray and Hicks applied to dismiss Count 1 on the indictment which was:-

> "…….between fourteenth day of February 1988 and 22nd day of November 1990 conspired together and with others to do acts tending and intended to pervert the course of public justice in that they agreed to mould, manipulate, influence and fabricate evidence relevant to the investigation of the murder of Lynette White and the alleged culpability and prosecution of John Actie, Ronnie Actie, Stephen Miller, Yusef Abdullahi and Anthony Paris."

Mr Mouncher applied to dismiss Counts 4 and 7. These were counts which alleged perjury against him at the original trials the particulars being that he had said on oath that he had not discussed the question of parole with Mr Massey and that he had not offered Mr Massey the inducement of a promise of assistance with parole before Mr Massey gave evidence (which was said to be untrue). Additionally, Messrs Jennings, Stephen and Greenwood applied to stay the proceedings on the grounds of abuse of process. On 6 December Sweeney J dismissed all the applications save for those made by Messrs Stephen and Jennings. He gave his reasons for reaching his decision in a written ruling dated 25 January 2011. The Judge adjourned the applications made by Messrs Stephen and Jennings to be dealt with in March 2011. His ruling in respect of their applications (which he dismissed) was given in writing on 17 March 2011.

407. It was also on 6 December that the Judge ordered that the indictment should be severed. On that date the Judge ordered that there should be two trials; the first trial (subject to the outcome of the applications made by Messrs Stephen and Jennings) would involve Messrs Mouncher, Powell, Page, Daniels, Gillard, Jennings, Stephen and Massey together with Mrs Perriam. Messrs Greenwood, Seaford, Pugh, Murray and Hicks would be tried at a second trial.

2011

408. Sweeney J handed down the rulings to which I have just referred. Steps were taken to ensure that the first trial would be ready to begin on schedule. On 14 March 2011 MG made a witness statement which, in typed script, ran to 27 pages. In due course,

this witness statement was served as part of the prosecution evidence. Essentially, the statement was an account in one document of the various allegations which MG had made from 2002 onwards. On or about 23 May MG made a further, very short, statement in which he exhibited a sketch plan of Butetown Police Station which he had made some years earlier. On 3 April, 7 May and 30 May there was further disclosure of unused material by the CPS.

409. The first trial began on 4 July and came to an end on 1 December. The decision to bring the proceedings to an end was made by Mr Dean in conjunction with Mr Clements and the other lawyers in the prosecution team. The decision was approved by the DPP before it was announced in court. Essentially, the decision to offer no evidence came about because of failures by the prosecution in relation to disclosure of unused material. I will elaborate upon this issue when I deal, specifically, with the Claimants' contention that LW3 officers committed the tort of misfeasance in public office.

Section 6

410. This section identifies all the legal issues which arise in this case. It also contains my conclusions about those issues where there is a dispute or a difference of approach between the parties. I begin by setting out the legal ingredients of the torts which the Claimants allege.

411. The legal ingredients of the tort of misfeasance in public office are set out, definitively, in *Three Rivers District Council and Others -v- Governor and Company The Bank of England (No 3)* [2003] 2AC 1. Upon a minute textual analysis of the speeches in *Three Rivers* it may be difficult to avoid the conclusion that there are some subtle differences between their lordships as to the necessary ingredients of the tort. However, in the context of this case, it is sufficient to identify and apply certain general principles which, without doubt, emerge from their lordships' speeches. First, there are two alternative bases upon which the tort can be proved. It is proved if a public official deliberately engages in conduct or deliberately omits to act with the specific intention of injuring or causing loss to an identified or identifiable person. In the authorities and leading text books this form of the tort is called "targeted malice". Alternatively, the tort is proved if a public official deliberately acts or deliberately omits to act in a particular way yet he knows that he has no power to behave in that way or he is reckless as to whether he has such power. In this alternative form of the tort the official must also know that the act or omission will probably cause injury or loss to a person or be reckless as to whether that will occur. Second, acts or omissions which are merely negligent or inadvertent cannot found the tort. Third, the core allegation to be proved, in either manifestation of the tort, is that the alleged tortfeasor has acted in bad faith. Fourth, it must be proved that the tort caused or substantially contributed to the injury and or loss alleged.

412. In this case no Claimant now alleges targeted malice; this form of the tort was pleaded on behalf of Mr Murray but abandoned, expressly, during the course of the closing speech of his leading counsel, Mr Cragg QC. Accordingly, in order to succeed in establishing liability for the tort of misfeasance in public office the Claimants who allege this tort must prove that at least one of the police officers engaged in LW3 deliberately acted or omitted to act in a particular way even though the officer knew at that time that he had no power so to act or he was reckless as to whether he had such

power. Additionally, the Claimants must prove that the police officer knew that his deliberate act or omission would probably cause injury/loss to the Claimants or he was reckless about whether that would occur.

413. One of the complaints made by all the Claimants is that their homes were searched. They do not allege in their pleadings that they have a direct cause of action in consequences of those searches. However, those Claimants who allege misfeasance in public office against the Defendant seek to establish that the obtaining of search warrants was part of the conduct which constituted misfeasance; Mr Morgan and Mrs Coliandris allege that the searches were in breach of their human rights. Accordingly, I set out at this juncture, the statutory provisions which relate to the obtaining of a search warrant since, of course, all the searches of the Claimants' homes were made pursuant to warrants issued by a magistrate. Section 8 of PACE (as in force in 2005) provides:-

> "8.(1) If, on an application made by a constable, a justice of the peace is satisfied that there are reasonable grounds for believing –
>
> (a) that a serious arrestable offence has been committed;
>
> (b) that there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and
>
> (c) that the material is likely to be relevant evidence;
>
> (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and
>
> (e) that any of the conditions specified in sub-section (3) below applies,
>
> he may issue a warrant authorising a constable to enter and search the premises.
>
> (2) A constable may seize and retain anything for which a search has been authorised under sub-section (1) above.
>
> (3) The conditions mentioned in sub-section (1)(e) above are:-
>
> (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
>
> (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to

> communicate with any person entitled to grant access to the evidence.
>
> (c) that entry to the premises will not be granted unless a warrant is produced;
>
> (d) that the purpose of the search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them."

414. I turn to consider the tort of false imprisonment. It has two key elements; first, the fact of imprisonment, which in this case means loss of liberty and second, the absence of lawful authority to justify that loss of liberty. There is no dispute about the fact that all the Claimants were deprived of their liberty for periods of time. The question for me is whether that deprivation was justified in law. The Defendant submits that the deprivation of liberty was justified in all case because (a) the arrests of the Claimants were, in all cases, lawful and (b) save in one respect which I shall identify in respect of particular Claimants in due course, the detention of the Claimants which followed their arrests was in accordance with the statutory provisions which governed that detention. For reasons which will become clear no useful purpose would be served by setting out in this judgment the many provisions of the 1984 Act which relate to detention following arrest.

415. There are a plethora of cases which consider the lawfulness of arrests made by police officers. Fortunately, there is no need to consider many of them since I do not detect many differences of approach between the Claimants and the Defendant as to the relevant legal principles which I must apply. Before discussing some of the case law, however, let me set out the relevant statutory background.

416. The power of arrest exercised by the arresting officers in this case was derived from section 24 of PACE. In 2005, when all the Claimants except Mr Hicks were arrested, section 24(6) of the Act was in the following terms:-

> "Where a constable has reasonable grounds for suspecting that an arrestable offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence."

417. By the time of the arrest of Mr Hicks in 2007 Section 24 of PACE was in different terms. The relevant parts were these:-

> "(2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.
>
> (4) But the power of summary arrest conferred by subsection ….(2)…is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.

> (5) The reasons are-
>
> (a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);
>
> (b) correspondingly as regards the person's address;
>
> (c) to prevent the person in question –
>
> (i) causing physical injury to himself or any other person;
>
> (ii) suffering physical injury;
>
> (iii) causing loss or damage to property;
>
> (iv) committing an offence against public decency (subject to subsection 6); or
>
> (vi) causing an unlawful obstruction of the highway;
>
> (d) to protect a child or other vulnerable person from the person in question;
>
> (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question;
>
> (f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question."

418. When a person has been arrested and, thereafter, sues for false imprisonment the starting point for the court is, usually, the judgment of Woolf LJ (as he then was) in *Castorina –v- Chief Constable of Surrey*, unreported 10 June 1988. At page 9 of the judgment Woolf LJ said:-

> "…….I suggest that, in a case where it is alleged there has been an unlawful arrest, there are three questions to be answered:
>
> 1. Did the arresting officer suspect that the person who was arrested was guilty of the offence? The answer to this question depends entirely on the findings of fact as to the officer's state of mind.
>
> 2. Assuming the officer had the necessary suspicion, was there reasonable cause for that suspicion? This is a purely objective requirement to be determined by the judge if necessary on facts found by a jury.
>
> 3. If the answer to the two previous questions is in the affirmative, then the officer has a discretion which entitles

> him to make an arrest and in relation to that discretion has been exercised in accordance with the principles laid down by Lord Greene M.R. in *Associated Provincial Picture Houses Limited –v- Wednesbury Corporation (1948) 1K.B.223."*

419. The onus of proving that an officer has reasonable grounds for his suspicion lies upon the defendant. The standard of proof is the civil one – the balance of probabilities. If a defendant satisfies the judge that there were reasonable grounds for the arresting officer's suspicion the onus shifts to the claimant to prove, on balance of probabilities, that the officer's exercise of discretion infringes the principles laid down in *Wednesbury* (which are too familiar to need repetition in this judgment).

420. In the instant case the Claimants were arrested on suspicion that they had committed one or more of the following three offences namely, conspiracy to pervert the course of public justice, false imprisonment and misconduct in public office. It is as well to set out, briefly, the necessary elements of those offences.

421. A person commits the offence of perverting the course of public justice if he does an act or embarks upon a course of conduct which has a tendency to and is intended to pervert the course of public justice. A positive act by the accused is required. Inaction by a public official, on its own, is insufficient. A conspiracy to pervert the course of public justice is committed where two or more persons agree to act in the way that I have just described. The essence of conspiracy is the agreement. The agreement may be proved by direct evidence or by proving circumstances from which a jury may properly infer that it existed.

422. The crime of false imprisonment is very similar, in concept, to the tort. False imprisonment consists in the unlawful and intentional or reckless restraint of a person's freedom of movement from a particular place. In the context of this case, the offence would be constituted if a police officer, not having arrested a person or having any other lawful authority so to do, intentionally or recklessly prevented that person from leaving a police station.

423. Misconduct in public office has similarities with the tort of misfeasance in public office. The crime is committed if a public official acting in his official capacity wilfully neglects to perform his duty and/or wilfully misconducts himself without reasonable excuse or justification to such a degree as to amount to an abuse of the public's trust in him. The misconduct in question must have the effect of being so injurious to the public interest so as to call for condemnation and punishment.

424. The police officers who arrested the Claimants were not the officers who had investigated them. It is common ground that their knowledge about the Claimants' alleged involvement in the alleged criminal offences was obtained from the briefing sessions to which I have referred and the written material provided to the arresting officers at those sessions. In *O'Hara -v- Chief Constable of the Royal Ulster Constabulary* [1997] AC 286 the House of Lords made it clear that in circumstances such as these the court must focus upon the state of mind and state of knowledge of the arresting officer, not the briefing officer, when answering the three questions posed in *Castorina*.

425. *O'Hara* was a case which was concerned with the powers of arrest conferred by section 12(1) of the Prevention of Terrorism (Temporary Provisions) Act 1984. That section reads:-

> "A constable may arrest without warrant a person whom he has reasonable grounds for suspecting to be … (b) a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism to which this Part of this Act applies …"

426. Its importance, however, is that their lordships set out a number of propositions about section 12(1) which they said were equally applicable to other provisions which empowered arrests and which used similar language. Section 24 PACE was singled out in the speech of Lord Steyn as one such provision. At pages 293C to 294B of his speech Lord Steyn said this:-

> "Certain general propositions about the powers of constables under a section such as section 12(1) can now be summarised. (1) In order to have a reasonable suspicion the constable need not have evidence amounting to a prima facie case. Ex hypothesi one is considering a preliminary stage of the investigation and information from an informer or a tip-off from a member of the public may be enough: *Hussein v. Chong Fook Kam* [1970] AC 942, 949. (2) Hearsay information may therefore afford a constable reasonable grounds to arrest. Such information may come from other officers: *Hussein's* case, ibid. (3) The information which causes the constable to be suspicious of the individual must be in existence to the knowledge of the police officer at the time he makes the arrest. (4) The executive "discretion" to arrest or not, as Lord Diplock described it in *Mohammed-Holgate v. Duke* [1984] AC 437, 446, vests in the constable, who is engaged on the decision to arrest or not, and not in his superior officers.
>
> Given the independent responsibility and accountability of a constable under a provision such as section 12(1) of the Act of 1984 it seems to follow that the mere fact that an arresting officer has been instructed by a superior officer to effect the arrest is not capable of amounting to reasonable grounds for the necessary suspicion within the meaning of section 12(1). It is accepted, and rightly accepted, that a mere request to arrest without any further information by an equal ranking officer, or a junior officer, is incapable of amounting to reasonable grounds for the necessary suspicion. How can the badge of the superior officer, and the fact that he gave an order, make a difference? In respect of a statute vesting an independent discretion in the particular constable, and requiring him personally to have reasonable grounds for suspicion, it would be surprising if seniority made a difference. It would be contrary to the principle underlying section 12(1) which makes a constable individually responsible for the arrest and

> accountable in law. In *Reg. v. Chief Constable of Devon and Cornwall, Ex parte Central Electricity Generating Board* [1982] QB 458, 474 Lawton LJ touched on this point. He observed:
>
> > "[chief constables] cannot give an officer under command an order to do acts which can only lawfully be done if the officer himself with reasonable cause suspects that a breach of the peace has occurred or is imminently likely to occur or an arrestable offence has been committed."
>
> Such an order to arrest cannot without some further information being given to the constable be sufficient to afford the constable reasonable grounds for the necessary suspicion. That seems to me to be the legal position in respect of a provision such as section 12(1). For these reasons I regard the submission of counsel for the Chief Constable as unsound in law. In practice it follows that a constable must be given some basis for a request to arrest somebody under a provision such as section 12(1), e.g. a report from an informer."

427. In his speech Lord Hope explained the approach to be followed by the court as follows:-

> "My Lords, the test which section 12(1) of the Act of 1984 has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised.
>
> This means that the point does not depend on whether the arresting officer himself thought at that time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as he is entitled to form a suspicion based on what he has been told. His reasonable suspicion may be based on information which has been given to him

> anonymously or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances." [page 298A to E]

428. Before leaving *O'Hara* I should point out that the House decided, definitively, that an order by a superior officer to a more junior officer to arrest a suspect was not, by itself, sufficient to afford the arresting officer a reasonable suspicion that an offence had been committed. This issue is discussed fully in the speech of Lord Steyn between pages 290C and 293B.

429. What is the position in law if the briefing to an arresting officer provides sufficient material to justify the arrest of a particular suspect but omits material which, if taken in conjunction with material provided, would cause the arresting officer to conclude that no reasonable grounds exist to justify the arrest?

430. On behalf of the Defendant it is argued that the answer to this question is to be found in the decision of the Court of Appeal in *Alford –v- Chief Constable of Cambridgeshire* [2009] EWCA Civ. 100. Richards LJ, with whom Ryder LJ and the President of the Queen's Bench Division agreed, said at paragraph 38 of his judgment:-

> "…..the lawfulness of an arrest depends ……on whether the *arresting* officer has a genuine suspicion and there are reasonable grounds for that suspicion. If ……..the arresting officer has such a suspicion and the briefing provides reasonable grounds for suspicion the arrest will be lawful. In those circumstances the omission of relevant material from the briefing cannot possibly render the briefing officer liable for wrongful arrest, since there is no wrongful arrest for which he can be liable, whether as sole or joint tortfeasor. On the other hand, the deliberate withholding of relevant material, leading to an arrest that would not otherwise have taken place, might render the briefing officer liable for misfeasance in public office……."

431. It seems clear from the report in *Alford* that no argument was presented to the court based upon the decision in *Davidson v The Chief Constable of North Wales and Another* [1994] 2 All ER 597. In summary, the Court of Appeal in that case recognised the possibility that a store detective giving false information to a police officer who then arrested a suspect might render herself liable for false imprisonment if, on the facts, it could be said that she had been the instigator, promoter and/or active inciter of the arrest and imprisonment.

432. The approach adopted in *Davidson* was followed by *Copeland -v- Commissioner of Police of the Metropolis* [2015] 3 All ER 391. In that case a police officer made a

complaint to a fellow police officer (which was alleged to be untrue) to the effect that he had been assaulted and injured by a suspect. The police officer to whom the report was made arrested the suspect. Moses LJ, with whom Pattern LJ and Maurice Kay LJ agreed, analysed the legal position thus:-

> "20. It is not and was not disputed that the burden of proving the lawfulness of the arrest lay upon the Commissioner. The claim for false imprisonment was based on the absence of lawful authority for the underlying arrest. It was for the Commissioner to prove that the arrest was lawful and that, accordingly, there was lawful justification for the detention. The Commissioner could not do so unless he established that PC Bains was acting in good faith in requesting PC Derbyshire to arrest Ms Copeland. As Toulson LJ put it in *R (M) v Hackney LBC* [2011] EWCA Civ 4 [2011] 1 WLR 2873 [36]:-
>
> > "Lawfulness or unlawfulness is an attribute of the conduct of the defendant which caused the claimant's loss of liberty."
>
> He recognised the principle at common law that:-
>
> > "There may be false imprisonment by A, although it was B who took the person into custody and B acted lawfully, provided that A directly caused B's act and that A's act was done without lawful justification."
>
> 21. The legality of the arrest and therefore of the detention turned on the legality of the actions of he who caused it, namely, PC Bains. Just as it was for the police to establish that the arresting officer, PC Derbyshire, suspected that MS Copeland had committed an arrestable offence and that she had reasonable grounds for doing so, it was no less for the police to establish that that was not on the basis of false evidence deliberately intended to procure the arrest of Ms Copeland.
>
> 22. As the judge recognised, were it otherwise, the burden would shift according to whether PC Bains himself arrested Ms Copeland or whether he asked someone else to do so. There is no sense in such a shift. For those reasons, in my view, the judge correctly directed the jury as to the burden of proof in question 3."

There is no mention of the decision in *Alford* in the judgment of Moses LJ.

433. A similar approach to that taken in *Davidson* and *Copeland* was adopted in the Divisional Court in *R(Rawlinson and Hunter) and others v Central Criminal Court [2013]* 1 WLR 1634 – see, in particular, paragraphs 209 to 234. No doubt, at some point in the future, the Court of Appeal or Supreme Court may be called upon to determine whether there is any irreconcilable tension between the decision in *Alford* and decisions such as *Davidson, Hunter* and *Copeland.* For my part, I am satisfied that I should follow the reasoning of the decisions in *Davidson, Hunter* and *Copeland.*

If, in due course, they can be reconciled with *Alford* so much the better; if they cannot I believe the law of precedent requires me to follow the line of authority which is the later in time. Accordingly, if, on the facts of the case in respect of any particular Claimant, it is appropriate for me to conclude that (a) Mr Coutts or Mr Penhale directed the arresting officers to carry out the arrests of the Claimant and (b) upon an objective analysis of the whole of the information available to them at the time of the arrest no reasonable grounds for an arrest existed but (c) the information provided to the arresting officer did justify an arrest albeit it was incomplete the arrest would be unlawful and either Mr Coutts or Mr Penhale or both (depending upon who and how they were involved) would be liable for false imprisonment and the Defendant vicariously liable for the tort.

434. I should also stress that in many of the cases in which there has been a contested issue about whether reasonable grounds exist to justify an arrest courts of high authority have stressed that the threshold is a "low one". It is not necessary to cite from authority for that proposition.

435. As I have said the arrest of Mr Hicks took place after section 24 of the 1984 Act had been amended. What has been the approach of the courts to the "necessity test" which now must be applied? Mr Thomas QC, leading counsel for Mr Hicks, has drawn my attention to the decision of Slade J in *Richardson v The Chief Constable of West Midlands Police* [2011] 2 Cr. App. 1. In that case the claimant was a teacher. He was involved in an incident which resulted in an allegation that he had assaulted a pupil. The claimant attended the police station with his solicitor by appointment for a voluntary interview whereupon he was arrested because, as the custody officer was later to allege, he would otherwise have been entitled to leave at will and there was a serious allegation to be investigated. In due course the claimant brought proceedings in which he claimed damages for false imprisonment; he alleged that his arrest had been unlawful. The defendant defended the proceedings maintaining that it had been necessary to arrest the claimant "to allow the prompt and effective investigation of the offence or the conduct of the person in question" – see Section 24(5)(e) of the 1984 Act. At paragraph 60 of her judgment Slade J said:-

> "In my judgment it is useful to consider the claimant's challenge to the lawfulness of his arrest by adapting and applying the *Castorina* questions to the pre-requisite of belief in the necessity of arrest within the meaning of Section 24 of PACE. In my judgment a useful approach to determining whether the necessity requirement is satisfied may be to adapt the approach to these questions used by Auld LJ in Al-Fayed v Commissioner of Police of the Metropolis (No. 3) 2004 [EWCA] Civ 1579; 2004 1 Pol..L.R.370 at [83] as follows:
>
> > "(1) In determining satisfaction of the 'necessity' requirement the state of mind is that of the arresting officer, subjective as to the first question, the fact that belief that arrest was necessary and objective as to the second and third questions, whether he had reasonable grounds for it and whether he exercised his discretionary power of arrest in *Wednesbury* reasonably.

> 2. It is for the police to establish the first two requirements, namely that an arresting officer believed that the arrest of the claimant was necessary for one of the s.24(5) reasons and that he had reasonable grounds for his belief. Whether the officer had that belief and reasonable grounds for it is a question of fact for the court to be determined (see also *Holgate – Mohammed v Duke* (1984) 79 Cr. App. R.120; [1984] A.C.437 per Lord Diplock at 123 and 442 F – 443A and *Plange v Chief Constable for Humberside Police* The Times March 23, 1992 per Parker LJ)
>
> 3. If the police establish those requirements the arrest is lawful, (all other preconditions being satisfied) unless the claimant can establish on *Wednesbury* principles that the arresting officer's exercise of his power of arrest was unreasonable …"

Later, at paragraph 62, the learned judge said:-

"In my respectful view 'necessity' in s24(4) of PACE is an ordinary English word which can be applied without paraphrase. … The decision as to whether an arresting officer's belief that an arrest is necessary is challengeable on *Wednesbury* grounds will be fact sensitive. However, due regard should be paid to the observation of the court in *Alexander* [*Alexander and others: Applications for judicial Review*] that the arresting officer:

> "must, in our judgment, at least consider whether having a suspect attend [a police station voluntarily] … is a practical alternative. The decision whether a particular course is necessary involves, we believe, at least some thought about the different options. In many instances, this will require no more than a cursory consideration but it is difficult to envisage how it can be said that a constable has reasonable grounds for believing it necessary to arrest, if he does not make at least some evaluation as to whether voluntary attendance would achieve the objective that he wishes to secure".

436. On behalf of the Defendant Mr Johnson QC and his team rely upon the decision of the Court of Appeal *Hayes v Chief Constable of Merseyside Police* [2012] 1WLR 517. In that case a police constable who was investigating an assault made contact with the claimant by telephone and a meeting between them was arranged. At the beginning of the meeting the constable arrested the claimant. He relied upon section 24(5)(e) of PACE i.e. he considered that the arrest was necessary to allow the prompt and effective investigation of the offence or of the conduct of the claimant. The claimant's action for false imprisonment was dismissed as was his appeal to the Court of Appeal. In the course of his judgment in the Court of Appeal, Hughes LJ (as he

was then was) with whom Richards LJ and Ward LJ agreed had this to say about how the 'necessity' test should be applied:-

> "40. … the circumstances of the present arrest were comparatively relaxed. It is by no means always so. To require of a policeman that he pass through particular thought processes each time he considers an arrest, and in all circumstances no matter what urgency or danger may attend the decision, and to subject that decision to the test of whether he has considered every material matter and excluded every immaterial matter, is to impose an unrealistic and unattainable burden. Nor is it necessary. The liberty of the subject is amply safeguarded if the rule is as Mr Beer contends, namely: (1) the policeman must honestly believe that arrest is necessary, for one or more identified section 24(5) reasons; and (2) his decision must be one which, objectively reviewed afterwards according to the information known to him at the time, is held to have been made on reasonable grounds ….
>
> 41. I should add that we have not been concerned in the present case with the position of an arresting officer who, often in a complex inquiry, receives an order to arrest a particular suspect. Such an officer will often not have access to all the material which the officers directing the inquiry will have. The decision to arrest, and to do so at a particular time, will often be part of a closely co-ordinated plan for the inquiry. I pause only to say that it is clear from the *O'Hara* case that this common situation is readily accommodated within the rules as I have set them out to be. The arresting officer must himself have reasonable grounds for believing that the suspect has committed an offence, and likewise reasonable grounds for believing that it is necessary, for a section 24(5) reason or reasons, to arrest him. But information given by others, attached to orders issued by them, can be and usually will be part of the information which goes to his grounds for belief of one or both matters, and thus to the reasonableness of the belief. That that is the law provides another reason why section 24(4) ought to be interpreted in the manner stated, rather than as requiring comprehensive consideration by the officer of all matters capable of being relevant to the decision, which would require him to have access too, and time to digest, a much fuller picture of the overall investigation than is realistic ….
>
> 42. Assuming that the judge applied this two stage test, his conclusion that the arrest was lawful is unassailable. Whilst of course it may be that it is quite unnecessary to arrest a suspect who will voluntarily attend an interview, as it was with the school teacher in the *Richardson* case … it is not the case that a voluntary attendance is always as effective a form of investigation as interview after arrest. Section 29 of the 1984

> Act reminds officers of their duty, if inviting voluntary attendance, to tell the suspect that he may leave at any time he chooses. It would not be honest for an officer to invite a person to attend a voluntary interview if he intended to arrest him the moment he elected to leave. Nor would it be effective. It would mean that the suspect could interrupt the questioning the moment he reached a topic he found difficult. Even if it were possible simply then to arrest him, the interview could not continue until all the important formalities of reception into custody, checks on health, notification of friends or relatives, and so on, had been complied with. …"

437. I see no tension between the decisions in *Richardson* and *Hayes*. However, as is obvious, I am bound by the decision in *Hayes*, and, accordingly, I will follow the principles elucidated by Hughes LJ in the passages cited above.

438. In the witness statements of the arresting officers they assert that it was proportionate to arrest the Claimants. At least some, perhaps all, of the Claimants' lawyers in their written material suggest that an arrest has to be proportionate to be lawful. None of the leading cases to which I have referred in this judgment suggest that proportionality is a factor to be considered when making an assessment about whether an arrest is lawful if (as is the case in some contexts) proportionality is to be treated as a different and in some way more onerous concept for the arresting officer than the concept of reasonableness in the *Wednesbury* sense. Further, none of the cases in the bundles of authorities provided by the parties suggest that proportionality in addition to reasonableness needs to be considered. I appreciate, of course, that proportionality has a part to play if the legality of an arrest and/or detention is viewed in the context of the European Convention on Human Rights ("ECHR") but none of the Claimants seek to impugn the lawfulness of the decision to arrest them (and, thereafter, detain them at the police station) on ECHR grounds. In his closing written submissions Mr Cragg QC suggested that "it is necessary to consider whether the decision to arrest was a lawful and proportionate exercise of the discretion to arrest, applying the '*Wednesbury*' principle of reasonableness". Put in that way there can be no objection to the use of the word proportionate in the context of the lawfulness of any arrest and I propose to adopt that approach. In my judgment the task for me is to reach a conclusion about whether any Claimant has proved that the decision to arrest him/her was unreasonable applying the principles in *Wednesbury*; if the decision was unreasonable it was also disproportionate.

439. All the Claimants complain about the fact that they were arrested at or about 6.30 a.m. in the morning. There were suggestions in the closing submissions of their lawyers that the timing of their arrests might tip the balance when an assessment was being made about the reasonableness of the decision to arrest i.e. that the timing of the arrest was a material factor to be taken into consideration when deciding whether the decision to arrest was reasonable.

440. Mr Johnson QC and his team contest that proposition with vigour. He submits that a challenge on *Wednesbury* grounds to the lawfulness of an arrest is necessarily a challenge to the lawfulness of the decision to arrest. It does not encompass a challenge to the manner of an arrest and/or the circumstances in which an arrest is

carried out. Clear support for that proposition, he submits, is to be derived from the decision of the Supreme Court in *Lumba v SSHD* [2012] 1 AC 245.

441. Mr Johnson QC relies upon a number of passages in the speeches of the Justices to support his submission. In my judgment one citation is sufficient. At paragraph 248 in the judgment of Lord Kerr he explained:-

> "248. In *R (SK) (Zimbabwe) v SSHD* [2009] 1 WLR 1527 it was accepted by the appellant that not every type of public law breach, committed after an initially valid detention, would render continued detention unlawful. On the present appeal the argument on behalf of the detained persons is put thus; a public law error that bears directly on the decision to detain will mean that the authority for detention is ultra vires and unlawful, and will sound in false imprisonment. But breaches which have no direct bearing on the decision to detain do not have that effect. Since, therefore, for instance, statutory obligations to permit a detainee to consult with his legal advisors *(Cullen v Chief Constable of the Royal Ulster Constabulary [2003] 1WLR 1763)* or to be provided with food or clothing, or to be held in certain conditions *(R v Deputy Governor of Parkhurst Prison ex p. Hague)* [1992 1 AC 58] did not bear on the legality of detention, breach of those obligations did not render detention unlawful nor did it give rise to a claim for false imprisonment."

442. The facts in *Lumba* bear no relation to the facts in the instant cases and, indeed, the arguments relating to the tort of false imprisonment in *Lumba* arise in a wholly different context. That said, I have been shown no authority which suggests that the manner of an arrest or the circumstances in which it is made is a factor to be taken into account when determining whether a decision to arrest has been made lawfully. I can see why that is so. It would be strange, indeed, if the lawfulness of a decision to arrest depended upon fine judgments as to the timing of an arrest or, for that matter, the place where an arrest is to be carried out. Accordingly, in assessing whether the decision to arrest the Claimants was unreasonable as alleged by them I propose to leave out of account the fact that the arrests took place very early in the morning at the Claimants' homes.

443. I can deal with the legal ingredients of the tort of malicious prosecution quite shortly. The tort is established if a claimant proves that (1) he was prosecuted by the defendant on a criminal charge, (2) the prosecution was determined in his favour, (3) the prosecution was without reasonable and probable cause and (4) it was malicious. In this case (2) is established. The issues for my determination are whether those Claimants who allege malicious prosecution can prove that (a) a police officer for whom the Defendant is vicariously liable is properly to be regarded as "the prosecutor" (b) there was no reasonable and probable cause for the initiation of the prosecution and (c) it was malicious.

444. In the instant case, it was Mr Coutts and a colleague who appeared before District Judge Wickham at the Westminster Magistrates' Court and provided the information which persuaded the District Judge to issue summonses against the prosecuted Claimants. However, no one suggests that this, by itself, makes Mr Coutts the

prosecutor. Mr Coutts would not have taken that step had not Mr Clements already decided that Claimants 1 to 13 should be prosecuted. Without doubt, in my judgment, there would have been no prosecution of any Claimant without the say-so of Mr Clements. That is why, no doubt, the Defendant submits that there can be no question of a finding of malicious prosecution against a police officer. The prosecutor was the CPS acting by Mr Clements.

445. Counsel for Mr Daniels, Mr Gillard, Mr Page and Mr Hicks do not accept this analysis. In summary they submit that the prosecution was procured by Mr Coutts and it is he who should be regarded as the prosecutor in this case. What are the principles which I must apply in determining whether it was Mr Coutts who should be held to be the prosecutor for the purpose of the tort?

446. In my judgment they are to be derived from the decision of the House of Lords in *Martin -v- Watson* [1996] 1AC 74 and subsequent decisions of the Court of Appeal in *Mahon -v- Rahn (No 2)* [2000] 1WLR 2150, *H -v - AB* [2009] EWCA Civ 1092 and *Ministry of Justice –v- Scott* [2009] EWCA Civ 1215. It is now well established that a person who simply provides information to the police or the Crown Prosecution Service upon which a decision to prosecute is then made cannot be liable for the tort of malicious prosecution even if the information which he provides is false and even if he knows the information to be false. However, a person will be liable for the tort if (1) he falsely and maliciously provides information about an alleged crime, expresses a willingness to testify against the alleged perpetrator and desires and intends that a prosecution should be brought against the alleged perpetrator (2) the facts relating to the alleged crime are exclusively within the knowledge of the person providing the information so that it is impossible for the person to whom it is imparted to exercise any independent judgment in the matter and (3) the conduct of the person providing the information is such that he makes it virtually inevitable that a prosecution will result from his complaint.

447. If those alleging malicious prosecution in this case fail to persuade me that Mr Coutts was the prosecutor in accordance with those principles that is the end of the claims in respect of that tort. If I am persuaded that Mr Coutts was the prosecutor I will have to consider whether he acted maliciously and without reasonable and probable cause when he procured the initiation of the prosecution. A finding that he acted maliciously would follow a finding that he was the prosecutor – see the analysis in the previous paragraph. However, a finding that he was the prosecutor does not necessarily mean that he acted without reasonable and probable cause. The two issues must be considered separately. I do not propose to spend time elaborating upon what constitutes reasonable and probable cause at this stage. It is far better that I deal with that issue in the light of my factual conclusions as they relate to the cases of Mr Daniels, Mr Gillard, Mr Page and Mr Hicks.

448. I should however, make clear the position of the Defendant. As I have said his case is that the decision to prosecute was made by Mr Clements on behalf of the CPS. The Defendant submits that Mr Clements applied the appropriate test i.e. he considered first whether there was a realistic prospect of conviction against the prosecuted Claimants and, second, whether it was in the public interest to prosecute them. Further, the Defendant asserts and has always asserted that Mr Clements decided that prosecution of Claimants 1 to 13 was justified only after considering substantial material himself which included the views, trenchantly expressed, of leading and

junior counsel who had themselves considered a great deal of material. In these circumstances, submits the Defendant, there was, inevitably, reasonable and probable cause for the prosecution.

449. Mrs Coliandris and Mr Morgan allege breaches of Article 8 of the European Convention on Human Rights (ECHR). Article 8 provides, so far as relevant:-

> "1. Everyone has the right to respect his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society … for the prevention of disorder or crime… … "

450. If breaches of an Article of the Convention are proved a person may bring a claim in respect of the breaches under Section 7 of the Human Rights Act 1998.

451. Mr Cragg QC alleges that the Defendant breached Mrs Coliandris' human rights under Article 8 in two respects. First, her home was searched, unjustifiably. Second, she was kept on bail for an inordinate period of time. If Mr Morgan is permitted to amend so as to plead a claim under the Human Rights Act 1998 he will allege a breach of Article 8 on the same grounds as those advanced by Mrs Coliandris.

452. Mr Johnson QC accepts that the searches of the homes of Mrs Coliandris and Mr Morgan constituted interference with the right to respect for the private and family rights. He contends, however, that the infringement was justified in accordance with Article 8.2. Further, he submits that there is an additional bar to a claim under the Human Rights Act 1988. The search warrants in question were issued by a magistrate. Mr Johnson accepts that such a decision is susceptible to a challenge by way of judicial review. He submits, however, that no civil action can lie against the defendant in respect of the searches because the warrants issued by the magistrate in respect of the homes of Mrs Coliandris and Mr Morgan have never been quashed. The quashing of the warrant, in the submission of Mr Johnson QC is a necessary pre-requisite to the bringing of a civil action by virtue of Section 6 Constables' Protection Act 1750. That Section is in arcane language and I do not propose to set it out in this judgment.

453. In the absence of any oral or written submissions to suggest that the analysis of Mr Johnson QC is incorrect I am disposed to accept it. Accordingly the Human Rights claim made by Mrs Coliandris in respect of the search of her home must fail. Mr Morgan's claim in respect of his home is indistinguishable and, accordingly, no purpose would be served by the grant of an amendment to permit Mr Morgan's claim to be made.

454. That leaves the contention that there was a breach of Article 8 Rights by virtue of the length of time which Mrs Coliandris and Mr Morgan spent on bail. Mr Johnson QC accepts that there may be circumstances in which remand on bail might constitute an infringement of Article 8 rights. He submits, however, that where, as here, a person is remanded on unconditional bail there is no infringement of his rights to private and family life. He preys in aide a passage in the speech of Lord Bingham in *R (Gillan)*

The Commissioner of Police of the Metropolis [2006] 2 AC 307. At paragraph 28 Lord Bingham said:-

> "It is true that "private life" has been generously construed to embrace wide rights to personal autonomy. But it is clear convention jurisprudence that intrusion must reach a certain level of seriousness to engage the operation of the convention, which is, after all, concerned with Human Rights and Fundamental Freedoms, and I am inclined to the view that an ordinary superficial search of the person and the opening of bags, of a kind to which passenger uncomplainingly submit at airports, for example, to scarcely to be said to reach that level".

Mr Johnson QC submits that a remand on unconditional bail which involves no more than an occasional attendance at a police station so that bail can be renewed does not amount to a "certain level of seriousness" so as to engage Article 8."

455. Mr Cragg QC and Mr Bowen QC do not agree. They submit that a person who has been remanded on bail in respect of serious criminal offences is subjected, necessarily, to a great deal of distress and/or worry, further Mrs Coliandris and Mr Morgan, as former police officers, are in some way stigmatised by virtue of being on bail for a significant period of time. In *S v United Kingdom (2009) 48 EHRR 50* the European Court of Human Rights recognised that the risk of stigmatisation might be taken into account when assessing whether or not a breach of Article 8 Rights had occurred.

456. I have grave reservations about whether a remand on unconditional bail even for a very significant period of time, can attain a sufficient level of seriousness so as to constitute an infringement of a person's right under Article 8 ECHR. However I do not decide that point, definitively, as a matter of law. I will assess the Article 8 claim in respect of the remand on bail when I deal with the individual cases in Section 9.

457. Finally, it is necessary to mention the defence of limitation. The Defendant pleads that most of the claims brought by the Claimants are barred by passage of time. I do not propose to set out the relevant statutory provisions nor the principles upon which I should act when applying them. That is because the claims made include the claims made for personal injuries. In respect of such claims the court has discretion to extend the time limit. My understanding is that at the conclusion of the oral hearing it was agreed that the defence of limitation would be determined, finally, in relation to those Claimants, if any, who succeeded in establishing liability on the part of the Defendant. In so far as is necessary I will return to the issue of limitation when I consider individual cases in Sections 8 and 9.

Section 7

458. Let me start by identifying the pleaded basis upon which Claimants 1 to 13 seek to establish the tort of misfeasance in public office. I hope I may be forgiven by the other Claimants' lawyers if do this by reference to the pleaded allegations made in the Amended Particulars of Claim served on behalf of Claimants 1 to 8 and for which I gave permission on 16 November 2015. The core paragraph in that pleading is paragraph 44 which reads as follows:-

> "The Claimant's case, in summary, is that the Defendant's officers committed a misfeasance in public office by deliberately or recklessly acting beyond their powers in the LW3 investigation, prosecution and trial. The Defendant's officers prejudged the central issues of the investigation, adopting a mindset of guilt in relation to the Claimant from the outset, and pursued the investigation of the Claimant in a wholly disproportionate way, despite the manifest weaknesses of the available evidence, foreseeing the likelihood that their actions would injure the Claimant. In the course of the said investigation, the Defendant's officers falsely imprisoned the Claimant."

In the paragraphs which follow (45 to 54) the Claimants provide the detailed allegations which are said to justify a finding of misfeasance. Paragraphs 45 and 46 provide particulars of bad faith. Paragraph 47 alleges that the Defendant's officers conducted LW3 with the mindset, from the very outset of the investigation, that the Claimants were guilty of committing criminal offences during LW1. Paragraphs 48 and 49 allege that there were unwarranted and material differences in the way that the Defendant's officers treated the Claimants compared with the core four and other civilian suspects. Paragraphs 50 and 51 allege that the Defendant's officers wilfully disregarded the inherent weaknesses in the case against the Claimants and failed to pursue "adequately, or at all" reasonable lines of enquiry which pointed away from the guilt of the Claimants. Paragraph 52 alleges that the Defendant's officers had an improper relationship with key witnesses in the investigation and paragraphs 53 and 54, respectively, allege disclosure failures and deliberate destruction of documents. I should make it clear that the pleadings of the other Claimants who allege misfeasance also make these allegations. In some instances they are formulated in somewhat different language but, in my judgment, no injustice will be visited upon any party if I deal with the allegation of misfeasance in public office by reference to the pleading of Claimants 1 to 8 as I have summarised it above.

459. Before considering the detail of the pleaded allegations it is necessary to identify an issue which may not have received the attention it deserved during the course of the hearing. Very commonly, both in pleadings and written submissions, the Claimants allege that the tort of misfeasance was committed by "the Defendant's officers". I readily understand that this phrase invariably or at least very often refers to Mr Coutts and Mr Penhale. However, it is not obvious to me, even now, whether the Claimants are alleging that other officers engaged in LW3 are to be included within this phrase and, if so, which officers. In reality, there are a number of potential scenarios. First, it may be that the Claimants are alleging that every single officer who engaged in LW3 was an active participant in the tort i.e. that the tort began in July 2003 and subsisted without interruption until November 2011 and that every officer who played a role in LW3 during that period was an active participant in a continuing tort. Second the phrase may encompass particular officers who engaged in specific aspects of the investigation e.g. officers with a managerial role or a role in relation to disclosure. In this scenario there may not have been one tort continuing throughout the period of LW3 but rather a series of torts committed by many different officers. Third, of course, the phrase would be apt to encompass any officer who is named by a Claimant, expressly or impliedly, in relation to a specific decision or omission.

460. I identify this issue, now, simply to make it clear that I have not confined myself to a consideration of whether the Claimants have established the tort against Mr Coutts and Mr Penhale. As my analysis proceeds, I will ensure that the position not just of Mr Coutts and Mr Penhale but, also, of other officers from whom I heard or about whom I heard is scrutinised.

461. I have given considerable thought as to how this section of my judgment should be structured. Although, as I have said, the pleaded case is compartmentalised for reasons which are wholly understandable the reality is that the decisions, acts and omissions to be scrutinised in relation to misfeasance are inextricably linked. I have decided, therefore, that I will deal with the complaints of fixed mindset, differences in treatment between police and civilian suspects, failures to takes account of the weaknesses in the cases against the Claimants and failures of investigation together as one topic. I will deal separately and discretely with the allegations relating to the relationship between LW3 officers and the original defendants and the allegations relating to failures of disclosure and destruction of documents. I will conclude this section of my judgment with my assessment of the core allegation of bad faith.

Mindset of guilt and the related topics

462. The crux of the Claimants' case as to the mindset of LW3 officers is neatly encapsulated in the written opening submissions on behalf of Claimants 1 to 8.

> "They proceeded on the questionable assumption that Gafoor was the only person involved in the murder of Lynette White and that five men, Stephen Miller, Yusef Abdullahi, Tony Paris, John Actie and Ronnie Actie … were wholly innocent. In that way, ironically, they made the very errors they wrongly accused these Claimants of. This approach prevented a fair and impartial investigation as any evidence or fact capable of undermining these fixed beliefs were ignored or treated as false."

463. At the end of the trial this allegation was still one of the cornerstones of the Claimants' case. Additionally, Mr Metzer QC alleges that that Messrs Coutts and Penhale had been pursuing a 'cause' throughout the whole course of LW3. According to him, they allowed nothing to come between them and "the ultimate goal of prosecuting and convicting the Claimants". That was their mindset at the beginning of the investigation and that was their mindset, still, when the trial collapsed. They intended to put right what had gone wrong in LW1.

464. This contention has been disputed with vigour on behalf of the Defendant. The case for the Defendant is that no officer involved in LW3 had any pre-conceptions about the guilt or innocence of any officer involved in LW1. It is submitted that, from the outset, LW3 officers engaged in an investigation which was fair and transparent and that the conclusions which they reached at each stage as the investigation unfolded were entirely justified.

465. Without doubt one of the most important tasks for me is to reach a view upon these rival contentions. It is vitally important, however, that I place this task in its proper context. I am not considering the mindset of LW3 officers in the abstract or in the

context of an assessment about whether every step taken or every decision made was, objectively, fair and reasonable; I am investigating the officers' mindset in the context of whether it can be proved to the civil standard that officers committed the tort of misfeasance in public office. Accordingly, in making a judgment about the rival contentions as to the mindset of the LW3 team I must keep to the forefront of my mind that the ultimate decision for me is whether the Claimants have proved that any officer engaged in LW3 acted beyond their powers during the course of LW3 knowing that they were so acting or being reckless about whether they were so acting.

466. I propose to consider this central issue together with the related issues by reference to the period beginning July 2003 and ending on 2 March 2009 i.e. from the beginning of LW3 to the time when the criminal proceedings against the prosecuted Claimants commenced. I have no doubt that by the time the decision to prosecute was made, Mr Coutts and Mr Penhale, together with many other LW3 officers were firmly of the view that the prosecution was justified and, of course, in the main the investigative period was over. My focus in the period March 2009 to December 2011 will be upon whether an inappropriate relationship existed between LW3 officers and the original defendants and the criticisms made by the Claimants of the process of disclosure in the criminal proceedings.

467. LW3 was launched by the Chief Constable of SWP after consultation with very senior officers in that Force. It was he who set the original Terms of Reference. The Chief Constable appointed Mr Cahill to oversee the investigation. Mr Cahill's background was such that there was no reasonable possibility of his having any preconceptions about what had occurred in LW1. He had no connection with SWP until he was appointed as an Assistant Chief Constable in December 2002; his whole career before that had been spent in England. There is no suggestion in the evidence that before his involvement in LW3 he had read about or discussed the issues thrown up by Lynette's murder in any detail. Mr Cahill's oversight of the investigation continued until 2008 when his role passed to Ms Paul. He was the person who had the oversight role during the crucial initial investigative stages.

468. Mr Cahill provided a witness statement on behalf of the Defendant. After suitable amendments/deletions the Claimants were content for his witness statement to stand as his evidence in this case. In relation to his own state of mind and that of other officers both at the outset of LW3 and during his involvement, Mr Cahill says:-

> "7. After Mr Gafoor's conviction and based on the available information I felt that it was reasonable for the Chief Constable and the Chief Officer Team to conclude that there were concerns about the conduct of the original investigation and that the [original Defendants] were most likely to be innocent. It was on this basis that the letter of apology from the Chief Constable was constructed and worded; this letter of course pre-dates the commencement of the Phase III investigation.
>
> 8. Phase III was commissioned because of these circumstances and its aim was to establish the truth, to my knowledge there has never been any evidence that contradicts that this viewpoint was and still is a reasonable one. I never saw any evidence of a

> closed mind being adopted by anyone involved in the investigation."

While I readily accept that Mr Cahill did not involve himself in the detail of the investigation either at the outset or subsequently his assessment as set out above is not without significance. After all, Mr Cahill was supervising an investigation into police officers and former police officers who had, apparently, served SWP with distinction over many years. On the face of it, the last thing he would want was a flawed or biased investigation.

469. Mr Cahill was the officer responsible for the appointment of Mr Coutts and Mr Penhale. He says that they were chosen on the basis of their history and their investigative experience. Both officers were suggested to him as being suitable for their respective roles and, after interviewing them, he concurred with that assessment.

470. Mr Coutts is a native of the North East of England. He became a police officer on 12 October 1981 when he joined the Metropolitan Police. He transferred to SWP on 28 July 1986 as a police constable and, thereafter, he rose through the ranks so that on 14 October 2002 he was promoted to the rank of detective superintendent and appointed as the Head of Major Crime Review. Mr Coutts was fulfilling that role when he was appointed SIO for LW3; he remained as SIO throughout LW3. The Claimants characterised Mr Coutts as overly ambitious; his assessment was that he was an ambitious officer and "there was nothing wrong with that".

471. Paragraph 6 of Mr Coutts' witness statement contains an account of what he knew of the history surrounding Lynette's murder prior to his appointment as SIO. In 1988, at the time of the murder, Mr Coutts was a detective constable based in Pontypridd (a town approximately 12 miles from Cardiff). He knew a number of the persons who had been involved in LW1 but he, personally, played no part in the original investigation. Over the years that followed Mr Coutts worked with a number of the Claimants and he knew Mr Gillard socially. He says that he disclosed his contacts with all these persons to Mr Cahill before his appointment was confirmed and there is no reason to doubt what he says. He, Mr Coutts, felt that he would be able to conduct an investigation impartially and objectively notwithstanding his knowledge of some of the persons involved in LW1 and, evidently, Mr Cahill agreed. It is also worth noting that when Mr Coutts was appointed to be the Head of Major Crime Review he thought it appropriate to read the Hacking and Thornley Report. That is hardly surprising; his role was to lead investigations into major crimes which had remained unsolved and there can be no doubt that the Hacking and Thornley Report constituted a comprehensive assessment of a major investigation which had, allegedly, gone wrong with the consequence that the crime was unsolved.

472. Mr Penhale joined SWP in October 1986. By 1989 he had become a detective and in 1996 he was promoted to the rank of detective sergeant. In 2001 Mr Penhale took up a post in the Investigative Training Department of SWP. In that post he was responsible for developing and delivering training to detectives of all ranks. Approximately one year later he was promoted to detective inspector and was deployed to the Major Crime Review Unit.

473. Mr Coutts told me that he wanted Mr Penhale as his deputy because he wanted a person with proven skills in major crime investigation and investigative interviewing.

He also wanted a person who was able to work under intense scrutiny. He considered that Mr Penhale had these attributes. Mr Penhale remained Deputy SIO throughout LW3 although his role between May 2007 and July 2011 was more limited on account of other duties.

474. In the weeks following his appointment Mr Coutts set about assembling a team of officers and civilians who would undertake the investigation in LW3. Some officers and civilians came from Operation Mistral; some had no connection with any previous inquiry into Lynette's murder. Mr Coutts deliberately chose to have in his team some officers and civilians who had significant knowledge of the relevant history and some officers and civilians who were ignorant of that history.

475. At the same time as Mr Coutts was assembling the investigative team he was also reading all the relevant information then available to him. As I have already indicated it is not entirely straightforward to pinpoint precisely what information he had. Mr Coutts does not set out in his witness statement a description of the information which he assembled and/or was provided to him in those early weeks after 7 July 2003. Self-evidently, however, Mr Coutts would have had access to all the documents generated in Operation Mistral itself (since they were of recent origin) and, no doubt, some of the documentation which had been generated in LW1 – particularly that which had been recovered for the purposes of Operation Mistral. Without doubt, too, Mr Coutts was provided with or obtained Mr Sekar's book "Fitted In".

476. During the course of his extensive cross-examination Mr Coutts was taken to task over what was alleged to be his willingness to be influenced by that book and its author. Mr Coutts stoutly denied that he had been influenced, unduly, by the contents of Mr Sekar's book. Mr Penhale was equally forceful in maintaining that he was open-minded about its themes and content. That said, they both defended their use of the book as a source of information. Looked at in the abstract I see nothing sinister in a SIO and his deputy reading material which might throw some light on a difficult and sensitive investigation. These were very experienced investigators; in my judgment it is reasonable to infer that they were quite capable of reading material at the outset of an investigation and then affording it appropriate weight as the investigation unfolded. I do not consider the fact that Mr Coutts and Mr Penhale read Mr Sekar's book and, in due course, provided it to other officers to read, in itself, demonstrates a fixed mindset. I will return, in due course, to the issue of whether there is any evidence which suggests that Mr Sekar's conclusions were unjustifiably and erroneously influencing Mr Coutts, Mr Penhale or any other officer.

477. On 1 September 2003 Mr Coutts set "lines of enquiry". I have already described his priorities in section 4. In my judgment, no possible criticism can be made of Mr Coutts for instigating those lines of enquiry. All of them, self-evidently, were necessary.

478. On the same date Mr Coutts designated the original defendants together with RO, MT and AM as victims. Sensibly, that can only mean that, as of that date, Mr Coutts considered that these persons had not been involved in Lynette's murder. Was such a conclusion reasonably justified at that time? In my judgment the answer must be yes. At that time the following facts/conclusions were incontrovertible. First, JG had confessed to Lynette's murder by pleading guilty before Royce J. Second, he had asserted through his Leading Counsel in open court that he had committed the murder

alone and that he had no knowledge of and no link to the original defendants. Third, three of the core four had admitted in interviews with officers from Operation Mistral that they had made false witness statements and they had given untruthful evidence which had wrongly incriminated the original defendants. Fourth, no forensic evidence, of any kind, had linked any of the original defendants to the murder scene. I appreciate, of course, that there was evidence in existence in 2003 dating back to 1988/89 which implicated some of the original defendants in Lynette's murder independently of the core four e.g. the evidence of Mr Massey as it related to TP, the evidence of Ms Harris as it related to YA, the evidence of Deborah Taylor and others in relation to SM and SM's admissions in interviews under caution and the evidence of Ms Perriam and Ms Carole Wheeler as it related to a group of men allegedly in the vicinity of 7 James Street on the night when Lynette was murdered. I appreciate, too, that LV, in particular, had spoken to persons of the involvement of some the original defendants in the murder both before and after making statements to the police. However, I have little doubt that Mr Coutts was entitled to conclude, as he quite clearly did, that such strands of evidence as implicated some of the original defendants but which were independent of the core four did not invalidate the conclusion that the original defendants were entitled to be classed as victims. In my judgment, as of September 2003 it was perfectly permissible for Mr Coutts to treat the evidence of admissions by YA and SM to girl friends/family members about knowledge of or participation in Lynette's death with a degree of caution particularly in the case of SM given what was known of his personality and psychiatric state in 1988. The evidence of Mr Massey was justifiably under scrutiny as was the evidence of Mrs Perriam. The Court of Appeal had made it clear that it regarded SM's admissions in interviews under caution as unreliable. The court had expressed itself in terms which left no room for doubt as to its views. I appreciate that the evidence of Ms Wheeler had been obtained in 1992 and could not, sensibly, have been regarded as tainted by events in November and December 1988. Nonetheless, weighing everything in the balance, it was much more likely than not that the original defendants and the other persons arrested in December 1988 were "victims" rather than perpetrators of Lynette's murder.

479. I appreciate, too, that there was no statutory basis for designating the original defendants as victims on the date when Mr Coutts took that decision. The statutory basis for categorising a person as a victim is Section 32 of the Domestic Violence, Crime and Victims Act 2004 which, of course, was not in force in September 2003. However, significantly before that enactment, police forces had begun to recognise victims of crime as having a special significance. I do not consider that the designation of the original defendants, RO, MT and AM as victims is any basis for thinking that Mr Coutts had a fixed mindset to the effect that LW1 officers and, in particular, the Claimants must have been guilty of crimes during the course of LW1.

480. It was also on 1 September that Mr Coutts designated the core four as suspects. In view of the admissions made by AP, MG and MA during the course of their interviews in Operation Mistral and the other factors mentioned in paragraph 478 above such a designation was, in my judgment, inevitable. No one has suggested otherwise; it has not been suggested that there was no proper basis for treating the core four as suspects and arresting them. What has been suggested, however, is that even at this early stage Mr Coutts and his team had an unwavering belief not just that the core four had lied when incriminating the original defendants but that those lies

had been induced by criminal conduct on the part of a number of officers at the heart of LW1.

481. I have no doubt that Mr Coutts and Mr Penhale did form the view, quite early on, that, in all probability, the core four had lied about the involvement of the original defendants in Lynette's murder. I have no doubt, too, that this view was held by many, if not all, of the officers then engaged in LW3. Further, in my judgment, it is at least probable that by the same stage Mr Coutts and Mr Penhale believed that there were reasonable grounds to suspect that the lies told by the core four were brought about by conduct which was unlawful on the part of LW1 officers albeit that they had not identified the officers involved in such conduct. Was that because their minds were closed to all other reasonable possibilities or were those beliefs justified on a fair and balanced appraisal of the information then available? I propose to take a little time, now, to answer those questions.

482. In my judgment, there was ample justification for the belief that the core four had lied about the involvement of the original defendants in Lynette's murder. First and foremost, three of the four had admitted that they had told such lies. Those admissions had taken place in interviews with officers from Operation Mistral some months before JG's involvement in the crime was discovered. At the time when AP, MG and PA made their admissions to officers from Operation Mistral they had no obvious reason to suppose that anyone (other than the original defendants) would be implicated in Lynette's murder. I have struggled hard and failed to think of a sensible reason why AP, MG and PA would say that they had lied on oath about the involvement of the original defendants if that was not true. It is difficult to see what possible motive they could have had for exposing themselves to the possibility of perjury charges if they had not committed the crime of perjury. The interviews with the officers from Operation Mistral were not "informal chats" which might lead to nothing; they were formal interviews at which lawyers and/or appropriate adults were present to represent the interests of AP, MG and PA. LV refused to be interviewed by officers from Mistral. This refusal to be interviewed would, no doubt, have gone some way to persuading the officers from Mistral and, in due course, LW3 that she, too, had lied during LW1. In any event, if AP's account of what she had seen on the night of 13/14 February 1988 was accepted as a lie, LV's account of events that night, too, was almost bound to be a tissue of lies.

483. The fact that, subsequently, JG confessed to killing Lynette, maintaining that he had acted alone, no doubt, reinforced the belief of Mr Coutts and Mr Penhale that the core four had told lies. No doubt, too, they were influenced in their belief by all the information which had been amassed during the course of Operation Mistral. That included the Hacking and Thornley Report, the NCF research into the likely profile of Lynette's killer and the forensic evidence which had been obtained.

484. I am equally satisfied that there were reasonable grounds to suspect that the core four had been induced to lie about the involvement of the original defendants by the conduct of police officers involved in LW1. Upon the premise that the core four had lied, the options available to explain such lies were comparatively limited. Option one was that each of the core four had made up the lies he/she had told completely independently. In my judgment, such an option was properly discounted at a very early stage. I accept that the accounts given by the core four were not identical. Indeed, I accept that they contained material differences, some of them quite marked.

On any view, however, there were significant similarities in the accounts which they had given. In my judgment, it beggars belief that the core four gave untruthful accounts about the involvement of the original defendants but completely independently of each other. A second option was that police officers had induced the core four to make witness statements which were untruthful and, thereafter, pressurised them into maintaining those untruthful accounts when giving evidence at the trials of the original defendants. That, of course, is what the core four were alleging. In my judgment, the way in which the accounts of the core four emerged during November and December 1988, the undoubted similarities in their accounts and, in particular, the way in which the detail provided sometimes "changed" to accommodate and/or fall in with detail provided either by a different person within the core four or another witness entirely provides considerable support for this option. The third option was that the core four had conspired together to incriminate the original Defendants completely independently of the police. Mr Coutts and Mr Penhale thought this a remote possibility. They did not believe that the core four were capable of instigating and implementing such a conspiracy. I have no means of reaching a definitive judgment about whether the core four were capable of initiating and then implementing such a conspiracy not least because I have never seen them give evidence about why they lied. I can, however, make a judgment about whether such a scenario was likely. In my judgment, it was not. In fact it was most unlikely given how their accounts emerged as I explained above.

485. Of course it is possible that the core four agreed amongst themselves that each of them would provide untruthful but similar accounts which they would "feed" to the police over a number of separate interviews taking place over an interval of time. That is not, however, a likely scenario. The core four had no means of knowing when and in what circumstances they would find themselves at the police station. They never attended by appointment; they never attended at a time or date of their own choosing. There is no evidence which begins to suggest that they even knew that they were to be asked to make statements and then yet further statements until "confronted" by officers who were out on the streets looking for them. If the core four had been intent upon making false accusations about the original defendants independently of their interaction with the police it is far more likely that the accusations would have emerged quite differently. I find it very difficult to understand how the accounts emerged as they did if no police officer was instrumental in what occurred.

486. In saying that I acknowledge that there is a further possible scenario. It is at least possible that what occurred was that Mrs Perriam's account gained credence with a number of the officers engaged with LW1. Her account was then repeated by officers to other potential witnesses and, in particular, to the core four. The core four, either independently or together, then decided, for their own reasons, to adopt Mrs Perriam's account as a starting point and then embellish it. What they then said, individually, was fed by officers to each of them so that there was a kind of rolling ball effect. The result was the statements which emerged on 22 November, 6 December and 11 December.

487. Having identified all the possibilities (realistic or otherwise) which were available for consideration by Mr Coutts, I have reached the clear conclusion that reasonable grounds existed from the start of LW3 to suspect that the untruthful accounts which

the core four gave about the involvement of the original defendants in Lynette's murder were brought about by criminal conduct on the part of police officers involved in LW1. In my judgment it was permissible for LW3 officers to suspect that officers who had been part of LW1 (at this point unknown) had engaged in a conspiracy to mould and manipulate evidence much as Mr Dean was later to describe in the Dean Review. I stress, however, that at this very early stage there is no evidence that LW3 officers had formed suspicions about particular officers who were involved in LW1.

488. It has also been suggested that even at this early stage in LW3 the true agenda of Mr Coutts and his team was to prosecute and gain convictions against police officers who had been engaged in LW1 and that nothing else mattered. The argument is made that the arrest and prosecution of the core four was always intended to smooth the path towards a successful prosecution of LW1 officers. The Claimants allege that it had no other genuine purpose.

489. I do not understand it to be denied that the possibility of prosecuting police officers was in the mind of Mr Coutts from the start of LW3. That is not surprising; the Terms of Reference under which LW3 was launched clearly permitted of that possibility. A line of communication was opened early on between the police and the CPS. I have referred previously to the meeting which took place on 11 September 2003 when Messrs Cahill, Coutts and Penhale met Mr Thomas and a colleague from the CPS. The minutes of that meeting demonstrate that the possibility that LW1 officers had committed criminal offences was discussed at that stage. Indeed the possibility that the local CPS lawyers engaged in LW1 had also committed offences was raised as a matter which would be investigated (as indeed it was in the case of Mr Hywel Hughes). In his briefing note to the Attorney General in late 2003 Mr Thomas made it clear to the Attorney that SWP would be seeking advice about whether a prosecution should be brought against serving and retired police officers. As Mr Thomas put it, graphically, at paragraph 5.4 of his note:-

> "The issue in the case is what made four witnesses maintain a story that was clearly false."

490. The evidence satisfies me that the possibility of prosecuting LW1 officers was always a live one from the commencement of the LW3 investigation. However, I have seen no documentation and I heard no oral evidence which begins to persuade me that prior to the arrest of the core four there was, already, in place a plan and a strategy to prosecute LW1 officers. Perhaps more importantly, I fail to see how recognising the possibility that LW1 officers might be prosecuted demonstrates a fixed mindset on the part of Mr Coutts and his team.

491. I have already described in some detail what occurred when the core four were interviewed under caution during the course of 2003 and 2004. At this stage it is sufficient that I repeat that LV, AP and MG admitted giving false evidence at the committal proceedings and the trials of the original Defendants but sought to explain their conduct by asserting that they were the victims of bullying and manipulation at the hands of officers from LW1. PA chose not to answer the questions which were put to him. The answers given in interview by AP and MG were similar to the accounts they had provided to Operation Mistral. I do not consider that anything emerged as a consequence of these interviews which should have lead Mr Coutts and his team to discount the possibility that LW1 officers had engaged in unlawful

behaviour during the course of that investigation. In my judgment nothing said by LV, AP and MG in those interviews had the effect of undermining their core contention that they had lied about the original defendants on account of pressure from LW1 officers.

492. Mr Coutts accepted under cross-examination that, with the benefit of hindsight, it was probably a mistake to have provided JG with a transcript of his Leading Counsel's speech in mitigation prior to the interview which occurred on 19 January 2004. Mr Coutts told me that he should have instructed his officers to question JG about what had occurred on the night of the murder without giving him the opportunity of any account with which to refresh his memory or tailor his account to what he had said previously.

493. The Claimants submit that Mr Coutts had a sinister reason for directing that JG should be provided with the transcript. They submit that the provision of the transcript was to ensure that the answers given by JG in interview were consistent with what he had said previously and to ensure that he stuck to his account that he had acted alone.

494. I am not prepared to hold that Mr Coutts acted with the cynical motivation attributed to him by the Claimants when he directed that JG should be provided with the transcript prior to interview. I consider it to be far more likely that he was simply seeking to obtain as much information as possible from JG and that his only motivation in providing the transcript was so that JG could refresh his memory.

495. Be that as it may, it is suggested that a number of unanswered questions remained following the interview of 19 January. In particular, it is submitted that JG failed to give any coherent account of how it came to be that Lynette sustained so many stab/slash wounds and in particular how she came to sustain the injuries which were responsible for her death. In truth, according to the Claimants, JG gave hardly any description of the circumstances in which he inflicted the fatal injuries upon Lynette. Further, JG was hazy, to say the least, about what he was wearing on the night of the killing, what he did with his clothes after the event and what he did with the knife which he used to kill Lynette. The Claimants submit that in the face of this lack of information Mr Coutts and his team should have been sceptical about JG's claim that he had acted alone when he killed Lynette. They should have contemplated the very real possibility that JG had been acting in concert with others and that he had been protecting them from the time of his arrest.

496. I have also given this submission considerable thought. At one level it is easy to believe that the circumstances of this murder would be, for ever, etched in the mind of the killer and that JG's inability to recount relevant details relating to the murder casts real doubt upon the credibility of his account. On the other hand, I can envisage, too, that a person committing a murder such as this would do his level best to try to forget what he had done.

497. There is no way that I can determine why it was that JG was unable to provide relevant details about the murder. What I can do, however, is make a judgment about how Mr Coutts should have reacted in the face of this lack of detail.

498. In my judgment the correct response from Mr Coutts was to instigate as many inquiries as was reasonable in order to test the proposition that JG may not have acted

alone. If JG was not acting alone at the time of the murder it must follow that he was protecting other persons involved. In such circumstances it was obviously incumbent upon Mr Coutts to investigate who those other persons might be and, in particular, whether those persons might be one or more of the original defendants.

499. To an extent such an investigation had already begun. On 2 March 2003 officers engaged in Operation mistral had taken a witness statement from Ms Brinda Moulani, JG's sister. It is clear from its terms that the statement was taken with a view to providing as much information about JG as could be provided by a close family relative. The information which Ms Moulani provided was that in 1988 JG was living and working in a shop in Malefant Street in Roath (another area of Cardiff about two or three miles north of Butetown). The shop was owned by Ms Moulani and her husband. JG was then aged about 22 and, according to his sister, he was a quiet, private person who spent most of his time working or reading. Neither JG nor any other member of the family had connections with or friends living in the Butetown area. Not surprisingly, after the length of time which had elapsed, Ms Moulani was unable to provide any account of JG's whereabouts over the weekend when Lynette was killed.

500. The information provided by Ms Moulani hardly supported the idea that JG had been with a number of other persons at the time he killed Lynette. Putting it somewhat crudely, it hardly supported the notion that JG, a quiet, private and rather lonely young man had been in company with the original defendants, or for that matter anyone else, at the time he committed this murder.

501. A few weeks later JG's cousin, Anthony Dickman, provided a witness statement. While it revealed that Mr Dickman himself had some connections with people in Butetown it said nothing to suggest that Ms Moulani's portrait of JG was inaccurate and it provided no basis to suspect that JG had been in the company of the original defendants (or anyone else) at the time of the murder.

502. Mr Coutts did not content himself with assessing this information from JG's family. He was informed, too, by the profiling evidence which had been obtained in 1988 and in Operation Mistral. Additionally, he set about obtaining expert evidence on a variety of topics. He said in evidence that the purpose of obtaining such evidence was to help him get to the truth and, in reality, there is no evidence which suggests that this is not correct.

503. The expert evidence most relevant to the issue of whether JG had acted alone or in concert with others was the reconstruction evidence which Mr Coutts commissioned from Virtual Reconstruction Limited. That company was instructed to provide evidence on 9 March 2004 i.e. within weeks of the interviews with JG. The work undertaken by the company was very extensive. Mr Andrew Postlethwaite, its managing director, made a witness statement dated 26 September 2005 to which he exhibited a large number of reconstructions in accordance with the instructions which he had been given in March 2004. The witness statement and paper copies of the relevant exhibits are contained within the Core Bundles (see Volume 11 pages 7625 to 7727). Not surprisingly, there was no detailed analysis of this evidence during the course of the hearing. That said, I accept the submission made on behalf of the Defendant that this evidence casts no doubt upon JG's account of acting alone at the time of the murder.

504. I should also mention the evidence of Dr Gallop, the forensic scientist. She had been instructed during the course of Operation Mistral and she provided a witness statement dated 30 May 2003 in which she had considered, amongst other things, the significance of the blood distribution at the murder scene. Nothing in Dr Gallop's statement of 30 May 2003 cast any doubt upon JG's account of acting alone. Indeed, Dr Gallop's opinion that the "foreign blood" which had been distributed within the flat was likely to have come from a hand injury sustained by Lynette's attacker was consistent with JG's assertion in the first interview on 19 January 2004 and in his subsequent witness statement that he had cut his wrists and knuckles during the course of the attack upon Lynette.

505. I have set out in Section 4 other important staging posts in the investigation during the course of late 2003 and 2004. However, it is as well to set out, briefly, the substance of the expert evidence which was provided by Professor Coulthard, Dr Hardcastle and Professor Cape.

506. Professor Coulthard was asked to consider the language used in a number of statements and records of interview which had been taken/made by LW1 officers. On 27 June 2004 he wrote to Mr Hugh Lewis, one of the more senior officers engaged in LW3 to say:-

> "…..in all the mass of Lynette White data I am able to find little that will help your investigation – the best I think I could do would be to write a brief report pointing out that some, at least, of the second Grommek interview is not in his language.
>
> I am very sorry I cannot be more helpful as, after hearing the story of what had happened, I started with high hopes. Please let me know what you would like me to do now and how I should ensure the return of all the evidence you left with me."

507. The Claimants attach significance to the Professor's letter. They argue that the phraseology used in the letter demonstrates a degree of partiality on his part. They also submit that I should infer that the instructions provided to Professor Coulthard by the officer who instructed him must have pointed him towards findings which would be adverse to the persons who had written the statements and records which he was asked to consider.

508. I accept that the Professor's use of language may not be ideal; I cannot accept, however, that the Professor's letter demonstrates partiality on his part. The letter notified Mr Lewis that the Professor could find nothing of substance which would incriminate any of the persons who had written the statements/records. That was its clear effect. None of the evidence adduced before me suggested that the Professor's instructions had been drafted in such a way so as to seek to influence his conclusions.

509. In any event, it is instructive to note what happened next. It might be thought that a partial investigator would have ditched Professor Coulthard. That did not happen. Rather, the Professor was instructed to provide a report upon the material with which he had been provided.

510. The Professor's report is dated 25 February 2005 – see Volume 11 of the Core Bundles page 7589. The report recorded that the Professor had been provided with "enormous number(s) of documents, tapes and CDs" although the report identified only those documents upon which the Professor chose to comment. As the Professor pointed out in the report his main focus was upon the two interviews conducted with AP on 17 November and the interviews with MG and PA on 22 November. The Professor's conclusion was that the majority of those interviews were partial records only by which I take him to mean that more had been said between the interviewee and the interviewers than had been reduced to writing. The Professor also noted that some of the language used was 'police' language i.e. words attributed to the witness which were much more likely to have been words in common use by police officers than lay persons. However, the core conclusion expressed by the Professor was that there was no linguistic evidence to suggest that the interview records had been fabricated or that the police officers involved in the interviews had not believed they were engaged in eliciting relevant facts from witnesses who were unreliable.

511. As is obvious nothing in the Professor's report suggested criminal conduct on the part of LW1 officers. Indeed a strong argument can be made that his evidence undermined the suspicion (by then firmly held by Mr Coutts) that the officers involved in taking statements from AP, MG and PA had engaged in unlawful conduct. At various stages of LW3 Professor Coulthard produced further reports. To the extent that it is necessary to do so, I will deal them in the correct chronological sequence.

512. Dr Hardcastle is a forensic document examiner (or at least he was in 2004). His areas of expertise included making assessments about whether a written record constituted a complete record of the words spoken between an interviewer and interviewee particularly by reference to the time taken to produce the record. He was asked to consider the record of interviews with AP on 17 November 1988 and MG on 22 November 1988. In respect of AP's interview during the morning of 17 November 1988 and MG's interview on 22 November Dr Hardcastle found no evidence to show that a significant part of the interview had not been recorded. In respect of the interview with AP during the afternoon of 17 November Dr Hardcastle's conclusion was that the evidence as to whether a part of the interview was not recorded was inconclusive.

513. Professor Cape produced a report on 5 December 2004. His instructions were to consider whether any officers involved in the arrest, detention and/or interviewing of the original defendants had committed breaches of PACE and/or the Codes of Practice made thereunder. He was provided with many documents all of which he listed in his report. The Professor's report is long and detailed. It voiced a number of criticisms of the conduct of police officers; in general terms the Professor's view was that there had been a number of breaches of PACE and/or the Codes but that the breaches identified, in themselves, did not constitute criminal conduct.

514. The documents provided to the Professor included a number which were relevant to the contentious issues surrounding the arrest of TP on 9 December 1988. The Professor was provided with the Custody Record spanning the dates 9 December 1988 to 12 December 1988 together with an associated warrant for further detention, transcripts of TP's interviews under caution in December 1988 and transcripts of the interviews conducted with TP in May 2004. He was also provided with documentation relating to the arrest of JA which was said to mirror the treatment

meted out to TP. However, Professor Cape was not provided with TP's solicitor's letter of 30 October 2003; nor was he provided with the witness statements made by Mr Greenwood, Mr Seaford, Mr Jennings and Mr Stephen. On the basis of the information provided to him the Professor's conclusion was as follows:-

> "9.1 A decision to treat John Actie and Anthony Paris as volunteers would probably have been lawful in principle, even though it may have been a ploy to avoid the consequences of arrest. However, it would seem that they were not, in fact, treated as volunteers since the evidence suggests that they were both required to attend Butetown police station under compulsion, and that this had been the intention from the outset. If this is the case, then they were both arrested at the time that they were taken from their homes. Such arrests would have been unlawful since, on the evidence I have seen, they were not told that they were under arrest and were not told of the grounds for the arrests. It also seems that they were not cautioned at the time of their *de facto* arrests. There were then breaches of both PACE and the Codes of Practice since they were treated as if they were volunteers and, in particular, were not taken before a custody officer, were not informed of their right to legal advice and the interviews at Butetown police station were not, apparently, contemporaneously recorded. On the basis that they were, in fact, arrested at the outset their detention at Butetown police station was unlawful at least until the time that they were properly arrested later in the morning of 9 December 1988. It is probable that their detention was rendered lawful when they were properly arrested."

515. Self-evidently this view is based upon an acceptance that TP attended the police station "under compulsion". However, so far as I can tell Professor Cape was not provided with any of the statements then in existence which suggested that TP had, in fact, attended voluntarily. I have received no explanation as to why the letter of 30 October 2003 and the witness statements of Mr Greenwood and the others did not reach Professor Cape before he reported. It is possible that somewhere hidden in the Full Electronic Bundle there may be documents which throw light upon how this state of affairs came about but I have not located them and they were not shown to me during the course of the hearing or referred to in counsels' closing submissions.

516. Four possibilities arise. First, the documents were deliberately withheld from the Professor for sinister motives. Second, the documents were withheld because the person instructing the Professor realised that he could not resolve the factual dispute about whether TP had attended the station under compulsion and his opinion was required on the assumption that TP had not attended the police station voluntarily. Third, the documents were not sent to the Professor through negligence or inadvertence. Fourth, the person who sent instructions to the Professor was unaware of the documents. Given the general view which I have formed about the integrity of the officers involved in LW3 I consider the third and fourth options to be far more likely than option one and I doubt whether option two would occur so readily to a

police officer as it may have done to a lawyer. I am not prepared to conclude that the letter and witness statements were deliberately concealed from the Professor.

517. As I have said, the overall effect of Professor Cape's report was that there had been significant breaches of PACE and the Codes of Practice made thereunder. In my judgment, there was nothing in the Professor's report looked at in its entirety which would have dispelled the suspicion held by Mr Coutts that a number of LW1 officers had committed criminal acts in November and December 1988.

518. In addition to the expert evidence to which I have just referred and the ESDA evidence which was being accumulated throughout 2004 and 2005, witness statements were obtained from a number of persons who were witnesses at the trials of the original defendants and/or who gave witness statements to LW1 officers. During the course of the trial I was shown transcripts of interviews under caution with Ms Pamela Matthews following her arrest in November 2003, transcripts of interviews with Ms Jacqueline Harris following her arrest in December 2003, notes made by Ms Hill of her contacts with Ms Amiel in January 2004 and February 2004, witness statements made by Ms Sidoric in January 2004, Mr Ellis in May 2004, Mr Mann and Mr Moore in January 2005, Mr Harrop and Ms Nying in February 2005. To a greater or lesser extent all those persons suggested in their statements that LW1 officers had engaged in bullying them and attempting to manipulate their evidence during the course of taking witness statements from them.

519. It is against this background that I turn to the decision-making process which led to the Claimants (apart from Mr Hicks) and other serving/former officers being arrested.

520. On 1 July 2004 Mr Coutts met with his senior colleagues in the Gold Group and informed them that material had been obtained which had the potential for incriminating eight police officers. This information was also provided to Mr Tom Davies, the IPCC Commissioner, at a meeting on 5 July. On 26 August 2004 Mr Coutts directed that all the witness statements made by 30 named police officers who had participated in LW1 should be obtained and preserved. The 30 officers included all the Claimants apart from Mr Hicks and Mr Morgan. The LW3 Policy Log shows that on 23 November 2004 Mr Coutts directed Mr Penhale to undertake two important tasks relating to LW1 officers. First, he was asked to prepare person of interest packages in respect of the (by now) 33 serving/retired police officers identified thus far as persons of interest. Second, he was asked to consider all relevant forensic issues as they related to those officers. In particular, Mr Coutts decided to adopt a recommendation made to him by the Independent Consultants that all witness statements made to LW1 officers between 16 November 1988 and 28 February 1989 (the date of the committal proceedings) should be subjected to ESDA testing and that all statements taken by individuals who were suspects or potential suspects should be ESDA tested (see Volume 15 Core Bundles page 10745).

521. On 25 January 2005 Mr Penhale submitted five person of interest packages to Mr Coutts in respect of Mr Daniels, Mr Gillard, Mrs O'Brien, Mr Page and Mr Seaford. Mr Penhale recommended that those persons should be designated as suspects and arrested.

522. Mr Coutts considered the person of interest packages in respect of the five police suspects on the same day that he was presented with them. He decided that they

should all be arrested and that the arrests should take place on the same day at or about the same time without prior warning and without prior disclosure. He decided, too, that the arrests should take place at each suspect's home and that immediately thereafter their homes should be searched.

523. In his witness statement (paragraph 83) Mr Coutts sets out what he describes as the "key evidence" which had emerged prior to his decision to arrest any police suspects. It is as well to set it out in detail which I will do in the series of bullet points which follows:-

- The statements made by or on behalf of JG.
- The various statements of the core four. There was available all the witness statements made by those persons during the course of LW1, at the very least a summary of their evidence in court in the summing-up of Leonard J, the record of the interviews of AP, MG and PA with officers from Operation Mistral and, of course, the record of the interviews under caution which had taken place between the core four and officers of LW3.
- The interviews under caution of the original defendants during the course of LW1.
- The treatment of the original defendants during the course of those interviews which was apparent from the transcripts of the interviews and also from listening to the relevant tapes.
- The record of interviews which had taken place between TP, JA and officers of LW3 in 2004.
- The accounts given by a number of persons about their treatment at the hands of the police and, in particular, the accounts of Mr Ellis, Ms Harris, Ms Nying, Mr McCarthy, Mr Mann, Mr Harrop, Mr Moore and Mr Hulse.
- The forensic and pathology evidence obtained during the course of LW1 and during Operation Mistral and the forensic evidence emerging during LW3.
- The evidence contained within the B59 as to the length of time spent by the core four at the police station on various dates.
- The evidence as to how Mr Massey came to give evidence at the trial of the original Defendants.

- A number of strands of expert evidence including ESDA evidence.

524. In his witness statement Mr Coutts describes the effect of the ESDA evidence as at early 2005. First, the evidence established that page 3 of MG's witness statement of 22 November 1988 had been re-written. Words used on the re-written page made MG's identification of RA, YA and MT as the persons he saw at or about the murder scene more convincing. Impressions of the re-written statement were found on the witness statement made by LV on 6 December 1988. Second, page 7 of AP's witness statement of 6 December had been re-written after the statement had been completed. The re-written version did not include a reference to Mr Ellis being present in James St at about the time of the murder but such a reference had "appeared" to be in the original version of that statement. Third, page 11 of AP's statement of 11 December had been re-written. Fourth, the final page of LV's statement of 6 December 1988 (mistakenly identified as the statement of 11 December in Mr Coutts' witness statement) included a re-written final paragraph which purported to show that Mr Miller knew of 7 James Street. This was contrary to an account Mr Miller had given earlier. Fifth, Mrs Perriam's statement dated 11 February 1988 must have been written on a different date.

525. During the cross-examination of Mr Coutts he was asked a number of questions, quite justifiably, about his assertion that the ESDA evidence showed that page 7 of AP's evidence had been re-written and that the original version of the page had contained a reference to Jack Ellis but the re-written version did not. Essentially there were two issues which needed elucidation. First, as of early 2005 was that the state of the evidence? Second, if not, was that ever the true state of the evidence?

526. Without doubt the most reliable indicator as to the state of the ESDA evidence in 2005 comes from the persons who were providing it. In a statement dated 6 August 2010 Dr Barr sought to pull together all the main ESDA points which had emerged by this date. That said, she was careful to point out, too, when such points had emerged and which scientist (Mr Richardson or herself) was responsible for the finding.

527. In her statement of 6 August 2010 Dr Barr made a number of points about page 7 of AP's statement. First, she offered the opinion that page 7 had been re-written. She also identified that this opinion had first been provided to the police in a statement made by Mr Richardson dated 7 December 2004. Second, she suggested that there was strong, albeit not conclusive, evidence to suggest that the final version of page 7 had been written after the author had completed the statement. This opinion, too, had been advanced first in Mr Richardson's statement of 4 December 2004. Third, Dr Barr offered the view that it was possible that there were impressions of the first page 7 on page 8 of the statement and that "the name Jack Ellis could appear in the impressions". As I understand it, however, this was first mentioned in statement form, at least, by Dr Barr herself in a statement dated 7 February 2007 (see Core Bundles Volume 11 page 7573).

528. On the basis of Dr Barr's witness statement Mr Coutts was wrong to assert that ESDA evidence in 2005 demonstrated that the original page 7 of AP's statement contained a reference to Jack Ellis but the re-written page did not. That was not information which had been provided to Mr Coutts by early 2005. Further, it seems to me that Mr Coutts was describing the ESDA evidence about this point in rather exaggerated

terms. Dr Barr's possibility had become rather more certain on a fair reading of Mr Coutts' witness statement.

529. I have, of course, considered whether this passage in Mr Coutts' witness statement was a deliberate attempt to mislead or simply a mistake. After some reflection, I consider it much more likely than not that Mr Coutts' assertion that this information was available as at early 2005 was a mistake as opposed to an attempt to mislead. After all, the point was easily checked by reference to the witness statements of Dr Barr and Mr Richardson. Further, the "Jack Ellis point" does not feature at all in the person of interest package which Mr Penhale prepared in respect of Mr Gillard who was the author of the statement. In my judgment, that is not just a clear further indicator that the point had not surfaced by 2005 but also a further reason for holding that Mr Coutts made a mistake in his witness statement. I do not consider it likely that Mr Coutts would have deliberately tried to mislead the court when there were obvious and comparatively easy ways of checking the accuracy of his evidence.

530. Mr Penhale's witness statement also refers to the "Jack Ellis point" (see paragraph 61). It is not clear from the way Mr Penhale's statement is written whether he was intending to assert that the point was known in 2005 but that seems very unlikely given the way he wrote the person of interest package in respect of Mr Gillard.

531. Both Mr Coutts and Mr Penhale sought to defend their assertion that the original page 7 "had contained" as opposed to "might have contained" a reference to Jack Ellis. I was asked by Counsel for the Defendant to consider the documents for myself but I declined. In my judgment, both Mr Coutts and Mr Penhale did, to an extent, overstate Dr Barr's evidence about this point in their witness statements and oral evidence. That, of course is the real point; it was not for Mr Coutts and Mr Penhale to interpret Dr Barr's written evidence in a manner they thought appropriate any more than it was for me to make a judgment about whether Dr Barr had been too cautious in her expression of view, especially without hearing from her.

532. I have taken some time to set out the evidence which Mr Coutts regarded as key in early 2005 for two reasons. First, it throws light upon whether or not Mr Coutts was operating with a closed mind. Second, it provides me with a guide as to the information upon which Mr Coutts acted when he decided that there were reasonable grounds to justify arrests. This second point is of some importance since, in my judgment, it would be wrong to approach Mr Coutts's decision-making about the arrests of suspects simply on the basis that all that he did was consider the person of interest packages provided to him by Mr Penhale. As Mr Coutts points out in his witness statement (paragraph 99) Mr Penhale was summarising the evidence against the suspected person. He was not purporting to describe all the relevant information available to Mr Coutts.

533. It is as well to pause at this point to consider a submission of considerable importance to the case put forward by the Claimants. Throughout the trial and particularly in the closing speeches of counsel, the Claimants sought to demonstrate that, from the outset of LW3, Mr Coutts and Mr Penhale ignored evidence or other material which undermined their view that the Claimants had committed criminal offences during the course of LW1. Accordingly, it is pertinent to explore what exculpatory and/or undermining material/evidence was in existence in 2005 when Mr Coutts and Mr

Penhale were making their decisions about arrests. At this stage I simply identify the points which were, on any view, of relevance to all Claimants.

534. First, without doubt, there were wholly proper and legitimate concerns about the truthfulness, reliability and accuracy of the core four. They were, potentially, vital witnesses in any prosecution of police suspects yet, self-evidently, they were witnesses whose testimony might not be believed. There was an abundance of material upon which they could be cross-examined in an attempt to discredit their evidence about the actions of LW1 officers. The summing-up of Leonard J was a clear remainder about how they might be exposed as witnesses. Further, although AP, MG and PA had complained about the conduct of police officers (plural) in their interviews with officers from Operation Mistral and although LV, AP and MG had made complaints about officers (plural) in their interviews under caution none of the core four were able to identify the individual officers whom they were impugning with any degree of conviction with a few notable exceptions. Further, in relation to a number of the Claimants, the core four positively rebuffed the suggestion that they had been engaged in threatening or bullying behaviour towards them. Second, evidence had emerged during the course of LW1 which had supported the evidence given by LV, AP and MG during the trials of the original defendants. That was true even if the evidence of such persons as Mr Massey and Mrs Perriam was discounted. By way of example, there was the evidence of SM's admissions to his girlfriend when in prison and the evidence that LV, in particular, had made allegations to persons other than the police to the effect that some of the original defendants were involved in the murder of Lynette. The evidence obtained from Carole Wheeler in 1992 provided potential support for the evidence of Mrs Perriam. Third, the Claimants submit that the account which JG gave to the police when interviewed as a witness in 2004 raised considerable doubt about his assertion that he was the only person involved in the murder of Lynette. All the Claimants' counsel point out, quite correctly, that JG's answers in his interviews and the contents of his witness statement do not explain all aspects of the forensic and pathological evidence.

535. The Claimants' counsel are correct, too, when they submit that none of these features appear in any of the documents recording the decision – making leading to the first or any subsequent arrests in 2005. They invite me to conclude that these points were simply ignored and that this is clear evidence that Messrs Coutts and Penhale had closed their minds to any possibility other than that the core four had been the victims of criminal misconduct on the part of LW1 officers and that this was why they had perjured themselves.

536. I have considered this line of argument with considerable care. However, it seems to me that it ignores the realities of the decision-making process in which Mr Coutts and Mr Penhale were engaged in 2005. At each stage their task was to decide whether reasonable grounds existed to justify the arrest of persons they suspected of criminal wrongdoing during the course of LW1. They were not deciding upon their guilt or innocence; they were not making a decision about whether there was evidence in existence which pointed away from guilt. The reality of the decision making process undertaken in relation to police suspects in 2005 is that unless the exculpatory/undermining evidence negated, completely, what would otherwise be reasonable grounds for suspicion it was not crucial at this stage.

537. Mr Coutts told me that he genuinely believed that grounds existed which justified the arrests which he authorised. Mr Penhale said the same in respect of the persons about whom he wrote in the person of interest packages and about those whose arrests he authorised. On this issue I believe them. Whether reasonable grounds did exist to justify those arrests is, of course, a hotly contested issue upon which I will need to adjudicate. To repeat, however, I accept that Mr Coutts and Mr Penhale believed such grounds existed. I am far from satisfied that as at 25 January 2005 and thereafter throughout the year Mr Coutts and Mr Penhale had become convinced that the LW1 officers whom they were considering for arrest had committed crimes in 1988 and that nothing was going to deflect them from that belief. I accept their evidence that they believed that reasonable grounds existed for suspecting that they had committed offences; that was their state of mind.

538. In my judgment that conclusion is supported by Mr Coutts' decision to hold an adversarial briefing. It is supported too by the available evidence about what occurred at the briefing. The decision that this meeting should be convened was made on 26 January i.e. on the day after Mr Coutts made his decision that the first phase of arrests should take place. There is no reason to doubt that Mr Coutts convened the meeting for the reason recorded in the LW3 policy log.

539. No doubt, it would be very easy to overstate the amount of detail which was provided to those who attended that meeting. I do not think, for a moment, that any of the persons at the adversarial briefing other than the LW3 officers had a command of the finer detail of what had emerged during the course of the investigation. That said, Mr Cahill, the IPCC Commissioner and the Independent Consultants had, between them, a wealth of experience in police investigations. They all left the adversarial briefing convinced that the arrests about which they were told were justified. That is what Mr Cahill says in his witness statement in terms. That can be inferred, quite properly, from the written evidence of Mr Davies the IPCC Commissioner and there can be no doubt that the Independent Consultants were so satisfied given the letter which they wrote following the meeting (see 279 above). Further, and, perhaps, more importantly, if this meeting was not, genuinely, an adversarial briefing Mr Coutts either alone or, much more probably, in concert with Mr Penhale, was knowingly involved in a kind of charade. He must have been participating in a meeting which was supposed to be challenging his thought processes when, in reality, his mind was made up and no amount of persuasion would alter it no matter what was said. I do not regard that as a credible scenario.

540. I am also fortified in my view that the prosecution of officers from LW1 was regarded as no more than a possibility as at January 2005 by reason of the contents of the minutes of meetings held between police officers and Mr Thomas and other members of the CPS during the latter part of 2004. The minutes of the meeting of 26 November 2004 are particularly instructive. The CPS (presumably Mr Thomas) is recorded as pointing to a number of potential difficulties relating to the pursuit of police officer suspects. First, on the state of the information available it was difficult to identify the officers who had engaged in misconduct. Second, some officers may have been no more than scribes when statements were being taken or interviews being recorded contemporaneously. These officers might not be the officers who had pressurised the core four and/or other witnesses. Third, witness statements may have been altered by the witnesses themselves and officers who changed pages may not

have spoken to the witnesses. Mr Coutts is recorded as responding that the ESDA evidence showed clear evidence of alterations and deletions but there were still forensic avenues to explore. Later Mr Coutts is recorded as saying that there was potential for "allegations" against retired police officers but more people were to be seen before any action was taken.

541. It is also worth noting that Mr Cahill and Mr Davies the IPCC Commissioner, were full participants at this meeting. Read as a whole the minutes of this meeting demonstrate that the participants were actively contemplating that police suspects might be arrested and that, thereafter, some of those arrested might be prosecuted. However, it was no more and no less than that. Given the information available at that time such a state of mind is hardly surprising.

542. I have not lost sight of the fact that it was at this meeting that Mr Penhale observed that arrests of a certain level of officer "would be seen as a success by the Cardiff Five" and that later he said "I have helped John Actie in other matters – we have a good relationship". I can see that such remarks might support a conclusion that Mr Penhale had become or was becoming "too close" to the original defendants. I will consider that issue in due course. However, I am not prepared to conclude that the expression of such views by Mr Penhale at this meeting demonstrates that his mindset was fixed and that his goal was to ensure the prosecution of police suspects come what may.

543. Let me now consider the specific complaint made by all the arrested officers that they were victims of misfeasance in public office because they were treated so differently from the core four and other civilian suspects. As is obvious, the process which had been adopted in relation to the arrests and interviews under caution of the core four and other civilian suspects in 2003 and 2004 was very different to the process which Mr Coutts authorised for the arrests of police suspects in 2005. The core four and other civilians were arrested by appointment at a police station; the date of arrest was provided to them many days in advance and they were also provided with substantial documentation which they were encouraged to consider in depth prior to interviews under caution taking place. The homes of the core four and other civilian suspects were not searched. Was this difference in treatment justified?

544. Let me begin with the "Arrest Strategy" i.e. the document which was prepared for each phase of arrests which considered whether an arrest should take place and, if so, how that was to be carried out. This document was identical for each suspect included in the first phase of arrests. It did not consider the personal or family circumstances of any of the suspects in the context of whether or not they should be arrested and, if so, in what circumstances. The document contained four options. The first option was that the suspects should be arrested but that the arrests would be phased over a number of days and take place some days ("a minimum of 2 weeks") after they had been informed about the location of the arrest, the line of questioning to be adopted in interview and appropriate documents had been disclosed to them. The second option was that all the suspects would be arrested by appointment on the same day. In this option, too, there would be disclosure, in advance, of the line of questioning to be adopted in interview and relevant documentation. The third option was that all suspects would be arrested on the same day at their homes without notice to them and with no advance disclosure of any kind. The final option was that there should be no arrest of the suspects at all; rather, this option contemplated that each

suspect would be invited to attend a police station on a specified date and, once there, they would be interviewed under caution. In this option the suspects would be told some days before their attendance at the police station what they were to be questioned about and provided with disclosure of relevant documents. The "Strengths" and "Weaknesses" of each of those options were also set out in the Arrest Strategy. Mr Penhale's recommendation was that all five suspects should be arrested on the same day without warning and without any advance disclosure of the line of questioning to be followed in interviews under caution and with no disclosure of relevant documentation.

545. The justification for adopting this approach was set out as follows:-

> "This option will protect the disclosure of the ESDA and also prevent the concealment or destruction of any evidence as the premises can be secured on arrest and searches instigated.
>
> The issue of treating serving and retired police suspects differently to civilians suspects I consider necessary to ensure that we secure and preserve evidence. There is a clear distinction between the two groups, members of the investigation team would have had access to a vast amount of documentation which could have been retained.
>
> There have been many instances where officers have retained such documentation including pocket books well past their retirement dates. There is no such argument that could be put forward in respect of the civilian suspects."

546. The other options set out in the document were discounted for a number of reasons. Those reasons included (1) other options might jeopardise the strategy of disclosing the ESDA evidence in phases (2) other options might permit of collusion between suspects (3) other options might permit of the possibility that a "vulnerable suspect" might self harm or abscond and (4) other options might provide the suspects with the opportunity to dispose of any material retained from LW1. With more than a little justification the Claimants took exception to reason (3), in particular.

547. The Arrest Strategy for the second phase of arrests was more or less the same as for the first phase except that there was a short reference to the first phase of arrests. The document changed somewhat for the third phase of arrests. In this document the same four options were identified. However, Mr Penhale acknowledged that potential suspects would have been alerted to the possibility of an arrest and search of their home by virtue of the first and second phases. Nonetheless, he continued to consider that there was a realistic prospect of recovering evidential material if the homes of suspects were searched. The justification for treating the police suspects differently from civilian suspects was as set out in the quotation at paragraph 546 above.

548. The Arrest Strategy for the fourth phase of arrests was written by Mr Gavin Lewis. For all practical purposes, however, it was identical to the Arrest Strategy written for phase 3. The Arrest Strategy which preceded the arrest of Mr Morgan was also written by Mr Lewis. It contained three options but only because there was no point in including the option relating to phased arrests. The justification for treating Mr

Morgan differently from civilian suspects was in identical terms to that which had been set out in the documents prepared for the earlier phases and the arrest strategy overall was justified for the same reasons as had been the earlier arrests and searches.

549. As can be seen from the preceding paragraphs the strategy adopted for arrests in all phases was inextricably linked to the decision that each of the suspect's homes should be searched.

550. I remind myself that the decisions to arrest police officer suspects without warning and disclosure and, thereafter, to search their homes was the subject of discussion at the adversarial briefing. Mr Cahill was fully aware of the process proposed for arresting the police officer suspects and searching their homes and approved it. The letter which the Independent Consultants wrote on 19 March 2005 (following the adversarial briefing) raised no issue about the process for arrests and searches, in principle, although it raised a query about whether there was a need for search teams to travel to suspects' homes in marked police vehicles.

551. I acknowledge that some of the arresting officers had misgivings about the arrest and search strategy which Mr Coutts approved. I can illustrate the disquiet by reference to a passage in the witness statement of Mr Taylor about his arrest of Mr Seaford. Paragraph 12 of Mr Taylor's witness statement reads as follows:-

> "12. I was concerned about the decision to arrest and search the premises with a warrant rather than invite for interview and search with consent. From recollection the 'necessity' to arrest rules were fairly new. It transpired I was not alone in my concerns and so, along with other interviewing officers, we had a meeting with D/Supt Coutts. He discussed his rationale and strategy, explaining by attending with a section 8 PACE warrant we would have the opportunity to secure and preserve evidence even if the subjects were not present when we attended. With hindsight and speaking as a senior investigating officer myself, I believe this to be absolutely the right decision. As a result of the briefings we had received, reinforced by my own reading and research, I was completely satisfied the planned arrests were completely justified, necessary and proportionate."

552. The reference in this paragraph to the "necessity" test is, of course, misplaced. There was no necessity test for arrests in 2005. This paragraph in Mr Taylor's witness statement is significant, however, in that it demonstrates, quite clearly, that he and other officers felt some misgivings about whether the arrest of police suspects and a search of their homes were justified. That said, as I read this paragraph, Mr Taylor's initial disquiet upon this issue was dispelled following a face to face meeting with Mr Coutts in which the arrest and search strategy was explained to him.

553. While I understand why the Claimants feel aggrieved about the fact that they were arrested without warning (especially those who had offered to attend the police station voluntarily) and about the fact that their homes were searched I cannot conclude that this behaviour either constituted or was evidence of misfeasance in public office. The process adopted for the arrests of police suspects and the subsequent searches of their

homes was a process which Mr Coutts was entitled to adopt i.e. it was lawful for the arrests to be carried out without warning and for searches of the suspects' homes to take place pursuant to warrants obtained lawfully. A reasoned justification for proceeding in that way was provided to Mr Coutts in advance of his decision in January 2005 and a reasoned justification for the arrests was produced for each phase of arrests thereafter. The decision of 25 January 2005 was endorsed by Mr Coutts' superior officer and by the Independent Consultants. Mr Coutts was not knowingly or recklessly exceeding his powers and it is not suggested that by authorising arrests without warning he was deliberately trying to cause harm or loss to the Claimants (i.e. there is no allegation of targeted malice). There is, of course, the suggestion that arrests carried out very early in the morning which were followed by searches were designed to maximise embarrassment. That is a different point and one I will deal with separately in due course.

554. I am satisfied that Mr Coutts did not act unlawfully when authorising arrests in April and May about which the suspects had no warning. I am equally satisfied that Mr Penhale was legally justified in adopting the same course in July and October. I accept that arrests without warning and searches became increasingly difficult to justify as the process unfolded but I do not consider that there was ever a stage in 2005 when it would be proper to conclude that Mr Coutts or Mr Penhale were exceeding their powers or being reckless about exceeding them when they decided that police suspects were to be arrested without prior warning and their homes searched.

555. During the course of cross-examination, and, to an extent, in final speeches the suggestion was made that there was no lawful basis to justify the applications which Mr Penhale made for search warrants. As will be apparent Section 8 of PACE provides reasonably strict criteria for the obtaining of a warrant to search premises. The focus of the argument before me was whether any of the conditions set out in Section 8(3) were satisfied in this case (see paragraph 413 above).

556. It is impossible to know what occurred before the District Judge when Mr Penhale made the application for search warrants. No notes of the hearings involving any of the Claimants have survived although there are notes of two separate hearings involving other arrested officers which suggest that the District Judge/Magistrate was told that those officers had offered to consent to a search of their homes. The search grounds prepared by Mr Penhale focused upon demonstrating that the person whose home was to be searched was properly suspected of committing a serious arrestable offence and identifying the property which might be recovered in a search.

557. The reality is that there is no proper basis for concluding that the search warrants were obtained by acts or omissions which were in excess of the powers conferred upon Mr Penhale. It was for the District Judge to apply Section 8 of PACE. There is no reason to suppose that he did not have the statutory criteria well in mind when he granted the search warrants in respect of the Claimants. No doubt, he should have been told in relation to the particular individual concerned that he had indicated a willingness to attend a police station voluntarily and/or had indicated that he would consent to the search of his home. At this distance, however, it is impossible for me to know whether that information was imparted to him.

558. The burden of proving acts of misfeasance lie upon the Claimants. I am reluctant to determine important issues by reference to the burden and standard of proof but I am forced to conclude that the Claimants have failed to establish, on the balance of probabilities, that Mr Penhale committed any acts of impropriety sufficient to found the tort of misfeasance in public office when he made applications for search warrants to the District Judge.

559. Thus far, I have considered only the differences in treatment as between the police suspects and civilians in the contexts of the decisions to arrest and search. There is, of course, a further significant difference in treatment between these two categories of arrested persons. The police officer suspects were given no disclosure of documentation in advance of their arrests and disclosure of information to them prior to interviews under caution took place shortly before an interview commenced and in a phased manner. In contrast the core four and other civilian suspects were provided with substantial documentation many days before their interviews under caution were due to take place.

560. The documentation provided to the core four, in the main, consisted of their previous witness statements or records of things they had said in question and answer sessions or interviews. I can well understand why these documents were provided in advance. The whole purpose of the interviews under caution with the core four was to seek to establish whether the contents of those statements and records were true or false. That process, inevitably, was likely to be assisted if the person to be interviewed was given sufficient time to consider the contents of the statements and the records.

561. It is true, of course, that many of the Claimants had made witness statements during the course of LW1. Some of them had been engaged in the interviews under caution with the original defendants. Documents existed, quite clearly, which could have been disclosed prior to the arrests. I accept, however, that the primary purpose of interviewing the Claimants under caution did not relate to the contents of their previous witness statements or the records of interviews under caution with the original defendants. The primary purpose of the interviews under caution were to explore the ESDA findings (where that was appropriate) and to explore the allegations which had been made by the core four about their treatment at the hands of LW1 officers.

562. In my judgment, Mr Coutts and Mr Penhale were entitled to conclude that there should be no disclosure of information to the Claimants prior to their arrests and that, thereafter, disclosure prior to interviews under caution should be phased and strictly controlled.

563. All that said, I am left with the feeling that Mr Cahill, Mr Coutts and Mr Penhale were determined to do all that they could to ensure that there could be no public perception that the Claimants were being treated in any kind of favourable way. In my judgment, they were almost bending over backwards to ensure there was no appearance of bias in favour of suspected police officers. That was an instinct which was wholly understandable given the history of this case. However, it may well be that those arresting officers who had reservations about some aspects of the treatment of the Claimants were correct to be concerned.

564. There is one aspect of the arrests about which I am convinced their concerns were justified. In my judgment, there was no proper justification for arresting the Claimants and other police suspects at or about 6am in the morning at their homes. By my reckoning, none of the persons arrested were less than 50 years old at the time of arrest and most were significantly older. Many, if not all, lived at home with their families. It would have been straightforward to obtain information about the suspects' usual lifestyle and plan their arrests accordingly. In my judgment there was no possibility that any of the suspects would seek to evade arrest. Their arrests related to events which had occurred 17 years previously and there had been considerable speculation that arrests of police officers would follow the arrests of the core four and other civilian suspects. As I have described some of the suspects had offered to attend at a police station voluntarily. In my judgment, the evidence of Mr Coutts and Mr Penhale that the suspects were arrested in the early morning simply because that was the best way of ensuring that they would be at home when the officers arrived was unconvincing. I cannot escape the conclusion that co-ordinated arrests at or about 6am in the morning had more to do with Mr Cahill, Mr Coutts and Mr Penhale demonstrating their determination that police officers should be subject to the same kind of arrest regime as has become common in relation to persons of interest to the media who have been arrested in comparatively recent times on suspicion of serious offences. I find it difficult to conceive of any justification for arrests at 6.00 a.m. in the morning in relation to any of the Claimants. I am fortified in that view, of course, because a number of the arresting officers shared my concern.

565. That said, I cannot conclude that the decision made by Mr Coutts to the effect that the arrests in 2005 should take place very early in the morning constituted misfeasance. Arrests at that time were within the powers conferred upon Mr Coutts and, of course, he has not been accused of "targeted malice".

566. Having considered the issue of differential treatment with care I do not accept that the differences in treatment as between the core four and other civilians on the one hand and police suspects on the other demonstrate that the senior officer engaged in LW3 who were responsible for the arrest strategy in 2005 committed the tort of misfeasance in public office.

567. I have already described how officers from police forces other than SWP were deployed to arrest the police suspects. On the basis of their written and oral evidence, that of Messrs Coutts and Penhale and the documentation in the Core Bundles relevant to this issue, I am satisfied that the arresting officers were provided with a detailed briefing which was sufficient to allow them to form a judgment about whether reasonable grounds existed to justify the arrests of the police suspects. I am satisfied that each of the arresting officers genuinely believed that reasonable grounds existed to justify the arrests. That said, I am equally satisfied that had any arresting officer formed the view that a suspect should not be arrested Mr Coutts and/or Mr Penhale would either have arrested the suspect personally or ensured the arrest of the suspect. In my judgment no other interpretation of the evidence is permissible.

568. I should mention at this point a letter dated 5 April 2005 which was written by Mr Cahill to Mr O'Connor, HM Inspector of Constabulary. This document was not discussed during the course of the hearing, although the reason for writing it is set out at paragraph 81 of the Defence. It is instructive to note what Mr Cahill wrote.

569. After an introductory paragraph which stressed the need for confidentiality, Mr Cahill began his letter by saying that he had never worked on or managed an enquiry that had been so well supervised and which was subject to such continuing scrutiny. He went on to describe how, from the outset, SWP had worked with the CPS and, further, how LW3 officers had benefitted from the IAG. Mr Cahill then provided an overview of the case history, Operation Mistral and the investigative steps undertaken in LW3. He described the process by which evidence had been gathered which had led Mr Coutts to be satisfied that grounds existed to justify the arrest of ten serving/retired police officers. In passing, he noted that the evidence secured had been presented to the CPS and Junior Counsel who had agreed that reasonable grounds existed to justify the arrests of those officers. Having justified the decision to arrest police suspects Mr Cahill then described the arrest strategy which was to be adopted and other strategies relating to communications and the media. Under the heading "Conclusion" Mr Cahill wrote:-

> "In approaching our terms of reference the Senior Investigating Officer and I have adopted an Evidence Based approach.
>
> It is self evident that the way we handle the investigation, its processes and our dealing with people must be beyond reproach.
>
> Peeling back the layers to make sense of the complexity has and continues to be a painstaking and time consuming process. However we are now in a position to move forward into an Investigative Phase focusing upon serving and retired police officers.
>
> Whilst the two arrest Operations outline together with other lines of enquiry will help determine the direction of the Investigation, I do anticipate further arrest phases involving serving/retired police officers. Our journey in this respect continues and I will update you post these immediate phases as to the outcomes and the potential for further investigative activity."

570. In my judgment this letter is of some significance written as it was no more than days from the first phase of arrests. It demonstrates Mr Cahill's belief in the integrity of LW3. It is inconceivable, in my judgment, that Mr Cahill would have written this letter if he had harboured any significant doubts about the integrity of the officers who were engaged in LW3 and, in particular, Mr Coutts and Mr Penhale. I have asked myself whether it is possible that Mr Cahill had been hoodwinked either deliberately or inadvertently into thinking that LW3 was extremely well supervised and managed when, in truth, that was not the case. It is said, sometimes, that all things are possible but, in my judgment, this possibility is remote.

571. In Section 8 of this judgment I will consider, in detail, the claims which each Claimant pursues in relation to the tort of false imprisonment. Necessarily, that will involve a detailed appraisal of whether or not the Claimants' arrests were lawful. At this stage, however, let me make it clear that I do not consider that the arrests of the Claimants (including Mr Hicks' arrest in 2007) constituted the tort of misfeasance in

public office or provided evidence to support a finding that the tort was committed. As I have said, I accept that Mr Coutts and Mr Penhale genuinely believed that reasonable grounds existed to justify the arrest of each Claimant with whom they were personally involved. I accept, too, that each arresting officer had the same genuine belief. That finding, on its own, would be inconsistent with a finding of bad faith in relation to the arrests.

572. The arrests of the Claimants (apart from Mr Hicks) and the evidence obtained from searches of their homes and from their interviews under caution was, potentially, very important to the progress of LW3. In his witness statement (paragraph 139) Mr Coutts says that the answers given by the Claimants in their interviews under caution were carefully analysed against the evidence that had been gathered by that time although he provides no detail of the analysis which was undertaken. Despite this lack of detail there is no proper basis for thinking that the evidence of Mr Coutts on this point is wrong. It is very unlikely that no such analysis took place. In reality, that is what was to be expected particularly since, during the course of 2005, substantial documentation was provided to the CPS (Mr Thomas) and, of course, Mr Bennett had been involved prior to any arrests taking place and Mr Dean was involved from the summer of 2005. It is also instructive to remember that in between 24 and 26 March 2006 Mr Coutts convened a briefing event with the independent consultants. At least some of the papers presented are contained within the Core Bundles (Volume 15 page 10802 et seq). It is obvious from the title of the event "Investigative and Evidential Evaluation" that a major reason for holding the event was to take stock and identify any further important investigative paths.

573. Further, it is clear from what was done subsequently that the information provided in the interviews under caution must have been considered and investigated. Let me provide two examples at this stage to justify that view. First, both Mr Gillard and Mr Morgan had made reference to the role played by Mr Hywel Hughes, the CPS employee, during the crucial stages of LW1. At some stage thereafter (and I have not found it easy pinpoint exactly when) officers of LW3 began to investigate his role. They discovered that Mr Hughes and a colleague Mr Jones had lectured about the LW1 investigation to colleagues in the CPS at training conferences held at the universities of Keele and Loughborough in September 1991. Mr Hughes' lecture notes were recovered; they appeared to demonstrate that he had, indeed, been consulted on 11 December 1988 soon after AP had given her account that she had been present at the murder scene and that she had cut Lynette. It may very well be that the length of time taken to obtain this information was too long (it was discovered in late 2006) but, clearly, this is an example of LW3 officers following lines of investigation revealed by what Mr Gillard, in particular, had said in interview under caution. The same is true in relation to Mr Page's assertion in interview that his police pocket books were stored at Merthyr and then destroyed. That assertion was followed up and investigated; there is a clear document trail to that effect.

574. As I have said, Mr Williams and Mr Davies were arrested, respectively, in January and April 2006. Quite shortly after the later arrest Mr Dean and Mr Bennett produced the Dean Review. In my judgment, that document was extremely influential in the chain of events which led ultimately to the prosecution of police suspects. I readily accept that once the Dean Review had been produced Mr Coutts and Mr Penhale (and no doubt other LW3 officers) became convinced of the merit of prosecuting police

suspects. Indeed, as I have recounted in Section 4, some of the LW3 officers (including Mr Coutts and Mr Penhale) thought that the Dean Review was insufficiently robust as it related to some of the suspected officers. I have no doubt that Mr Coutts and Mr Penhale thought that the evidence available as at August 2006 justified the prosecution of Mr Morgan, Mr Greenwood and Mrs Coliandris as well as the other suspects identified in the Review. I am satisfied that as from the date of the Dean Review the mindset of Mr Coutts and Mr Penhale and, probably, other senior officers within LW3 was that the police suspects identified in the Review should be prosecuted. In that sense Mr Coutts and Mr Penhale did adopt a fixed mindset.

575. That does not mean, however, that their mindset became closed to all alternative possibilities and that officers in LW3 called a halt to appropriate investigations. By way of example, only, on 1 February 2007 a statement was taken from Ms Judith Iddles who was then a sergeant in SWP. In her statement Ms Iddles recounts how on 11 December 1988, while on duty at Rumney police station, she was told to go to Butetown police station to sit with two girls who were helping with enquiries in relation to Lynette's murder. The two girls turned out to be AP and LV. Ms Iddles' best guess was that she sat with AP for about 2-3 hours. During that period she did not interview AP and she did not record any of the conversation which passed between them. Nothing untoward happened. Ms Iddles also spent time sitting with LV. She estimated that period at about 2 hours. She recalled that there came a point in time when Mr Powell entered that room and asked her to leave which, of course, she did. On Ms Iddles' account she was at the Butetown police station over a number of hours. When she was in company with AP and LV nothing out of the ordinary occurred. The women were not distressed or upset.

576. During the course of the cross-examinations of Mr Coutts and Mr Penhale and during closing speeches counsel for the Claimants identified a number of investigative trails which, they alleged, had not been followed up either with vigour or at all following the arrests which took place in 2005. Again, by way of example only, counsel drew attention to the failure to trace the journalist (Mr Horton) who had interviewed MG within a day or two of Lynette's murder and written an article which suggested that MG had knowledge of the murder. They drew attention, too, to the lack of urgency surrounding the interviewing of Mr Hywel Hughes, Ms Smith and officers involved in LW1 who might well have had relevant information to impart. The suggestion was made, impliedly, if not expressly, that there was a marked reluctance to obtain information from Mr Robert Tooby because by 2005/2006 he had risen in the ranks to be a senior officer with SWP. I do not propose to analyse, in detail, what should have been done to obtain information from these persons more quickly. I say that because I am satisfied that delays in obtaining information were not a symptom of a fixed mindset which would brook no alternatives. In this period, i.e. 2006/07 the focus of investigation shifted to an extent from police suspects to others involved in LW1, namely members of the CPS and the forensic scientists who had given evidence at the trials of the original defendants, and, in particular, Dr Whiteside. There was, additionally, the debate which I have described above about whether or not the Core Four should be prosecuted and, of course, there was debate which ensued following the Dean Review.

577. There was one failure in the investigative process which is worth highlighting because it impacts, directly, on the cases of Mr Hicks and Mrs Coliandris. On 25 October

1989 Mr Hicks and Mrs Coliandris made witness statements in which they described what had occurred (albeit in a summary form) when statements were taken from LV by Mrs Coliandris on 11 December 1988. It is quite clear from those witness statements that Mr Hicks had been present throughout the whole time that the statements were being taken.

578. There is no indication that any officer in LW3 was aware of those two witness statements for a number of years. There is certainly no indication that LW3 officers knew of the existence of the statements as at the date of Mrs Coliandris' arrest or, indeed, at any stage when she was interviewed under caution during the course of 2005. In her interviews under caution Mrs Coliandris maintained that she had been alone when LV's statements were taken and at the time of interviewing there was no direct evidence to contradict that.

579. By the time of the Dean Review Mrs Coliandris' account of how she had taken the witness statements had been considered by Professor Coulthard. He doubted whether Mrs Coliandris could have been alone when taking the main statement unless she had been given a very thorough briefing beforehand. The Dean Review, itself, was very sceptical about Mrs Coliandris' account of how she had taken that statement and it concluded that Mrs O' Brien may well have been present when the statement was taken. There is no mention of Mr Hicks in the Dean Review. It seems clear that even at the stage of the Dean Review the witness statements of Mr Hicks and Mrs Coliandris had not been located.

580. Mr Hicks was first made a suspect on or about 23 April 2007. That followed a person of interest package which was written by Mr Penhale on or shortly before that date. In the grounds for arrest which Mr Penhale prepared he wrote that the witness statement made by Mr Hicks during the course of LW1 was discovered on 30 January 2007 when a police officer, Mr Lewis, was "examining documentation for disclosure purposes" (which must have been a reference to disclosure in the prosecution of the core four). It is apparent from what Mr Penhale wrote that the witness statements of Mrs Coliandris and Mr Hicks had been misfiled and their relevance not appreciated.

581. Mr Penhale's account of how Mr Hicks' involvement with LV on 11 December 1988 came to be unearthed has not been challenged. There is no evidence before me which suggests that Mr Penhale's explanation in the grounds for arrest was inaccurate or untrue.

582. In my judgment this episode is of some significance since it demonstrates that in an investigation of the type and scale of LW3 it is almost inevitable that some mistakes will be made. The difficulty which faces the Claimants, however, is that errors are insufficient to found the tort of misfeasance in public office. As I have indicated in Section 6 inadvertence or negligence on the part of police officers is not a basis upon which the tort of misfeasance can be founded. I am prepared to accept that there were from time to time investigative errors or omissions. I am not prepared to conclude, however, that, in truth, there were deliberate failures to follow up important evidential trails as the investigation evolved.

583. As with all other Claimants I will deal with the lawfulness of Mr Hicks' arrest in the next section of this judgment. It is to be noted, however, that Mr Hicks was not arrested at his home and his home was not searched (although a search was

undertaken of Mr Hicks' room at his base police station). The arrest, in the case of Mr Hicks, was by appointment at a police station and, in advance of the date of the arrest, Mr Hicks was provided with information about the line of questioning to be adopted during the course of interviews under caution and disclosure of relevant documentation. I should say, now, however, that as with the other Claimants I am satisfied that Mr Coutts and Mr Penhale (who wrote the grounds of arrest) genuinely believed that reasonable grounds existed to justify the arrest of Mr Hicks as did the arresting officer, Mr Kerley. Whether they addressed their minds to the issue of whether it was necessary to arrest Mr Hicks is a live and contentious issue and one with which I will deal in due course. However, I am satisfied that none of the persons involved with Mr Hicks' arrest acted in bad faith and I am satisfied that his arrest did not constitute an act of misfeasance in public office or provide evidence to support a claim of misfeasance.

584. The core four were charged on 27 February 2007. They appeared at the Cardiff Magistrates' Court for the first time on 5 March 2007. With the benefit of hindsight it seems unusual that the proceedings against them did not conclude until December 2008. It is important to note, however, that it has not been suggested that this delay, if delay it was, was referable to any inactivity on the part of the police. Inevitably, however, following the decision to prosecute the core four the focus of LW3 was upon that prosecution.

585. In Section 4, I described how in the summer of 2007 Mr Thomas retired and Mr Hart became the reviewing lawyer for the CPS. Until Mr Thomas' retirement there had been substantial agreement between the police officers, the CPS representatives and leading and junior counsel about the direction of travel of LW3. Essentially it had been agreed following the Dean Review that the core four would be prosecuted and, provided they were convicted a prosecution of the police suspects identified in the Review together with Mrs Perriam and Mr Massey would follow. When Mr Hart became the reviewing lawyer he did not dissent from the view that a successful prosecution of the core four was a pre-requisite to a successful prosecution of police suspects. He did, however, at least in his own mind if not publicly, have doubts from the outset about the wisdom of prosecuting police suspects. Quite understandably, however, given the nature of the investigation, Mr Hart wished to satisfy himself that the steps to be taken while he was the reviewing lawyer were steps with which he was comfortable. No doubt for that reason he made it clear in November 2007 that he would make no decision about whether police suspects should be prosecuted and, if so, which suspects they would be until after the conclusion of the proceedings against the core four.

586. Mr Hart's reluctance to make a charging decision in respect of police suspects until after the conclusion of proceedings against the core four lead to a difference in view as between Mr Coutts and he about the statutory provision which should govern bail for those police suspects who had not been informed that they were not to be prosecuted. No useful purpose would be served in entering this blind alley. I have no doubt, as I have said, that Mr Coutts believed by late November 2007 that sufficient evidence existed to justify a decision that Claimants 1 to 13 should be prosecuted. Even if he was seeking to exert pressure upon Mr Hart to make a decision to prosecute by altering the statutory basis upon which those Claimants (apart from Mr Greenwood) were on bail and even if that amounted to misfeasance there is no

possibility that this caused any of the Claimants any loss of any kind. Without doubt, throughout the whole period that the Claimants were on bail there was an appropriate statutory basis for it. If, for a short period of time, the statutory basis identified to the Claimants was wrong it could not have caused any of them any loss.

587. As LW3 reached the point when decisions had to be made about prosecuting police suspects so the difference of approach between Mr Hart, and, to an extent, Mr Cohen, on the one hand and Mr Dean, Mr Bennett, Mr Coutts and Mr Penhale on the other became more and more marked. I am here referring, in particular, to the period which began with the decision made in relation to PA in July 2008 and which ended with the decision made by Mr Clements that Claimants 1 to 13 should be prosecuted. On the basis of the evidence which I heard and read (and there was a good deal of both) I accept that relations between Mr Hart on the one hand and Mr Dean and Mr Coutts on the other did not, completely, break down. I am equally satisfied, however, that there were occasions when these men were at loggerheads. Further, I have no doubt that the events surrounding the decision that PA was not fit to plead contributed, substantially, to the strain in the relations which was from then onwards apparent at many meetings.

588. Yet, in some ways, the differences in approach between Mr Hart and the others were not as great as might appear at first blush. Mr Hart openly acknowledged that the probability was that the core four had told lies which falsely incriminated the original Defendants. He also considered that the most likely explanation for those lies was unlawful conduct on the part of a number of police officers – see, in particular, the minutes of the meeting held on 19 January 2009 at the Hotel Du Vin in Birmingham paragraph 394 above.

589. Stripped to its essentials the difference between Mr Hart on the one hand and Mr Dean and Mr Coutts on the other can be summarised in this way. Mr Hart's view was that a jury could not be persuaded to convict the police suspects identified for prosecution on the basis of evidence given by the core four. He thought that their credibility had been damaged beyond repair for reasons which were perfectly understandable. Mr Dean took a different view. His opinion was that the jury could be persuaded to accept that the only credible explanation for the false testimony given by the core four was unlawful conduct on the part of police officers and that there was sufficient evidence to implicate the suspects which he had identified in such unlawful conduct. Not surprisingly, Mr Coutts and his team considered Mr Dean's assessment to be correct.

590. The reality is that the decision about whether to prosecute police suspects was a very difficult one. I have the benefit of hindsight and I consider the decision was fraught with difficulty. I can well understand how the view could be formed, quite legitimately, that the credibility of the core four was damaged beyond repair. However, it was, in my judgment, equally permissible to conclude that a jury could be led to the view that despite the obvious credibility issues which surrounded the core four their conduct in falsely incriminating the original defendants was explicable only if police officers had behaved as they alleged. As all those who are familiar with jury trials will know full well it can be extremely difficult to predict the outcome of a certain type of case. In my judgment, this was one such case *par excellence.*

591. As it seems to me, there was nothing improper about Mr Coutts and Mr Penhale holding the view from late August 2006 to early 2009 to the effect that the evidence available justified the prosecution of those who were ultimately charged. It is only if they were deliberately turning a blind eye to evidence which substantially undermined that view and, just as if not more importantly, hiding that evidence from the CPS would I be persuaded that they were committing the tort of misfeasance in public office during this period.

592. As I have said already I accept that, from time to time, there were errors in the investigation. I do not consider, however, that evidence exists which demonstrates that Mr Coutts, Mr Penhale or any other officer was engaged in conduct such as deliberately suppressing exculpatory material and ensuring that it did not reach the CPS. I readily accept the likelihood that the CPS was not supplied with every last document which had been generated during the course of successive investigations, but I am not persuaded that there was any deliberate withholding of any relevant document or information from the CPS. My view on this aspect of the case is informed in part by the documents which I was shown during the course of the trial. It is informed, too, by my assessment of the officers involved in LW3 who were responsible for managing and disclosing documents. I heard from Ms Hill, Mr Allen, Mr May, Mr Rowlands and Mr O'Connor. They were the lead disclosure officers at all material times. I do not accept, if it is being suggested, (which I doubt) that any of those persons deliberately suppressed documents which they knew would undermine the case against any of the police suspects or which would support the case of any individual suspect.

593. In my judgment this is an aspect of the case in which the Claimants' cases are simply too imprecise. The closing speeches of counsel on behalf of the Claimants alleging misfeasance in public office are littered with what counsel describe as examples of documents which were not supplied by the police to the CPS. Mr Metzer QC, Mr Simblet and Mr Thomas QC sought to demonstrate (and succeeded to an extent) in showing that the Dean Review, the Dean Update and Mr Bennett's document "Credibility of the Core Four" failed to mention a number of documents and/or strands of evidence which undermined the credibility of the core four and/or the case against a particular police suspect. From that starting point, however, there is a very long jump to the submission that the relevant document must have been suppressed, deliberately, and that this constituted an act of misfeasance in public office.

594. It is fanciful to suppose that Mr Coutts or Mr Penhale had such a grasp of the details of the case against police suspects that they knew of every scrap of material which undermined the case against them or potentially assisted their cases. Although the general thrust of any defence was foreseeable they had no means of knowing what defence was or might be open to each suspect. It is inconceivable, in my view, that they personally suppressed important documents. Perhaps, more importantly, in my judgment there is no sound evidential base for concluding that Mr Coutts, Mr Penhale or any lead disclosure officer directed any officer who was more junior to hide relevant information from the CPS. I appreciate that it is unlikely that I would have heard direct evidence to that effect during the course of the trial. However, in my judgment, there is no proper evidential basis from which such a conclusion can properly be inferred. Further there is no evidence of any kind which begins to support the view that individual police officers within LW3 deliberately suppressed material

for reasons of their own. I accept that it is inherently improbable that every document generated in LW1, Operation Mistral and during the course of LW3 found its way to the CPS before the decision to charge police suspects was made. I cannot conclude from that, however, that there was a deliberate decision by Mr Coutts and Mr Penhale that unhelpful documentation should be hidden from the CPS. This scenario becomes all the more unlikely when it is understood that the documents which are said to undermine the credibility of the core four and/or assist the case of a particular police suspect were disclosed in the criminal proceedings. It seems to me to be most unlikely that Mr Coutts and Mr Penhale directed that documents which undermined the credibility of the core four should be withheld from the CPS yet took no steps to prevent those very same documents being disclosed in the criminal proceedings. To take but one example, Mr Thomas QC complains that the various accounts of Ms Carole Wheeler are not referred to during the various assessments which were undertaken by prosecuting counsel prior to the decision to charge. Yet I do not understand him to say that Ms Wheeler's statements/interviews were not disclosed during the course of the criminal proceedings.

595. Following the arrest of police and civilian suspects in the period 2003 to 2005 the police submitted a large volume of documentation to the CPS. In his witness statements Mr Coutts says that there was a Core Bundle which comprised 28 lever arch files (running to 9,008 pages) and 32 individual suspect files consisting of 73 lever arch files (containing in excess of 22,000 pages). Mr Coutts also asserts that in the event that the CPS and counsel sought clarification of any issue or required further information this was provided to them. The consequence was that as from 2006 onwards further documentation was supplied by the police to the CPS as and when it became clear that the documentation was relevant. I will describe shortly the scale of the task facing the lead disclosure officers. In short, however, they faced a huge task. In these circumstances it would not be right to infer that the failures to ensure that the CPS had been provided with every last document which existed were brought about by a deliberate policy to suppress exculpatory material.

596. With the benefit of hindsight it is easy to see how the methodology adopted for the supply of documents by the police to the CPS gave rise to a risk that individual important documents might be missed. As Mr Coutts acknowledged information is often provided by the police to the CPS at the end of an investigation and at a time when a team of dedicated officers can ensure that all relevant documents find their way from the police to the CPS. It is possible that if that system had been adopted in LW3 an even greater number of documents would have found their way from the police to the CPS prior to the decision to charge and, certainly, it is possible that there would have been a sharper focus upon documents which undermined the case for the prosecution or assisted the case of an individual suspect.

597. Reduced to its essentials I have a stark decision to make about the fact that certain documents in existence did not find their way from LW3 officers to the CPS prior to the decision being made to charge Claimants 1 to 13. The Claimants allege that I should draw an inference that documents were deliberately withheld by LW3 officers from the CPS either because Mr Coutts and/or Mr Penhale directed more junior officers to behave in that way or because, for their own reasons, some junior officers adopted that course of action. I am not prepared to reach any such conclusion on the basis of the evidence put before me. I have already commented upon the view I

formed of the lead disclosure officers. Shortly, in the context of my conclusions on the issue of bad faith, I will set out my view on the integrity of Mr Coutts and Mr Penhale. I say now, however, that having heard them give evidence over the better part of two court weeks I am not persuaded that they engaged in a campaign prior to 2009 to ensure that important exculpatory material in the hands of the police did not reach the CPS.

598. I cannot leave the issue of mindset and the related complaints without explaining my view of Mr Dean, Mr Bennett and Mr Simon Clements given that they were the lawyers most involved in the decision that Claimants 1 to 13 should be charged. Counsel had been instructed over some years by the time the charging decision was made. Their recall of some of the details of the case against the police suspects when they gave evidence before me was impressive coming, as it did, some years after their last involvement in the case. I have no doubt that in the relevant period i.e. 2005 – 2011, their command of the case was formidable. From all that I have heard or read I do not accept that it was SWP (and Mr Coutts, in particular) which was the driver of the criminal proceedings brought against Claimants 1 to 13 and that, in some way, Mr Dean and Mr Bennett had become seduced by the "Coutts view" of the case. The Dean Review, the Dean Update and Mr Bennett's "Credibility of the Core Four" were serious analyses of a very difficult case. They set out independent judgments formulated over a significant time period. I have no doubt that both Mr Dean and Mr Bennett had their own strongly held views that a prosecution against Claimants 1 – 13 was justified.

599. In my judgment the same is true of Mr Clements. I have already identified that Mr Clements held the post of Head of the Special Crime Division in 2008 when he first became involved, personally, in LW3. He continued to hold that position until March 2011. It is clear from his witness statement that Mr Clements had a wealth of experience by the time he came to make the decision that Claimants 1 – 13 should be charged.

600. At paragraph 30 of his witness statement Mr Clements identifies the documents which he considered before reaching his conclusion. Essentially he relied upon Counsels' assessments although it is clear, too, that he considered Mr Hart's Review as to Charge. I have no doubt, too, as he told me in evidence that he had many discussions with counsel, Mr Hart and other CPS lawyers which helped to form his view.

601. I have reached the clear conclusion that by the time Mr Clements made his decision that Claimants 1 – 13 should be charged he was fully entitled to conclude that the test for bringing a prosecution against those suspects was satisfied. He was entitled to conclude that there were reasonable prospects that the Claimants to be prosecuted would be convicted and that it was in the public interest that they should be prosecuted. I have no doubt, too, that it was Mr Clements who made the decision to charge the suspects. His evidence about this was unequivocal. For reasons which I will elaborate, in summary form, in Section 9, I do not consider that there is any proper basis for concluding that any individual senior officer within SWP was, in reality, the person who made the decision to charge the police suspects nor do I consider that SWP, as an organisation, can properly be regarded as the prosecutor in this case.

602. During the course of cross-examination and to an extent in closing submissions the suggestion was made that Mr Coutts may have been less than frank when addressing the Magistrate who authorised the issue of summons against the prosecuted Claimants. This point was made, in particular, in relation to the information which may have been provided by Mr Coutts to the Magistrate in respect of Mr Greenwood.

603. There is no possibility that I can investigate and resolve what was said between Mr Coutts and the Magistrate. The process by which a police officer "lays an information" in order to seek the issue of a summons is comparatively informal. No relevant note of the proceedings has been produced in evidence. In any event the threshold to be crossed in order to satisfy a Magistrate that a summons should be issued is a low one. That is not surprising. As I detail in Section 9 a procedure exists whereby a person against whom a summons has been issued may apply to have the proceedings dismissed if no proper grounds exist to justify them. I note in passing that Mr Greenwood invoked that procedure but his application to have the proceedings brought against him dismissed was refused by Sweeney J (as was his abuse of process application). I am not prepared to accept that Mr Coutts deliberately chose to mislead a Magistrate if that is the allegation which has been made. He was entitled to be selective in what he said in the sense that he was entitled to explain the case against Mr Greenwood in such a way as to justify the issue of the summons.

604. This has been a long and detailed part of my judgment. I have reached the conclusion that the allegations which are said to justify a finding of misfeasance in public office against Mr Coutts and Mr Penhale or any other officer which I have considered thus far are not well founded or have not been proved. Inevitably, however, in order to reach this conclusion I have had to make my own assessment of the integrity of Mr Coutts and Mr Penhale. I had the opportunity of observing them being cross-examined and re-examined over very many days. Without doubt, there were instances when their evidence was properly called into question and I have detailed some parts of their evidence which was wrong. However, I am not persuaded that any of the core allegations made against them are proved. I do not consider that they controlled and directed an investigation which was partial; I do not believe they operated with a closed or fixed mind set which prevented them from undertaking reasonable avenues of investigation. Essentially, in my judgment, they sought to get to the truth of what had occurred during the course of LW1 and, perhaps not surprisingly, they encountered very many difficulties in pursuing that aim. I will return to my assessment of Mr Coutts and Mr Penhale when I consider the core allegation of bad faith.

Contact between police officers and victims

605. I turn to the thorny issue of contact between LW3 officers and the original defendants and other persons designated as victims. The LW3 policy log shows that as early as 10 July 2003 Mr Coutts decided that a document should be prepared entitled "Victim Liaison Strategy" and that Mr Penhale was to perform the role of Victim Liaison Officer. At this stage no one had been designated, formally, as a victim although, quite clearly, it was anticipated that a number of persons would be so designated in due course. On the same day, Mr Coutts determined that a Family Liaison Strategy should be prepared and that the role of Family Liaison Officer would be undertaken by the person who had been responsible for that role during Operation Mistral (DC Taylor).

606. The LW3 policy log records that on 12 August 2003 Mr Cahill, Mr Coutts and Mr Penhale met with TP, JA and their legal representatives. By 1 September 2003, i.e. the day that the original defendants were designated as victims, Mr Cahill, Mr Coutts and Mr Penhale had met RA and his legal representatives as well as some of Lynette's close family members. On 23 October 2003 Messrs Cahill, Coutts and Penhale met YA and his legal representative.

607. In his witness statement, Mr Coutts says that at those first meetings he explained "in strong terms" the rules of engagement which were to be followed at meetings with the original defendants and their solicitors. He informed them that there would be regular meetings during the course of the investigation but at no stage would he discuss evidence. He explained that the purpose of the meetings was to provide updates and information about the progress of the investigation. I was not shown minutes or contact logs of those early meetings. It suffices that I say, at this stage, that there is no dispute about the fact that the rules of engagement laid down by Mr Coutts were appropriate. However, there is a very real issue about the extent to which those rules were observed particularly as the investigation unfolded.

608. It was obviously always a distinct possibility that if any trial were to take place in which officers involved in LW1 were defendants it would be necessary for the original defendants to give evidence. Accordingly, in November 2003 Mr Coutts instigated a Victim Interview Strategy. Further, on 19 November, Mr Coutts, Mr Penhale and Mr Marlow (the officer advising Mr Coutts on interview strategy) held a meeting with a number of solicitors who were representing victims. I am not sure whether the meeting was confined to solicitors acting on behalf of the original defendants and it is not clear to me whether SM's solicitor was present. It matters not; the aim of the meeting was to provide information to those present about the steps which would be taken to ensure that evidence obtained from the original defendants (and others categorised as victims) accorded with best practice. Following this meeting there was an exchange of correspondence between Mr Coutts and the solicitors acting for JA and RA since there was disagreement, to an extent, about the process for obtaining evidence suggested by Mr Coutts.

609. As I have set out above two of the original Defendants, TP and JA were interviewed by LW3 officers in 2004. SM was interviewed on 7 and 9 September 2005; he was treated as a vulnerable witness. YA was interviewed on 5 and 18 July 2006. No interviews with RA had taken place prior to his death in 2007.

610. As I have already said, Mr Coutts appointed both a Victim Liaison Officer and a Family Liaison Officer at the outset of LW3. So far as I can tell from the evidence before me Mr Penhale's role as the Victim Liaison Officer never ceased in any formal sense. However, as the investigation progressed the day to day activity as it related to victims was assumed much more by the Family Liaison Officer.

611. As I have said, an officer named Taylor was the first Family Liaison Officer to be appointed. I record, without any express or implied criticism, that this person did not give evidence before me so I do not know when his/her appointment as Family Liaison Officer came to an end. I do know that at some stage in either late 2003 or in 2004 the role of the Family Liaison Officer was taken over by Ms Claire Evans. Her appointment was comparatively short lived in that she was succeeded by Ms Sandra Hearne on 18 November 2004.

612. Ms Hearne was the Family Liaison Officer for LW3 between 18 November 2004 and 3 January 2007. In her witness statement she explains that although her title was Family Liaison Officer her role encompassed contact with Lynette's family, the original defendants and Mr Satish Sekar. Her main task was to provide investigative updates to these individuals. She estimates that she was in contact with them on a monthly basis either by telephoning them or meeting them in person.

613. Ms Hearne did not instigate any meetings or telephone conversations with the original defendants by direct contact with them. She says that contact would be arranged with their solicitors. During her period as Family Liaison Officer the solicitors with whom Ms Hearne had contact were Mr Elvin Blaze, representing TP, Mr Nick Lloyd representing YA, Ms Gareth Pearce and later Mr Matthew Gold representing SM and Ms Nogah Ofer representing RA and JA.

614. Ms Hearne's evidence was that she carried out her duties in accordance with the Victim Liaison Strategy which had been prepared by Mr Penhale (see paragraph 15 of her witness statement). She says that she was conscious of a need to ensure that nothing occurred in her meetings/conversations with victims which would prejudice their giving evidence. That said she understood, too, that they were entitled to be kept informed about important milestones in the investigation.

615. Ms Hearne insists that following every meeting/conversation she had with the original defendants she would make a written record of the salient points of what had occurred. She says that there was an ongoing log of police contact with these individuals which was kept in the Major Incident Room at Rumney Police Station. This record of contact was kept in a number of files; once the process of disclosure had begun in the prosecution of the core four (and subsequently Mr Mouncher and other Claimants) the files were given the disclosure reference D30. The documents identified by the description D30 became the subject of much debate during the course of the criminal trial involving Mr Mouncher and his former colleagues.

616. Ms Hearne was not cross-examined at any length about her evidence that she kept a written record of her contacts with the original defendants. It was not suggested to her that there was no system of recording contact as she had described and/or that she did not comply with it in her role as Family Liaison Officer. On the basis of the evidence provided to me I have no reason to doubt what she told me about what occurred in terms of recording contact with the original defendants during the period November 2004 to January 2007. Without doubt, however, her evidence demonstrates that (a) there was regular contact between the original defendants and her (b) that it was intended that all the contact should be documented and (c) Mr Coutts and Mr Penhale intended that this should be the case since they had put in place the practice to be followed. It follows, of course, that there should not have been any undue difficulty about disclosing these documents. That such difficulties did arise, however, is beyond question. During the course of the criminal trial one of the issues which most concerned the parties and the trial judge was whether there had been full and frank disclosure of the contact between LW3 officers and the original defendants throughout the period of the investigation.

617. Ms Tracey Lewis assumed the role of Family Liaison Officer in succession to Ms Hearne (see paragraph 65 of the witness statement of Mr Monks). She remained in that role, according to Mr Monks, until he left LW3 in November 2009. Ms Lewis

did not give evidence in the trial (or provide a witness statement) but I have no basis for concluding that she did not continue the process which Ms Hearne described especially since the process was continued by her successors Mr Matthew Jones and Ms Catherine Cooke.

618. Mr Matthew Jones had some direct experience of family liaison duties prior to his involvement in LW3. He had attended a training course in the subject in September 2006. He joined LW3 in early 2008. As from about December 2009 he was given responsibility for family liaison, witness and victim care. That remained his primary role throughout the remainder of the period leading to the conclusion of the criminal proceedings against the Claimants. Ms Cooke became the Family Liaison Officer working under the supervision of Mr Jones in January 2010 and she remained in that role until proceedings against the Claimants had come to an end.

619. Ms Cooke's witness statement contains a detailed account of the process undertaken by her to ensure that a record was made of all contacts between the designated victims and officers of LW3. I quote:-

> "Each victim was allocated a Family Liaison Log book. All contact with the victims, whether in person, by telephone or otherwise, was recorded in the respective FLO log. An entry would be made for each contact by the officer making the contact. If more than one officer was involved in the contact then one of those officers would be responsible for completing the log. The record contained details of how the victim was contacted, the reason for the contact and details of what was discussed. The same process was followed when contact was made with the victims' solicitors. The pages in the FLO log are carbonated and following completion, the top copy would be torn out and submitted to the MIR. The copy remained in the book which would be retained by the FLO until completed. If details of the contact with the victim were more involved then I would submit an officer's report. This system was put in place prior to my joining the investigation and as far as I am aware is standard practice for all investigations……."

620. In his role as the person responsible for witness and victim care Mr Jones created a management protocol to guide contact between police officers and victims and witnesses. Mr Jones says that this document was created at the specific request of Mr Coutts. The aim of the document was to ensure that effective support was provided to witnesses and victims both before and during the trial of the Claimants. The protocol sought to ensure that LW3 officers complied with the requirements of the Victims' Code of Practice which, by this stage, had been in use for some little time.

621. At paragraph 27 of his witness statement Mr Jones describes how contact with the original defendants was generally documented in Family Liaison Office log books which were carbonated books with duplicated pages. The original written page was intended to be pulled out and placed in file; a copy would be left behind which remained in the log book. Mr Jones also says that the log books were supplemented by officers' reports for contacts or meetings requiring greater detail. Mr Jones does not say so expressly but it seems reasonable to infer from his witness statement that

the intention was that these officers' reports should also be filed with the copies of the log entries.

622. There is no reason to suppose that the system described by Ms Cooke and Mr Jones was not operated to the best of their ability. Certainly none of the questions asked of them in cross-examination challenged the evidence which they gave about what the system was and how it was intended to operate. Of course, the proper operation of this system should have ensured the retention of all relevant documentation. As I have already observed, however, (paragraph 616 above) a contentious issue arose in the criminal trial about the efficacy of the system which, as is obvious, was as efficient only as the persons who operated it.

623. Let me now turn to specific issues which arise about that which was said at meetings which occurred between LW3 officers and the original defendants and/or their representatives. I can take this quite shortly by reference to paragraph 52(c) of the Amended Particulars of Claim served on behalf of Claimants 1 to 8. In this part of the pleading (paragraph 52) the Claimants set out their specific complaints which are said to justify their contention that an improper relationship existed between officers of LW3, including Mr Coutts and Mr Penhale, and the original defendants.

624. On 28 November 2005 a meeting took place at the offices of the CPS in Ludgate Hill, London. Those persons attending were Mr Coutts, Mr Penhale, Ms Hearne, Mr Thomas, Mr McAlroy, Mr Gold, Mr Blades and Ms Ofer. Minutes of the meeting were taken by Mr McAlroy which were subsequently typed up; there are also in existence handwritten notes made by (at least) two of the solicitors representing original defendants.

625. It is argued on behalf of the Claimants that Mr Coutts behaved improperly at the meeting because he divulged to those present aspects of the forensic evidence which had been obtained but then asked the solicitors not to disclose the information to their clients. This, it is said, would have placed the solicitors in an impossible position because they were duty bound to disclose what had been said to their clients.

626. The minutes of this meeting prepared by Mr McAlroy end with the following paragraph:-

> "CC asked those solicitors attending not to mention any forensic evidence to their clients as this may prejudice further interviews with suspects."

This paragraph is written in bold print which can only mean that Mr McAlroy was seeking to convey that Mr Coutts had placed considerable emphasis on the point. Yet there is nothing in the remainder of the minutes which suggest that Mr Coutts had revealed any of the forensic evidence which had emerged by this time. Further, unless my reading of the handwritten notes of the solicitors is defective, there is nothing in those notes which suggests that any specific aspect of the forensic evidence was disclosed or discussed.

627. When Mr Coutts was cross-examined about this aspect of Mr McAlroy's minutes of the meeting he denied that he had disclosed any forensic evidence either at that meeting or outside the meeting. Although his denial was challenged on behalf of the

Claimants the reality is that there is nothing, apart from what was written by Mr McAlroy, which begins to suggest that Mr Coutts disclosed significant aspects of the forensic evidence. It does not seem to me that this one reference (albeit apparently written with emphasis) is a safe foundation upon which I should conclude on balance of probabilities that Mr Coutts disclosed significant aspects of the forensic evidence to one or more of the legal representatives of the original Defendant especially since the same minutes record Mr Thomas, at the commencement of the meeting, making it clear that it would not be permissible for there to be a discussion of any specific evidential matters.

628. I acknowledge that it is possible, perhaps even likely, that there was some discussion of forensic issues. In my judgment, however, it is very unlikely that it was discussed in such detail so as to make a finding that Mr Coutts had behaved in an inappropriate manner justified. Even, if he did behave inappropriately, however, I am far from persuaded that this would translate into the conclusion that Mr Coutts had acted in bad faith.

629. The next criticism made of Mr Coutts relates to a comment at a meeting on 29 November 2006 to the effect that it was unlikely that LW3 officers would wish to interview SM again in case he contradicted himself. This meeting was attended by Mr Coutts, Mr Penhale, Mr Thomas, Ms Meader and Mr Gold. After the meeting had started Mr Miller and his girlfriend also arrived and participated.

630. It is correct that Ms Meader, the author of the minutes, has recorded Mr Coutts as indicating that it was not likely that SM would be interviewed again "in case SM contradicts himself in his evidence". When Mr Coutts was cross-examined about this part of the minute, he suggested that what he had said had been taken out of context. His recollection was that the discussion at this point in the meeting was focusing upon the psychological assessment which had been undertaken upon SM. Mr Coutts was not seeking to protect SM from an attack from his credibility; he was seeking to ensure that SM's suggestibility was not exploited. According to Mr Coutts he gave much the same evidence on this point when he was questioned about it during the criminal trial involving the majority of the Claimants.

631. So many years after the event it is virtually impossible to form a concluded view upon a point of detail such as this. On any view, Mr Coutts is a forthright individual; in my judgment he is quite capable of saying things from time to time which may, upon reflection, be considered inappropriate. Equally, Mr Coutts' explanation of the minute is not inherently implausible. Even if Mr Coutts did express himself in the way which Ms Meader has captured in the minutes it would not be right to conclude that this remark was a real indicator that Mr Coutts had an improper relationship with the original defendant and/or their lawyers.

632. I turn next to a meeting which took place on 25 November 2008. At that meeting a discussion occurred about how best to secure a witness statement from a potential witness Helen Nying, formally Helen Prance. She had provided a witness statement on 10 December 1988 in which she had given details about her relationship with TP. In 2008 it was proving difficult for LW3 officers to make contact with Ms Nying in order to obtain evidence from her. The minutes of the meeting show that Mr Coutts made the suggestion that TP or a near relative of his should make an approach to her.

633. I accept that the probability is that Mr Coutts did make this suggestion. I am far from satisfied, however, that because Mr Coutts made this suggestion it demonstrates that he had an inappropriate or improper relationship with TP and/or his lawyers. It is within my own professional experience over decades that police officers and/or solicitors who wish to obtain witness statements from potential witnesses sometimes ask persons closely connected to the witness to act as a point of contact. Perhaps, and I stress perhaps, Mr Coutts should have realised that in an investigation of the sensitivity of LW3 it would have been better to avoid that type of conduct. I simply do not accept that this episode demonstrates that Mr Coutts' relationship with TP and/or his lawyers was improper.

634. Mr Coutts did not seek to dispute the fact that in a meeting of 27 January 2010 Mr Paris' solicitor was alerted to the possibility that some of the officers standing trial might adopt a line of defence to the effect that although JG had been convicted of Lynette's murder one or more of the original defendants might also have been involved in the killing. His stance was that far from being evidence of an improper association the discussion was strictly in accordance with the contents of the Victim's Code of Practice.

635. I have grave doubts about whether that explanation can be correct. I have considered the terms of the Victims Code (albeit not the one which was in existence in 2010). No part of the Code suggests that a police officer should discuss potential lines of defence with a victim who is also a witness. That said, it is a very long jump from a finding that Mr Coutts spoke inappropriately to TP to a finding that he committed the tort of misfeasance in public office. For reasons which I have begun to explain and which I will explain further at the end of this section I simply do not accept that Mr Coutts was acting in bad faith. Mr Coutts' remarks were made in the presence of the CPS; it is inconceivable in my judgment that Mr Coutts would contemplate doing something which he knew or even suspected to be unlawful in the presence of a CPS representative. Even if I am wrong in this view it seems to me to be inconceivable that Mr Paris would not have been alerted by his own lawyer that a potential line of cross-examination was that JG did not murder Lynette on his own and TP was involved with him. If that is correct Mr Coutts' revelation to the same effect could not possibly have caused any loss to the Claimants.

636. A forensic review conducted in late 2010/early 2011 discovered aspermic semen in Lynette's underwear (retained from 1998). It was obviously necessary to undertake inquiries about how it might have got there. An obvious possibility was that it had come from SM. Mr Matthew Jones gave evidence to the effect that Mr Coutts told him to contact SM and his solicitor, Matthew Gold, to enquire of them whether SM was aspermic. Mr Jones acknowledged that he spoke directly to SM and asked him if he was aspermic. He did not, so he said, provide any significant detail to SM as to why he was making the enquiry.

637. It is not disputed that the discovery of aspermic semen was, potentially, significant. Mr Metzer QC acknowledges that it was necessary to ascertain whether SM was aspermic. However, he submits that a formal request should have been made to SM that he undergo relevant testing.

638. I accept, of course, that SM could have been approached in the more formal manner suggested by Mr Metzer QC. It is hard to believe, however, that Mr Jones' question

to SM, even if accompanied by some explanation of why the question was being asked, demonstrates an improper relationship between Mr Jones and SM let alone constituted an act of misfeasance either on the part of Mr Coutts or Mr Jones. At worst, in my judgment, this episode was an example of the officers taking something of a shortcut. The prospect of this shortcut impacting upon the fairness of the proceedings which, by this time, had been instituted against Claimants 1 – 13 seems to me to be remote. Mr O'Connor made a note of the contact with SM. The note was disclosed in the criminal proceedings. No doubt, that is why Mr Metzer QC was able to develop this point in these proceedings. To repeat, I do not see how the integrity of the prosecution against Claimants 1 – 13 could be undermined by this episode; to be fair to Mr Metzer QC, his written closing submissions do not suggest the contrary.

639. As well as the meetings to which specific reference is made in the Claimants' pleadings, it is clear from Mr Coutts' witness statement (paragraph 180) that he attended meetings other than those set out above with one or more of the original defendants and their legal representatives. It has been suggested that some of the comments made by Mr Coutts during some of those meetings shows that he had become convinced that officers engaged in LW1 had committed crimes and that the original Defendants were innocent.

640. It is as well to note the dates of these meetings. In the main, if not exclusively, they occurred later in time than the Dean Review which was completed in August 2006. As I have said, the Dean Review was an important staging post in the evolution of LW3. It seems to me to be very likely that once that Review had been produced Mr Coutts and, for that matter, many other officers involved in LW3 accepted the essential tenets of the Review – reinforced, as they were, by Mr Thomas' commentary upon it. I have no doubt that from this time forward Mr Coutts and Mr Penhale considered it very likely, at the very least, that JG had acted alone when killing Lynette, that the core four had committed perjury when giving evidence and that they had been pressurised into so doing by the actions of a number of LW1 officers. I accept without reservation that as from late 2006 Mr Coutts and Mr Penhale considered that sufficient evidence had been obtained to justify prosecuting a number of LW1 officers and all that remained to be resolved was which officers were to be prosecuted.

641. I have laboured this point again at this stage because the probability is that, on occasions, Mr Coutts did make remarks such as it was his job (or the job of LW3 officers) to put right the wrongs which had taken place in 1988. Strictly, no doubt, Mr Coutts was walking on thin ice in making such remarks. However, the reality is that as from late 2006, or thereabouts, Mr Coutts had formed the view that many police suspects should be prosecuted. He had formed that view because he had by then come to believe that they had committed serious criminal offences during the course of LW1. As I have concluded, already, there was a proper basis for Mr Coutts' belief. In making remarks such as those just described Mr Coutts was doing no more than articulating what was by then a firmly and genuinely held belief that a number of police suspects had committed the offences for which they had been arrested.

642. I have not forgotten Mr Penhale's remarks at the meeting of 26 November 2004 (see paragraph 270 above). Those remarks were made significantly before the Dean Review. In fact, of course, they preceded the arrest of any police suspects. I have no doubt that arrests of police officers or former officers (especially those who were

senior officers in LW1) would have pleased the original defendants. That is hardly surprising. By this time the original defendants had been designated as victims, justifiably as I have found. Perhaps more significant was Mr Penhale's observation that he had a good relationship with JA and that he had helped him in relation to other matters. That might, indeed, suggest that Mr Penhale's relationship with JA was too close.

643. The relationship between a person designated as a victim of crime and senior police officers engaged in investigating that crime can be a difficult one to manage in practice. I accept that viewed in hindsight and through a very critical lens there may have been instances in which Mr Coutts and Mr Penhale did not observe the clear line or "rules of engagement" which Mr Coutts, himself, had set with the original defendants and their solicitors above. It may be, too, that the relationship between Mr Coutts, Mr Penhale and the original defendants and their solicitors strayed from the strictly professional on occasions, although I note that this was denied by at least two of the original defendants' solicitors when this became an issue during the course of the criminal proceedings. Whatever the precise position I do not consider that the Claimants have proved that Mr Coutts and Mr Penhale behaved in such a way towards the original defendants that this had any kind of impact on the fairness of the proceedings brought against the police suspects. I am satisfied, too, that there is no basis upon which I could properly conclude that Mr Coutts, Mr Penhale or any other LW3 officer so conducted himself towards the original defendants or their solicitors that their conduct constituted the tort of misfeasance in public office.

Disclosure of Unused Material

644. In advance of a criminal trial the prosecution serves upon the defendant the evidence upon which it intends to rely in support of its case. Generally speaking, all the evidence is served before the first day of the trial but it is not unknown for evidence to be served as the trial unfolds. In major investigations the police, invariably, hold information which will not form part of the prosecution case but which may or may not be relevant to the issues for consideration in the trial. Lawyers often call this information "unused material".

645. Whether or not unused material should be disclosed to an accused in a criminal trial is governed by provisions contained within the Criminal Procedure and Investigations Act 1996. The wording of the Act has been amended over the years and the provisions which currently govern disclosure in criminal prosecutions are somewhat different to the provisions which were applicable in the proceedings brought against Claimants 1 to 13. It is common ground that in those proceedings the Act imposed two disclosure duties upon the prosecutor. First, the prosecutor was under a duty to disclose to the accused material which "in the prosecutor's opinion might undermine the case for the prosecution against the accused". This obligation arose in every case and was known as "primary disclosure". As is readily apparent the prosecutor was required to form an opinion about whether the material in question "might undermine the case for the prosecution". Inevitably, there was scope for differing opinions. Second, once primary disclosure had been provided and following the service of a "defence statement" (which set out the nature of the accused's defence to the charge or charges against him) the prosecutor was obliged to disclose material which "might be reasonably expected to assist the accused's defence" (secondary disclosure). This obligation required the person considering the unused material to form a judgment by

applying objective standards of reasonableness but, nonetheless, it is not difficult to imagine that on occasions there would be scope for a difference of view between different decision makers.

646. Traditionally, decisions about whether unused material should be disclosed are taken, in the first instance at least, by police officers as opposed to lawyers. No doubt, in part, that is because the relevant material is held by the police as opposed to the CPS. In very large investigations which lead to prosecutions and when there is a large number of documents to be considered there are often teams of "disclosure officers" who undertake the task and for some time it has been common for those officers to work alongside lawyers and be subject to their guidance.

647. In his witness statement Mr Thomas says that it was apparent from the beginning of LW3 that there would be a vast amount of unused material to be considered. Accordingly, from an early stage, he held a number of discussions with LW3 officers as to how the unused material should be managed. There was agreement about how the process should begin. The first major task was to locate and secure all the material of potential relevance which had been generated since Lynette's murder. The second task was to index this material on the HOLMES computer system. This process began shortly after the inception of LW3. The locating, securing and indexing of the material which had been generated during LW1 and Operation Mistral was undertaken, at least in large part, before the decision was taken to charge the core four i.e. by the end of 2006.

648. As at 2006 Mr Thomas was very experienced in dealing with disclosure. By then, he had been appointed a national trainer within the CPS in respect of disclosure of unused material. In April and May 2006 he, and a fellow national trainer, Mr Welsh, provided disclosure training to six officers from LW3; they were Mr Monks, Mr Lane, Mr Rowlands, Mr Morris, Ms Hill and Ms Hearne. In the months that followed he devised procedures to be followed with a view to ensuring that all the unused material was properly assessed.

649. In 2006, as now, unused material was recorded on standard forms known as MG6C, MG6D and MG6E. MG6C was used to record material which was potentially relevant but non-sensitive i.e. material which the reviewing police officer thought was relevant to the case and which could be read, usually unedited, by the accused and his lawyers. MG6D was used for sensitive material i.e. material that would not be disclosed to the accused and his legal team because it was not in the public interest so to do. MG6E was used for recording material that would undermine the prosecution case or assist the defence case. This Schedule was crucial in a prosecution in which there was a large amount of unused material.

650. An important part of the scheduling process was the description which was applied to each of the documents recorded in the schedule. Mr Thomas told me that it was stressed to LW3 officers during the course of training that the description needed to be sufficiently clear and detailed so as to allow an accused's lawyer to make a judgment about whether the document should be inspected.

651. Shortly before the decision was made to charge the core four a decision was taken that one of the officers within LW3 should be designated the Lead Disclosure Officer. The

first such officer within LW3 was Ms Hill. She became the Lead Disclosure Officer in February 2007 and it was decided that her supervising officer would be Mr Monks.

652. Quite soon after Ms Hill's appointment it was decided that there was a need to have a means of checking whether documents scheduled in MG6E had been assessed appropriately. The procedure adopted came to be known as "the E catalogue procedure". Any officer engaged in reviewing a document who considered that it should be included on schedule MG6E was also required to complete a separate form and provide a hard copy of the relevant document which were then considered by Mr Thomas. Ms Hill says that it was she who devised the separate form to be completed. This procedure was approved by Mr Dean and Mr Thomas at a meeting which was attended by Mr Monks and Ms Hill on 12 March 2007 at the Cardiff Crown Court.

653. The work of preparing disclosure schedules during the proceedings against the core four was very extensive. In all there were twelve separate phases of disclosure. Ms Hill was the Lead Disclosure Officer for all those phases. She signed off the schedules and, until his retirement, Mr Thomas countersigned them on behalf of the CPS.

654. In July 2007 Mr James Haskell, a colleague of Mr Bennett at Guildhall Chambers in Bristol was instructed as "Disclosure Counsel". He was relatively inexperienced, having been called to the Bar in 2004. He assisted in the disclosure process as it unfolded during the proceedings against the core four and as he became more and more familiar with the process his judgment was more and more relied upon.

655. Ms Hill was succeeded as Lead Disclosure Officer by Mr Mark Allen who took up his appointment on 18 February 2008. Mr Allen remained the Lead Disclosure Officer until 4 December 2009. During his period as Lead Disclosure Officer he was assisted by a team of thirteen detective constables. Mr Monks was his supervising officer.

656. During 2008 Mr Allen's points of contact within the CPS were Mr Hart and Mr Cohen. He worked closely with Mr Haskell. Although Ms Hill had signed off the disclosure schedules served during the course of the proceedings against the core four, disclosure was kept under continuous review until the end of those proceedings. Essentially, the process for identifying material which might undermine the prosecution case or support the case for the defence remained unchanged throughout the course of the proceedings against the core four.

657. Once the proceedings against the police suspects had been started a number of documents were produced to provide guidance to those who would be involved in the process of disclosure of unused material. I need not identify each one; they are described in the witness statement of Mr Edward May at paragraphs 31 to 34. In any event, notwithstanding that these documents were produced the processes for managing disclosure remained, essentially, those which had been deployed during the course of the prosecution of the core four. In particular, the E Catalogue Procedure remained the process which was used to determine whether a document should be recorded in schedule MG6E as being a document which might undermine the prosecution case or might support the case for the defence.

658. Primary disclosure in the prosecution of Claimants 1 to 13 took place in phases beginning on 14 September 2009 and ending on 14 September 2010. Mr Howard

Cohen signed off each phase of disclosure on behalf of the CPS and the Lead Disclosure Officers also signed the schedules. In that period they were, successively, Mr Allen, Mr May and Mr Rowlands. Defence statements were served in September 2010 and many if not all of the statements contained requests for specific disclosure. Further, a number of the prosecuted Claimants made applications to dismiss the proceedings. Accordingly there was a need to deal with secondary disclosure as promptly as possible. The specific disclosure requests were answered in two phases – on 25 October 2010 and 21 January 2011. Formal schedules were not produced but copies of the documents were sent to the solicitor acting for the accused person to whom the documents related.

659. On 3 April 2011, 8 May 2011, 30 May 2011 and 26 August 2011 there were further phases of secondary disclosure. As is obvious, the last phase occurred after the commencement of the trial of the police suspects. In each instance Mr Simon Clements signed off the schedules on behalf of the CPS and they were countersigned by Mr O'Connor who had become the Lead Disclosure Officer in September 2010 and who remained the Lead Disclosure Officer until the proceedings against the police suspects came to an end.

660. Let me pause at this point to take stock. It is common ground that the obligations upon a prosecutor to disclose material which might undermine the prosecution case or which might assist the case for an accused are imposed for the purpose of ensuring that the accused receives a fair trial. Accordingly, in cases in which there is likely to be a large volume of unused material it is crucially important to have in place procedures which ensure that material which might undermine the prosecution case or which might assist the case for the accused is properly assessed and accurately and clearly recorded in the appropriate schedule, namely MG6E.

661. The procedure followed in LW3 in order to achieve these aims was the E Catalogue Procedure. I have no doubt that it was devised because Mr Thomas, in particular, and those officers most concerned with disclosure in the proceedings brought against the core four considered it a proper means of ensuring that all the documents by the police/CPS which might undermine the prosecution case or which might assist the case for an accused would be disclosed. No one has suggested that this procedure did not work reasonably well in the proceedings against the core four. No one in these proceedings has suggested in terms that this procedure should not have adopted in the proceedings against Claimants 1 to 13; certainly it has not been suggested that a different obviously superior methodology should have been adopted. However, as with all processes of this type, its success depended upon the efficiency and judgment of a number of different people. Crucially, it depended upon the individual officer reading a particular document forming the correct view of its relevance; unless a document found its way into the E Catalogue system there was a distinct possibility that it would not find its way to the accused. Each of the officers who conducted the initial review of a document had to have sufficient experience and training to be able to discern when a document might undermine the prosecution case or assist the case for an accused.

662. I heard evidence from all the Lead Disclosure Officers who held that position between March 2009 and December 2011. Mr Allen had been a police officer since 1 April 1997. He had performed a variety of roles between 1997 and February 1998 and, at least once, he had undergone training in the provisions of the 1996 Act. There was

nothing in his evidence to me which suggested that he did not have the capability or the experience to make appropriate assessment of the documents or schedules which he read.

663. Mr Allen was succeeded by Mr May. Mr May had been a police officer for about five years at the time he joined LW3 in 2008. Mr May was designated as a deputy disclosure officer immediately upon his deployment to LW3 which meant that he was one of the officers tasked with reading many of the documents constituting the unused material and, therefore, making assessments about how they should be scheduled. He describes the training he received at paragraphs 13 to 16 of his witness statement. I heard nothing to suggest that he did not have a thorough understanding of the duties imposed upon the prosecutor by the 1996 Act.

664. Mr Rowlands had been a police officer for almost 20 years when he joined LW3 in November 2004. Initially, he took the role of Exhibits Officer. However, during the course of 2005 he became involved in disclosure. He had received disclosure training before joining LW3 but Mr Rowlands confirmed that he underwent further training during the course of his deployment to LW3. It seems clear that Mr Rowlands was an experienced officer, fully familiar with the concept of disclosure, by the time he became Lead Disclosure Officer in December 2009.

665. Mr Rowlands left LW3 in October 2010. For a very short period Mr May assumed the role again but, literally within a few weeks, Mr O'Connor became the Lead Disclosure Officer. Mr O'Connor had joined the Metropolitan police on 2 December 2002. On 1 September 2008 he transferred to SWP and he joined LW3 in October 2009. Initially, Mr O'Connor combined the roles of outside actions officer and deputy disclosure officer. He familiarised himself with the guidance which, by then, had been produced by counsel and in January 2010 he completed a HOLMES course. As is obvious he was the Lead Disclosure Officer at a crucial period in the prosecution process and I will refer to his evidence in some detail when I deal with some of the specific complaints about disclosure. He, too, impressed me as having a thorough understanding of disclosure duties.

666. I did not receive much evidence from those who were deputy disclosure officers during the period following the commencement of the criminal proceedings in March 2009. It was probably at their level that the risk was greatest that the significance of a document would be missed. In saying that I do not wish to cast doubts upon the efficiency or integrity of those involved. I mean only that those persons charged with making the initial decisions had to consider thousands of pages. They were the ones most likely to make mistakes.

667. I pause again to take stock. Over the period between 2 March 2009 and 4 July 2011 a significant number of police officers were involved in reviewing the vast number of documents which had been generated in LW1, Operation Mistral and LW3 in order that decisions could be made about disclosure. They had been supervised by lead disclosure officers who in turn had access to CPS lawyers and Mr Haskell. As was clear from his evidence Mr Dean took a keen interest in what was happening.

668. No doubt Mr Coutts, too, had an overall managerial role. However, there is no evidence to suggest that he was involved personally in any or at least many decisions about the disclosure of individual documents. The same is true of Mr Penhale.

669. The impression I have formed of the evidence is that the detailed application of the disclosure process was managed by the lead disclosure officers acting in conjunction with Mr Haskell. That is not to doubt that, on occasions, Mr Dean and Mr Bennett become involved in decisions which were thought to be difficult or that Mr Coutts and to a lesser extent Mr Penhale, too, may not have become involved in disclosure issues. It does seem to me to be very unlikely, however, that a SIO and his deputy could be in command of the details of a disclosure process which was as vast an operation as the one in this case.

670. As I have said there were a number of phases of secondary disclosure during late 2010 and in 2011. The trial commenced in early July 2011. There was a break for a summer holiday in August. During the break Mr Clements asked Mr Haskell to provide a note setting out the size of the disclosure task both before and during the course of the trial to that point. It is worth quoting paragraph 39 of Mr Clements' witness statement verbatim on this issue:-

> "39.In summary [Mr Haskell's] note recorded that:-
>
> - Since the service of Primary Disclosure in October 2009 the Crown had received approximately 175 formal documents requesting further disclosure.
>
> - The 175 documents contained more than 4,300 individual requests for disclosure.
>
> - 59 written disclosure requests were made between 4 July 2011 (when the trial started) and 12 August 2011 (when the trial was adjourned for a summer break).
>
> - The 59 disclosure requests contained more than 500 individual requests.
>
> - Of the 175 formal requests – 42 requests came from Mr Mouncher's team.
>
> - The 42 requests for further disclosure contained over 900 individual requests.
>
> - Of the 42 Mouncher requests – 24 were made since 4 July 2011.
>
> - The 24 written requests since 4 July 2011 included approximately 240 individual requests.
>
> - As a result of over 500 individual disclosure requests made since 4 July 2011 the Crown disclosed approximately 30 further documents.
>
> - As a result of approximately 240 individual requests from Mouncher's team since 4 July 2011 – the Crown disclosed approximately 14 further documents. Of

> those 240 individual requests – approximately half of those could have been made in advance of the trial."

671. Quite how crucial any of these documents were to the issues in the criminal trial was never resolved; both Mr Dean and Mr Bennett considered that many of the documents were of marginal relevance, only, to the true issues in the case. Nonetheless, as is obvious, a number of documents were disclosed as the trial progressed. The fact that disclosure was continuing during the course of the trial led to a growing suspicion that proper attention had not been paid to the disclosure obligations placed upon the prosecutor.

672. Once the trial had begun counsel for the accused were very much alive to any perceived deficiencies in the disclosure process. However, I stress that there is no suggestion that counsel for the accused behaved unprofessionally or improperly. Neither Mr Dean nor Mr Bennett criticised counsel about the way in which they approached disclosure issues. In their view, counsel for the accused had sought to exploit weaknesses in the disclosure process but they had not gone beyond the bounds of their professional obligations and duties.

673. As the prosecution case unfolded so it became more and more obvious that counsel for the accused would suggest at some point that there were such failings in the disclosure process that the accused could not receive a fair trial. Let me explain what occurred, as neutrally as possible.

674. During the course of September, October and November witness statements were obtained from Mr Coutts, Mr May, Mr O'Connor and Mr Mathew Jones which, in effect, sought to provide answers to the various aspects of the complaints made about disclosure. As I have said already, there were complaints about a failure to disclose contacts between LW3 officers. There were complaints about the failure to disclose material from LW1. The details of all the complaints are analysed in those witness statements. No useful purpose would be served by setting out the detail in this judgment. Witness statements were obtained, too, from Mr Clements and Mr Haskell. A comprehensive document was prepared by Mr Dean and Mr Bennett to deal with alleged disclosure errors. It was given the title "Analysis of Errors". The document began its life in early June 2011 but it seems to have been a living document in the sense that additions were made to it in the ensuing months as and when complaints about disclosure were made. All the statements and the Analysis of Errors were produced in order to ward off the anticipated suggestion on behalf of the accused that they could not receive a fair trial.

675. At the close of the prosecution case counsel on behalf of the accused began long and detailed submissions to the effect that the disclosure failings were such that the proceedings should be brought to an end. My understanding is that the judge received substantial written submissions and he heard oral evidence to supplement the witness statements which had been made and to which I have just referred. I have been shown transcripts of some of the exchanges between Sweeney J and counsel. It is clear the judge was becoming concerned about the integrity of the disclosure process.

676. Matters crystallised on 28 November 2011. During the course of submissions on that day the judge resolved that he would set an exercise to be undertaken by the prosecution team; the aim of the exercise was to check the validity of assurances

which had been given to the judge by Mr Dean, on behalf of the prosecution, that all disclosure problems had been solved. The judge directed that all the material which had been brought to the attention of Mr Haskell by police officers (the E Catalogue material) should be identified; that Mr Haskell's consideration of that material should be disclosed if in written form; that the prosecution should specify whether such documents had already been disclosed and it should also indicate whether any documents remained undisclosed. My understanding is that Mr Clements and all prosecuting counsel were at court on this day so that the task set by the judge was to be supervised by the full legal team. A number of police officers were also present at court including Mr May and Mr O'Connor.

677. As the team began to work on the exercise set by the judge it became clear that certain documents were missing. The material in question had the reference numbers D7447 and D7448. D7447 consisted of copies of documents received by LW3 officers from the IPCC in around July 2009 which contained complaints by JA and the husband of Ms Carole Evans about the conduct of LW3 officers. D7448 were copies of documents received from SWP Legal Services Department.

678. The discovery that these documents were missing came about when Mr O'Connor asked a fellow officer based within the MIR at St Athan, Mr Kingsbury, to find and locate these documents. When Mr O'Connor reported that Mr Kingsbury was unable to find the documents alarm bells began to ring. They began to ring very loudly when Mr May indicated that he recalled a telephone conversation with Mr Allen in or about 2010 in which Mr Allen had suggested that the documents had been destroyed upon the instruction of Mr Coutts.

679. Mr Dean decided he would telephone Mr Allen. Mr O'Connor's recollection and that of the other persons present was that Mr Dean was told by Mr Allen that the documents had been shredded at the direction of Mr Coutts. That was not Mr Allan's recollection of what was said as set out in his witness statement and his evidence to me. He told me that he had no recollection of telling Mr May in 2010 that he had been told by Mr Coutts to shred documents and he did not tell Mr Dean of any such conversation in his telephone conversation with him during the evening of 28 November.

680. Mr Dean also spoke, by telephone, to Mr Coutts. The conversation was short. It was kept short quite deliberately by Mr Dean who wanted (quite justifiably) to avoid a situation in which he might become an important witness. In the telephone conversation Mr Coutts denied instructing anyone to destroy any documents.

681. Mr Dean was faced with a dilemma. He had been told that certain documents which were germane to the exercise set by Sweeney J could not be located. He had also been told of a conversation between police officers in which it had been said that the documents had been destroyed upon the instruction of the SIO. There was no easy means whereby that allegation could be rebutted. Faced with these circumstances Mr Dean rapidly concluded that the prosecution was doomed and that no further evidence should be offered against those on trial. He consulted with Mr Clements who agreed.

682. The next day Mr Dean sought an audience with Sweeney J in Chambers. He applied for and was granted an adjournment so that he could appraise the DPP of what had occurred. In due course the DPP gave his approval to Mr Dean to offer no further

evidence against those on trial. An official announcement to that effect was made in open court on 1 December 2011 and Sweeney J directed verdicts of not guilty should be entered against those then on trial.

683. Some weeks later the missing documents were found at St Athan in an area normally occupied by Mr Coutts. Not surprisingly SWP faced a great deal of adverse publicity and, to this day, a degree of mystery surrounds the "losing" and "finding" of those documents.

684. How does this chain of events sit with the claim of misfeasance in public office made against the officers of LW3? First, as a matter of fact, the documents in question were not destroyed. There was no unlawful destruction of those documents and, so far as I am aware, of any other documents which came into the possession of the police. Insofar as the Claimants found an allegation of misfeasance on the factual assertion that documents were destroyed that allegation must fail. Second, it is possible to argue that Mr Coutts did issue an order to Mr Allen to destroy the documents but Mr Allen did not comply with that order. Depending on the circumstances in which the order was given such an order might constitute misfeasance in public office. In my judgment, however, it is very unlikely that Mr Coutts issued any such order. Why would Mr Coutts direct the destruction of copies of documents when the originals were held safely by third parties? Third, there is no obvious explanation for the difference in recollection between Mr May and Mr Allen about the conversation said to have taken place between them in 2010. However, no one has suggested that Mr May has made up the conversation for any malicious purpose. Of course, if Mr May did make up the conversation, presumably on the spur of the moment when Mr Kingsbury was unable to find the documents, his only conceivable motivation, so far as I can see, would have been to assist those on trial. Given the impression that I have formed of Mr May that is a possibility to be discounted. Fourth, I suppose it is conceivable that an officer based at St Athan deliberately hid the documents knowing the effect this would likely have on the proceedings against those on trial. If any officer did act in that way it was probably misfeasance in public office but, without doubt, no loss was caused to the prosecuted Claimants. The only effect of such an act by the unknown officer was to facilitate the ending of the proceedings against them.

685. The probability is that the documents were misplaced through human error. Quite how they came to be found, apparently so easily, some weeks after the trial came to an end is a mystery which I cannot resolve and about which I decline to speculate. To repeat, however, the Claimants have failed to establish that Mr Coutts (or any other officer) deliberately destroyed documents in the possession of the police and, that being so, that pleaded allegation of misfeasance must fail.

686. In the light of that conclusion I do not propose to dwell upon the evidence which Mr Penhale gave about this aspect of the case. He was cross-examined at length about parts of a statement which he made during the course of the IPCC investigation into the collapse of the trial. In summary, Mr Penhale was very defensive about what had occurred and, it seemed to me that he was seeking to shift the blame for what occurred from the police officers involved to the lawyers. Some of his answers were difficult to accept in the light of other evidence in this case, particularly that given by the team of prosecuting counsel. To repeat, however, no useful purpose would be served in recounting in detail Mr Penhale's evidence on the destruction issue since it

was never suggested that he, personally, was involved in any way in how the documents came to be lost but then found.

687. I turn to the wider disclosure issues. Before me it has been suggested that LW3 officers ignored their disclosure obligations, that the process was not fit for purpose and/ or there were "systemic failures" in the process. A very substantial amount of detail has been advanced by counsel for the Claimants to support these contentions.

688. Having reflected upon those submissions, I have decided that I must and will determine whether officers deliberately and/or recklessly ignored their disclosure obligations. The reasons will become apparent shortly. However, I cannot possibly decide whether the system was fit for purpose or whether there were systemic failures. In order to decide those two issues I would have to consider disclosure in such detail that this judgment would be very considerably longer than is already the case. Further, and more importantly the judgment would lose sight of its true focus which is to consider whether individual officers committed the tort of misfeasance in public office by virtue of their conduct during the disclosure process. There have been two investigations already into the collapse of the trial and the part played in that collapse by disclosure failures (see paragraph 712 below). I do not propose to turn this judgment into a third such investigation.

689. Of course, if a detailed analysis of whether the disclosure process was fit for purpose and/or whether there were systemic failures was strictly necessary in order to determine whether the Claimants had been the victims of the tort of misfeasance, no doubt, the lengthening of the judgment would not, of itself, be a reason to baulk at descending to the detail. However, even if the disclosure process was not fit for purpose and/or even if there were systemic failures these of themselves would not sustain a finding of misfeasance in the absence of a finding that the officers engaged in disclosure either knowingly or recklessly exceeded their powers and/or otherwise acted in bad faith. In the context of disclosure it would be necessary to demonstrate that the officers involved in the process either deliberately or recklessly ignored their statutory obligations thereby causing significant failures in the disclosure process. Reduced to essentials before misfeasance could be proved in the context of disclosure failings Claimants 1 to 13 would have to prove that LW3 officers deliberately or recklessly suppressed documents which they knew should have been disclosed. There is simply no evidence that the lead disclosure officers or their subordinates acted in this way. This conclusion is justified by a number of pieces of the evidential jig-saw. First, I gained a favourable impression of all the officers who gave evidence before me on the disclosure issues. Second, without doubt, there was close supervision of the disclosure process by the team of prosecuting lawyers. Mr Haskell was relatively inexperienced but I have no doubt that he had a very sound grasp of the issues and that he was astute to apply the statutory provisions about disclosure in an appropriate manner. However, the evidence which most convinced me that there was no deliberate or reckless withholding of documents which undermined the prosecution case or assisted the defence was that part of the evidence which I heard about a number of documents which came to light shortly before the trial began. A consideration of three such documents will suffice.

690. On 19 January 1989 SM's solicitor visited him in prison. They discussed the events of the night during which it was assumed Lynette was murdered. A very full attendance note was made by the solicitor of what was said. In circumstances which

are not entirely clear the attendance note made by SM's solicitor in January 1989 found its way into the hands of LW3's officers.

691. In my judgment this attendance note constituted one of the most important pieces of exculpatory evidence unearthed during the course of LW3. The attendance note was hand written. It comprised seven sheets. It began by describing, in summary, events in the week leading to Lynette's murder. There followed a description of SM's movements on the Saturday night and his discovery that Lynette was staying at 7 James Street. SM described how he spent some time at the Casablanca Club and then decided to go to 7 James Street to see if Lynette was there. His account continues:-

> "The flat at 7 James Street is only about 100 – 150 yards from the club. I think there might have been a Cortina outside the flat, it was dark coloured or appeared to be in the streetlight. The front door was ajar, Lynette always closes doors so it seemed a bit funny. I pushed the door and the door opened onto some stairs. On the stairs were two white men. I had never seen them before. One of these men had longish hair, shoulder length, the other had shortish hair, like the policeman who was with you last time. One was taller, the one with the long hair, they were standing on different stairs so this is difficult really. Both men were looking up to another room and I remember that one of them had like bum fluff moustache and beard. I squeezed past them on the stairs about got to the top of the stairs and heard noises. It sounded like people talking quietly. I turned the corner, and walked down the landing to a room on my right, the door of which was open. Ronnie Actie was standing on the area between the door frames, I think this door opens from left to right. (He indicated that facing the door the opening part with the handle would be to the left of the door frame). As I entered the room I said nothing to Ronnie, I walked straight in and then saw a bed or something like a bed to my left. Lynette was standing next to this and Tony Paris was standing close to Lynette. Della was standing in about the middle of the room and John Actie was standing to the left of the room door. There were two windows in the room, they faced the door. I walked straight up to Lynette and said "why didn't you phone or contact me?" I then punched her in the mouth because she smiled at me stupidly. It was a right hand punch, she fell to the floor, she got back up, I walked away from her and Tony Paris, passed where Della was standing. I then heard Tony Paris say who are you talking to you bitch or something like that. He then slapped her face left handed, she fell down to the floor again, got up and started to have a go at him, like thumping him with both fists and kicking him. He held her by the jumper, by her throat, top of her chest at arms length with his left hand, and then I saw him take a knife with his right hand from somewhere on his right side. He then stabbed Lynette in her left side just under the ribs, she fell to the floor and then when she was on the floor she screamed

> twice. I walked to Tony Paris and Della had walked towards him as well. As I got to Paris he threatened me with the knife and said "do you want some?" I backed off again and said "no I don't want no trouble, I'm not looking for trouble." I am aware that Paris is evil and I didn't want any part of him. Both the Actie's are mad as well. I had about got back to where I was when Tony Paris stabbed Lynette when Leanne Vilday came into the room. She shouted "what have you lot fucking done" or something like that. She had only just got into the room, I panicked and ran out. I went down the stairs which were now empty, slipped on the bottom stair, ran and ran and eventually got back outside the Casablanca. I got in my car and went home. I really couldn't believe what had happened. I just couldn't accept it. It seemed to have been done for no reason."

692. Later in the attendance note SM described being arrested before Christmas and telling the police a number of versions of what had happened. He then asserted:-

> "This is the truth, I can say no more. I was telling lies because I was frightened for myself and my family. Since I have been in prison I have been threatened by Della, Ronnie has also harassed me. John has just sworn at me and Paris keeps glaring at me all the time. All of them when they see me say they are waiting, that is all they say, they are waiting for me inside, they keep asking me to tell the truth."

Finally I should mention two other aspects of the note. First SM described the knife used by TP as being "a bowie type knife with teeth on the back of it". Second he told his solicitor that he would be prepared to give evidence against TP as he was the only person that he saw stab Lynette.

693. The evidential significance of this attendance note is obvious. If true, it completely undermined the proposition that Lynette had been murdered by JG acting alone. Indeed, if true, it cast very considerable doubt upon whether JG had been involved at all.

694. The circumstances in which this document came to be in the hands of the CPS are not fully explained. The most detailed explanation comes in the witness statement of Mr O'Connor. At paragraph 78 he describes how the original defendants' solicitors asserted legal professional privilege in relation to some of the documents which were being sought from them. That is hardly surprising. At some stage, however, SM's solicitors must have relented and provided the attendance note to which I have just referred to the CPS. Mr O'Connor says that this was all happening in early 2011 and that the attendance note was disclosed to the lawyers acting for the prosecuted Claimants in February 2011.

695. There is no evidence which suggests that this is not correct. I have no reason to doubt that this important document first came into the possession of the CPS/Police in about late 2010 early 2011 and it was disclosed, quite properly, shortly thereafter. On that basis the conduct of LW3 officers cannot be faulted.

696. At the conclusion of the proceedings against JG his leading counsel, Mr Rees QC, wrote a case assessment. He did so in order to support the fee for representing JG which he was claiming from the legal aid fund. At the time, counsel was obliged to complete a standard form in order to support the fee which he claimed and it was common place to provide a detailed case assessment to accompany the standard form. The form and assessment would be sent by counsel's clerk to the appropriate "taxing officer" i.e. the person appointed to determine the appropriate fee.

697. Mr Rees QC wrote a detailed assessment. Its significance in this case is reasonably summarised in the evidence of Mr Rowlands. The assessment had the "potential to raise doubts over [JG's] confession" and it related that JG had disclosed to Mr Rees that there were other men who were about to enter the flat at the material time and that they may have inflicted further stab wounds. Self-evidently this, too, was a very important document which was capable of being used to good effect by the lawyers acting for those on trial.

698. At first blush it is difficult to understand how this document ever came to be in the hands of the CPS. However, that has been explained in the evidence. In summary the taxing officer responsible for determining the fees of Mr Rees QC sent it to the taxing officer who was responsible for assessing the fees of leading counsel for the prosecution. No doubt, quite legitimately, the two officers were comparing notes so as to determine the appropriate fees. The result was, however, that the assessment prepared by Mr Rees QC found its way into a file within the CPS.

699. As early as December 2006 an action was raised by an LW3 officer with a view to obtaining hand written statements from the files of evidence relating to JG held by the CPS in Cardiff. For reasons which do not matter in this context this action was not pursued for some years – see paragraph 10 of the witness statement of Ms Louise Frazier. In 2010 she took steps to recover files from the CPS and, eventually, on or about 22 June 2010 Ms Frazier received two large boxes of documents from a representative of the CPS. The documents contained within the boxes were the files held by the CPS in relation to JG. Ms Frasier transported the boxes to the MIR at St Athan. Ms Frasier had nothing more to do with the contents of the boxes.

700. Quite separately, Mr Howard Cohen provided further boxes containing material held by the CPS on 7 July 2010.

701. The likelihood is that the boxes obtained by Ms Frazier and supplied by Mr Cohen were not reviewed by any LW3 officer until January 2011. In his second witness statement Mr Rowland says that on 15 January 2011 he was assisting with the disclosure process then being undertaken in the MIR at St. Athan. (As I have said Mr Rowlands had ceased his full time employment to LW3 but, occasionally, he returned to assist.) On that day he discovered the assessment prepared by Mr Rees QC. It was in one of the boxes of material which had been provided by the CPS – see paragraphs 6 – 9 of Mr Rowlands' second statement. Upon reading the assessment Mr Rowlands immediately understood its significance. He drew attention to the document, immediately, and wrote a report about it.

702. Mr O'Connor, the Lead Disclosure Officer, became aware of the existence of the document either on the day it was discovered or shortly thereafter. He considered the document himself and referred it immediately to Mr Haskell. Mr Haskell directed its

immediate disclosure. Mr O'Connor says that the document was registered promptly on the computer system and provided to the lawyers acting for the prosecuted Claimants during the phase of secondary disclosure which began on 21 January 2011.

703. For the greater part of the hearing before me the Claimants were disposed to doubt this sequence of events. Indeed Mr Hart was led to say in his oral evidence that he thought it probable that he had seen the assessment made by Mr Rees QC during his involvement in the case.

704. I do not accept Mr Hart's evidence on this point. It is, I suppose, possible that Mr Hart had seen the document in a CPS file but I regard the possibility as being remote. Mr Hart did not suggest to me that he had delved into CPS files prior to such files being provided to the police for assessment. There is no evidence which suggests that the file in which the assessment was located was provided to the police earlier than June/July 2010. In my judgment Mr Hart was led to give the oral evidence he did by the line of questioning which preceded it or by virtue of earlier out of court discussions.

705. I am conscious, of course, that there was a considerable delay between an officer of LW3 first raising as an action the obtaining of files relating to JG from the CPS and the receipt of those files. No doubt that is regrettable. However, there is no basis for inferring any improper motive to that delay. It could hardly be suggested that any officer in LW3 or any lawyer within the CPS could have foreseen that a CPS file containing evidence relating to JG would contain a case assessment prepared by JG's leading counsel.

706. There was also a delay of some months before the CPS files were assessed once received by the LW3 officers. No doubt, too, that is regrettable but it has no bearing on the issues in this case. The plain fact is that once a police officer discovered the case assessment it was drawn to the attention of Mr Haskell and disclosed very promptly.

707. The events surrounding the disclosure of this document, as I find them to be, are completely inconsistent with the deliberate withholding of exculpatory material.

708. On 15 August 1990 LV underwent a psychiatric assessment. She was examined by Dr Kellam, an experienced Consultant Psychiatrist, and he produced a written report. In it he made reference to statements which LV had made to him which suggested that she had witnessed Lynette's murder. The statements to the Doctor were, in broad terms, consistent with parts of LV's witness statements of December 1988.

709. The suggestion was made and, to an extent, pursued during the course of the hearing that LW3 officers suppressed this report. Yet the evidence of Mr O'Connor and other LW3 officers was that attempts were being made to persuade LV to consent to the disclosure of her medical records over a significant period of time. For most of that period, LV steadfastly refused. Ultimately she agreed. Upon receipt of the medical records the significance of the report of Dr Kellam was appreciated and it was disclosed.

710. As I have said, the Claimants make very many complaints about the inadequacies of disclosure in the criminal proceedings. I have chosen to detail the events surrounding

three particular documents since, as I have said, these events provide a very good indicator about the true attitude of the disclosure officers. All three documents came from sources which were beyond the control of the police officers. The attendance note came from those acting for SM; the taxation note came from the CPS and the medical report came from LV, herself, in the sense that it would not have surfaced but for her consent. It is very unlikely that those documents would have been disclosed if, as the Claimants allege, there was an orchestrated campaign, driven by Mr Coutts and/or Mr Penhale and/or by the Lead Disclosure Officers, to suppress exculpatory material.

711. As was to be expected, the ending of the trial and the acquittal of the prosecuted Claimants provoked a good deal of media interest and public debate. HM Crown Prosecution Service Inspectorate decided to conduct a review of the handling of disclosure during the criminal trial. It published a detailed report in May 2013. The IPCC also conducted a review albeit on a more limited basis. That report was published on 4 July 2013. Both reports are included in the Core Bundles – see volume 12 pages 8710 to 8830 (HMCPS Inspectorate Report) and 8832 to 8874 (The IPCC Review).

712. The evidential status of the two reviews in these proceedings was not debated at any length during the hearing. I make it clear that I have not ignored the reports but my primary focus has been upon the evidence provided to me from all the officers who had significant responsibility for the disclosure process during the criminal trial. I stress that this includes both their witness statements in this trial and the statements which they produced during the criminal trial and subsequent investigations. I have also paid close attention to the evidence provided by Mr Dean, Mr Bennett and Mr Haskell. In my judgment it is this evidence which provides the most reliable basis upon which to reach a conclusion about whether any LW3 officer committed the tort of misfeasance in public office by virtue of his conduct in relation to disclosure in the criminal trial. On the basis of this evidence the tort is not proved.

Bad Faith

713. Bad faith can be an elusive concept if an attempt is made to describe it in words. However, it is usually comparatively easy to recognise when it exists. As I have said on more than one occasion Mr Coutts and Mr Penhale were subjected to comprehensive cross-examinations. Those examinations were also skilful and persistent. The aim of the cross-examinations was to undermine their credibility and to seek to demonstrate that, in truth, they were guilty of acting in bad faith throughout LW3. I had a very good opportunity to assess them over many days.

714. I would exaggerate if I said that they escaped their examinations unscathed. There were aspects of their evidence which I found difficult to accept without qualification. I have referred to Mr Coutts' evidence as it related to contact with the original defendants and his exaggeration of a particular aspect of the ESDA evidence. I formed the impression, too, that Mr Coutts was reluctant to accept that relations between Mr Hart and he had soured to the extent that I have found. He never succeeded in explaining to me why Mr Sekar enjoyed the status he was afforded during the course of LW3. For all intents and purposes Mr Sekar was treated as if he was a victim. His book was supplied to all the investigators engaged in LW3. For my part I can see no justification for the special status which was afforded to Mr Sekar

and only marginal benefits to be derived from the investigators reading his book. Mr Penhale was defensive when dealing with disclosure failures and, as I have said, I was not impressed with some of the answers which he gave about the events immediately surrounding the collapse of the trial. He was seeking to shift the blame from police officers to the lawyers in a manner which was not particularly attractive. The cross-examinations of Mr Penhale also demonstrated that his suspicions about wrongdoing were very easily aroused. That may be an occupational hazard; on balance, my view is that Mr Penhale was overly suspicious of the conduct of many of the persons who had been involved in LW1.

715. Despite these reservations I do not consider that the Claimants have discharged the burden upon them of proving bad faith on the part of Mr Coutts and Mr Penhale. My judgment is they went about their tasking of leading the investigation with two clear objectives. First, they were determined to prove that they were prepared to investigate current and former colleagues without fear or favour. Second, they were determined to undertake a thorough and rigorous investigation of police and civilian suspects who were alleged to have committed very serious criminal offences. For reasons which I have sought to explain, however, they did not either knowingly or recklessly exceed their powers. Very importantly, they did not close off lines of investigation which were likely to be advantageous to the police suspects and they did not hide or suppress exculpatory material either in their dealings with the CPS or, to the limited extent that they were involved personally, in the disclosure process once the prosecution had begun. They had a very close working relationship with Mr Thomas and prosecuting counsel but that was because each of those persons, quite independently, considered that the evidence available justified arresting all the Claimants and prosecuting Claimants 1 – 13.

716. I have considered whether there is any evidence of bad faith on the part of any other officer who had a significant role in LW3. Mr Monks held a senior role over some years. There is no evidence of any kind that he acted in any way inappropriately throughout his period of deployment to LW3. The same is true of all the other officers from whom I heard evidence or whose witness statements I read. There simply is no evidence that any of these officers acted in bad faith when discharging their duties.

717. I have, of course, considered whether acts or omissions which, looked at in isolation, appear innocuous should be viewed quite differently when considered together. Ultimately, however, my judgment is that the officers involved in LW3 did not act in bad faith whether their decisions acts or omissions are viewed in isolation or cumulatively. Those seeking to prove the tort of misfeasance in public office have to surmount a number hurdles which are set at a considerable height. It is a tort which is usually very difficult to prove. In my judgment, the Claimants in these proceedings who allege misfeasance have failed to prove that they were the victims of that tort.

Section 8

718. In this section I consider the claims for false imprisonment. A crucial issue in respect of each claim is whether or not the Claimant's arrest was lawful. I will address that issue in respect of each phase of arrests and in the order in which the arrests were carried out. I consider that to be necessary for the obvious reason that after each phase had taken place the suspects were interviewed under caution and their homes

searched. What was or was not revealed in interview and what was discovered in the searches was capable of informing the decisions made by Mr Coutts and Mr Penhale about persons not yet arrested.

719. I stress that this part of my judgment must be read against the background that I have already concluded that there were reasonable grounds to suspect that the core four had committed perjury when giving evidence against the original defendants and that there were reasonable grounds to suspect that they had been caused to give that evidence by police officers who had engaged in the offences for which the Claimants were arrested.

The arrests on 13 April 2005

720. Having heard the arresting officers, Mr Penhale and Mr Coutts give evidence, I am satisfied that each of them believed that reasonable grounds existed to justify the arrests of Mr Daniels, Mr Gillard, Mrs O'Brien, Mr Page and Mr Seaford. I am equally satisfied that they believed that it was reasonable to arrest the five suspects.

721. As it seems to me, the crucial issue in respect of the lawfulness of each arrest in the first phase is whether reasonable grounds existed to suspect that the person under consideration had committed the crimes for which he/she was to be arrested.

Mr Daniels

722. Mr Daniels was arrested by Mr Boulton who was in company with Mr Stephens. In his witness statement, Mr Boulton says that he suspected Mr Daniels had committed the offences for which he was arrested and that he was "more than satisfied that there were sufficient grounds" to justify the arrest (see paragraph 31). He took account of all that he had heard in the briefings and all that he had read when researching the case. In particular, Mr Boulton took account of the ESDA evidence as it related to Mr Daniels. He says "it was alleged that a page had been inserted in the middle of a witness statement obtained by Mr Daniels from Ms Psaila".

723. Paragraph 31 of the witness statement of Mr Boulton is identical or virtually identical to paragraph 25 of the witness statement of Mr Stephens. He, too, asserts that the effect of the ESDA evidence was that "it was alleged that a page had been inserted in the middle of a witness statement obtained by Mr Daniels from Ms Psaila".

724. These paragraphs are impossible to reconcile with the way that Mr Penhale described the effect of the ESDA evidence in the grounds for arrest which he wrote in respect of Mr Daniels. The contrast is so stark that it is necessary to quote, in full, what Mr Penhale wrote:-

> "He is the author of Statement 65J which is Angela Psaila's statement dated 11 December 1988. The statement contains incriminating evidence in respect of Psaila providing information in respect of seeing a dark coloured Ford Cortina parked outside 7 James Street in the early hours of 14 February 1988.

> This statement was provided during the period that Psaila claimed that she was held against her will and subject of threats and intimidation from the interviewing officers. This statement when subjected to ESDA testing shows the following:-
>
> 1. Page 4 bears impressions of first and second page of Violet Perriam's statement 2626B. The author of this statement is Thomas Page. This officer is subject of a separate report.
>
> 2. Page 11 of this statement bears impressions of another version of page 11 showing in effect that the current page 11 was a blank page under the original page 11 when the original page 11 was written.
>
> ESDA shows that the original page 11 is finalised and signed three quarters of the way down the page. The further paragraph provides evidence in respect of a dark coloured Ford Cortina parked outside 7 James Street in the early hours of 14 February 1988. This change is supportive of a hypothesis that this page was re-written in order to put Ronald Actie outside the scene of the murder at the relevant time.
>
> These ESDA findings are also linked to other statements taken from different witnesses at key stages. A flow chart identifying this linkage is shown at Appendix A."

725. No explanation has been offered on behalf of the Defendant as to how it can be that Mr Boulton and Mr Stephens describe the effect of the ESDA evidence so differently from Mr Penhale.

726. Let me deal first with the most likely explanation for this state of affairs. In my judgment, the most obvious explanation for this stark difference is error on the part of the person or persons who drafted the witness statements. I say that for a number of reasons. First, quite clearly, paragraph 31 of Mr Boulton's statement and paragraph 25 of Mr Stephens' statement were either drafted by the same person or drafted by the two of them together. As I have said, the words of the paragraphs are very similar and they are identical insofar as they relate to the ESDA evidence. Second, the draftsman could not have drafted the paragraphs by reference to the grounds for arrest written by Mr Penhale. Third, the paragraphs bear no relation, either, to the witness statements of Mr Coutts or Mr Penhale or any of the witness statements I have seen which were written by Dr Barr or Mr Richardson. Accordingly, I am left to conclude that a significant error has crept into these witness statements. That view is reinforced by the fact that the allegation made against Mr Daniels in the witness statements would not, necessarily, be inaccurate if it had been made against Mr Gillard. The suggestion that a page had been inserted in the middle of a statement made by AP would not sit uncomfortably with the allegation that Mr Gillard re-wrote a page of AP's statement of 6 December – as to which see paragraph 740 below. At all material times Mr Daniels and Mr Gillard dealt with AP together.

727. I am satisfied, however, that the error lies in the witness statements. I do not consider that Mr Boulton and Mr Stephens were under any misapprehension as to the true state

of the ESDA evidence at the time of Mr Daniels' arrest. In my judgment they did not arrest him on a completely false basis.

728. The grounds for arrest prepared by Mr Penhale identified other aspects of Mr Daniels' conduct upon which it was reasonable to suspect that he had participated in the crimes for which he was to be arrested. First, he had a "prominent role" in the evidence gathering process. Second, he had been one of the police officers who had brought AP to the police station on 10 December and it was reasonable to suspect that he had been instrumental in keeping her there for a period in excess of 12 hours given that he was the officer who had written her statement.

729. One of the curiosities of the document prepared by Mr Penhale is that it makes no reference to the fact that AP's statement of 11 December 1988 was markedly different to any other account which she gave. It seems to me this was, inevitably, an important point to be considered given that Mr Daniels had been present on every occasion when AP had given her accounts in November and earlier in December. Mr Penhale did draw attention to the fact that the statement was made during a time that AP alleged she was the subject of threats and intimidation from "the interviewing officers" but, to repeat, he made no mention of the fact the statement contained a markedly different account from anything which AP had said previously. I am satisfied, however, that this point would have been well known to Mr Coutts when he made the decision that Mr Daniels was to be arrested.

730. On behalf of Mr Daniels, Mr Simblet submits that there were a number of features in play at the time of the arrest which, properly assessed, would have negated any reasonable suspicion that Mr Daniels was involved in any of the offences for which he was arrested. First, there was the inherent improbability of a police officer of many years unblemished service acting in such a criminal fashion. Second, Mr Daniels was a comparative stranger to the other officers involved in the investigation. Third, there was no motive identified for Mr Daniels to commit the crimes of which he was suspected. Fourth, AP never, directly, implicated Mr Daniels in any wrongdoing. In this respect, Mr Penhale was wrong to write that AP had alleged that she was the subject of threats and intimation by "interviewing officers". Fifth, in any event, her complaint of the treatment handed out to her by the police was not worthy of belief. Sixth, Mr Daniels had interviewed a number of witnesses during the course of LW1 and none of those witnesses had made any specific allegation against him – indeed some had spoken in positive terms about him. In particular Mr Daniels had been one of the officers who had taken the statements in late November 1988 from persons working on the Coral Sea. Their statements had supported YA's alibi. Mr Simblet submits that it makes no sense that an officer engaged in a conspiracy to manipulate evidence to incriminate the original defendants would be content to take statements from witnesses which supported YA's alibi. As Mr Simblett puts it, it is difficult to conceive of a police officer "popping in and out" of the alleged conspiracy.

731. Mr Simblet also seeks to argue that the state of the ESDA evidence as of early 2005 was not as represented by Mr Coutts or Mr Penhale. In the main this point relates to whether there had been an attempt to write out "Jack Ellis" from the statement made by AP on 6 December. However, as I have already pointed out, this point did not feature in the grounds for arrest which Mr Penhale prepared in relation to Mr Daniels.

732. I have given some considerable attention to Mr Simblet's submission that Mr Coutts and Mr Penhale misrepresented the state of the ESDA evidence. There are, in reality, two distinct issues. First, was it misrepresented to the arresting officers in 2005? Second was it being misrepresented in the evidence before me? It is the first of those two issues with which I am now concerned. I have dealt with the second issue at paragraphs 526 – 532 above.

733. The task of determining whether the ESDA evidence was misrepresented to the arresting officers in 2005 is best looked at by reference to two distinct strands of evidence. The first strand is the evidence given by most of the arresting officers. Many of the witness statements of those officers relied upon by the Defendant attest to the fact that the ESDA presentation at the briefings at the Hilton Hotel in Swindon was provided by Dr Barr and Mr Richardson. No arresting officer was cross-examined on the basis that those persons had not made a presentation at the briefings. That is hardly surprising since there is no reason to doubt that they were in attendance. If it is accepted, however, that the ESDA evidence was presented at the briefings by Dr Barr and Mr Richardson it is very unlikely that the arresting officers were provided with misinformation about the state of that evidence. In reality there is simply not a shred of evidence which supports the conclusion that those scientists were misrepresenting the state of the ESDA evidence at the briefings to the arresting officers. It seems to me to be wholly implausible that two distinguished experts would misrepresent the true state of the evidence.

734. The second strand of evidence which bears upon whether there was any misrepresentation of the ESDA evidence to the arresting officers is Dr Barr's witness statement of August 2010. As I have indicated already that statement identifies when each ESDA point of significance emerged. I have reached the clear conclusion that there is no evidence upon which it would be safe to conclude that Mr Penhale and Mr Coutts misrepresented the state of the ESDA evidence to the arresting officers thereby calling into question the reasonableness of any belief they might hold as to the justification for Mr Daniels' arrest.

735. What of the other points made by Mr Simblett? I fully understand that many of them could be deployed, some with considerable force, during the course of adversarial criminal proceedings. I accept, too, that the suggestion that AP was threatened and intimidated by "interviewing officers" does not accord with what she asserted in interview under caution. Nonetheless, I have reached the clear conclusion that notwithstanding these legitimate arguments there were reasonable grounds to suspect that Mr Daniels had been involved in the offences for which he was arrested. I reach that conclusion notwithstanding the evidence advanced in the witness statements of Mr Boulton and Mr Stephens. The fact that their evidence to me is wrong in relation to the ESDA evidence as it related to Mr Daniels cannot, in itself, be a proper basis for saying that no reasonable grounds existed to suspect Mr Daniels of involvement in the conspiracy.

736. However, the error made in the witness statements of Mr Boulton and Mr Stephens has caused me to re-visit their assertions that they believed that reasonable grounds existed to justify Mr Daniels arrest. Can that be correct given their clear error? In my judgment, the answer to that question is yes. I consider it far more likely than not that notwithstanding the error in the witness statement Mr Boulton had a clear and accurate understanding of the grounds for suspecting Mr Daniels at the time when he

was considering the justification for his arrest. I am satisfied that he had been provided with Mr Penhale's grounds for arrest in respect of Mr Daniels. I am satisfied, too, that Dr Barr and Mr Richardson presented the ESDA evidence to the arresting officers during the course of the briefings in advance of the arrest. It is very unlikely, in my judgment, that the evidence was correctly represented to Mr Boulton and Mr Stephens by the scientists but that they misunderstood it. The witness statement is erroneous but, in my judgment, it does not represent Mr Boulton's true understanding in April 2005.

Mr Gillard

737. The officer who arrested Mr Gillard was Mr Rawles who was accompanied by Mr Parry. In his witness statement (paragraphs 25 to 27) Mr Rawles sets out the grounds which, he says, justified Mr Gillard's arrest. There are no equivalent paragraphs in the witness statement of Mr Parry.

738. The grounds upon which Mr Rawles arrested Mr Gillard were as follows. First, Mr Gillard had been involved in interviews with and obtaining statements from AP and, according to her, those statements had been given after "she had been threatened and intimidated by officers". Second, the B59 demonstrated "the inordinate amount of time" which she had spent at Butetown police station on 22 November, 6 December and 11 December which supported her assertions relating to intimidation and threats. Third, the ESDA evidence had the potential for incriminating Mr Gillard.

739. The effect of the ESDA evidence was set out by Mr Penhale in his grounds for arrest in respect of Mr Gillard. It reads:-

> "This statement when subjected to ESDA testing shows the following:-
>
> 1. Page 8 bears impressions of a different page 7 from the one that now exists within the statement.
>
> 2. Page 7 bears impressions of page 10 of the statement. ESDA shows that the current page 7 has been inserted. The fact that the current page 7 bears impressions of writing and signatures of page 10 shows that page 7 was written after page 10. This would have been in effect a blank page when page 10 was written. The inserted page 7 was then written after the statement had been finished.
>
> This change is supportive of the hypothesis that this page was re-written in order to put Ronnie Actie, John Actie and Yusef Abdullahi going to 7 James Street in the early hours of 14 February 1988.
>
> These ESDA findings are also linked to other statements taken from different witnesses at key stages. A flow chart identifying this linkage is shown as Appendix A."

740. As I have said, I am satisfied that Dr Barr and Mr Richardson were the persons who provided the presentation of the ESDA evidence at the briefing of the arresting officers and that they would have properly represented the state of the ESDA evidence at that time. There is no reason to suppose that Mr Penhale misrepresented this evidence in his grounds for arrest.

741. In his closing submissions Mr Simblet did not, in the main, distinguish the positions of Mr Daniels and Mr Gillard in terms of the lawfulness of their arrests. Essentially his submissions in respect of Mr Gillard are as set out above suitably adapted to Mr Gillard's case.

742. My conclusion in respect of Mr Gillard is the same as my conclusion in respect of Mr Daniels. The arguments of Mr Simblet would be powerful defence points in contested criminal proceedings, on any view. I am not prepared to conclude, however, that no reasonable grounds existed to justify his arrest.

Mrs O'Brien

743. Mrs O'Brien was arrested at her home by Mr Kerley who was with Mr Keech. Mr Kerley was one of the officers who had misgivings about arrests at 6.00 a.m. in the morning. That said, his evidence was that he believed that reasonable grounds existed to justify Mrs O'Brien's arrest. In his witness statement he did not explain, in any significant detail, the basis for his belief. He referred to all that he had seen and read as a consequence of the briefings he had received and he highlighted the allegations made by LV that she "had been threatened and intimidated whilst being interviewed by Mrs O'Brien resulting in her giving a false statement" – which must be a reference to LV's assertion in interview under caution that there was at least one occasion when she was being interviewed by Mrs O'Brien when Mr Mouncher entered the room and engaged in threatening and intimidating behaviour towards her.

744. Mr Kerley says in his witness statement (paragraph 8) that at the first briefing which he attended (February 28 to 2 March 2005) Dr Barr and Mr Richardson provided a presentation of the ESDA evidence which he found "useful and informative". That is important because Mrs O'Brien was the author of the statement made by LV on 6 December 1988 which was subject to ESDA analysis. In the grounds for arrest prepared in respect of Mrs O'Brien the effect of this evidence is described thus:-

> "The statement when subject to ESDA testing shows the following:-
>
> 1. Page 6 bears impressions of the last paragraph of the last page (12) of this statement, however although the impressions are similar in content to the text on that page, the precise shapes and positions of the characters differ. There is strong evidence these impressions are another version of the paragraph.
>
> 2. The last paragraph of page 12 has been added after the statement was concluded.

> 3. Impressions of Grommek's third statement (inserted) page S68J appear on page 12 of this statement. The author of this statement is John Seaford. This officer is subject of a separate report.
>
> The information on page 12 effectively provides evidence in respect of Steven Miller knowing the location of Vilday's flat (i.e. the scene of the murder) at 2.00 a.m. on the 11 February 1988.
>
> These ESDA findings are also linked to other statements taken from different witnesses at key stages.
>
> A flow chart identifying this linkage is shown at Appendix A."

745. The grounds for arrest also drew attention to the fact that Mrs O'Brien performed a prominent role in the evidence gathering process; that the statement of 6 December incriminated SM, RA, YA and MT for the first time and that LV had been at the police station for a period in excess of 10 hours on 6 December – a period of time which was inconsistent with her being in attendance voluntarily.

746. I note that the grounds for arrest suggested that LV was subjected to threats and intimidation by "interviewing officers". That is not a justified complaint insofar as it may be taken to relate to Mrs O'Brien. LV did not suggest that Mrs O'Brien intimidated or threatened her. As I have said, her complaint about Mrs O'Brien was that she was present on at least one occasion when Mr Mouncher intimidated her. It was not suggested by Mr Metzer QC that this error, of itself, would affect the lawfulness of Mrs O'Brien's arrest. Nonetheless in my judgment this was an imprecision which was, potentially, misleading. I do not believe that it would have misled Mr Coutts – he knew the correct position – but it might have misled the arresting officer. I say that because Mr Keech, the officer accompanying Mr Kerley at the time of Mrs O'Brien's arrest, says in his witness statement that LV was threatened and intimidated by "interviewing officers" – no doubt relying upon the grounds for arrest prepared by Mr Penhale for that assertion.

747. In the main Mr Metzer QC did not rely upon points specific to Mrs O'Brien in seeking to persuade me that there were no reasonable grounds to justify her arrest. That comment is not meant in any critical sense. On behalf of all his clients Mr Metzer QC sought to focus upon the investigation as a whole. He sought to persuade me that it lacked integrity from first to last and, no doubt, if that had been correct it would be difficult to justify the lawfulness of any arrest. As I have already concluded, however, the root and branch attack upon the integrity of the investigation in LW3 has not been made out.

748. The one submission which Mr Metzer QC makes which is particular to Mrs O'Brien is that the case against her was substantially dependent upon the credibility of LV. I am afraid I do not accept that submission. Mr Metzer QC has ignored the ESDA evidence summarised above.

749. As I have said already, I am not prepared to conclude that LW3 was lacking in integrity. Further on the basis of the information set out above I am satisfied that reasonable grounds existed to justify the arrest of Mrs O'Brien.

Mr Page

750. As I have described already, Mr Page was arrested twice during the course of LW3. Let me deal first with his arrest on 13 April. Mr Prentice was the arresting officer. In his witness statement Mr Prentice says that that he took account of three strands of evidence when deciding that reasonable grounds existed to justify Mr Page's arrest. First, he relied upon a complaint made about Mr Page by Mr Peter McCarthy. Mr Page had, allegedly, told Mr McCarthy that YA had admitted the murder which, if said, was an untruth. Second, it was alleged that Mr Page had tried to intimidate Mr Orton over a proposed change to Mr Orton's evidence which would have assisted the alibi defence of YA. Third, he relied upon the ESDA evidence presented to him by Dr Barr and Mr Richardson. In his witness statement Mr Prentice does not explain the nature of this evidence.

751. Mr Penhale prepared detailed grounds for arrest in respect of Mr Page. It began by acknowledging that Mr Page was "not officially attached to the enquiry" but then went on to assert that Mr Page "had a prominent role". Mr Penhale identified a number of specific grounds upon which he considered Mr Page's arrest was justified. First, Mr Page was one of the officers involved in conveying JA from his home to Butetown police station on 9 December 1988. It was suspected that this was a "sham arrest" – for all practical purposes identical to the allegation made in respect of the arrest of TP (see paragraph 134 above). Second, Mr Page was named in the B59 as one of the officers who interviewed LV on 11 December. Accordingly, it was reasonable to suspect that Mr Page had been a party to detaining her against her will and that he was party to the threats and intimidation to which she claimed to have been subjected. Third, Mr Page was the author of the witness statement of Mrs Perriam which was dated 11 February 1988. As at the date of Mr Page's arrest Mr Penhale considered that there were a number of suspicious factors relating to this statement. I quote:-

> "Page is also responsible for taking the statement, which purports to be the third statement from Violet Perriam (S2626B) dated 11 February 1988. This statement had been dated incorrectly, and concerns the identification of Rashid Omar, who she previously identified in Statement 2626A as being outside the murder scene in the early hours of 14 February 1988. Statement 2626B states that she cannot be 100% sure that she can identify Omar as one of the four persons outside James Street between 01.30 and 01.45 on 14 February 1988. This statement effectively puts Omar out of the picture. This combined with the alibi he provides weakened any case against him and he was released, NFA.
>
> An audit trail was made in respect of the statements provided by Perriam. In respect of Statement 2626B it is dated 11 February 1988, three days before the murder. Page later

> claimed this was a mistake and it should have been dated 11 December 1988.
>
> Statement 2626C which purports to be the fourth statement taken refers in it's first paragraph as Perriam having made two previous statements. This is further supported by action number A6046 which clearly shows that this statement was provided with a unique identification number of S626B and not 'C'. It is clear that this has now been overwritten with the letter 'C'.
>
> It is also clear that after ESDA examinations of the first page of Statement 2626C reveals impressions on Action A6046. This is the action that instructs DC James to take a statement from Violet Perriam. It would appear that this action was finalised and written whilst resting on the first page of Perriam's statement dated 5 January 1989. This sequence of events is reflected in Perriam's nominal card and strengthens the hypothesis that this chain of events is accurate. This indicates that the statement Page claimed to have taken from Perriam on 11 December 1988 did not enter the Incident room document flow until some date after 5 January 1989.
>
> This statement has been subject of ESDA testing which revealed no significant findings. It has also been the subject of handwriting analysis with regard to the authenticity of the signatures held within the pages. No opinion can be expressed as to whether any of the signatures of Perriam were written by Page. This is mainly because her signature is of a fairly simple design containing few distinctive features, although a visual examination by a lay person would show that the signature on the statement are clearly different from that of her other statements. This statement was also that which caused her concern when shown to her during her interviews by the Phase III team."

Fourth, ESDA examination of page 4 of AP's statement made on 11 December 1988 showed impressions of pages 1 and 2 of Mrs Perriam's statement allegedly made on 11 December 1988. Further the impressions had been created on page 4 before it had been used as part of AP's statement. Yet there were no impressions of Mrs Perriam's signature notwithstanding that her completed page 4 contained a signature.

752. As is conceded in the closing submissions on behalf of the Defendant the ESDA analysis undertaken between Mr Page's arrest and his subsequent prosecution casts very considerable doubt upon the proposition that Mrs Perriam's statement had been written before the statement of AP. There is no suggestion, however, that Mr Penhale was misrepresenting the effect of the ESDA evidence as it stood at April 2005 when he set out his grounds for arrest.

753. Mr Thomas QC makes the valid point that apart for the reference in the B59 for 11 December 1988 there was not a shred of evidence at the time of his arrest to connect

Mr Page with the core four or any statements made by them. He submits, too, that there was nothing suspicious, in reality, about Mr Page's involvement with Mrs Perriam. The statement taken by Mr Page was, on any view, wrongly dated and, by far, the most likely explanation was a simple mistake. Mrs Perriam had denied any wrongdoing of any kind albeit she had decided to decline to answer some of the questions put to her in interview under caution and it was at least possible (to put it at its lowest) that Mrs Perriam's evidence as to what she had seen on 14 February 1988 was supported by the account which had been given both in interview and statement form by Ms Carole Wheeler. Further, and importantly, it was always acknowledged that Mr Page was not, officially, involved in the investigation. In those circumstances, submits Mr Thomas QC, it was improbable that he would involve himself in criminal conduct.

754. I recognise that the submissions of Mr Thomas QC have some force. I have no doubt that the substance of those submissions was deployed, to good effect, in the criminal trial before Sweeney J insofar as that was possible in cross-examination. I cannot accept, however, that these points should lead me to conclude that no reasonable grounds existed to justify Mr Page's arrest. In my judgment, Mr Penhale produced a reasoned and detailed analysis of why it was reasonable to suspect that Mr Page had committed the offences for which he was arrested. I acknowledge that Mr Prentice, seemingly, attached importance to the complaints by Mr McCarthy and Mr Orton in addition to the points which had been made by Mr Penhale. No doubt he was entitled to take these additional points into account when making the decision that Mr Page's arrest was justified. On any view, in my judgment, reasonable grounds existed to justify Mr Page's arrest.

755. Mr Page was arrested for a second time on 28 June 2005. The basis for that arrest is described, shortly, in paragraph 304 above. In the closing submissions on behalf of Mr Page the suggestion is made that this arrest was unlawful and that it founds a separate claim for false imprisonment.

756. In written submissions in reply Mr Johnson QC argues that such a claim has never been pleaded. I agree. On a fair and proper reading of the Amended Particulars of Claim served on behalf of Mr Page his claim for false imprisonment is founded squarely on the alleged unlawful arrest of 13 April 2005. As I indicated from my first involvement in this case my task is to adjudicate upon claims which are pleaded.

757. That said, I have no doubt that the arrest of Mr Page on 28 June 2005 was justified. His account of burning documents unrelated to the enquiry given in interview under caution on 13/14 April was open to considerable doubt in the light of forensic evidence which the police had obtained from Dr Barr and a colleague. There were reasonable grounds upon which to suspect that Mr Page had committed the offence of perverting the course of justice.

Mr Seaford

758. At paragraph 19 of his witness statement Mr Taylor explained the basis upon which he considered the arrest of Mr Seaford was justified. I quote:-

> "On 10 November 1988 Mr Seaford took a statement from Violet Perriam where she claimed to have seen a group of

> unidentified males outside the murder scene at the relevant time. He took a second statement from Violet Perriam on 16 November 1988 when she then named John Actie as one of the males present. On 22 November 1988 he took part in a question and answer interview with Mark Grommek which resulted in a witness statement of which Mr Seaford was the author. Subsequent ESDA analysis of this statement indicated that page 3 of this statement had been replaced. Although Mark Grommek's arrival time is recorded in the B59 his departure time is not. Mr Grommek subsequently claimed that he had been held against his will and subjected to threats and intimidation by the interviewing officers who included Mr Seaford. … …"

759. Neither Mr Boulton nor Mr Penhale in his grounds for arrest mentions the "sham arrest" of TP. In his grounds for arrest Mr Penhale concentrates very much on the effect of the ESDA evidence. At the date of Mr Seaford's arrest the ESDA evidence available demonstrated that Mr Seaford had rewritten page 3 of MG's statement of 22 November 1988. It also suggested that the rewritten page used words which had the effect of making MG's identification of RA and YA more convincing compared with the words used in the original page 3. In summary, the words used in the original page 3 had suggested that MG had learned of the identity of YA and RA after the night of 13/14 February 1988 whereas the final version suggested that he knew them as of that date.

760. Mr Metzer QC seeks to deal with this last issue in his closing submissions by pointing to other evidence which was available and which tended to suggest that, in truth, MG did know RA and YA as of 13/14 February 1988. On that basis, of course, the change in words would not have been significant. To make his point good Mr Metzer relies upon an exchange in the question and answer session which took place during the afternoon of 22 November 1988 involving MG, Mr Seaford and Mr Pugh. It is as well to set out the whole of the relevant passage which reads:-

> "Q. Can you carry on?
>
> R. About half past twelve, quarter to one, my doorbell rang. I went to answer the door and it was Paul Atkins. I invited him in for a chat and the next thing I knew was my doorbell rang again about half one, quarter to two. I then went down to answer the door again and there was 3 or 4 people outside. One person I now know to be Abdullah asked me if anyone was in flat No. 1, and I said "not that I know of". With Abdullah was a tall black guy, a fellow who I now know as Ronnie Actie, someone who I think looked like a boy called "Tucker". I am almost certain it was him.
>
> Q. When you say you now know two of the people to be Abdullah and Ronnie Actie, what exactly do you mean.
>
> R. I now know them through working at the North Star club."

761. In my judgment far from supporting Mr Metzer's point this passage reinforces the suspicion that MG's witness statement was rewritten, deliberately, to make it appear as if MG knew RA and YA at the time of the murder, even though in the question and answer session he was saying that he had become aware of their identity after that time.

762. There were other strands to the ESDA evidence. It demonstrated that impressions from the final version of page 3 of MG's statement appeared on page 12 of LV's statement of 6 December 1988. Page 4 of MG's statement had impressions upon it of the final page of the statement made by Mrs Perriam on 16 November.

763. A very substantial part of the written closing submissions advanced on behalf of Mr Seaford is concerned with his involvement with Mrs Perriam. Mr Metzer QC goes to quite some lengths to demonstrate that those dealings did not give rise to a reasonable suspicion that Mr Seaford was involved in the crimes for which he was arrested. Looked at in isolation I agree that Mr Seaford's involvement with Mrs Perriam is not suspicious. Without doubt, however, the allegations against Mr Seaford must be considered together. When that is done I have no doubt that notwithstanding the points made by Mr Metzer QC in closing, reasonable grounds existed to justify the arrest of Mr Seaford.

764. As will be obvious each of the Claimants arrested in the first phase of arrests were implicated in wrongdoing by ESDA evidence. It should be noted that in the grounds for arrest prepared in respect of each Claimant Mr Penhale drew attention to this evidence both as it related to the individual concerned and cumulatively by reference to an Appendix which he provided (Appendix A). This Appendix was in the form of a chart which set out in diagrammatic form the nature of the evidence as a whole. In my judgment, the fact that the ESDA findings were not restricted to one suspect or a statement or statements from one witness inevitably increased the suspicion that a conspiracy to pervert the course of justice was in operation and that persons implicated in wrongdoing by ESDA evidence were participants in that conspiracy.

765. In the result, I conclude that reasonable grounds existed to justify the arrest of the five Claimants who were arrested on 13 April 2005. Were the decisions that they should be arrested unreasonable?

766. As I have described already, the issue of whether the police suspects were to be arrested had been the subject of considerable discussion and debate beforehand amongst a large number of persons with a wide range of relevant experiences. All those who participated in the adversarial briefing considered it was reasonable that the police suspects should be arrested. Essentially, they all accepted the reasoning advanced by Mr Penhale in his "Arrest Strategy". In these circumstances it would be very difficult for me to conclude that the decisions to arrest the suspects were unreasonable. I appreciate that it is for me to determine whether the decisions were unreasonable notwithstanding the consensus which had emerged about the arrests. Obviously, however, the views of very senior police officers, the IAG, the CPS, the independent consultants and the IPCC carry very significant weight. I cannot possibly conclude that no reasonable senior police officer presented with the information provided to Mr Coutts would have authorised the arrests or that no reasonable arresting officer provided with the same information would have carried out the arrests. I have reached the clear conclusion that the decisions to arrest Mr Daniels and

all other officers in the first phase of arrests were not unreasonable. I reach that conclusion in respect of Mr Page notwithstanding his offer to attend voluntarily at the police station.

767. That is not to say that I regard the manner of the arrests as reasonable. I have, already, expressed my view in reasonably trenchant terms about the decision to arrest the suspects at or around 6am at their homes – see paragraph 368 above. I do not regard the decision to arrest at that time of the morning to be reasonable for all the reasons expressed in that paragraph. Had I been persuaded that the decision to arrest at or about 6am was capable of rendering unlawful an otherwise lawful decision to arrest I would have found that the first phase of arrests was unlawful. That said, as I have explained in section 6 of this judgment, there are sound legal reasons why I cannot conclude that the decision to arrest the Claimants at or about 6am rendered unlawful arrests which were otherwise justified.

The arrests on 21 April

768. This was the second phase of arrests. I have already described how Mr Greenwood, Mr Pugh, Mrs Coliandris and two others (Ms Evans and Ms Cuddihy) were made suspects on 18 March i.e. shortly after the adversarial briefing had taken place.

769. The strategy devised by Mr Penhale for the arrests of these suspects was, for all practicable purposes, identical to the strategy adopted in respect of the first phase of arrests. I have no doubt that those present at the adversarial briefing knew, full well, that arrests of further police suspects would take place shortly after the first phase of arrests and that the justification of the arrest strategy to be adopted for the second phase was, essentially, identical to the justification put forward for the first phase.

770. I have no doubt, too, that Mr Coutts, Mr Penhale and the arresting officers believed that reasonable grounds existed to justify the arrests of Mr Greenwood, Mr Pugh and Mrs Coliandris. Did reasonable grounds exist for those beliefs? It is to that issue which I turn next in respect of each of those three suspects.

Mr Greenwood

771. Mr Stephens was Mr Greenwood's arresting officer. At paragraph 48 of his witness statement he identifies the basis upon which he believed reasonable grounds existed to justify Mr Greenwood's arrest. I quote:-

> "In summary, Leanne Vilday had alleged that she had been held against her will at Butetown police station on 6 December 1988 and had further alleged that she was subjected to threats and intimidation. Mr Greenwood had been one of the interviewing officers. Additionally on 9 December 1988 Mr Greenwood was one of several officers responsible for conveying Anthony Paris from his home address to Butetown police station, supposedly to be interviewed voluntarily. Anthony Paris subsequently alleged that he was arrested at his home address when Mr Greenwood and other officers attended."

772. Mr Stephens was accompanied by Mr Boulton at the time he arrested Mr Greenwood. In his witness statement Mr Boulton says that the two attended at the Hilton Hotel Swindon between 4 and 8 April and it was then that they were allocated the task of arresting Mr Greenwood. Mr Boulton's recollection, as recorded in his witness statement (paragraph 54), is that it was Mr Greenwood's involvement with LV on 6 December 1988 which justified his arrest.

773. In the grounds for arrest Mr Penhale identified the following as justifying Mr Greenwood's arrest. First, Mr Greenwood had "performed a prominent role in the evidence gathering process". Second, Mr Greenwood was a member of the Serious Crime Squad at the material time – a position he shared with many of the other police suspects. Third, Mr Greenwood was involved with MG on 22 November 1988. He was named in the B59 as an interviewing officer. He had interviewed MG with Mr Seaford during the course of the morning. Later that day MG had given a markedly different account to Mr Seaford and Mr Pugh in a question and answer session and Mr Seaford had taken a witness statement from him confirming that markedly different account. While Mr Penhale acknowledged that Mr Greenwood was not the author of the statement and had not been engaged in interviewing MG when he first gave his different account he considered that Mr Greenwood was "clearly closely connected to the events that led to the statement being taken". He considered, too, that there were grounds for concluding that Mr Greenwood was complicit in keeping MG at the police station on 22 November against his will. Fourth, Mr Penhale considered that there were grounds to suspect that Mr Greenwood had been involved in interviewing LV on 6 December 1988. He was named as one of the two interviewing officers in the B59. Mr Penhale knew that Mr Greenwood was not the author of the statement which LV made on that date but he considered that he was "closely connected" to the events that led to the statement being taken. Further and allied to this point Mr Penhale suspected that Mr Greenwood had been complicit in keeping LV at the police station for many hours against her will. Fifth, Mr Penhale drew attention to the ESDA evidence as it related to MG's statement of 22 November and LV's statement of 6 December. The inference to be drawn from what he wrote was that Mr Penhale suspected that Mr Greenwood was in some way linked to wrongdoing in respect of the writing of those statements. Finally, Mr Penhale relied upon the fact that Mr Greenwood was one of the four officers who conveyed TP to the police station on the morning of 9 December 1988 engaging in what has been called "the sham arrest".

774. During the course of his cross-examination Mr Penhale accepted that the allegation relating to the "sham arrest", standing alone, would not have justified the arrest of any police suspect involved in that conduct. Further, he appeared to accept that whether reasonable grounds existed to justify Mr Greenwood's arrest hinged upon a proper interpretation of the available evidence as it related to the events of 6 December 1988.

775. Mr Metzer QC takes issue with a number of the grounds for arrest relied upon by Mr Penhale. He disputes that it was reasonable to conclude that Mr Greenwood had a prominent role in evidence gathering. He disputes that the time spent at the police station by MG on 22 November 1988 and LV on 6 December 1988 was, in itself, suspicious. He points out, correctly, that there was nothing suspicious about Mr Greenwood's involvement with MG during the question and answer session in which he participated with Mr Seaford during the morning of 22 November. Further there is no direct evidence that Mr Greenwood had any involvement with MG at any time

thereafter on that day. It is simply wrong, submits Mr Metzer QC, to assert that Mr Greenwood was closely connected to MG making his witness statement on 22 November just as it was wrong to suggest that he was closely connected to LV making her statement on 6 December.

776. Despite Mr Metzer's powerful submissions I cannot conclude that there were no reasonable grounds to suspect that Mr Greenwood was involved in the offences for which he was arrested. As of April 2005 it was known that Mr Greenwood was an officer who had been involved in LW1 more or less throughout its duration and he was a member of the Serious Crime Squad. He was, in my judgment, accurately described as a person who had a prominent role in the evidence gathering process. He was named in the B59 as being one of the interviewing officers of MG on 22 November and of LV on 6 December and the ESDA evidence demonstrated serious concerns about parts of the statements which were written on those dates. The fact that it was known that Mr Greenwood was not the author of those statements did not, automatically, negate the reasonable suspicion that he was a party to what had occurred. Even if I am wrong on this latter point, I am firm in my view that it was reasonable to infer that Mr Greenwood had been involved in keeping MG and LV at the police station against their will. There was a justified suspicion that Mr Greenwood and others had behaved improperly towards TP on 9 December (even if their conduct did not amount to a crime) and, in my judgment, that episode was not irrelevant in an assessment of whether reasonable grounds existed to justify the arrest of Mr Greenwood.

777. If the sole focus of attention is or should be 6 December 1988 the following picture emerges. The B59 records Mr Greenwood as being one of the persons who interviewed LV on that day. LV was at the police station for a very long time – on any view. As of April 2005 there was no sensible explanation for the length of time which she spent at the police station. In my judgment, it was reasonable to suspect that she was at the police station for that length of time because she was prevented from leaving. Further, as the evidence stood in 2005, it was reasonable to suspect that the persons named as interviewing officers in an official record (the B59) were involved in detaining her.

778. I appreciate that following Mr Greenwood's arrest there were very significant debates about whether it was appropriate to prosecute him. In my judgment, however, it is clear that the criteria by which the lawfulness of an arrest is to be judged are significantly different from the criteria which govern whether a person is to be prosecuted. In simple terms, there is a much higher threshold for prosecution than there is for arrest.

779. My conclusion is that the Defendant has discharged the onus upon him of demonstrating that reasonable grounds existed to justify the arrest of Mr Greenwood.

Mr Pugh

780. Mr Pugh's arresting officer, Mr Taylor, provides detailed reasons for Mr Pugh's arrest. They are contained within paragraph 45 of his witness statement which I quote in full:-

> "Having heard all the presentations, and by the time that I had done all my own research, I was satisfied there were reasonable grounds to suspect Mr Pugh of the offences of Conspiracy to Pervert the Course of Justice, False Imprisonment and Misconduct in a Public Office, having regard in particular to: the interview of Mr Grommek on 22 November 1988 which provided the basis for the Section 9 statement that contained incriminating evidence against Ronald Actie and Yusef Abdullahi; Mr Grommek's account that he was held against his will and subject to threats and intimidation from the interviewing officers (including Mr Pugh); the fact that the B59 book did not record Mr Grommek's departure; the statement Mr Pugh took from Mr Grommek on 6 December 1988 which contained incriminating evidence against Ronald Actie, Yusef Abdullahi and Mr Tucker; Mr Grommek's account that on occasion to he was held against his will, the fact that Mr Pugh had been one of the officers responsible for conveying Ms Psaila to Bute Town police station on 10 December 1988, where she remained for over 12 hours, supposedly as a voluntary attendee but on her account she was held against her will and subjected to threats and intimidation from the interviewing officers; the ESDA evidence suggesting a page of Ms Psalila's statement had been re-written (although Mr Pugh was not the author of this statement he had been closely connected to the events that had led to the statement in question being taken)."

781. Mr Taylor's witness statement mirrors the grounds for arrest which were prepared by Mr Penhale. In these circumstances no useful purpose would be served by me seeking to summarise them. The assertion by Mr Taylor that Mr Pugh was "closely connected" to the events that led to the taking of AP's statement on 11 December actually mirrors the words used by Mr Penhale.

782. Mr Metzer QC submits, correctly, that MG made no complaint about Mr Pugh, personally, during the course of interviews with officers from Operation Mistral and during his interviews under caution following his arrest by LW3 officers. As Mr Metzer QC submits, MG had countless opportunities to allege impropriety against Mr Pugh. Mr Metzer QC submits, too, that Mr Pugh was not the author of MG's statement on 22 November and it was not open to Mr Penhale to suspect that he had any involvement in any impropriety in the taking of that statement.

783. The fact that MG made no direct complaint against Mr Pugh is clearly of some significance in the context of this case. However, it must be understood that MG did describe the "good cop/bad cop" syndrome when describing his treatment at the hands of the police and, accordingly, the fact that he made no direct complaint of unlawful behaviour against Mr Pugh is of less significance than might otherwise have been the case. That said, I acknowledge that Mr Taylor's assertion that MG had complained of threats and intimidation from interviewing officers was, probably, wrong and, of course, MG made no complaint about his treatment during the interview which took place on 22 November 1988 in which Mr Pugh was involved.

784. Despite these powerful and proper points there are a number of features which interlink, in my judgment, and which justified the conclusion that reasonable grounds existed to justify Mr Pugh's arrest. As it happens, in Mr Pugh's case, they are set out clearly and concisely in the evidence of the arresting officer which is set out above. In my judgment reasonable grounds existed to justify the arrest of Mr Pugh.

Mrs Coliandris

785. Mrs Coliandris was arrested by Mr Kerley who was in company with Mr Keech. At some point before Mrs Coliandris was taken from her home the officers were informed that a family member had died and that the funeral was later that day. According to Mr Keech, Mr Kerley contacted a senior member of LW3 by telephone (whom he believes was Mr Coutts). Mr Keech says that Mr Kerley suggested to Mr Coutts that the home of Mrs Coliandris should be searched but that she should be bailed to attend at a police station at a later date for interview under caution as opposed to being taken to the police station that day. This suggestion was rejected according to Mr Keech – a decision which disappointed him. Mr Kerley makes no mention of this discussion in his witness statement. Nonetheless, I am satisfied that it occurred.

786. Prior to the arrest all LW3 officers had received information to the effect that Mrs Coliandris suffered from a disability, (having retired from SWP on the grounds of ill health) that her husband was recovering from treatment for cancer and that they had two children of school age living at home with them. I proceed on the basis that these facts were known to Mr Kerley and Mr Keech although there is nothing in their witness statements which confirms that to be the case.

787. What was the basis upon which Mr Kerley arrested Mrs Coliandris? He says, at paragraph 67 of his witness statement, that he believed proper grounds existed to arrest her because she had "obtained statements from Ms Vilday which were significantly different from her previous statements" and that in these statements she implicated the original defendants in Lynette's murder. In his witness statement, Mr Keech maintains that the arrest was justified because (a) Mrs Coliandris had written LV's witness statements on 11 December 1988 (b) LV was at the police station for more than 19 hours that day and (c) LV had complained that during this time she had been held against her will and threatened and intimidated by interviewing officers.

788. Mr Keech's account of the justification for the arrest of Mrs Coliandris mirrors the justification for her arrest which was set out in the grounds for arrest composed by Mr Penhale. His reasoning was comparatively short and it is worth setting it out in full:-

> "**Facts**
>
> Coliandris at the time of the original investigation was a uniform constable based in Cardiff City Centre and had very limited involvement in this enquiry.
>
> She is the author of two critical statements, S1Q and S1R taken from Leanne Vilday dated 11 December 1988.

> There is information to show that Coliandris together with Rachel O'Brien and Sarah Cuddihy interviewed Vilday on the 11th December 1988 (D550 page 29 refers – Detective Superintendent Davies covering report).
>
> Vilday at this time was supposedly a voluntary attendee for a period of 19 hours and 15 minutes (B59 refers) and provides two statements amounting to 8 pages.
>
> These statements provide incriminating evidence against all five of the original suspects in this case.
>
> These statements were provided during the period that Vilday claimed that she was taken from Pill in Newport and held against her will and subjected to threats and intimidation from the interviewing officers.
>
> **Conclusions**
>
> I am satisfied that based on the evidence that has emerged that reasonable grounds exist to arrest Erica Coliandris on suspicion of conspiracy to pervert the course of justice and false imprisonment."

789. The first issue for my consideration is the accuracy of Mr Penhale's grounds for arrest. Mr Cragg QC submits that the grounds contain two important errors. First, he submits that Mr Penhale was wrong to assert that Mrs Coliandris interviewed LV together with Mrs O'Brien and Ms Cuddihy. Second, he submits that Mr Penhale was wrong to assert that LV had claimed that she was subject to threats and intimidation "from the interviewing officers".

790. As a matter of fact, it now appears that Mr Penhale was wrong in his assertion that Mrs Coliandris had interviewed LV together with Mrs O'Brien and Ms Cuddihy if by using the word "interview" he was intending to suggest that it was those persons who had been present at the time LV's witness statements were taken. It is now agreed that the person who was present when Mrs Coliandris took LV's statements was Mr Hicks. It seems very unlikely, too, in the light of all the information now available that Mrs Coliandris had been present for any length of time at the Butetown police station before she took those statements so that it is most unlikely that she was involved with Mrs O'Brien and Ms Cuddihy in any interviews prior to taking the statements. However, what needs to be considered is not what is now known but what Mr Kerley, Mr Coutts and Mr Penhale knew as of 21 April 2005. The B59 named Mr Page, Mrs O'Brien and Ms Cuddihy as the interviewing officers. It did not mention Mrs Coliandris. The statements taken from LV showed on their face that they had been written by Mrs Coliandris. The report written by Mr Davies on 5 April 1989 contained the following assertion namely that LV "was re-interviewed by Detective Constables O'Brien, Cuddihy, Coliandris and Inspector Page on the 10th December 1988 at the Docks Police Station which culminated in a further statement being obtained….". As far as I am aware, no other written material was considered by Mr Coutts, Mr Penhale and the arresting officer which related to Mrs Coliandris' involvement in interviewing and/or taking statements from LV. LV's interviews

under caution threw no further light on the subject and, as I have found, Mr Coutts and Mr Penhale were not aware of the witness statements of 25 October 1989 made by Mrs Coliandris and Mr Hicks.

791. On the basis of the sparse information considered in April 2005 was it reasonable to suspect that Mrs Coliandris had been involved in interviewing LV with Mrs O'Brien and Ms Cuddihy? In my judgment it was not. Mr Davies' report on this point contained no reasoning to support his conclusion that Mrs Coliandris had been one of the interviewing officers. In my judgment, the overwhelming likelihood is that Mr Davies simply assumed that Mrs Coliandris was part of an interviewing team because her name appeared on LV's statement. In passing, he also appears to have assumed that Mrs Coliandris was a detective which, of course, was erroneous. I am prepared to accept that these assumptions in a report of the type written by Mr Davies may have been understandable. The details relating to those who had interviewed LV and/or taken statements from her were not important at that stage of the LW1 investigation. In my judgment, however, it was necessary for Mr Penhale and Mr Coutts, in particular, to assess the reliability of the assumptions made by Mr Davies before accepting them as forming a reasonable basis for suspecting Mrs Coliandris' involvement in serious criminality.

792. Mr Penhale knew that Mrs Coliandris' involvement in LW1 was "very limited". He knew, too, that she was not a detective. He was fully aware that at the material time she was a constable in uniform based at the Cardiff Central police station. In my judgment, on the basis of those facts and given that she was not named in the B59 as an interviewing officer it was not reasonable to suspect that Mrs Coliandris had been involved with Mrs O'Brien and Miss Cuddihy in interviewing LV. It must commonly be the case that a police officer or officers will have detailed discussions with a potential witness about his evidence but then another officer is tasked to take a witness statement. Mr Penhale seems to have discounted the possibility that Mr Page was one of the officers who interviewed LV (at least in the grounds for arrest he prepared in respect of Mrs Coliandris). What basis was there for discounting that possibility but suspecting that Mrs Coliandris was involved in the interview process? In my judgment just as Mr Davies assumed that Mrs Coliandris was with Mrs O'Brien, Miss Cuddihy and Mr Page when LV was interviewed so Mr Penhale assumed that she had been with Mrs O'Brien and Miss Cuddihy at that time. I do not consider that this assumption was reasonably based. In truth it must have been based solely upon the fact that Mrs Coliandris' name appeared on LV's statements of 11 December 1988 from which it was reasonable to infer that Mrs Coliandris had written the statements but no more. In my judgment Mr Cragg QC is correct to categorise as an error the suggestion in the grounds for arrest that LV was interviewed by Mrs Coliandris, Mrs O'Brien and Miss Cuddihy. There was no reasonable basis for that assertion.

793. Mr Cragg QC is also correct when he submits that Mr Penhale fell into error when he suggested that LV had complained of threats and intimidation from "the interviewing officers". I set aside the fact that there was no proper evidence or information available upon which to suspect that Mrs Coliandris was an interviewing officer as opposed to the officer who had written the two statements. When LV was interviewed under caution she did not suggest that she had been intimidated, threatened or bullied by Mrs Coliandris. To the contrary, she could hardly remember

her. That, of course, in itself may be a reasonable pointer to the fact that Mrs Coliandris was no more than a scribe. After all, she would have been in her police uniform on 11 December 1988 yet Mrs Coliandris appears to have made no impression on LV or, at least, none worth mentioning. I have scrutinised LV's prepared statements and interviews under caution with care. In my judgment there is no basis for the assertion that it was the officer or officers taking her statements on 11 December who were subjecting her to intimidation and threats and there is certainly no basis for suspecting that Mrs Coliandris had behaved in this way.

794. Accordingly, I consider that Mr Cragg QC has demonstrated that there were important errors in Mr Penhale's grounds for arrest. That said there can be no disputing the fact that the statements made by LV on 11 December 1988 were written by Mrs Coliandris and, as Mr Penhale pointed out, those statements provided incriminating evidence against the original defendants which was completely false. Was it reasonable to suspect that Mrs Coliandris had committed one of the crimes for which she was arrested simply on the basis that she was the author of those statements?

795. I have found this a difficult issue. Ultimately, however, I have reached the conclusion that it was not reasonable to suspect that Mrs Coliandris had committed the offences for which she was arrested simply because she had written out LV's statements. In reaching that conclusion I have paid particular regard to a number of factors. First, Mrs Coliandris was a police constable in uniform at the material time. She would have stood out like a sore thumb and very likely be recognised and remembered if she, personally, had resorted to intimidation and threats. Second, there was no reason to suppose that she had any connection with LW1 save for the taking of LV's statements on 11 December 1988. Third, there was nothing to suggest that she had any professional or social connection with any of the detectives involved with LW1 who were on duty on 11 December 1998. Fourth, there was nothing to suggest that she knew, or knew of, LV. Fifth, so far as anyone could judge Mrs Coliandris' involvement in the investigation had come about by chance. In truth it was inexplicable (as it was, still, when Mr Dean and Mr Bennett wrote the Dean Review). Sixth, there was no realistic basis to suspect that, somehow, Mrs Coliandris had been enlisted by fellow officers to engage in a conspiracy to mould or manipulate evidence. That appears to me to be a very implausible scenario. Seventh there was no reasonable basis to suspect that Mrs Coliandris knew, believed or suspected that LV was telling untruths when her statements were taken. In reality, that could only have come about if Mrs Coliandris had been enlisted into the conspiracy and briefed about what it was that LV was expected to say.

796. I appreciate that at the time the decision to arrest was taken Mr Penhale, Mr Coutts and Mr Kerley did not know how long Mrs Coliandris had been at the police station on 11 December. In my judgment, however, it was not reasonable to suspect that she had been at the station for any length of time which was longer than the time needed to write out LV's statements. Certainly, it was not reasonable, in my judgment, to suspect that she had been at the police station for very many hours longer than that. However, as it seems to me, it is only if it was reasonable to suspect that Mrs Coliandris was at the police station for many hours that day would it become reasonable to suspect that she had, in some way, been involved in a conspiracy and/or had been involved in detaining LV against her will and/or she had engaged in misconduct in public office.

797. It is stating the obvious to say that had reasonable grounds existed for suspecting that Mrs Coliandris had been involved in interviewing LV with Mr Page or Mrs O'Brien, in particular, and/or threatening and intimidating LV there would have been reasonable grounds to suspect her of criminality. However, to repeat, the factual basis for suspecting that Mrs Coliandris was involved in interviewing LV with the other officers was extremely thin and the factual basis for suspecting her of threats and intimidation was virtually non-existent.

798. I should not leave the issue of whether reasonable grounds existed to justify Mrs Coliandris' arrest without considering the submissions of Mr Johnson QC. He submits that there were strong grounds to suspect that the witness statements taken from LV by Mrs Colinadris were untrue. I accept that submission as is obvious from what I have said previously. He further submits that there were strong grounds to suspect that the statement had been procured by unlawful means. That too, in my judgment is uncontroversial given the findings I have made previously. He submits that it was reasonable to suspect, at the very least, that she must have been present when another officer or officers were "putting words into Vilday's mouth". That is a submission which has some force but I cannot help but think that it is fashioned from the now undisputed fact that Mr Hicks was present with Mrs Coliandris at the time the statement was taken. Mr Johnson QC stresses that at the time of the arrest of Mrs Coliandris it was not known that she had only arrived at the police station that afternoon. That of course is true but, as I have said, that does not mean in her case that there was a reasonable basis to suspect that she was present for longer than was necessary to write out the statements.

799. In his written closing submissions Mr Cragg QC makes much of the nature of the interviews under caution which followed Mrs Coliandris' arrest. He submits that they demonstrate that the interviewing officers had no genuine belief that Mrs Coliandris had been involved in a conspiracy. Mr Johnson QC counters that by submitting that the interviewing officers, by then, had been provided with information from Mrs Coliandris' pocket books (seized during the course of the search of her home) which showed that she had gone to the Butetown police station at about 2.00 p.m. on 11 December 1988.

800. I do not propose to analyse these submissions in any detail. On any view, the interviews with Mrs Coliandris immediately after her arrest were somewhat gentle affairs. I am not surprised. It is probable that the officers had been told during the course of the day that Mrs Coliandris had been with LV for a comparatively short period of time on 11 December. On any view, they had been reluctant to arrest Mrs Coliandris in the first place and, no doubt, they were still well aware that a funeral of a family member was in progress and/or had taken place.

801. I remind myself that it is for the Defendant to establish that reasonable grounds existed to justify the arrest of Mrs Coliandris. I do not consider that he has discharged that burden.

802. Let me now consider whether the decisions to arrest Mr Greenwood, Mr Pugh and Mrs Coliandris were unreasonable. At the time when Mr Coutts made his decision that they should arrested the first phase of arrests had not taken place. Accordingly, it seems clear that Mr Coutts made the decision to arrest on precisely the same basis as his decision was made for the first phase. In all the circumstances, that approach was

reasonable – certainly I could not say that no reasonable senior police officer would have made the same decision as was made by Mr Coutts. By the time the arresting officers exercised their power to arrest it was known that evidential material had been seized during the course of the searches of the homes of Mr Gillard and Mr Page. In my judgment that was an additional factor which the arresting officers were entitled to take into account, if they so chose, when deciding whether the arrests of Mr Greenwood, Mr Pugh and Mrs Coliandris were reasonable.

803. I do not consider that Mr Greenwood and Mr Pugh have proved that the decisions to arrest them were unreasonable. In reality, they were treated in an identical fashion to their former colleagues in the first phase of arrests and that was not unreasonable .

804. The decision to arrest Mrs Coliandris must be considered in a somewhat different light. The officers who had been arrested in the first phase (except Mr Page) were all officers who had been substantially involved in LW1 more or less from the start. The same was true of Mr Greenwood and Mr Pugh. Although Mr Page was not, officially, a member of LW1 save for short designated periods of time he was the most senior officer in uniform at Butetown police station throughout 1988 and, therefore, was reasonably suspected of having a substantial knowledge of the investigation. Mrs Coliandris, on any view, was engaged in the investigation for no more than some hours on one day. It is easy to see why Mr Cragg QC argues that no account was taken of the circumstances which were relevant to Mrs Coliandris alone. He points out that the arrest strategy written for her was, essentially, identical to the arrest strategy written for all the suspects in phase one and identical to the other suspects in phase two. He submits that it was not reasonable to conclude that Mrs Colinadris would not have co-operated voluntarily by engaging in interviews under caution and permitting a search of her home in appropriate circumstances. Mr Coutts and/or Mr Penhale knew that Mrs Coliandris had retired as disabled from the police force, that her husband had been diagnosed with cancer and that she had two children. They appeared to ignore the very substantial impact which an arrest without warning would have upon Mrs Coliandris and her family. On the very day of the arrest, Mr Kerley sought permission to permit Mrs Coliandris to attend a funeral. That request was refused. As a matter of timing Mrs Coliandris may have been arrested by the time that this request was made and refused but had the request been granted Mrs Coliandris would not have been taken into custody.

805. I can understand why Mr Keech was disappointed when he was told that the arrest was to proceed. A search warrant had been obtained and a search of Mrs Coliandris' home could have taken place pursuant to that warrant whether or not Mrs Coliandris was taken into custody. However, I doubt whether this episode, of itself, can render unlawful what would otherwise be a lawful arrest. If, as I have found, the decision to arrest at a very early hour of the morning cannot be a reason why an otherwise lawful decision to arrest becomes unlawful it does not seem to me that a decision to go ahead with an otherwise lawful arrest renders the arrest unlawful because it involves denying that person the possibility of attending a funeral of a family member.

806. There are many features about the manner of the arrest of Mrs Coliandris which trouble me. However, I cannot persuade myself that the decision to arrest her was unreasonable and the reality is that my discomfort arises because she was arrested unnecessarily in the very early morning when that would cause undoubted stress to her whole family in difficult circumstances and, further, because of the response to

the request that she should not be taken into custody so that she could, if she wished, attend the funeral of a family member.

807. I have reached the conclusion that had there been reasonable grounds upon which to suspect that Mrs Coliandris had committed the offences for which she was arrested the decision to arrest Mrs Coliandris would not have been unreasonable in the *Wednesbury* sense. Those factors relating to the manner of her arrest which trouble me do not impact upon the lawfulness of the decision to arrest. I arrive at that conclusion with regret.

The arrests on 19 May

808. This was the third phase of arrests. Mr Jennings, Mr Stephen and Mr Murray were made suspects on 7 May. There is no indication that these arrests were considered, specifically, during the adversarial briefing but those present at the briefing fully understood that there would be a number of phases of arrests. In the case of these three Claimants there are a number of issues to be considered in order to determine whether the decision that they should be arrested was reasonable. Before considering the reasonableness of their arrests, however, it is necessary to determine whether reasonable grounds existed to justify their arrests.

Mr Jennings

809. Mr Jennings' arresting officer was Mr Kerley. He and his partner Mr Keech had attended the Hilton Hotel in Swindon on 9 May 2005 where they were provided with a file which was specific to Mr Jennings. On 16 May they received a briefing about Mr Jennings from LW3 officers. According to Mr Kerley he was satisfied that reasonable grounds existed to arrest Mr Jennings because he had been one of the officers who had interviewed PA on 22 November 1988, in particular, and PA had alleged that he had been threatened and intimidated by police officers on that occasion. In his witness statement Mr Keech provided an additional justification for Mr Jennings' arrest (see paragraph 59). He relied upon the sham arrest of TP.

810. The grounds for arrest prepared in respect of Mr Jennings identified four bases to justify his arrest. First, Mr Jennings was alleged to have been involved in the sham arrest of TP at his home on the morning of 9 December 1988. Second, Mr Jennings, together with Mr Stephen, interviewed PA on 22 November during which interview PA provided evidence of the circumstances of Lynette's murder which was untrue. Mr Jennings is recorded in the B59 as the interviewing officer on that day. Third, it was suspected that Mr Jennings was present on 6 January 1989 when a further statement was taken from PA by Mr Stephen which incriminated RA and YA. Fourth, although PA had never made a direct accusation of improper behaviour against Mr Jennings proper grounds existed to suspect that Mr Jennings had been very much involved in the evidence gathering process in relation to PA and, on that basis, there were reasonable grounds to suspect that Mr Jennings was party to the threats and intimidation of which PA complained.

811. Mr Metzer QC submits that there were no reasonable grounds to suspect that Mr Jennings had committed any of the offences for which he was arrested because no credence could be given to any allegations of police impropriety made by PA. Mr Metzer QC makes a number of powerful points in support of that central proposition.

First at the trial of the original defendants presided over by McNeil J the prosecution decided against calling PA as a witness because he could not be relied upon. Second, the value of PA's testimony was described in scathing terms by Leonard J during the course of his summing up in the second trial. Third, PA had never admitted committing perjury in an interview under caution. It is true that he had made admissions in his interviews with officers from Operation Mistral but his accounts in those interviews were very difficult to understand and were often contradictory. Reduced to its essentials PA was the most unreliable of unreliable witnesses and the information provided by him could not justify arresting anyone.

812. On any view these are very powerful points. However, as I see it there are two substantial difficulties which Mr Metzer QC cannot overcome. First, the allegations made by PA of police impropriety cannot be viewed in isolation. The allegations made by PA to the officers of Operation Mistral, although garbled, were similar to allegations made by the core four and other persons who were either arrested by or gave statements to LW1 officers. For the purposes of deciding whether there were reasonable grounds to suspect that PA's allegations of police misconduct were true it was permissible for Mr Penhale and Mr Coutts to take account of the fact that his allegations were similar to those made by others. While that is not mentioned in Mr Penhale's grounds for arrest the point was so obvious that it need not be spelt out. The second difficulty which faces Mr Metzer QC is the similarity between aspects of the false account given by PA and MG, in particular. In his closing submissions Mr Metzer QC sought to demonstrate that no such similarity exists. I am afraid I do not accept that. In my judgment there were significant similarities between the accounts given by MG and PA. It is also to be observed that MG's account on 22 November 1988 emerged very shortly after a similar account was provided by PA.

813. I remind myself that the threshold which the defendant must cross in order to establish reasonable grounds is a low one. While I acknowledge that PA's credibility and reliability was always open to very serious question, the co-incidence in time between the disclosures of PA and the disclosures of the other members of the core four and, in particular MG, cannot be other than suspicious. In the context of the case as a whole it was reasonable to suspect that the persons who interviewed PA on 22 November and thereafter were party to the threats and intimidation which PA described and it was certainly permissible to suspect that they had a guiding hand in the false account which PA gave about his knowledge of the circumstances of the murder.

814. As I have observed in my assessment of the lawfulness of the arrest of Mr Greenwood the involvement in the sham arrest would not, of itself, have justified the arrest of Mr Jennings or any other officer. It was, however, an event which provided support for the suspicion that the officers involved were engaged in improper conduct thereby providing some support for the suspicion that they were involved in an unlawful conspiracy. In my judgment, reasonable grounds existed to justify the arrest of Mr Jennings.

Mr Stephen

815. Mr Stephen was arrested by Mr Rawles. At paragraph 83 of his witness statement Mr Rawles describes the grounds upon which he considered Mr Stephen's arrest was justified. Essentially the grounds were that Mr Stephen had taken a number of witness statements from PA and had been involved in the "sham" arrest of TP. Mr

Rawles was accompanied by Mr Parry; he does not explain the basis for the arrest in his witness statement.

816. Mr Penhale's grounds for arrest in the case of Mr Stephen were quite detailed. He began by asserting that Mr Stephen performed a prominent role in the evidence gathering process – a suggestion which it would be difficult to refute. Mr Penhale next identified Mr Stephen's involvement in the "sham" arrest making the point that in interviews under caution Mr Greenwood and Mr Seaford appeared to corroborate TP's allegation (Mr Penhale also noted that Mr Greenwood had withdrawn his support for TP's allegation once he had seen his witness statement of March 1989). Mr Penhale next described Mr Stephen's involvement with PA. He drew attention to Mr Stephen's involvement in the taking of statements from PA on 22 November and 6 December 1988 and 6 January 1989 and he drew attention to the length of time which PA spent at the police station on 22 November and 6 December. Mr Penhale then focused upon the complaints made by PA. He wrote:-

> "He was interviewed by the Operation Mistral team on 15 October 2002. During the interviews he admitted that he gave false witness testimony but states that it was due to the threats and intimidation from interviewing officers that he changed his accounts of what he had witnessed (interviews Y4 page 5, 6, Y4A page 4, 5, 6, 7, refers).
>
> In Atkin' deposition dated 23 February 1989 (Exhibit AD27 refers) he states that Stephen was not one of the officers who bullied and threatened him but he was the officer they handed him over to 'after he had cracked'. He further stated that Stephen was quite friendly towards him. This would appear to be further evidence of the 'good cop bad cop' strategy, which appears to have been adopted with a number of witnesses during this investigation.
>
> During interviews on Lynette White Phase 3 of the enquiry Atkins has offered no comments to questions asked."

817. In the main the points made by Mr Metzer QC in respect of the arrest of Mr Jennings are repeated in the case of Mr Stephen. It is not difficult to understand why. I do not propose to set out those submissions again.

818. The reality is that the position of Mr Stephen cannot be distinguished from that of Mr Jennings. It would be ridiculous to hold that the arrest of Mr Jennings was justified but that the arrest of Mr Stephen was not, or vice versa. Having concluded that Mr Jennings' arrest was justified I reach the same conclusion in the case of Mr Stephen.

819. I should not leave Mr Stephen's case without noting Mr Penhale's reference to PA's evidence at the committal proceedings – the reference to PA's deposition dated 23 February 1989. It was correct of Mr Penhale to draw attention to the fact that PA had positively exonerated Mr Stephen from improper behaviour. Of course, Mr Penhale chose to view this as an example of what he called the 'good cop bad cop' strategy but, nonetheless, it would have been open to Mr Coutts to take a different view had he thought it appropriate. What is clear is that Mr Penhale did not seek to hide an aspect

of PA's evidence which might assist Mr Stephen in his contention that he had behaved properly in his dealings with PA.

820. As I observed when dealing with Mr Jennings the reasonable suspicion that they were involved in criminal activity arises not by virtue of any direct complaint by PA. The suspicion arises from the combination of circumstances to which I referred when dealing with Mr Jennings' case.

Mr Murray

821. Mr Murray's arresting officer was Mr Boulton. At paragraph 75 of his witness statement he describes how he attended the Holiday Inn Hotel, Cardiff, between 16 and 18 May in order to be briefed about Mr Murray's arrest. Mr Boulton was paired with Mr Taylor and during their period at the Holiday Inn Hotel they prepared interview plans in respect of Mr Murray. Mr Boulton and Mr Taylor describe the grounds for arresting Mr Murray in identical terms (see paragraph 78 of Mr Boulton's statement and paragraph 73 of Mr Taylor's statement). It is clear from those paragraphs that it was Mr Murray's involvement with MG on 6 December which most influenced those officers.

822. The grounds for arrest compiled by Mr Penhale specified a number of points to justify the arrest. They can be summarised as follows. First, Mr Murray had performed a prominent role in the evidence gathering process. Second, he was the author of two statements taken from MG dated 25 May 1988 and 5 January 1989. MG had alleged that one of those statements was true (the statement of 25 May) but he had admitted that the statement of 5 January 1989 contained lies in that it incriminated RA and YA in Lynette's murder and suggested that PA had gone to the murder scene after hearing screams. Third, MG had identified Mr Murray as being one of the officers who had pressurised him. He was the officer with a beard and moustache and he had been one of the first officers to whom MG had related his changed account so it was said. Fourth, Mr Murray was said to be "clearly closely connected" to the events giving rise to MG making a witness statement on 22 November 1988 which contained untruths and which ESDA testing had shown had been re-written to an extent. Fifth, Mr Murray had been named in a document (not the B59) as one of the officers who had interviewed MG on 6 December. MG had alleged that on that day he had been held against his will and "subjected to threats and intimidation".

823. In his written closing submissions Mr Cragg QC undertakes a detailed analysis of MG's various interviews in order to demonstrate how no reliance could be placed upon any assertion which MG made about Mr Murray. He points out, quite correctly, that there was no contemporaneous documentary evidence of any kind to connect Mr Murray with MG on 22 November 1988.

824. I have given long and anxious consideration to whether reasonable grounds existed to connect Mr Murray with MG on 22 November 1988. Obviously that day was an important one given that this was when MG first changed his account to suggest that he had important information about the events surrounding Lynette's murder. I have taken account of all the points made by Mr Cragg QC which seek to demonstrate the various accounts given by MG of Mr Murray's involvement on 22 November were simply unreliable and should not have been relied upon as any basis for justifying his arrest. With some hesitation I have concluded that that is not correct. Upon a fair

reading of MG's interviews prior to his arrest i.e. during Mistral and in his interviews under caution he was suggesting that Mr Murray was present on that date and there were grounds for believing that MG was asserting that Mr Murray was one of the first officers to whom he provided his changed account. I appreciate that, later, evidence emerged which cast considerable doubt upon whether this could be accurate. However, on the basis of MG's assertions in interview it was reasonable to suspect that Mr Murray had been present at Butetown police station on 22 November 1988 and that he had participated in the process by which MG gave his changed account.

825. If that analysis is correct then I am satisfied that reasonable grounds existed to justify his arrest. In addition to the suspected involvement on 22 November there were proper grounds to suspect that MG had been interviewed by Mr Murray on 6 December 1988. In my judgment it was reasonable to conclude that if, as he alleged, MG had been kept at the police station against his will on that date the officers engaged in interviewing him were complicit in that detention. Mr Cragg QC complains that Mr Boulton mis-states the position in his witness statement when he suggests that MG alleged that Mr Murray and Mr Pugh subjected him to threats and intimidation on 6 December 1988. That is, I accept, a possible reading of the witness statement. It is also possible that Mr Bolton was intending to convey that while Mr Murray and Mr Pugh had been complicit in detaining MG other, unknown, officers had threatened and intimidated him. I say that, of course, because in his grounds for arrest Mr Penhale does not suggest that MG alleged that either Mr Murray or Mr Pugh threatened or intimidated MG. Mr Penhale simply recorded that MG had complained of being detained against his will, threatened and intimidated.

826. Were the decisions to arrest Mr Jennings, Mr Stephen and Mr Murray unreasonable? All three were serving police officers at the time of their arrest. Two days after the decision was made that they should be arrested Mr Jennings and Mr Stephen offered to attend voluntarily at a police station for the purpose of being interviewed under caution and they indicated that they would consent to the search of their homes. No doubt the timing of the solicitor's letters which made those offers caused Mr Coutts to suspect that Mr Jennings and Mr Stephen had been tipped off about their imminent arrest. Be that as it may, those offers did not persuade Mr Coutts to change the arrest strategy.

827. Mr Murray did not offer to attend at a police station to be interviewed under caution but, as Mr Cragg QC points out, it would have been open to the Defendant to direct Mr Murray to attend at a nominated police station and, in reality, he could not have refused.

828. The Arrest Strategy written by Mr Penhale made no reference to the fact that Mr Jennings, Mr Stephen and Mr Murray were serving police officers. No doubt, however, that was well known to both Mr Coutts and Mr Penhale.

829. For my part, I can well understand why Mr Coutts would not wish to distinguish between serving and retired police officers when deciding whether they should be arrested. In my judgment the real issue which arises is whether it was unreasonable to arrest any suspect by this stage of the investigation.

830. As I observed earlier in this judgment, as time went by so it became more difficult to justify arresting police suspects. However the arrest strategies for Mr Jennings, Mr

Stephen and Mr Murray did provide a rational basis for the decisions to arrest. As I have said, the decisions to arrest were closely connected to the perceived need for the suspects' homes to be searched. The searches had produced evidential material during the first two phases of arrest and, in my judgment it was still realistic to suppose that evidential material would be recovered in the third phase. Notwithstanding the submissions by leading counsel to the contrary, I have reached the conclusion that the decisions to arrest Mr Jennings, Mr Stephen and Mr Murray were not unreasonable.

The arrests on 20 July

831. This was the fourth phase of arrests. The persons arrested on this date were Mr Mouncher, Mr Powell and Ms Carole Evans. Each of them was arrested in the early morning at their homes i.e. the same arrest strategy was adopted.

Mr Mouncher

832. Mr Mouncher was arrested by Mr Taylor. At paragraph 99 of his witness statement Mr Taylor sets out, in some detail, the basis upon which he decided reasonable grounds existed to justify Mr Mouncher's arrest. I quote:-

> "… on 22 November 1988 Mark Grommek was brought to Butetown police station and later alleged that Mr Mouncher told him that he would be kept there indefinitely if he did not tell the officers what they wanted to know. As a result of these alleged threats and intimidation Mr Grommek changed his evidence providing incriminating evidence against Ronald Actie, Yusef Abdullahi and Martin Tucker. Mark Grommek was interviewed twice and provided a subsequent witness statement which later ESDA examination indicated that page 3 had been re-written to negate the need for identification procedures because the named individuals are 'known' to Mark Grommek and not simply named by him. Although Mr Mouncher is not the author of this statement it was alleged by Mark Grommek that he was clearly closely connected to the event that led to the statement being taken. Leanne Vilday alleged that she was held against her will at Butetown police station where Mr Mouncher had threatened and intimidated her which resulted in her changing her account in statements dated 6 and 11 December 1988 providing incriminating evidence against Steven Miller, Ronald Actie, John Actie, Toby Paris and Yusef Abdullahi. When subsequently interviewed Leanne Vilday alleged that it was Mr Mouncher who 'broke her' into telling the police what they wanted to know. She further alleged that Mr Mouncher would come into the room and shout at her when she was being interviewed by other officers and that he would keep her awake not allowing her to rest. …"

Mr Taylor was accompanied by Mr Pitchford. The material part of paragraph 73 of Mr Pitchford's witness statement is in identical terms to the part of Mr Taylor's witness statement set out above.

833. These witness statement closely follow the grounds for arrest which were identified by Mr Gavin Lewis. In summary the grounds relied on by Mr Lewis as justifying the arrest of Mr Mouncher were as follows. First, the allegation made by MG that Mr Mouncher had pressurised him while MG was at the Butetown police station on 22 November 1988. Second, the allegation by LV that Mr Mouncher had pressurised her when she was at the police station on 6 December 1988. Third, the length of time spent by both MG and LV at the police station on the dates to which I have referred. MG was at the police station on 22 November for a period of at least 8 hours; LV was at the police station for upwards of 10 hours on 6 December. Fourth, the witness statement made by MG on 22 November had been subjected to ESDA analysis. Although the ESDA findings in respect of this statement were relevant, primarily, to the person who had written it (Mr Seaford), Mr Lewis considered that Mr Mouncher's involvement with MG meant that he was "closely connected to the events that led to the statement being taken". Fifth, ESDA analysis had been undertaken of the statement made by LV on 6 December 1988 and this had provided grounds for suspecting that its author (Mrs O'Brien) had engaged in criminal conduct. Again, it was Mr Lewis' view that Mr Mouncher "was closely connected" to the events which gave rise to the making of that statement.

834. Mr Metzer QC submits that the grounds for arrest identified by Mr Lewis and adopted by Mr Taylor are based entirely upon the allegations made by MG and LV. Essentially, Mr Metzer QC is correct. He submits, too, that there was no written or other evidence which suggested that Mr Mouncher was responsible for writing or supervising the writing of any witness statement. That submission, too, is correct. In his written closing submissions Mr Metzer QC seeks to undermine the complaints of MG and LV and, additionally, he makes points about Mr Mouncher's role in LW1 which, he submits, undermine the suspicion that Mr Mouncher was engaged in any of the criminal offences for which he was arrested.

835. With respect to Mr Metzer QC I cannot accept that no reasonable grounds existed for Mr Mouncher's arrest. In my judgment the specific complaints made by LV and MG justified the arrest. I appreciate, of course, that there were proper grounds to be very cautious about the truthfulness and accuracy of both those persons but, in my judgment, it cannot be said that their complaints did not, objectively, constitute reasonable grounds.

836. Was the decision to arrest Mr Mouncher unreasonable? In particular, was it unreasonable in the context that his solicitor had written on 11 April 2005 indicating that Mr Mouncher would attend a police station voluntarily for the purpose of being interviewed under caution? The arrest of Mr Mouncher must be seen in the context of what had gone before. There had been three phases of arrests involving a total of twelve officers and retired officers. In respect of the first two phases, at the very least, the arrest strategy (which was identical to the arrest strategy adopted in respect of Mr Mouncher) was subject to independent scrutiny at the adversarial briefing. No person present at that meeting thought that it was unreasonable to arrest the suspects then under consideration. It is, of course, true that the adversarial briefing took place before some of the suspects offered to attend a police station voluntarily. On any view, an offer to attend a police station voluntarily was a material factor to be taken into account in deciding whether a suspect should be arrested.

837. As it seems to me the decision to arrest Mr Mouncher cannot be categorised as unreasonable. There was still the prospect that the arrest strategy as a whole would yield evidential material – which prospect, of course, became a reality following the search of Mr Mouncher's home.

Richard Powell

838. Mr Powell was arrested by Mr Stephens who was in company with Mr Rawles. Mr Stephens' justification for Mr Powell's arrest, as summarised in his witness statement, was twofold. First, Mr Powell had been identified by MG as being an officer who had threatened and intimidated him while MG was at the Butetown police station on 22 November and 6 December 1988. Second, it was Mr Stephens' view that Mr Powell was a detective inspector engaged in LW1 "at a time when it appeared that the investigating team were making a concerted effort to strengthen the evidence against the original defendants". These were also the reasons provided to justify the arrest by the officer who accompanied Mr Stephens, namely Mr Rawles.

839. The grounds for arrest in respect of Mr Powell were written by Mr Lewis on or about 17 June 2005. In summary, the grounds identified by Mr Lewis as justifying the arrest related to Mr Powell's treatment of MG. According to MG, Mr Powell was the person most involved in threatening and pressuring him into making false statements. According to MG, too, Mr Powell was involved in this conduct on 22 November 1988 and 6 December 1988 when he was held against his will at the police station for lengthy periods. In the grounds for arrest which he prepared Mr Lewis suggested that the length of time during which MG was at the police station on 22 November and 6 December 1988 was a factor to be taken into account when making a decision about Mr Powell's arrest. He also appeared to suggest that ESDA evidence in relation to the statement taken from MG by Mr Seaford on 22 November 1988 was to be taken into account.

840. It is apparent from what I have said earlier in this judgment that on Mr Powell's account he had no involvement in the investigation on those days. However, as at the date when Mr Powell was arrested there was no documentary evidence in existence which demonstrated, one way or the other, whether Mr Powell was involved in LW1 on 22 November or 6 December 1988. Mr Powell was not mentioned in the LW1 policy log; he was not mentioned in the B59 and he was not mentioned in the diaries of Mr Gillard and Mr Murray which had been recovered in searches of their homes. Perhaps more importantly, however, there was no documentary evidence which suggested that Mr Powell could not have been at the Butetown police station on those dates.

841. The reality is that Mr Powell's arrest can be justified objectively only if it was permissible to suspect him of wrongdoing on the basis of MG's complaints. Without MG's complaints there was no basis to suspect Mr Powell of anything.

842. If there was one thing MG was consistent about it was that he was threatened, bullied and intimidated by Mr Powell and that is what caused him to fabricate his accounts on 22 November and 6 December 1988. Of all the complaints made by the core four MG's complaints about Mr Powell rank with LV's complaints about Mr Mouncher as being the most coherent and consistent. I have reached the conclusion, not without

some hesitation, that it was objectively justified to arrest Mr Powell on the basis of those complaints.

843. Was it unreasonable, in the Wednesbury sense, to arrest Mr Powell? In my judgment his case is indistinguishable from that of Mr Mouncher except that Mr Powell did not volunteer to attend a police station to be interviewed under caution. For the reasons set out in paragraph 837 above I do not consider that it was unreasonable to arrest Mr Powell.

Mr Morgan

844. The SIO log shows that the decision to arrest Mr Morgan was made on or about 21 September 2005 i.e. on the same day that Mr Gavin Lewis provided a person of interest package to Mr Penhale. Mr Morgan had anticipated that he would be the subject of investigation by LW3 officers. As I have said his solicitor had written to Mr Coutts on 28 April 2005 informing Mr Coutts that Mr Morgan would be happy to attend for interview on a voluntary basis. Mr Morgan's solicitor did not notify Mr Coutts that Mr Morgan had retained relevant diaries.

845. The Arrest Strategy prepared by Mr Gavin Lewis made no reference to Mr Morgan's offer to attend at the police station voluntarily. Mr Lewis recommended that Mr Morgan should be arrested without warning and without prior disclosure of relevant material and Mr Penhale accepted the recommendation. Mr Lewis recommended, too, that Mr Morgan's home should be searched immediately after arrest. There were two essential justifications for this linked strategy; first it would minimise the possibility of collusion; second it would maximise the prospect of recovering relevant documentation from Mr Morgan's home.

846. Mr Morgan was arrested at his home on 12 October by Mr Pitchford who was in company with Mr Taylor. In their witness statements they both describe how they met in advance in order to prepare interview plans in respect of Mr Morgan. Neither Mr Pitchford nor Mr Taylor describe when, if at all, they were specifically briefed about Mr Morgan.

847. At paragraph 97 of his witness statement Mr Pitchford sets out the reasons which, he says, justified the arrest of Mr Morgan. I quote:-

> "The grounds for my suspicion focused upon the fact that Mr Morgan performed a prominent managerial role during the original investigation, including the management of the evidence gathering process. During the original investigation Mr Morgan was a senior supervisory officer involved when a number of statements were taken, which provided incriminating evidence against a number of the original suspects. It is alleged that witnesses who provided those statements were held in police stations during which time they were subjected to threats and intimidation during a critical phase of the enquiry i.e. from the 6 - 12 December 1988 when Mr Morgan was chairing conferences or was in such a position of authority that officers briefed him in relation to the ongoing investigation and that the direction and control of the enquiry was his responsibility. In

> his diary entry dated 9 December 1988 … Mr Morgan commenced duty at 06.45 hours and updates his diary 'on duty Docks incident room confer Inspector Page and teams to arrest John Actie and Anthony Paris'. He makes a further entry at 09.30 hours that day contradicting the previous entry stating 'confer D/CA/Supt Williams. Actie and Paris after initially being brought to station as potential witnesses and interviewed were arrested and conveyed to designated stations for further interview'. …"

Mr Taylor provides reasons for the arrest of Mr Morgan which are in similar, although not identical, terms.

848. The grounds for arrest prepared by Mr Lewis in respect of Mr Morgan identified a number of grounds upon which his arrest was said to be justified. First, during a critical period of the investigation Mr Davies the Deputy SIO was on leave "leaving Mr Morgan as one of the senior officers in charge of the investigation". Second, the available documentary evidence provided grounds to suspect that Mr Morgan was implicated in the sham arrests of TP and JA. Third, Mr Morgan was responsible for decision making in the period 6 - 12 December 1988. That was apparent from diaries recovered from Mr Murray and Mr Mouncher. Extracts from those diaries indicated that Mr Morgan was involved with briefings and conferences with Mr Mouncher; the extracts indicate that Mr Morgan was "chairing the conferences or was in such a position of authority that officers briefed him in relation to the ongoing investigation, therefore concluding that direction and control of the enquiry was the responsibility of him". Fourth, Mr Powell had suggested in his interviews under caution that Mr Morgan had a supervisory role. Fifth, Mr Morgan had been appointed to the Serious Crime Squad (East) on 17 October 1988. That coincided with his appointment as Office Manager. Sixth, on 14 March 1989 Mr Davies had written an appraisal of Mr Morgan which included the following:-

> "He has quickly settled into the role as Office Manager in the Lynette White murder enquiry and was to the forefront when this matter was brought to a successful conclusion."

849. In powerful detailed submissions Mr Bowen QC seeks to demonstrate that the grounds for arrest identified by Mr Gavin Lewis and the grounds relied upon by Mr Pitchford were misconceived. In particular, he argues that there were never reasonable grounds to suspect that Mr Morgan was one of the senior officers in charge of the investigation or one of the officers at the centre of decision making during the period identified, namely between 6 – 12 December 1988. Essentially Mr Bowen's submissions can be drilled down into two strands. First Mr Morgan was the office manager of the MIR; it was inevitable that he would be involved with the officers working in the MIR and that he would provide direction and control in respect of their work. That was no more and no less than doing his job. Second, while Mr Davies may have been on leave, Mr Williams, the SIO, certainly was not. LW3 officers had access to Mr Williams' diary (reference is made to it in Mr Morgan's grounds for arrest) and it was obvious from the entries made therein that the SIO was heavily involved in what was going on in this crucial period.

850. There is much force in what Mr Bowen QC says. I accept that there was documentary evidence available to Mr Lewis to which he made reference in the grounds for arrest, to the effect that the SIO was holding the reins in the period 6 December to 12 December 1998. I accept, too, the obvious point that Mr Morgan had a position of responsibility in the MIR which, inevitably called upon him to exercise some degree of direction and control of aspects of the investigation.

851. Nonetheless it is instructive to consider the contents of the diaries belonging to Mr Mouncher and Mr Murray for the period 6 to 12 December 1988. Mr Mouncher's diary entry for 6 December shows that quite soon after commencing his shift he "conferred with Mr Morgan". Similar entries were made for 7 December and 9 December. There are other entries for 6 and 7 December which might show that the two men were conferring. Mr Murray's diary entry for 6 December begins with a reference to a conference with Mr Morgan. There is a similar reference in the entry for 7 December and there is a reference to a briefing with Mr Morgan having taken place early in the morning of 8 December. The entry for Saturday 10 December begins with a record of a briefing taking place with Mr Morgan. The entry for 12 December has a similar entry given that it is reasonable to infer that the words "confer D/C/I" referred to Mr Morgan.

852. The word "confer" appeared in many of the diaries of police officers engaged in LW1. Almost without exception each of the Claimants sought to persuade me that the word did not refer to its natural meaning i.e. that a senior officer was conducting a meeting or conference with other officers about the state of the investigation. This part of the evidence adduced on behalf of the Claimants is difficult to accept.

853. I have no doubt that the diary entries of Mr Mouncher and Mr Murray for the period 6 December to 12 December 1988 properly give rise to the suspicion that Mr Morgan was doing more than simply carrying out every day tasks associated with managing the MIR. I note that there was a clear connection between Mr Mouncher and Mr Morgan on some of these crucial days and, in particular, there was a connection between them on 6 December. Immediately after the diary entry which speaks of a conference between Mr Mouncher and Mr Morgan Mr Mouncher "conferred" with all the officers who were to interview/take statements from the core four and Jack Ellis. I have already concluded that there were reasonable grounds to suspect that Mr Mouncher was engaged in criminal conduct towards LV on 6 December and, in my judgment, it was reasonable to suspect that Mr Morgan was complicit in what was occurring.

854. It was Mr Penhale, of course, who made the decision to arrest Mr Morgan. During the course of his cross examination by Mr Bowen QC Mr Penhale was prepared to accept that it was the documentary evidence relating to Mr Morgan's activity on 6 December which was crucial in persuading him that Mr Morgan's arrest was justified.

855. As Mr Johnson points out, however, there were other factors to be considered in relation to Mr Morgan. There were suggestions by Mr Powell in his interviews under caution that Mr Morgan was supervising LW3 at the time. There was the suspicion that Mr Morgan was complicit in the alleged sham arrest of TP.

856. Mr Bowen QC takes issue with the reliance upon Mr Powell's answers in interviews under caution. He submits that Mr Powell's answers were much more consistent with

an acceptance that Mr Morgan was the Office Manager of the major incident room i.e. responsible for managing the activities within that room. Put in its proper context, submits Mr Bowen QC, Mr Powell was not suggesting that Mr Morgan was responsible for directing the activities of those officers who were taking statements from crucial witnesses. He submits, too, that Mr Lewis was wrong to rely upon Mr Davies' appraisal of Mr Morgan which referred to him as being "to the forefront" when LW1 was brought to a successful conclusion. He reminds me, too, that Mr Penhale conceded that the sham arrest standing alone could not justify an arrest of anyone. There can be no doubt that the answers of Mr Powell in interview and the report of Mr Davies taken in isolation would hardly justify Mr Morgan's arrest. I agree with the submission of Mr Bowen QC to that extent. The allegation of involvement in the sham arrest can provide support for the decision to arrest but cannot justify the arrest standing alone.

857. Mr Bowen QC submits that even if the diary entry of Mr Mouncher and Mr Murray provided some basis for suspecting that Mr Morgan had committed one or more of the crimes for which he was arrested such suspicion ought to have been dissipated by a number of factors which are simply ignored in Mr Lewis' analysis.

858. The first feature relied upon by Mr Bowen QC is the contact between Mr Morgan and Mr Hywel Hughes following AP's disclosures on 10/11 December 1988. Mr Bowen QC makes two points about this episode. First, Mr Hughes' potential importance as a witness was obvious, at the latest, once Mr Gillard had produced his prepared statement in interview under caution in May 2005. Second, LW3 officers did nothing to investigate Mr Gillard's assertion at any time prior to Mr Morgan's arrest. As Mr Bowen QC points out it is difficult to pin point when it was that LW3 officers first made contact with Mr Hughes but there is no suggestion that this occurred before Mr Morgan was arrested. The Defendant has not explained why that is the case.

859. The second point relied upon by Mr Bowen QC relates to diary entries which were, by then, available to LW3 officers other than the diaries of Mr Murray and Mr Mouncher. They included a print out of Mr Williams' diary. In his written closing submissions Mr Bowen QC devotes a good deal of time to analysing Mr Williams' diary for the period mid November 1988 to 11 December 1988. His submission, based upon this analysis, is that it is clear that Mr Williams was in control of events during the whole of this critical period. His diary entries admit of no other interpretation. Mr Bowen QC accepts that there were times, during this period, when Mr Davies was absent from the enquiry, but, to repeat, his submits that it is clear throughout this critical period Mr Williams was firmly in charge. That he submits wholly invalidates the suggestion made in Mr Lewis grounds for arrest that Mr Morgan was involved in controlling the investigation.

860. It is not necessary for me to set out Mr Williams' diary entries, day by day, since, in my judgment, the conclusion urged upon me by Mr Bowen QC is correct i.e. throughout the critical period Mr Williams was in control of the investigation. However, it does not follow, either as a matter of logic or common sense that Mr Morgan did not have a role in the investigation which was considerably wider than the role of Office Manager of the MIR. Further it is noteworthy that Mr Mouncher's diary contains no reference to Mr Williams' involvement during the period 6 to 12 December until the morning of 11 December. In my judgment, the fact that Mr Williams was demonstrably in overall charge of the investigation between 6

December and 12 December does not negate the suspicion that Mr Morgan, too, was involved in directing and controlling what was occurring in these crucial days.

861. Mr Lewis did not give evidence on behalf of the Defendant. His reasoning process has not been tested. Mr Penhale, of course, gave evidence over many days and his reasoning process in relating to Mr Morgan was tested over some hours. The upshot was, as I have said, that Mr Penhale was left to assert that it was Mr Morgan's role on 6 December 1988 which was crucial in persuading him that reasonable grounds existed to justify Mr Morgan's arrest.

862. Without doubt 6 December was a very important day in the course of LW1. It was on 6 December that LV aligned herself, at least substantially, with the account which AP had given in the previous few weeks. Additionally, MG and PA provided statements which incriminated some of the original defendants. Jack Ellis was present in the station for very many hours. All this was occurring under the same roof and Mr Penhale knew, or at least reasonably suspected, that Mr Morgan had been at this police station throughout, or for most of the relevant time.

863. The person of interest package in respect of Mr Morgan records Mr Penhale's reasoning for authorising Mr Morgan's arrest. It is clear that Mr Penhale does not focus upon 6 December 1988 in his reasoning – indeed, he appears to accept the totality of the grounds for arrest presented by Mr Lewis and, additionally, he raises the possibility that Mr Morgan's involvement in Operation Safehouse was a reason to suspect him of criminal activity. Mr Bowen QC submits that Mr Penhale's focus on 6 December 1988, in the witness box, was a cynical manoeuvre on his part designed to divert attention from the fact that the main thrust of Mr Lewis' grounds for arrest had been shown to be without foundation.

864. I have reflected upon the submission of Mr Bowen QC with care. I am prepared to accept that Mr Penhale is capable of being defensive when giving evidence as I have already discussed in the context of the events which led to the ending of the criminal trial. I am conscious, however, that the events of 6 December 1988 were crucial in the evolution of LW1 on any view. Having given Mr Bowen's submission due weight I am not prepared to conclude that Mr Penhale engaged in a cynical manoeuvre. In any event, that is not what I have to decide. I have already concluded that Mr Penhale genuinely believed that grounds existed to justify Mr Morgan's arrest. Nothing in his oral evidence led me to doubt the genuineness of that belief. Accordingly my task now is to evaluate whether the grounds which Mr Penhale relied upon were justified, objectively. On any view of the evidence Mr Morgan's involvement in the events of 6 December 1988 was a factor which Mr Penhale relied upon to justify his decision. I have reached the conclusion that the suspected events of 6 December and Mr Morgan's suspected involvement in those events did justify his arrest. I have said it more than once but it is worth repeating. The threshold for a justified arrest is comparatively low and, on that basis, I am not persuaded that no reasonable grounds existed to justify Mr Morgan's arrest.

865. Was the decision to arrest him unreasonable? I have reached the conclusion, just, that it cannot be demonstrated that the decision was unreasonable. The arrest strategy which, on the whole, had produced significant evidential material was still rational and defensible. As it happens Mr Morgan had retained material of evidential value. As it happens, the search of his home would not have discovered that material. It was

open to a reasonable and responsible senior officer, however, to consider that an arrest without notice followed by a search provided the best chance to obtaining evidential material and, therefore, the decision in his case was not unreasonable.

Mr Hicks

866. Mr Hicks was arrested by Mr Kerley on 26 June 2007. The arrest took place at the Swansea Central police station at about 10.13 a.m. following Mr Hicks' voluntary attendance at that police station. Mr Hicks had been invited to attend at the police station on that date and informed that following his attendance he would be arrested.

867. Mr Hicks became a suspect on or about 13 April 2007. The decision to raise Mr Hicks to suspect status was made by Mr Coutts after receipt of a person of interest package composed by Mr Penhale. By the time of these events section 24 of PACE had been amended to include the "necessity test". The power of arrest conferred by the section was exercisable only if the arresting officer had reasonable grounds for believing that it was necessary to arrest Mr Hicks for any of the reasons set out in section 24 (5).

868. The Arrest Strategy prepared by Mr Penhale made no mention of this change in the law. Mr Penhale set out three options for consideration by Mr Coutts. The first option was "arrest by appointment", the second option was "arrest without pre-disclosure or warning" and the third option was not to arrest Mr Hicks but rather invite him to attend at a police station for interview under caution voluntarily after first providing him with relevant disclosure. Having set out the options Mr Penhale made no recommendation as to which should be adopted.

869. Mr Coutts decided that the most appropriate option was that Mr Hicks should be arrested by appointment. He set out his reasoning in his hand written notes which are dated 23 April 2007. It appears that Mr Coutts considered that this approach was "appropriate, reasonable, fair and proportionate". Nothing in Mr Coutts' handwritten notes suggest that he considered whether reasonable grounds existed to justify the conclusion that it was necessary to arrest Mr Hicks for any of the reasons set out in section 24(5) of PACE.

870. However, there was within the person of interest package supplied to him a typed sheet which had the heading "Does the arrest pass 'the necessity test'". After an introductory paragraph the typed script continued:-

> "The arrest of Stephen Hicks is necessary subject to a number of reasons; one of the reasons, which apply, is under section 110(5)(E) to allow the prompt and effective investigation of the offence or the conduct of the person in question. i.e. it is self evident that this arrest would allow the prompt and effective investigation of the offences outlined, in addition in respect of the conduct of the person in question it addresses issues where their conduct is likely to conceal, alter, cause the loss, damage or destruction of evidence or otherwise hinder the investigation of the offence or likely to commit the offence by their conduct."

There was then a reference to a letter written by Mr Cahill apparently explaining the ingredients of the "necessity test".

871. Paragraph 134 of Mr Coutts' witness statement deals specifically with the arrest of Mr Hicks. It is necessary to quote it in full:-

> "On 23 April 2007 I was asked to consider the POI package in respect of Stephen Hicks. In asking himself the question whether reasonable grounds existed to believe that relevant material would be present at the scene, DCI Penhale was unable to make a firm recommendation to me. On the aforementioned date, I raised Stephen Hicks to a suspect status and I made the decision that he should be arrested. In asking myself the question did reasonable grounds exist to consider that material might be present at the suspect's home address, I considered that due to the lapse of time and that no material had been since January 2006, a period of 14 months, it would not be reasonable nor proportionate to arrest and conduct a search without pre-disclosure or warning. I therefore made the decision that arrest by appointment would be the method of approach to be adopted. Whilst this was at variance with previous approach, I was content at this time and stage in the process that this method was appropriate, reasonable, fair and proportionate."

With respect to Mr Coutts, this paragraph is lifted, verbatim, or almost verbatim, from the reasons which he recorded in the person of interest package for his decision to arrest by appointment. Self evidently, however, the witness statement does not deal with the issue of whether it was necessary for Mr Hicks to be arrested for a reason within section 24(5) of PACE. I am not satisfied that the Defendant has proved that Mr Coutts considered whether 'the necessity test' was satisfied before he made his decision to arrest Mr Hicks. I accept that the person of interest package contained the typed sheets to which I have just referred but there is not a shred of direct evidence which begins to prove that Mr Coutts considered them and made a conscious decision that an arrest was necessary. I am not satisfied that the Defendant has proved that Mr Coutts believed that an arrest was necessary; I am not satisfied that Mr Coutts considered the statutory criteria at all.

872. I understand, of course, that it may be said that Mr Coutts must have considered the typed sheets which were contained within the person of interest package and that I should infer that he accepted the necessity for an arrest on the basis of what was typed. I have set out the relevant part at paragraph 870 above. Upon analysis the only paragraph within section 24(5) which is identified as applicable is 24(5)(e). The bold assertion is made that it is "self evident" that this paragraph is applicable. At paragraph 877 below I explain why I do not consider that it was reasonable to believe that the criteria under section 24(5)(e) of PACE were met.

873. Quite deliberately, Mr Thomas QC, on behalf of Mr Hicks, asked Mr Coutts no questions about this aspect of the case. He took the view and submits that the Defendant has adduced no evidence to satisfy the statutory criteria which was in force at the time of Mr Hicks' arrest.

874. That is probably not correct. In his witness statement the arresting officer Mr Kerley says that he considered it "appropriate, necessary and proportionate" to arrest Mr Hicks and later in the same paragraph (161) he says that he did not consider dealing with Mr Hicks other than by arrest "as potentially during interview he could have left the Police Station, thereby frustrating the inquiry". It seems to me that in this passage Mr Kerley does provide evidence of his belief that it was necessary to arrest Mr Hicks to allow the prompt and effective investigation of the offences for which Mr Hicks was arrested or his conduct.

875. I hasten to add that I do not consider the use of the phrase "appropriate, necessary and proportionate" in respect of the arrest, by itself, demonstrates that Mr Kerley had in mind the correct statutory criteria. Mr Kerley used that phrase in respect of every other arrest in which he was involved, namely the arrests of Mrs O'Brien, Mrs Coliandris and Mr Jennings, even though there was no necessity test at the time of those arrests. However, his assertion that he did not consider dealing with Mr Hicks other than by arrest for the reason he gave is an indication that he was addressing his mind to the correct statutory criteria.

876. I am prepared to accept, although with some degree of reluctance, that Mr Kerley did think about whether it was necessary to arrest Mr Hicks and formed the genuine belief that his arrest was necessary. He was not like the police officer in *Richardson* who simply did not address the issue. However, I have reached the conclusion that it was not open to Mr Kerley to conclude that there were reasonable grounds to believe that an arrest was necessary by virtue of one or more of the criteria set out in section 24(5) of PACE. The only conceivable basis was section 24(5)(e) whereby an arrest may be necessary "to allow the prompt and effective investigation of the offence, or of the conduct of the person in question". I simply do not understand how there were reasonable grounds to suspect that an arrest was necessary for those purposes. The offences for which Mr Hicks was to be arrested had occurred approximately 18 ½ years before the decision was taken to arrest him. There was a delay of two months or thereabouts between the decision to arrest Mr Hicks and his actual arrest. No evidence has been adduced to show that an arrest was necessary to allow the prompt and effective investigation of the offences. Whatever the proper interpretation to be given to the words "the conduct of the person in question" there was no basis to conclude that an arrest was necessary on account of any actual or predicted conduct on the part of Mr Hicks.

877. Apparently, Mr Kerley considered Mr Hicks' arrest was necessary because Mr Hicks could have left at any time during the course of his interview under caution if he was not under arrest "thereby frustrating the inquiry". In my judgment two points need to be made about that suggestion. First, there is no evidence that anyone addressed the likelihood of Mr Hicks attempting to walk out of the police station during the course of his interview under caution or how the progress of the inquiry would be hampered or frustrated if Mr Hicks was arrested at that point as opposed to upon his arrival at the police station. Second, the statutory provisions relating to the 'necessity test' would be nullified if it was open to a police officer to say that arrest in advance of an interview under caution was always necessary to prevent the person being interviewed attempting to leave. Stripped to its essentials, in the context of this case there must have been reasonable grounds to believe that an arrest was necessary to allow the

prompt and effective investigation of the offences allegedly committed by Mr Hicks. In my judgment no such grounds existed.

878. In the written reply on the law counsel for the Defendant submit that this point is not open to Mr Hicks since neither Mr Coutts nor Mr Kerley were questioned or challenged about the 'necessity' test. I do not accept that this is the correct approach. The onus of proving that reasonable grounds existed to justify the belief that it was necessary to arrest Mr Hicks in accordance with the statutory criteria was upon the Defendant. I do not consider that the Defendant discharged the evidential burden upon him simply because the arresting officer used the words to which I have referred in his witness statement or because the person of interest package identified the need for the necessity test to be passed.

879. Mr Johnson QC and his team also rely upon the decision of the Court of Appeal in *Hayes*. As I have said I am bound by that decision. However, I do not consider that my analysis in the preceding paragraphs is inconsistent with the approach set out in the passages from the judgment of Hughes LJ as set out at paragraph 436 above. To the contrary, I have applied the two-stage test which is advocated at paragraph 40 of the judgment.

880. I have reached the clear conclusion that no reasonable grounds existed for believing that it was necessary to arrest Mr Hicks to allow the prompt and effective investigation of the offences for which he was arrested or on account of any conduct (actual or predicted) on the part of Mr Hicks.

881. Were there reasonable grounds for his arrest albeit, in my judgment, the arrest was unnecessary? Mr Kerley describes the reasons why he arrested Mr Hicks in the same paragraph of his witness statement to which I have referred. Reasonable grounds existed, in particular, because LV had been subject to threats and intimidation by police officers "whilst giving witness statements to Mrs Coliandris in the presence of Mr Hicks". The grounds for arrest prepared by Mr Penhale were comparatively long and detailed. Mr Penhale began by drawing upon information from the Hacking and Thornley Review about Mr Hicks' involvement in LW1. Next he set out Mrs Coliandris' involvement with LV on 11 December 1988 together with a substantial extract from the Dean Review which demonstrated Mr Dean's suspicion that another officer must have been present at the time LV's statements were taken. Mr Penhale then described how the witness statements made by Mrs Coliandris and Mr Hicks on 25 October 1989 came to be discovered (as to which see paragraph 578 above). Next, Mr Penhale summarised the statements and expressed his view of Mr Hicks' involvement on 11 December 1988:-

> In summary, the statements referred to Hicks being requested by the "incident room" to take an on "unprompted" statement from a lady named Leanne Vilday. He went to a room where he saw Miss Vilday with PC Erica Colinadris, he states Coliandris wrote the statement at the dictation of Vilday, Coliandris statement confirms this account.
>
> This statement now provides an explanation as to how Vilday's statements were constructed on 11 December 1988 and

> identifies the individual who, as Vilday states, was telling Coliandris what to put in the statement.
>
> Hicks was an officer who has experience and knowledge of the enquiry and it is reasonable to suspect that he would have been able to lead and prompt Vilday through the statement in a manner which was suggested by Professor Coulthard.
>
> Coliandris' insistence on being alone throughout the statements appear now to be an attempt to protect the identity of Hicks or at the very least the existence of a third party. "

882. Finally Mr Penhale identified instances in which Mr Hicks was involved in interviewing suspects on 7, 8, 9 and 10 December 1998 thereby demonstrating his involvement in the investigation at that stage. He suggested that Mr Hicks had been involved in interviewing Anthony Brace on 7, 8 and 9 December and TP on 10 December. All these references were wrong. Mr Brace had died by this time and Mr Hicks did not interview TP on 10 December. It probably matters not, however, since Mr Hicks acknowledges that he was involved in interviewing suspects on those days albeit the suspect in question was MT and, in any event, it is quite clear that the focus of the grounds for arrest prepared by Mr Penhale was Mr Hicks' involvement in the taking of LV's statements on 11 December 1988.

883. In my judgment, the fact that Mr Hicks was present when LV gave her account on 11 December 1988 did provide reasonable grounds to suspect that he had been involved in the offences for which he was arrested. Mr Hicks' involvement was quite different from Mrs Coliandris. He was an officer who was familiar with the course of the investigation. It was reasonable to suspect that he was one of those officers who was a party to LV being pressurised and/or intimidated into giving the account which she provided on 11 December. Alternatively or additionally, it was reasonable to suspect that Mr Hicks had sufficient knowledge of LV's account on 6 December 1988 to make it plausible that he was engaged in feeding her lines which was one of her primary complaints. I appreciate that Mr Hicks was involved with LV on 11 December only. If, however, it was reasonable to suspect that her statement of 11 December was untruthful, as it clearly was, it was also reasonable to suspect that Mr Hicks was unlawfully involved in procuring the making of that statement.

884. If, contrary, to my view, it was necessary to arrest Mr Hicks it was not unreasonable to arrest him. In the context of this case, at least, if the 'necessity test' was passed it is extremely difficult to see how the arrest could be labelled as unreasonable.

Summary

885. In my judgment the decisions to arrest Mrs Coliandris and Mr Hicks were unlawful. It follows that their claims for false imprisonment on the issue of liability will succeed unless they are defeated by the defence of limitation.

886. Both Mrs Coliandris and Mr Hicks plead that they have suffered personal injuries as a consequence of their false imprisonment. The defence of limitation, therefore, is not an absolute bar in their cases. The court has a discretion to disapply the defences and, as I have said, my understanding is that these defences will be considered at the

hearing which will be convened to assess damages unless, of course, the claims are settled by agreement.

887. All other Claimants have failed to establish that their arrests were unlawful. Accordingly, unless the detention consequent upon their arrests was unlawful for some other reason the claims for false imprisonment must fail.

888. The Defendant concedes that the statutory provisions which specify that a person's detention must be reviewed at appropriate intervals of time was not adhered to in the cases of Mr Mouncher, Mr Jennings, Mr Daniels, Mr Murray, Mr Morgan and Mrs Coliandris. Accordingly, the Defendant admits that there were periods of time when those Claimants were detained unlawfully. However, Mr Johnson QC submits that I can be satisfied that had the custody reviews taken place timeously in accordance with the statutory provisions the detention of each of those Claimants would have been authorised by the Custody Officer. In my judgment Mr Johnson QC is correct. I have no doubt that had the detention of those six Claimants been reviewed at the appropriate time the Custody Officer would have authorised their continued detention.

889. In these circumstances Mr Mouncher, Mr Jennings, Mr Daniels and Mr Murray have established false imprisonment but they are entitled to nominal damages only. In these circumstances it seems to me that their claims must be defeated by limitation. Even if those four Claimants could establish that they suffered personal injuries no court would disapply the limitation period simply to award nominal damages. I appreciate this point was not considered in detail at the oral hearing but it seems to me to be an inescapable conclusion. Mrs Coliandris' position is different in the sense that I have determined that her arrest was unlawful. In Mr Morgan's case his claim was issued inside the limitation period but he did not plead a cause of action based upon a failure to comply with the statutory provisions of PACE. Accordingly, he cannot make any claim, even for nominal damages.

890. All the Claimants required the Defendant to prove that their detention was lawful. From the documents which are available and having taken account of any submissions which are relevant I am satisfied that save in the respect which I have identified in this summary the defendant has proved that the Claimants' detention was lawful. There is no need for further elaboration.

Section 9

891. It remains for me to consider the claims for malicious prosecution brought by Mr Daniels, Mr Gillard, Mr Page and Mr Hicks and the claims under section 7 of the Human Rights Act 1998 which have been brought by Mrs Coliandris and which Mr Morgan wishes to pursue by way of amendment to his pleadings.

Malicious Prosecution

892. In my judgment these claims fall at the first hurdle. In Section 6 above I set out the legal principles upon which I must act in order to determine whether Mr Coutts was properly to be regarded as the prosecutor in this case. On the basis of findings I made in Section 8 he did not maliciously provide false information about the Claimants' alleged crimes to the CPS; the relevant facts were not exclusively within his knowledge – far from it since LW3 was, on any view, a team effort; his conduct was

not such as to make it virtually inevitable that a prosecution would result from his complaints.

893. In my judgment and in summary the relevant sequence of events was as follows. From the outset, Mr Coutts sought guidance from the CPS. At the meeting on 11 September 2003 he made it clear that LW3 officers would be seeking guidance from the CPS throughout the investigation and a comprehensive review following its completion. Following the arrests of civilian and police suspects (if not before) it became clear that the reviewing lawyer at the CPS would be the person who would have a crucial role in deciding whether any suspect was to be charged. That was abundantly clear from the evidence given by Mr Thomas which was not disputed. The decision to prosecute the core four was made by senior lawyers at the CPS. When Mr Hart became the reviewing lawyer, one of the first decisions he made was that he would not make the charging decision in respect of police suspects until the proceedings against the core four were concluded. The decision that the CPS should accept that PA was not fit to plead was made by Mr Hart and his view was endorsed by very senior lawyers at the CPS at a Director's Case Management Panel. Following the conviction of LV, AP and MG Mr Dean and Mr Bennett produced the Dean Update, Mr Bennett produced his assessment of the credibility of the core four, Mr Hart produced his Review as to Charge and, thereafter, a number of discussions took place between very senior members of the CPS and counsel. At the Director's Case Management Panel which met on 27 February 2009 it was decided that Mr Clements should make the decision about whether charges should be brought against the police suspects. He had expressed the view at the meeting that prosecutions were justified. Subsequently he provided a charging decision in writing. I find it impossible to conclude, in the light of this history, that Mr Coutts was the prosecutor. Both in form and substance the prosecutor was the CPS.

894. For reasons which I have explained in Section 7 there is no proper evidential basis to conclude that any officer from LW3 withheld evidence or potential evidence from the CPS before the decision to prosecute was made. There is certainly no evidence upon which to conclude that Mr Coutts orchestrated the withholding of evidence and/or withheld it himself. In my judgment what occurred in this case was no different to many other cases where there is a huge volume of documents. The vast majority of relevant documents were supplied by the police to the CPS in order that the CPS, in conjunction with counsel, could consider whether it was appropriate to bring a prosecution. A very small number of documents (comparatively) may not have found their way from the police to the CPS by the time the decision to prosecute was made but, in my judgment, that was not by reason of any bad faith or malice on the part of the police but rather this was the product of human error. In a very small number of instances the errors may have amounted to negligence as opposed to inadvertence, although no useful purpose would be served by trying to decide which it was. I am satisfied that there was no withholding of documents or evidence which was motivated by malice which was the product of bad faith.

895. It follows from these findings and those set out in Section 7 that there can be no question that the prosecution was brought maliciously. On that ground, too, the claims for malicious prosecution must fail.

896. I can deal with the issue of reasonable and probable cause quite shortly. Once malice or bad faith is removed from the equation and once it is accepted, as I accept, that the

vast majority of relevant documents were considered by leading and junior counsel before they advised it seems to me that one need look no further than the documents which counsel produced for establishing reasonable and probable cause. It is enough for me to list these documents without attempting to describe them in detail. The documents which establish reasonable and probable cause are the Dean Review, the Dean Update, the Credibility Assessment of the Core Four and the various advices written by counsel. Once the prosecution was launched, counsel produced a case summary and, in due course, a written opening statement. In my judgment the content of all these documents clearly justified the conclusion that there was reasonable and probable cause to prosecute Mr Daniels, Mr Gillard, Mr Page and Mr Hicks.

897. It is not without significance, too, that a number of officers made applications to Sweeney J to dismiss the charges brought against them pursuant to the provisions of Schedule 3 Crime and Disorder Act 1998. In summary a judge is empowered to dismiss charges brought against a person "if it appears to him that the evidence against the [person] would not be sufficient for him to be properly convicted". One of the Claimants who brought such an application was Mr Hicks. Sweeney J rejected the application; the submissions made to him and his decision can be found at Core Bundle Volume 15 pages 10942 – 10945. I am probably not bound by the ruling of Sweeney J as a matter of law but it provides very significant support for my conclusion that there were proper grounds upon which to prosecute Mr Hicks.

898. Mr Daniels, Mr Gillard and Mr Page made no application to dismiss. In all the circumstances, I think it appropriate to infer that they realised that such an application was very likely to fail.

The Claims under ECHR

899. I have already concluded that Mrs Coliandris' claim that the search of her home breached her rights under Article ECHR must fail (see paragraphs 451 to 453 above). Mr Morgan's proposed claim in respect of the search of his home is indistinguishable; accordingly no useful purpose would be served by permitting his application to amend his pleadings. There remains the issue of whether the length of time which Mrs Coliandris and Mr Morgan were kept on bail constituted a breach of their rights under Article 8.

900. Mrs Coliandris was arrested on 21 April 2005 and her bail came to an end on 27 February 2007. She was interviewed under caution on 21 April 2005 and then released on bail to return to Swansea police station on 9 June 2005. On that date further interviews under caution took place and, at their conclusion, Mrs Coliandris was bailed to appear at the Swansea police station on 29 November 2005. Mrs Coliandris appeared on that date and further interviews took place. At the conclusion of the interviews she was bailed to re-appear at Swansea police station on 16 February 2006. She remained on bail until 27 February 2007. As I have said Mrs Coliandris' bail was unconditional.

901. I should record that on 29 November 2005, Mrs Coliandris provided a prepared statement to her interviewing officers in which she complained about the length of time she was spending on bail. She did the same on 16 February 2006.

902. The strength of the case against Mrs Coliandris was assessed in the Dean Review. The conclusion reached was that Mrs Coliandris should not be prosecuted. It is of some note, however, that Mr Dean was sceptical about the accounts which Mrs Coliandris had given in her interviews under caution about the manner in which she had obtained statements upon LV on 11 December 1998. Put shortly Professor Coulthard had doubted whether Mrs Coliandris had been alone (as she maintained) when she had taken LV's statement and Mr Dean shared that scepticism.

903. Given the nature and extent of LW3 as a whole I do not consider that the period which Mrs Coliandris spent on bail constituted a breach of her Article 8 Rights. As I have said, already, I doubt whether a remand on unconditional bail even for a very significant period of time can attain a sufficient level of seriousness so as to constitute an infringement of Article 8 Rights. However, I am prepared to acknowledge that this may be to underestimate the impact of having to attend a police station albeit very infrequently and the stress and concern necessarily attendant upon the initial arrest and the extended period of bail. Accordingly, I have thought it prudent to consider whether any infringement of Mrs Coliandris' rights was justified.

904. I have no doubt that any such infringement was justified in this case. Although, as I have found, Mrs Coliandris' arrest was not justified that does not mean that her interviews under caution were not justified and the decisions to remand her on bail were not justified. It has not been suggested that there was no power to remand Mrs Coliandris on bail. As I have said the challenge relates to the time spent on bail. This was a very complicated and extensive enquiry and, as it happens, the case against Mrs Coliandris became more difficult to assess following her interviews under caution. As the Dean Review demonstrates Mrs Coliandris' accounts of how she had taken LV's statement on 11 December 1988 were open to some question. Notwithstanding the fact that the Dean Review concluded that Mrs Coliandris should not be prosecuted and, further, that Mr Thomas shared that view I do not consider that Mr Coutts and the LW3 officers who had investigated Mrs Coliandris were unreasonable to ask the lawyers to reconsider her case. That occurred and, shortly thereafter, Mrs Coliandris' bail came to an end. In my judgment her claim that her rights under Article 8 ECHR were unjustifiably infringed has not been made out.

905. Mr Morgan was on bail for a period of time which was significantly shorter. There are no circumstances in his case which distinguish his position from that of Mrs Coliandris. Accordingly no useful purpose would be served by permitting Mr Morgan to amend his claim form and/or pleadings to include a claim that his Article 8 Rights had been infringed, unjustifiably, by the length of time which he spent on bail.

Section 10

906. For the reasons which I have provided in Section 7 all the claims for misfeasance in public office fail and they are dismissed.

907. Mrs Coliandris and Mr Hicks succeed in their claim that they were the victims of false imprisonment. It remains to be seen whether their claim is, nonetheless, barred by limitation. That will be determined at a future hearing (when quantum will also be assessed, if necessary) unless their claims are settled. The remaining Claimants fail in their claims for false imprisonment and those claims are dismissed.

908. Mr Daniels, Mr Gillard, Mr Page and Mr Hicks fail in their claims for malicious prosecution and their claims are dismissed.

909. Mrs Coliandris fails in her claim that that her rights under Article 8 ECHR have been infringed. Her claim under section 7 Human Rights Act 1998 is dismissed. I refuse to permit Mr Morgan to amend his pleadings to allege a breach of his rights under Article 8 of ECHR since, on the merits, his claim would be indistinguishable from that of Mrs Coliandris and it would be bound to fail.