



Inspecting policing
in the public interest

**REVIEW OF THE
LESSONS LEARNED
FROM THE
METROPOLITAN POLICE
SERVICE'S
INVESTIGATION
OF HOME OFFICE LEAKS**



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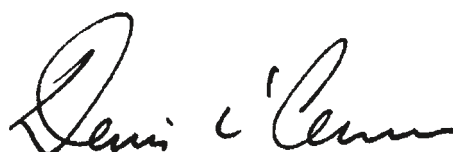
1. FOREWORD

The review of the lessons learned from the Metropolitan Police Service's investigation of Home Office leaks is a complex matter affecting Parliament, the Cabinet Office, the Home Office, the Metropolitan Police Service and the Crown Prosecution Service, not to mention senior individuals in public life.

The investigation into a series of leaks from the Home Office was regrettably not a successful enterprise. Sadly other criminal investigations involving Parliament and its members are not rare given the experience of the last three years. We must therefore anticipate that there will be similar events in the future and plan to avoid repetition of the circumstances which are the hallmark of this case.

The report provides a broad outline of the sequence of events only as an aid to identifying critical issues for the police and those they worked with on leaks affecting the Home Office in 2008.

I have not sought to adjudicate on the findings of the several individuals and bodies that have already looked at this issue. I have focussed on the value of involving the police in high profile enquiries concerning Members of Parliament, officials and others where a criminal prosecution is an option, but not necessarily the only way to bring resolution to problems encountered in the functioning of Government.



Denis O'Connor CBE QPM
Her Majesty's Chief Inspector of
Constabulary

2. EXECUTIVE SUMMARY

2.1 In November 2008 the Metropolitan Police Service started an investigation into a series of leaks from the Home Office. This resulted in the arrest of Christopher Galley, a civil servant; and Damian Green, a Member of Parliament (MP). In April 2009, having considered the evidence, the Director of Public Prosecutions announced that no charges would be brought against either man.

2.2 The arrest of Damian Green MP, a prominent front bench opposition spokesman, and the search of his Parliamentary office, attracted widespread criticism from the media and other Members of Parliament. This review is in addition to those already conducted into aspects of the case, its focus being upon the lessons learned from the police investigation.

2.3 As we now know the Home Office leaks attributable to Christopher Galley were not a threat to national security and yet the police became involved in an investigation. They did so as a result of a convergence of events; concern over the potential threat; and Cabinet Office guidelines which, on some readings, could be seen to have encouraged a police investigation. These guidelines allow not just for police investigation but also refer to matters relating to serious interference with the functions of Government. Departments and the Cabinet Office should have the capability to deal with the matter and should not have to rely on

the police. The smooth running of Government is an understandable concern but not an obvious matter for the police. Once the investigation had commenced the police believed they had a duty to pursue the evidence and to act 'without fear or favour'.

2.4 This review has illustrated that noble intentions are not good enough on their own when applied to high profile cases. In future, the police when acting 'without fear or favour' should do so based upon an assessment of the likelihood of success and realisation of outcomes. Such an assessment will be based on issues such as proportionality, seriousness, public interest, costs etc. Such cases will always involve making difficult choices and there must be an acceptance that by applying these tests the police may decide not to investigate or arrest politicians. The lessons learned from this and other more recent cases involving Parliament, Members of Parliament, officials and the police should inform a process for an appropriate police response which preserves the dignity of Parliament. However, nothing will prevent the police from commencing an investigation into any individual should they believe that it is warranted.

3. RECOMMENDATIONS

This review has identified four recommendations which I believe will achieve this aim:

Recommendation 1

That the Metropolitan Police Service together with the Association of Chief Police Officers (ACPO), review and formalise guidance on police investigations involving high impact cases, to fully incorporate the principles of ‘without fear or favour’.

Recommendation 3

That the Cabinet Office reviews its guidance to departments on leak investigations to clarify that police will have the lead in Official Secrets Act inquiries or other very exceptionally serious criminality, but that the Cabinet Office/departments will deal with other leaks and agree the guidance with police.

Recommendation 2

That the Cabinet Office reviews the Civil Service’s capability to respond to leaks and facilitates the development of appropriate standards of preventative security and investigation in accordance with departmental risks.

Recommendation 4

The police, Cabinet Office and Crown Prosecution Service jointly agree a protocol that provides checks and balances for future investigations recognising that decisions on the conduct of investigations must ultimately rest with the police.

4. INTRODUCTION

4.1 In October 2008 the Metropolitan Police Service received a request from the Cabinet Office to investigate a number of unauthorised leaks of information from the Home Office. Following some CPS consultation and approval from senior officers, investigators from the Counter Terrorist Command (SO15) subsequently arrested Christopher Galley, a Home Office civil servant; and Damian Green MP, a Conservative front bench spokesman, for offences connected to the leaks.

4.2 As a result of these events, this high profile case was to be the subject of a number of reviews. In December 2008 the Acting Commissioner of the Metropolitan Police Service¹ asked Sir Ian Johnston, as Chair of the ACPO Crime Committee, to review certain aspects of the case known as 'Operation Miser'. In April 2009 the House of Commons Home Affairs Committee published a report entitled *Policing Process of Home Office Leaks Inquiry*². Finally, in July 2009 the House of Commons Public Administration Select Committee published a report entitled *Leaks and Whistleblowing in Whitehall*³.

4.3 Sir Ian Johnston's review⁴ was conducted against a very tight timescale of 14 days. The Acting Commissioner requested that the review give a professional view on a number of areas including the proportionality of police action, the conduct of the investigation, and its future direction. Reviews conducted during the course of an investigation can only reflect a particular point in time. Often the evidence collated thereafter can markedly change the sense and emphasis of any such review. To undertake this task and gain a thorough understanding of every element was extremely challenging and has almost inevitably led to subsequent disquiet about the content of the Sir Ian's report particularly where the investigative picture was still in development.

4.4 As a result, these matters have been raised with Sir Ian and, following consultations, relevant redactions to his original report have been agreed with the Metropolitan Police Service to prevent any misunderstanding. These are reflected in the final version of the report released by the Commissioner of the Metropolitan Police Service, which for ease of reference appears in Annex 'A' of this review.⁵

4.5 During her evidence to the Home Affairs Committee on 20 January 2009, the then Home Secretary, the Rt. Hon. Jacqui Smith MP, undertook to instigate a review into the conduct of the leak inquiry once any proceedings relating to the investigation had been determined.

4.6 On 16 April 2009 the Director of Public Prosecutions (DPP) Keir Starmer QC announced that no charges should be brought against either Christopher Galley or Damian Green following the Metropolitan Police Service investigation into the leaks of information from the Home Office.

4.7 Following the DPP's decision, the Home Secretary asked Her Majesty's Chief Inspector of Constabulary to review the case. The Terms of Reference for the review were set as follows:
"To undertake a review of the lessons learned from the Metropolitan Police investigation into Home Office leaks."

5. METHODOLOGY

5.1 This review is underpinned by a methodology that encompasses:

- Interviews with principals involved in the case;
- Interviews with other key stakeholders;
- Analysis of written material relative to the case including:
 - Sir Ian Johnston’s Review;
 - Home Affairs Committee report;
 - Public Administration Select Committee report.
- Preparation and delivery of a report for the Home Secretary, and
- Publication of this report and Sir Ian Johnston’s Review of ‘Operation Miser’.

5.2 This review will not analyse other reports in detail other than to provide an account of events and outline whether those reports present a practical way forward in relation to future investigative practice on leaks.

6. BACKGROUND

6.1 “Leaks have long been an occupational hazard in government. They are widely seen as damaging”⁶. In essence there are two important variants on ‘disclosure’ of official information, that which is authorised by ministers and the unauthorised disclosure of information from civil servants.

6.2 It is quite clear that civil servants have a duty of confidence in respect of information as required under the Civil Service Code 2006 which states that they “must not disclose official information without authority.”⁷

6.3 Not every unauthorised disclosure of information amounts to a criminal offence. When the *Official Secrets Act 1989* was introduced the Home Secretary said “We asked the House today to agree in principle that the criminal law should be prised away from the great bulk of official information.”⁸ The Act identifies six categories of information whose disclosure might be subject to criminal sanctions⁹. In relation to this case the category of security and intelligence is relevant and the subject of comment later in this report.

6.4 This principle was further reinforced by the *Freedom of Information Act 2000*, the effect of which could in certain circumstances legitimise a civil servant disclosing government information.

6.5 The majority of leaks are investigated internally within Government departments in accordance with guidance

issued to those departments by the Cabinet Office. It is responsible for formulating security policy standards for Her Majesty’s Government and ensuring the operational delivery of such policy. It also has a role in providing advice and assistance to departments.

6.6 In some exceptional situations the police may be asked to investigate the circumstances of leaks. This function has traditionally fallen to SO15 (formerly Special Branch). The history of investigations into unauthorised disclosures, whether carried out by the police or conducted internally, has been that they rarely identify the source of a leak, with some notable exceptions.

6.7 The source of leaks is a complex factor in any investigation because there is a widely held view outside government that “the majority of leaks tended to be political in origin, primarily coming from special advisors or ministers, and undertaken with political goals in mind.”¹⁰

6.8 Leaks from Government are a perennial issue and need a measured proportionate response, because the public interest associated with them is always likely to be in dispute, as it was in this case. The proportionality of the response to leaks is further influenced by the high threshold required for a prosecution for offences under the *Official Secrets Act 1989* and the Common Law offence of ‘Misconduct in a Public Office’.

7. SUMMARY OF EVENTS

7.1 The referral

7.1.1 During the summer of 2008 there was discussion between the Home Office and the Cabinet Office about the persistence and impact of leaks from the Home Office, the source of which was unknown at the time. Both Departments were concerned that there was clearly a person or persons close to the centre of the Home Office with possible access to secret material, putting security at risk. The Cabinet Office was particularly concerned that there might be a link between these leaks and earlier leaks affecting national security. It was, therefore, agreed that the Cabinet Office should approach the police about involving them in the investigation.

7.1.2 There had been 31 leaks of information over the previous 4 years, of which 20 had occurred between February 2006 and September 2008. All of the leaks, with the exception of one classified as 'Secret', were either 'Unclassified' or 'Restricted'. The effect of the leaks was said to be "damaging trust within and confidence in the Home Office and particularly harming relationships between Ministers and officials".¹

7.1.3 The opportunity to involve the police in the investigation of leaks occurred as a result of two significantly important Cabinet Office documents. The first was a draft protocol between the Cabinet Office and SO15 entitled

"Handling unauthorised disclosures and national security cases". Paragraph 2 of this document refers to "handling cases in which a criminal investigation is or may be commenced under the *Official Secrets Act 1989*", whilst paragraph 27 refers to handling such cases "Where it is believed that an offence under the *Official Secrets Act 1989* or any other serious criminal offence may have been committed."

7.1.4 The second Cabinet Office document is entitled *Guidance on leak investigation policy and procedures* which is issued to all Government departments. Within the guidance is a leak threshold table where reference is made to a potential police investigation in circumstances where serious leaking is "Serious and damaging interference with the functions of government". The effect of both documents will be highlighted in detail later in this report but suffice to say they provide a rationale in this case for inviting a police investigation of the Home Office leaks below the 'Secret' level.

7.1.5 Following the discussions between the Home Office and Cabinet Office, on 8 October 2008 the Cabinet Office wrote a letter to the Assistant Commissioner Specialist Operations in the Metropolitan Police Service asking whether the police would investigate a series of leaks. The letter referred to the Home Office leaks and, despite the fact that all but one of the unauthorised disclosures were not at secret level, stated "We are in no doubt

that there has been considerable damage to national security already as a result of some of these leaks and we are concerned that the potential for future damage is significant.”¹²

7.1.6 The reference in the letter was later commented upon by the Home Affairs Committee who said “We think it was unhelpful to give the police the impression that the Home Office leaker(s) had already caused considerable damage to national security.”¹³ When invited to comment, the author of the letter explained there had been a number of previous cross government leaks of material classified as ‘Secret’, which might have been attributed to the Home Office. The source of the leaks had not been resolved as a result of previous investigations by SO15 and, whilst there was no direct evidence to link the more recent Home Office leaks with those investigations, they might have been associated. It was in the mind of those involved at this stage that a fresh police investigation could establish evidence of a connection between the two sets of leaks and identify their source.

7.1.7 In response to the request from the Cabinet Office the police agreed that, subject to a scoping exercise being conducted to establish if any criminal offences had been committed, an investigation would commence. This scoping exercise took place during the remainder of October 2008.

7.1.8 During the same time frame a Cabinet Office internal investigator was conducting an investigation of Home Office leaks which had begun in September 2008. This investigation identified a Senior Personal Secretary

working in the Home Office Strategy Unit named Christopher Galley as a strong suspect in relation to five leaks occurring from October 2007 to September 2008. These leaks were either ‘Unclassified’ or classified as ‘Restricted’.

7.1.9 As a result of this revelation, on 22 October 2008 officers held a consultation limited to a general set of facts with the Crown Prosecution Service. The consultation concluded that there did not appear to be sufficient evidence to constitute an offence under the *Official Secrets Act 1989*, but the behaviour of a serial leaker might amount to a common law offence of ‘Misconduct in a Public Office’.

7.1.10 By 31 October 2008 the scoping exercise had been completed. Christopher Galley was suspected of being responsible for the leaks and would be investigated for an offence of ‘Misconduct in a Public Office’. Although the focus of the investigation was to be the five identified leaks the police were also aware of their previous unsuccessful *Official Secrets Act* investigations and did not discount the possibility of discovering evidence linked to these previous, more serious leaks.

7.2 The investigation

7.2.1 Once the investigation had commenced the police concentrated their efforts pursuing lines of enquiry to gather evidence. They were at the early stages of the investigation and whilst Christopher Galley remained a strong suspect they were also pursuing other lines of enquiry. During this time it was agreed that Mr Galley should remain in his post as Senior Personal Secretary whilst enquiries continued. This was to change when a further unauthorised disclosure of information from the Home Office was published in a national newspaper on 15 November 2008.¹⁴

7.2.2 Once again investigators strongly suspected Christopher Galley of this leak and it was decided he could no longer be allowed to remain in his role at work without risking further disclosures of Home Office information. As a result of this development, at 5.50 am on 19 November 2008 Christopher Galley was arrested at his home address for an offence of 'Misconduct in a Public Office'.

7.2.3 During his time in custody Christopher Galley admitted responsibility for four unauthorised disclosures of Home Office information. He denied passing the information to any journalist, but admitted passing the information to Damian Green MP, a front bench spokesman for the Opposition. Letters from the MP on House of Commons' headed note paper which were recovered from Christopher Galley's home address confirmed this assertion. Christopher Galley stated his motivation for leaking the information was to win favour with a prominent member of the Conservative party in the expectation he

might secure employment with them. Christopher Galley was released from custody on police bail at 11.00 pm the same day, pending further enquiries.

7.2.4 At 10.00 am on 21 November 2008 Christopher Galley attended Paddington Green Police Station on a voluntary basis and was re-arrested. On this occasion he provided further information regarding his involvement and after interview was released on bail.

7.2.5 Christopher Galley's revelations regarding his association with Damian Green were immediately reported to senior officers. They identified there were challenging issues to be addressed before making decisions on the most appropriate course of action to take in relation to the MP, such as the option to search Damian Green's Parliamentary office and how Parliamentary Privilege might impact on the investigation.

7.2.6 With regard to these two issues, following Christopher Galley's release, early contact was made with the Serjeant at Arms at the Palace of Westminster and with the Crown Prosecution Service. Advice was also sought from the Metropolitan Police Service Legal Services.

7.2.7 Following the disclosures by Galley, the Metropolitan Police approached the Crown Prosecution Service regarding potential offences which might have been committed by a Member of Parliament. At the request of the police they provided advice which was restricted to the offence type committed by the MP. While arrest and search are matters for the police, issues of proportionality and potential value are matters upon which the CPS can have a view but as far as we can ascertain, such views were not sought.

7.2.8 Discussions with the Serjeant at Arms were at this early stage restricted to general advice about searching an MP's office at the Palace of Westminster. Details of the specific MP were not given at this time.

7.2.9 Following these events, on the 26 November 2008 two strategic meetings¹⁵ (known as Gold Groups) were held to consider what further action should be taken in respect of the investigation. The meetings were attended by a number of senior officers and some senior members of the investigation team. Cabinet Office staff were not present. Detailed consideration was given to what action should be taken regarding Damian Green. It was agreed there were grounds to interview Damian Green to determine his role in the leaks either by requesting his voluntary attendance at a police station to be interviewed or by effecting his arrest. The meeting recognised the implications of depriving a high profile Member of Parliament of his liberty but concluded, given the seriousness of the offence, the public interest and a number of other considerations around evidence, that they should arrest him as the police had a duty to "act without fear or favour".¹⁶

7.2.10 The second Gold Group meeting was held following a briefing to the Deputy Commissioner¹⁷ about the decision of the group to arrest Damian Green. During the second meeting cognisance was given to the views of the Deputy Commissioner as they related to the manner of Damian Green's arrest.

7.2.11 Further consideration was given to the arrangements for the arrest of Damian Green and searching premises connected to him. The meeting decided

the arrest and searches should be discreet, with the minimum of disruption. In particular it was agreed that, if possible, the arrest would be carried out at the MP's home address and not in the presence of his children.¹⁸

7.2.12 On the same day search warrants were obtained from the court for Damian Green's home addresses and his constituency office in Kent. In respect of his Parliamentary office further discussions were held with the Serjeant at Arms, who was invited to give consent to search his office under the provisions of the *Police and Criminal Evidence Act 1984 (PACE)* and accompanying *Codes of Practice*. The Serjeant at Arms gave written consent the following day having first sought advice from other Parliamentary officials.

7.2.13 Recognising the media impact of arresting a prominent MP, the Gold Group developed a response for handling media interest,¹⁹ as well as identifying persons who should be notified of his arrest.²⁰ The intention was for senior officers to communicate the news of Damian Green's arrest to key stakeholders near to the time of the arrest. The Home Secretary, Home Office and the Mayor of London in his capacity as Chair of the Metropolitan Police Authority were included in this list.

7.2.14 Officers having failed to locate him earlier at home on 27 November 2008, Damian Green was eventually arrested in Kent at 1.37 pm that day on suspicion of offences relating to 'Misconduct in Public Office'. Shortly after his arrest Damian Green indicated the files the police sought would be found in his Parliamentary office – later confirmed during its search.

7. Summary of events

7.2.15 Damian Green was subsequently interviewed at a police station in the presence of his legal advisor. At 11.09 pm the same day he was released on police bail to return on 17 February 2009 pending further enquiries.

7.2.16 The investigation continued thereafter as did further consultation with the Crown Prosecution Service. However between 2 and 16 December 2008,²¹ it was the subject of a review by Sir Ian Johnston, the then Chief Constable of the British Transport Police.

7.2.17 The investigation continued until the provision of a case file to the Crown Prosecution Service on 9 April 2009. The submission of this file was delayed whilst legal representatives resolved issues relating to Parliamentary Privilege.

7.2.18 On 16 April 2009 the Director of Public Prosecutions decided there was no realistic prospect of a conviction against either Damian Green or Christopher Galley.²² In particular he highlighted his application of the Attorney General's *Reference No 3 of 2003(2004) EWCA Crim 868* where the Court of Appeal held that in a case of 'Misconduct in a Public Office' the threshold for a successful prosecution is a high one. Whilst the Director of Public Prosecutions noted that a police investigation was inevitable given the pattern of leaks, he stated "the overall evidence of damage in this case is not capable of meeting the threshold necessary for the institution of criminal proceedings."

8. FINDINGS

8.1 Decision to involve the police

8.1.1 There was a history of the Metropolitan Police Service investigating breaches of the *Official Secrets Act 1989* and unauthorised disclosures of information at the request of the Cabinet Office. This arrangement was underpinned by the Cabinet Office draft protocol with SO15²³ and the guidance issued to government departments regarding leak investigations.²⁴

8.1.2 In the context of this case these two factors were significant when considered together. Given the police involvement in previous unauthorised disclosure cases there was an expectation they would investigate the Home Office leaks. In addition, the application of the leak investigation guidance to departments and the draft joint protocol enabled the police investigation of a series of leaks which represented a lower level of harm.

8.1.3 There is no doubt the level of unauthorised leaks of information from the Home Office was a source of frustration and, to a degree, embarrassment. They were characterised by the Home Office Permanent Secretary in the following terms - “These leaks were damaging trust within and confidence in the Home Office, and particularly harming relationships between Ministers and officials.”²⁵ Against this background it is understandable that the Home Office

turned to the Cabinet Office for assistance even though they had also commissioned an enquiry into the leaks using a Cabinet Office approved internal investigator.

8.1.4 The frequency of the leaks and the failure to identify the sources or prevent the leaks raises a question about the effectiveness of the Departmental security regime that was in place over the period of the leaks. In particular, the security controls were compromised in an important part of the Home Office. Had a risk-based approach to security been applied in that area the level of harm incurred might have been avoided even in the absence of departmental trained investigators and a lack of analytical capability. The Department was reliant upon the availability of Cabinet Office internal investigators to support them in investigating leaks. Ironically, the identification of Christopher Galley by an internal investigator illustrates the value of using the skills of an experienced investigator and reinforces the benefits of in-house capabilities.

8.1.5 The response of the Cabinet Office to the problem (in addition to providing an internal investigator), was to request the assistance of SO15. They did so through the letter of 8 October 2008 when concern was not only expressed about the Home Office leaks, but reference was also made to previous leak investigations and “considerable damage

to national security”²⁶ In fact there had been a small number of previous cross government leaks from December 2005 to the early part of 2006 involving threats to national security which had not been resolved through investigation or otherwise. Amongst these were a few where Home Office officials might have had access to the information concerned but it was a possibility, no more. These events were to all intents and purposes conjoined to the 31 Home Office leaks by that letter.

8.1.6 It is now clear that the vast majority of the Home Office leaks were of a low security classification, and the one previously classified as Secret no longer posed a threat to national security at the time of referral. Despite this fact, application of the leak guidelines to government departments as they related to “Serious and damaging interference in the functions of government”²⁷ legitimised the request for and the deployment of police assistance. In this case they were invited because of persistent leaks from the Home Office, which were believed by the Cabinet Office to be possibly linked to previous cross-government *Official Secrets Act* leaks, but they remained involved when other possible criminality was revealed.

8.1.7 By convention, because of their additional investigative capabilities and powers, the police have in the past been involved in investigating leaks involving threats to national security. The police remained engaged because they felt it was their duty once involved to go where the evidence took them and because any withdrawal could have been misinterpreted adversely as partiality one way or another.

8.1.8 Involving the police in matters which effectively amount to the smooth running of government departments raises a significant question about the appropriateness and value of such an approach. The police are generally considered to be part of the state, but not an instrument of the executive as such. Legally and philosophically they have a measure of independence from the executive. This principle was upheld in the case of Blackburn²⁸, in Lord Denning’s words “I have no hesitation in holding that, like every constable in the land, (the Commissioner of the Metropolitan Police) should be, and is, independent of the executive”.

8.1.9 The involvement of the police in investigating non *Official Secrets Act 1989* leaks may in exceptional cases be appropriate but their involvement needs to be very carefully considered in the future, particularly if other options exist, eg discipline procedures to deal with civil servants who breach the Civil Service Code. In such exceptional circumstances the police should exercise their operational discretion by applying the most rigorous and thorough tests to the value of their involvement, whether it represents the best use of resources and the likelihood of success. This approach is consistent with the findings of the case of *R v Chief Constable of Sussex, ex parte International Trader’s Ferry Limited* [1999].²⁹ Such an approach will be the subject of further comment later in this report.

8.1.10 In our view the use of police resources in this case, although well intended was, to say the least, debatable, especially as more information was gathered which raised doubts about the

wisdom of continuing with the investigation. This was an important consideration for the Acting Commissioner in setting the Sir Ian Johnston review in motion. The need to adopt procedures whereby the intentions of the investigation are regularly reviewed against outcomes will be the subject of further comment later in this report.

8.2 The nature of the investigation

8.2.1 The Home Office appointed a Cabinet Office approved investigator to conduct an internal inquiry into the leaks shortly before the commencement of the police scoping exercise. It is important to note that it was this inquiry which identified Christopher Galley as a suspect who potentially had access to Private Office documentation including ‘Secret’ material. The Department was understandably concerned as he posed a security risk and it was fearful as to the extent of that risk.

8.2.2 His identification led to the scoping activity being reduced from the initial 31 leaks originally referred by the Home Office to 5 of a low level of security classification, on the basis of Christopher Galley’s suspected involvement. At this stage it would have been possible to cease police involvement and leave the Home Office to deal with the matter.

8.2.3 Despite this development the scoping exercise had not discounted the prospect of a police investigation. The identification of the offence of ‘Misconduct in a Public Office’ and a belief that the pursuit of Christopher Galley might lead to a connection with previously investigated leaks were

considered to be relevant. There was a lack of intelligence, let alone evidence, for this latter assumption.

8.2.4 Once the criminal investigation had commenced it was possible, although challenging, to avoid the eventual consequences. An investigation will generally lead the police to go where the evidence takes them in their quest to establish facts and search for the truth, as they work towards a criminal justice resolution. In this case a critical point came when Christopher Galley during interview alleged he was passing the information to Damian Green, MP.

8.2.5 The alleged involvement of Damian Green was a very significant development which was bound to lead to high levels of public scrutiny requiring senior level consideration by the Metropolitan Police Service. Once it was known he was the subject of a police investigation it was predictable that the matter would become high profile. Those involved in making crucial decisions did so believing they were acting in the public interest and that they must act ‘without fear or favour’.³⁰ This is a difficult balance to strike, especially when not all of the facts about an individual can be known before an arrest. In such circumstances it would have been beneficial to have a process of checks and balances between what a further police investigation might reveal and the public interest issues in the case. They did, however, consider the implications of searching his property and seizing documents which might attract Parliamentary Privilege.

8.2.6 The public do not expect the police to be inhibited in investigations because of the status of individuals. The emerging

experience from a series of high profile cases involving officials, parliamentarians and the media in recent times is that noble intentions need to be considered against the added value of police involvement, the potential use of scarce highly skilled resources, and the likelihood of success.

8.2.7 The notion of acting ‘without fear or favour’ is still a relevant consideration. Indeed the police have signalled that they will continue to use their discretion ‘without fear or favour’ in the future, although this sentiment will not be driven purely by intentions but tempered by consideration of what is likely to be realised or the potential for a successful outcome.

8.2.8 The Commissioner of the Metropolitan Police Service has indicated there are lessons to be learned in this regard. He fully supports this shift of emphasis in decision making which is already being applied within his force. The Commissioner points to the evidence of the Metropolitan Police Service handling of the Telegraph revelations about the expenses of Members of Parliament to support his contention.

8.2.9 To date this thinking has not been formalised and had not been set out at the time of this enquiry, but it should be now.

8.3 Investigative issues

8.3.1 As a result of this review and that conducted by Sir Ian Johnston on behalf of the Acting Commissioner of the Metropolitan Police Service, a number of investigation related matters are worthy of comment.

8.3.2 Some were surprised by the Metropolitan Police Commissioner’s decision to commission a review shortly after Damian Green’s arrest. There is a precedent for taking such action, in major investigations, for example in murder, rape and high profile cases where a review plays an important role in providing checks and balances as they relate to the progress of the investigation. The only variant in this review is that it questioned the value and diligence of Operation Miser. In short, the objective was to give the Metropolitan Police Service the benefit of a relatively considered objective view at a crucial stage of the inquiry. Adopting a staged approach including reviews is sensible and is reflected at Recommendation 4 of this report.

8.3.3 Sir Ian Johnston concluded that the arrest of Damian Green was not proportionate. Senior Metropolitan Police Service officers responsible for making the decision sanctioning his arrest did not and do not agree with this conclusion and contend it was proportionate. Some but not all the justifications are usefully replicated in pages 18 to 20 of the Johnston report (see Annex A). It would not be appropriate for this review to comment upon the weight of each set of arguments; save to comment that for this matter still to be contested at this stage is regrettable. Such a situation could be avoided by a realisation/outcome based approach and if necessary appropriate legal advice.

8.3.4 Sir Ian Johnston also made a number of observations about the investigation related to procedural issues and this review has established that the matters highlighted are being addressed by the

Metropolitan Police Service. It should be noted that some parties are passionately contesting particular findings, while some feel this way about the findings in general.

8.3.5 The convention that SO15 Counter Terrorist Command will investigate *Official Secrets Act* leaks and their involvement in this case led to their being a misleading perception as to the seriousness and nature of the matters under investigation. This may be seen as a presentational issue within the police but it will almost certainly have wider repercussions.

8.3.6 The difficulties posed for lawyers and police officers alike in respect of Parliamentary Privilege have been a common theme arising out of both reviews. The absence of a clearly established procedure to inform the most effective way of resolving such claims ultimately contributed to delays in the decision not to charge either man. The Speaker has created a protocol placing himself as the point of contact for investigations seeking the execution of warrants. Procedures do exist elsewhere in other constitutions as to how Parliamentary Privilege is dealt with during the course of police investigations.³¹

8.3.7 The searching of Damian Green's office in Parliament without a search warrant caused considerable disquiet. The police were actually following the procedures prescribed in the *Police and Criminal Evidence Act 1984, Code of Practice B*³² and were legally obliged to pursue the option of gaining consent to search his office before considering the option of obtaining a search warrant. This was subsequently acknowledged by the

Home Affairs Committee report which stated "The police were following the procedure set down in statute."³³

8.3.8 The Home Affairs Committee also recommended the adoption of a protocol setting out the exceptional circumstances in which a politician would be informed of any police operation. This was a reference to the Mayor of London in his capacity as Chair of the Metropolitan Police Authority being informed of Damian Green's arrest shortly before it occurred. Nationally, it is recognised by the Association of Chief Police Officers as good practice that the police carry out community impact assessments in relation to high profile and sensitive operations. The consequence of the assessment is that frequently in such cases, Chief Officers inform Police Authority Chairs, as well as other community leaders. When they choose to do so is an issue of timing which is often influenced by operational considerations. I, therefore, do not believe a protocol is necessary. It is sensible to alert those in positions of responsibility who do not have an immediate conflict of interest but will have to respond to the consequences of high profile police action.

8.3.9 Furthermore, the potential for a perceived conflict of interest in respect of the Home Office and Cabinet Office was recognised. To avoid any suggestion of political interference these Government Departments and their Ministers were not informed of the progress of the investigation, including Damian Green's arrest, until shortly before that event. This decision was justified on the grounds of operational confidentiality and in the future should be balanced with

the need for key stakeholders to be involved in constantly reviewing the case providing there is no conflict of interest.

8.3.10 The benefits of police investigators obtaining early legal advice from the Crown Prosecution Service in serious crime cases is recognised as best practice nationally by both organisations. In this case SO15 did seek such advice during the scoping phase, prior to the arrest of Damian Green and thereafter during the case file preparation phase. Early consultation by the police was largely oral and restricted to general advice concerning offence type and provided at an appropriate level within the Crown Prosecution Service. Once it was known a Member of Parliament was involved the case was kept under constant review at a senior level within the Crown Prosecution Service.

8.3.11 The use of the offence of ‘Misconduct in a Public Office’ was a key influence in this case. Early advice from the Crown Prosecution Service to the police, which was limited to offence type, suggested the circumstances of the Home Office leaks may have amounted to such an offence. This advice was subsequently supplemented by guidance contained within the *Attorney General’s Reference No 3 of 2003* as it relates to the high level of threshold required to secure a prosecution in such offences. The principle in the Reference stated “The threshold is a high one requiring conduct so far below acceptable standards as to amount to an abuse of public trust in the office holder.” It is not clear to what extent this advice was applied in respect of police actions.

8.3.12 This approach contrasts sharply with that taken by the two organisations

in respect of the Parliamentary expenses case though it is acknowledged in the case under review that the implications were obvious from the outset. Here a more formal approach by more senior representatives from the Metropolitan Police Service and Crown Prosecution Service was employed from an early stage of referral. Those involved in consideration of the case were able to assess issues such as likely outcomes, options for resolving allegations and the most appropriate use of police resources. This approach has real merit and could be part of a model for dealing with other high profile, complex and sensitive cases involving Parliament.

8.3.13 The challenges for the police associated with investigating leak investigations have been ably demonstrated in this case. The *Official Secrets Act 1989* removed from the protection of the criminal law the vast majority of official information, as was the position in this case. The use of the offence of ‘Misconduct in a Public Office’ requires a high threshold and many interviewed expressed reservations about the appropriateness of such an offence, given the constraints imposed by current legislation and the difficulties of securing a conviction for such matters. Concern was also expressed in 1997 by the Committee on Standards in Public Life who stated “A common law offence of ‘Misconduct in a Public Office’ exists at present and prosecutions are still undertaken from time to time. We believe that a new statutory offence should be developed from the common law offence.”³⁴ To date the law has not been amended, but it further illustrates the reservations held by many regarding this offence and the difficulties of applying it to an investigation.

9. CONCLUSIONS

9.1 Experience tells us that the investigation of leaks, particularly those involving national security or with a political dimension, are fraught with difficulties. In this case a number of well-motivated people inside and outside policing were caught up with dealing with leaks which had come from the Home Office over a four year period. Their intentions were to staunch the leaks and to potentially discover the sources of leaks of national security material but realisation proved difficult and the outcome problematic.

9.2 When the stakes are high, commensurate measures should be put in place to thoroughly test the value of police involvement and the likelihood of success.

9.3 After due consideration of the police response and the role other bodies played, this review makes four recommendations:-

9.1 Emerging guidance

9.1.1 The lesson learned from this and other high profile cases with similar characteristics is that there needs to be a formalisation of best practice as it relates to sensitive and high impact cases. Investigations with Parliamentary implications are relatively rare and are not guaranteed to occur within a predictable timeframe. For this reason there are clear benefits in capturing best practice for the

benefit of those charged with the responsibility of conducting enquiries in the future.

9.1.2 The police need to be able to retain their impartiality and exercise discretion acting ‘without fear or favour’. In doing so they need to be confident of moving from a ‘without fear or favour’ approach based on intentions to one that also considers the likely realisation and outcomes.

9.1.3 The challenge is to ensure that the intention of the investigation is subject to tests as they relate to: the value of police involvement (including the cost in money and reputation terms); whether the commitment of scarce highly skilled investigative resources could be more effectively deployed; and the likelihood of success. In regard to the last test the police should be willing not to proceed and be prepared to stand by their decisions ‘without fear or favour’ where tests are not fulfilled. Decisions should be capable of being justified in an open and transparent fashion.

Recommendation 1

That the Metropolitan Police Service together with the Association of Chief Police Officers (ACPO), review and formalise guidance on police investigations involving high impact cases, to fully incorporate the principles of ‘without fear or favour’.

9.2 Government departmental capability

9.2.1 For the police to be more appropriately deployed in the future, it would be helpful if Cabinet Office/ departments could operate to an agreed standard of security in relation to prevention and investigation. In the absence of effective response the Home Office leaks continued over a four year period with corrosive consequences. In the future departments should adopt a risk based approach to protective security with analytical, investigative and preventative capabilities. This approach allows for some cost efficiency, for example in the area of vetting, to, in part, offset any funding implications. The Home Office Permanent Secretary has welcomed this proposal and is reviewing steps to improve the department's capabilities.

Recommendation 2

That the Cabinet Office reviews the Civil Service's capability to respond to leaks and facilitates the development of appropriate standards of preventative security and investigation in accordance with departmental risks.

9.3 Cabinet Office and departmental guidance

9.3.1 Given the high threshold for prosecution in leak cases, this should be reflected in the guidance issued by the Cabinet Office so that police are not likely to be deployed when offences do not meet the *Official Secrets Act 1989* levels. Alternatives could be considered in very exceptional cases which could seriously threaten the well being of the UK in, for example, economic terms. Government departments of course retain the same duty as everyone else to report suspected breaches of the criminal law to the police. Departmental and cross-government matters, including leaks which are embarrassing, should be addressed through internal security procedures. The greater the clarity between these two positions the better they will operate.

Recommendation 3

That the Cabinet Office review its guidance to departments on leak investigations to clarify that police will have the lead in Official Secrets Act inquiries or other very exceptionally serious criminality but that the Cabinet Office/departments will deal with other leaks and agree the guidance with police.

9.4 A protocol for future investigations

9.4.1 In order to inform police and other stakeholders as to the criteria for involving the police in future leak investigations, an illustrative outline of a series of checks and balances in the form of a protocol is provided at Annex 'B'. The aim of the protocol is to develop a staged process between the police, the Crown Prosecution Service, Cabinet Office and a designated Parliamentary official to deal with investigations of this nature. The Protocol describes a process which encourages key stakeholders to contribute to the decision making, whilst recognising the independence of each organisation. The aim is to apply a discipline of supportive, collective reasoning to a wide range of considerations including likelihood of success and assessment of outcomes. In making this recommendation it is suggested the Protocol can be applied more widely to other allegations of serious crimes involving Parliament, Members of Parliament and officials.

Recommendation 4

That the police, Cabinet Office and Crown Prosecution Service jointly agree a protocol that provides checks and balances for future investigations recognising that decisions on the conduct of investigations must ultimately rest with the police.

ENDNOTES

- ¹ Sir Paul Stephenson was Deputy Commissioner of the Metropolitan Police Service until 1 December 2008 when he became Acting Commissioner upon the resignation of Sir Ian Blair. He became Commissioner of the Metropolitan Police Service on 28 January 2009.
- ² Home Affairs Committee, Fourth Report of Session 2008-09, *Policing Process of Home Office Leaks Inquiry*, HC 157.
- ³ Public Administration Select Committee, Tenth Report of Session 2008-09, *Leaks and Whistleblowing in Whitehall*, HC83.
- ⁴ Metropolitan Police Service, *Redacted version of Review of Operation Miser*, Sir Ian Johnston, December 2008.
- ⁵ This matter created significant public debate and therefore the MPS considered it appropriate due to these exceptional circumstances to release their review in the public interest. Such release aids the police and others who may find the lessons learned less understandable without it.
- ⁶ Public Administration Select Committee, Tenth Report of Session 2008-09, *Leaks and Whistleblowing in Whitehall*, HC83, para 8.
- ⁷ Cabinet Office, *Civil Service Code*, June 2006, para 6.
- ⁸ HC Deb 21 December 1998, col 460.
- ⁹ *Official Secrets Act 1989*, Chapter 6, defines six categories of information whose disclosure is subject to criminal sanction as security and intelligence; defence; international relations; crime and special investigation powers, that resulting from unauthorised disclosures and entrusted in confidence; and that entrusted in confidence to other States or international organisations.
- ¹⁰ Public Administration Select Committee, Tenth Report of Session 2008-09, *Leaks and Whistleblowing in Whitehall*, HC83, Answer by David Hencke of the Guardian to Q 171.
- ¹¹ Home Affairs Committee, Fourth Report of Session 2008-09, *Policing Process of Home Office Leaks Inquiry*, HC 157, para 7.
- ¹² Letter to Assistant Commissioner Robert Quick from Chris Wright, Director of Security and Intelligence, 8 October 2008 (mistakenly dated 8 September 2008).
- ¹³ Home Affairs Committee, Fourth Report of Session 2008-09, *Policing Process of Home Office Leaks Inquiry*, HC 157, para 15.
- ¹⁴ Daily Mail, *Serious violent crime is going up NOT down, Home Office Chief admits*, 15 November 2008.
- ¹⁵ Metropolitan Police Service, *Gold Group minutes Operation Miser*, 26 November 2008.
- ¹⁶ Metropolitan Police Service, *Gold Group minutes Operation Miser*, 26 November 2008, para headed Public Interest.

- ¹⁷ Sir Paul Stephenson was Deputy Commissioner until 1 December 2008 when he became Acting Commissioner. He became Commissioner of the Metropolitan Police Service on 28 January 2009.
- ¹⁸ Metropolitan Police Service, *Gold Group minutes Operation Miser*, 26 November 2008, para headed Arrest and Search Plans.
- ¹⁹ Metropolitan Police Service, *Gold Group minutes Operation Miser*, 26 November 2008, para headed Media.
- ²⁰ Interview of Mr Robert Quick (Assistant Commissioner of Specialist Operations until 10 April 2009).
- ²¹ Metropolitan Police Service, *Redacted version of Review of Operation Miser*, Sir Ian Johnston, December 2008.
- ²² Director of Public Prosecutions, *Decision on prosecution – Mr Christopher Galley and Mr Damian Green MP*, Keir Starmer QC, 16 April 2009.
- ²³ Cabinet Office, *Handling unauthorised disclosures and national security cases – Protocol between Cabinet Office on behalf of Her Majesty’s Government and the Metropolitan Police Counter Terrorism Command (SO15) DRAFT*, October 2008.
- ²⁴ Cabinet Office, *Guidance on leak investigation policy and procedures*, October 2008.
- ²⁵ Home Affairs Committee, Fourth Report of Session 2008-09, *Policing Process of Home Office Leaks Inquiry*, HC 157 Para 7 and Q5 of Sir David Normington.
- ²⁶ Letter to Assistant Commissioner Robert Quick from Chris Wright, Director of Security and Intelligence, 8 October 2008 (mistakenly dated 8 September 2008).
- ²⁷ Cabinet Office, *Guidance on leak investigation policy and procedures*, October 2008.
- ²⁸ R -v- Police Commissioner of the Metropolis, ex parte Blackburn [1968] 1 All ER 763.
- ²⁹ R -v- Chief Constable of Sussex ex Parte International Trader’s Ferry Limited [1999] 1 All ER 129.
- ³⁰ Metropolitan Police Service, *Gold Group minutes Operation Miser*, 26 November 2008, para headed Public Interest.
- ³¹ New South Wales Parliament, Privileges Committee, *Protocol for execution of search warrants on members’ offices*, Report 33, February 2006.
- ³² Effective from 31 January 2008.
- ³³ Home Affairs Committee, Fourth Report of Session 2008-09, *Policing Process of Home Office Leaks Inquiry*, HC 157, para 24.
- ³⁴ Committee on Standards in Public Life, *Misuse of Public Office: A Consultation Paper*, 1997, Para 15.

ANNEX A

**Metropolitan Police Service, redacted version of Review of
Operation Miser, Sir Ian Johnston**

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Association of Chief Police Officers of England,
Wales and Northern Ireland

Ian Johnston CBE QPM DL BSc (Hons)
Head of ACPO Crime Business Area
Chief Constable, British Transport Police

Review of Operation Miser

by Ian Johnston CBE QPM DL

Head of ACPO Crime Business Area

and

Chief Constable of

British Transport Police

16 December 2008

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Association of Chief Police Officers of England, Wales and Northern Ireland



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Review of Operation Miser **by Ian Johnston CBE QPM DL** **Head of ACPO Crime Business Area and** **Chief Constable of British Transport Police**

On 2 December 2008 I was invited by Sir Paul Stephenson, Acting Commissioner of the MPS to conduct an urgent review into the 'leaks' investigation, code named Operation Miser. I was asked to provide an interim report within seven days, which I supplied on 9 December 2008, and a final report within two weeks. This is my final report.

The Terms of Reference given to me for the review were:

1. To establish the circumstances which led to the arrest of Christopher Galley on 19 November 2008 and Damian Green MP on 27 November 2008.
2. To give a professional view on whether police action has been lawful and proportionate in the circumstances.
3. To give a professional view on the conduct of the investigation to date in terms of diligence and inclusion.
4. To give a professional view on the future direction / conduct of the investigation.
5. To examine and comment on the governance and accountability arrangements for the investigation.

My letter dated 3 December to the Acting Commissioner sets out the boundaries to my review, as I see them, within the terms shown above. The review is based on materials provided to me by the Operation Miser team, up to and including 16 December, and by people I have been able to engage with, and who have been

willing to do so within the time frame set. Material has been fed to me on a day-by-day basis by the Operation Miser team, and some has been with me for a very short period of time, limiting the extent for consideration of its relevance and meaning. Whilst a significant amount of material has been supplied, we cannot be sure that all material has been forwarded. Other material which I needed to review is now not available because of legal argument regarding Parliamentary Privilege. This includes any documentation which may have been found in Damian Green's Parliamentary offices.

Nonetheless, with the vast amount of material made available to me (approximately 1500 pages of documents), and with the help I have received from those involved in the investigation, I am confident that I have been able to give a valid response to all the subjects listed in the terms of reference.

In this report, I have dealt with each of the terms of reference in the order they are listed above, except that I have incorporated my considerations into the 'diligence' of the enquiry into the section on 'accountability', and reordered my responses so that my comments on 'future direction' of the enquiry appear last.

I have been assisted in my review, by the provision of material from the hard working investigating team and senior police colleagues, many of whom were managing issues of great national importance. Additionally, I am extremely grateful for the time afforded to me, at short notice, by all those who have taken time out of busy and important schedules to speak with me. I know this has been a distraction for them.

Ian Johnston
Head of ACPO Crime Business Area
Chief Constable, British Transport Police

16 December 2008



Association of Chief Police Officers of England, Wales and Northern Ireland

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Sir Paul Stephenson
 Acting Commissioner
 Metropolitan Police
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3 December 2008

Dear Sir Paul

Operation Miser

Thank you for the terms of reference for the review you have asked me to undertake in my role as Chair of ACPO Crime Committee.

I confirm I will provide you with an interim report in seven days, which will cover the 5 areas set out in the terms of reference, with a final report within two weeks.

Given the timescales set, my review will focus upon available written documentation. It will not involve interviews with suspects. Nor will it stray into matters properly subject to "Professional Standards" scrutiny.

Where there are relevant gaps in my understanding from an assessment of written material, I will seek to speak to individuals who may be able to help. This is more likely to take place in the second seven days.

Please let me know if this meets your ambitions.

Yours sincerely

Ian Johnston
 Chief Constable
 Head of ACPO Crime Business Area

**To establish the circumstances
which led to the arrest of
Christopher Galley on 19
November 2008 and Damian Green
MP on 27 November 2008**

To establish the circumstances which led to the arrest of Christopher Galley on 19 November 2008 and Damian Green MP on 27 November 2008.

In October 2008, following an internal investigation within the Cabinet Office into a series of leaks occurring during the period from 2004 to 2008, there were conversations between the Cabinet Office and SO15 Counter Terrorism Command officers. This dialogue was followed up by a letter to Assistant Commissioner Robert Quick, dated 8 September 2008 (which should have been dated 8 October 2008) from Mr Chris Wright (Director of Security & Intelligence, Cabinet Office) requesting the assistance of police.

The letter asks 'whether you will consider agreeing to an investigation into a series of leaks, probably originating in the Home Office, which is causing considerable concern to the Cabinet Secretary'. Mr Wright makes clear that there have been a number of recent leak investigations and 'whilst not all the leaks which concern us merit, taken individually, investigation by the police, we are concerned that there is an individual or individuals in the Home Office with access to sensitive material who is (are) prepared to leak that information. We are in no doubt that there has been considerable damage to national security already as a result of some of these leaks, and we are concerned that the potential for future damage is significant'.

In a letter dated 29 October 2008, Chris Wright wrote to DAC Cressida Dick agreeing that a scoping exercise would be undertaken by the MPS in the first instance, and subject to that exercise, and if appropriate, the MPS would:

- Undertake an investigation to identify the source/sources of these unauthorised disclosures, taking the unauthorised disclosure of the draft Home Secretary's letter to the Prime Minister reported in The Times on 1 September 2008 as a starting point;
- Identify the chain of that disclosure and any other related unauthorised disclosures; and
- If necessary, appropriate and authorised, proactive measures should be taken to achieve these outcomes.

A report dated 31 October 2008 by ██████████ SO15 details the initial MPS findings from the scoping exercise. His report includes:

- The background to the enquiry is that between February 2004 and September 2008, thirty-one unauthorised disclosures have taken place, with the Home Office being a custodian of this information.
- Combined with other leaks, some involving GPMS material classified as Secret, the MPS had initially been requested by the Cabinet Office to focus on four incidents of unauthorised disclosure, however, since engagement this has now increased to five.

- It has been established that there is a common pattern, this being that certain members of The Conservative Party have been involved, apparently in the role as a conduit for the dissemination of this information.
- One Member of Parliament, in particular, has featured on several occasions.
- Early consultation with the CPS, on a generic basis, has given rise to the consideration of the Common Law crime of Misconduct in a Public Office, which carries a maximum sentence of life imprisonment.

In [REDACTED] report, an individual called Christopher Galley, working as Diary Secretary to the Head of the Cabinet Office (*actually Home Office*) Strategy Unit, is identified as 'being a strong contender as the source of this leak'. This analysis is based on the internal investigations by the Cabinet Office, which conclude in a report dated 24 October 2008 [REDACTED] including a comment 'In the light of the above I assess that Christopher Galley is likely to have been responsible for the leaking of the draft letter to the Prime Minister. However, I have been unable to find hard evidence of his guilt'.

Consultation with the CPS on 22 October 2008, on a 'generic basis', indicated on the information provided that the matters under investigation did not seem to meet the 'evidential benchmark' required for Official Secrets Act 1989. The Common Law offence of Misconduct in a Public Office was identified as relevant.

I rely upon the statements of [REDACTED], to evidence the "leaks" and the source documents for which Galley was seen as a suspect.

Leak 1 14 October 2007 – Article published in The Sunday Telegraph titled 'Asylum crisis getting worse say officials'

Source Document, High Level Monthly Performance Report July 2007

Protective Marking – Restricted Management

Leak 2 11 November 2007 - Articles published in Daily Telegraph, Daily Mail, The Independent, and Daily Express

Source Documents, reports relating to Immigration Checks on SIA Security Staff

Protective Marking - Documents and covering letters are marked Restricted

Leak 3 10 February 2008 – Article published in The Sunday Telegraph titled 'Government accused of cover up after illegal immigrant caught in Commons'

Source Document, Letter from Tony Smith, Regional Director BIA

Protective Marking - Restricted

Leak 4 20 & 27 April 2008 – Articles in The Sunday Times titled 'Blacklist of MPs in terror rebellion' and 'Brown set for U - Turn on Terror Detention'

Source Documents, Briefing for CT Bill – 2nd Reading and CT Bill top lines briefing

Protective Marking – The second document is marked Restricted

Leak 5 1 September 2008 – Article in the Daily Mail titled ‘Home Secretary’s warning that credit crunch will send crime soaring is blindingly obvious says Minister’
Source Document, Drafts of letter for Home Secretary to Prime Minister
Protective Marking – not marked but should have been marked Restricted Policy

Leak 6 15 November 2008 – Article in the Daily Mail titled ‘Serious violent crime is going up NOT down, Home Office Chief admits’
Source document, First Day briefing pack prepared by Sir David Normington
Protective Marking - Restricted Policy

My understanding is that it was this last leak which required the investigation to be expedited. This was done to balance the risk of leaving the suspect in place whilst pursuing investigative opportunities for a relevant period of time.

Following a decision by the SIO to arrest Galley, an observation was kept at his home address on 18 November 2008. At 05.50 on 19 November 2008 Galley was arrested at his home address. A search of his premises at that time revealed five letters on House of Commons note paper from Damian Green. Details of these letters are set out below.

- 4 January 2007 - Letter from Damian Green MP (headed House of Commons paper) to Mr C Galley (Exhibit INM/28)

“Dear Christopher

Just a quick note to wish you a Happy New Year and many thanks for the extremely useful correspondence you have shown me. We are very grateful for this as it provides an insight, which would not otherwise be available. All best wishes.

*Yours sincerely,
Damian”*

- 22 March 2007 - Letter from Damian Green MP (headed House of Commons paper) (Exhibit INM/30)

“Dear Chris

Thank you for your letter. I am happy to say again how very helpful you have been regarding the current state of the IND. It is invaluable to hear what is happening inside the organisation. I can quite understand your desire to move into an overtly political job. I am afraid I have no vacancies at the moment, and I am not aware of any within the Home Affairs team, but I will certainly ask around. I would also suggest your having a look at the website www.w4mp.org, which lists a range of jobs currently on offer across all parties. The other thing you might consider is applying directly to Conservative Campaign Headquarters, as there is obviously a steady stream of jobs which become available there. Good luck in your search.

*Yours Sincerely
D”*

- 25 April 2007 - Letter from Damian Green MP (headed House of Commons paper) (Exhibit INM/29)

“Dear Chris

Thank you for your latest bundle. As ever this is extremely useful. Good luck in your work for Bill Wiggin, which I am sure you will enjoy hugely.

Yours Sincerely,

D”

- 21 June 2007 - Letter from Damian Green MP (headed House of Commons paper) (Exhibit INM/31)

“Dear Chris,

Many thanks for your latest bundle. As ever this is extremely interesting and useful.

Yours Sincerely,

D”

- 23 August 2007 - Letter from Damian Green MP (headed House of Commons paper) (Exhibit INM/32)

“Dear Chris,

Thank you for your recent communications. As ever, these have been extremely useful and I hope that you can keep them up in your new post

Yours Sincerely,

D”

Additionally, the search of Galley’s home address recovered e-mail traffic between him and Damian Green MP. These exchanges have been the subject of an analytical examination by my review team. As an example, they include that on the 26 August 2008 Galley asks if Green wants to meet and after an exchange of messages, Green replies: “Anywhere we won’t see any of your colleagues! Do you know the Balls Brothers opposite Victoria Station? If we say 6.15pm, and I will be in the back bar, which is usually quieter.”

During his subsequent interview at Paddington Green Police Station, Galley made admissions in regard to the leaks of 11 November 2007, 10 February 2008, 20 April 2008, and 1 September 2008 (leaks 2, 3, 4 and 5).

Some of the correspondence found in his possession covered a period outside the dates of the six leaks (see above). Despite extensive questioning, he did not admit any further offences. However, his questioning did not focus on offences of a more serious nature under the Official Secrets Act, or save in the most general of terms, to any other offences than the six identified leaks. Nor did it cover his motivation for securing employment in the Home Office.

Galley informed the officers that the recipient of the leaked material, on each occasion, was Damian Green MP. He explained that the material was physically

transferred to Damian Green MP via despatch in two cases, and by meeting in person on two occasions.

At 23.00 on 19 November 2008 Galley was released on bail to return on 29 January 2009. However, on 21 November 2008 he returned of his own volition to Paddington Green Police Station, because he wanted to clarify previous explanations regarding how he met Green.

He was rearrested and re-interviewed. He indicated that his original contact was with David Davis, the then Shadow Home Secretary, to whom he had sent an email, early in his employment with the Immigration Department, complaining about government handling of immigration issues.

He explained how he met Davis at the House of Commons and was introduced to Damian Green, who held the immigration portfolio. He also stated that he provided Green with information and statistics on immigration from material, which was widely available. His position in the Immigration Department did not give him access to material of a sensitive nature. He subsequently provided Green with the information relating to the leaks he has admitted, as shown above.

Following an office meeting on 20 November 2008, ██████████ put in train a series of actions including those relating to CCTV, financial profiles of Galley, IT systems, statements from potential witnesses, research on Green and correspondence tracking in MPS.

On 21 November 2008 Operation Miser officers met CPS colleagues, and were given oral advice. This followed a telephone call to CPS on 19 November 2008. It was followed by an email on 23 November 2008 from ██████████ of the CPS Counter Terrorism Division. As is their practice, the CPS are not prepared to publicly comment on the content or outcome of this communication. MPS have indicated that advice on potential offences (but not arrest or search) was given.

On 21 November 2008 and 25 November 2008 there is evidence, from DAC Dick's time line document, of engagement of senior MPS officers concerning the involvement of an MP.

On 26 November 2008 two Gold Groups were held which, from a subsequent note of the meetings, gave significant consideration to issues of seriousness and proportionality. The meeting was led by AC Quick, and in attendance were DAC Dick, DAC McDowall, Commander Sawyer, ██████████. The note indicates the meeting addressed arrest and search plans, which included the search of Green's office in Parliament, and the sensitivities involved.

On 26 November 2008, applications were made for search warrants for Green's home addresses at Charing and Acton, and for his constituency office in Kent.

Meanwhile, on 20 November 2008 the Serjeant at Arms had been approached by the Chief Superintendent at the Palace of Westminster to secure general advice about searching a Member's office, which is part of the Palace. She was approached again

on 26 November 2008 and invited to give that consent. Police witnesses indicate she went to consult The Clerk to the House of Commons at the Palace of Westminster, and that she intended to contact the Speaker. The following day, 27 November 2008, she provided a letter of consent and signed a form in Book 101 (consent to search form). While the form makes clear she is giving consent, it does not make clear that the person is not obliged to consent. The Codes of Practice state that a person should be informed they are not obliged to consent, but failure to comply with the Codes of Practice does not make the search unlawful.

On 27 November 2008 at about 09.00 efforts to arrest Green at home failed. At 13.37 the same day he was located in the Snodland area of Kent, and was arrested.

Shortly after his arrest, Green indicated to police that the files police were looking for were in his desk in his office in Parliament.

His London and constituency homes, and constituency and Parliamentary offices were searched. Green accompanied officers during their search of his home address at Charing, Kent. The material seized is not now available for inspection while issues of Parliamentary Privilege are determined.

Green was taken to Belgravia Police station arriving at 16.34, and asked for a legal representative. Michael Caplan QC attended at 18.02. Following consultation with his legal representative, at 21.00 Green gave what was principally a 'no comment' interview over a period of 32 minutes, emphasising the point that he was tired. He was again interviewed at 22.30 for 16 minutes. Green was released on bail at 23.09 to return to police on 17 February 2009.

The enquiry continues, and the MPS investigation team will not be able to complete their research into material seized until issues of Parliamentary Privilege are resolved. The principal evidence at this time is the admissions of Galley, and the written communication between Galley and Green found in possession of Galley.

The written communication includes the letters of thanks from Green to Galley, and also emails relating to the leaked information sent from Galley to Green.

This chronology of events above, which detail the circumstances leading to the arrest of Galley on 19 November 2008 and Green on 27 November 2008, is drawn from the material provided to me as of 16 December 2008, and from conversations I have had with relevant parties up to that time.

**To give a professional view on
whether police action was lawful
and proportionate in the
circumstances**

To give a professional view on whether police action was lawful and proportionate in the circumstances

Was Galley's arrest lawful?

For an arrest to be lawful, one of a range of conditions under S.24 of the Police and Criminal Evidence Act 1984 (PACE) as amended by S.110 of Serious Organised Crime and Police Act 2005 has to be met. These conditions include any person whom the officer has reasonable grounds for suspecting an offence has been committed, and reasonable grounds to suspect the individual of being guilty of it.

Under S.24 (4) of PACE the power of arrest is only exercisable if there are reasonable grounds for believing that it is necessary to arrest for a reason mentioned in subsection (5). One of these includes 'to allow prompt and effective investigation of the offence or the conduct of the person in question'. This condition may be met where arrest is necessary to obtain evidence by questioning, or where evidence may be destroyed by the suspect, or the suspect may make contact with co-suspects.

The police received an allegation that "unauthorised disclosures" were taking place from within the Home Office and an investigation commenced. A suspect was identified from material provided to them. This suspect was named as Christopher Galley. The matters under investigation were considered not to reach the threshold required in the Official Secrets Act, but there was nevertheless prime facie evidence to suspect that an offence of Misconduct in a Public Office had been committed. This was confirmed in "generic terms " with the CPS. Hence there were reasonable grounds to suspect Galley of being guilty of an offence and reasonable grounds for suspecting an offence has been committed. However, the necessity criteria still needed to be satisfied.

██████████ decided that an arrest of Galley should take place. The rationale and basis for Galley's arrest was:

- 'He was a named suspect.
- He had access to the limited time frame of the tracked changes document in the letter between the Home Secretary and the Prime Minister. The circulation was very small and those that did have access had given satisfactory explanations as to their actions. Galley gave no such explanation.
- He was working within the Immigration Department when the leaks from that office took place.
- He had access to the list of MPs voting against the 42 hour detention, which again had a limited circulation list.



At 18.00 on 18 November 2008 [REDACTED] briefed his team to this effect. A copy of an undated Operation Miser Operation Order (sanitised and unsanitised) has been reviewed. The SIO's decision log details the rationale for arrest, and further rationale is recorded in the 'rationale for arrest of Galley' document.

On 19 November 2008 at 05.50 Galley was arrested at his home address by [REDACTED], SO15 Counter Terrorism Command, for the offence of Misconduct in Public Office. [REDACTED] informed him that the arrest was necessary under PACE to secure evidence of the offence. This satisfies a necessity criterion – to allow the prompt and effective investigation of the offence or the conduct of the person in question.

In summary, from the information, which was provided to [REDACTED] at his briefing, he would have formed an honest suspicion, based on reasonable grounds, of Galley's guilt of an offence, and it was necessary to arrest him in order to allow the prompt and effective investigation of an offence, in order to prevent evidence being destroyed, and to obtain evidence by questioning.

While the records relating to the exercise of the power of arrest are not as complete or as consistent in some of the documentation as they might be, my view is that his arrest was lawful.

Was Galley's arrest proportionate?

I have been asked to comment on proportionality. For the purpose of my assessment of proportionality I have used the following question 'Given the level of seriousness of the offences for which there are reasonable grounds to suspect the involvement of the suspect, were there comparably effective ways of dealing with the suspect which were less intrusive?' In other words, was this the least intrusive means of achieving the necessary operational aims?

In operational terms it was important to arrest Galley before he had the opportunity to dispose of material or to make contact with any potential co-suspects. There was a practical benefit from the element of surprise and early intervention.

[REDACTED]

My view is that the arrest was the only way to deal effectively with him, in terms of the operational need to interview and in having a realistic prospect of recovering property. It would also limit his opportunity for collusion, and this was more important because of the reasonable basis to suspect his wider involvement in other leaks. I believe his arrest was proportionate.

Was the search of Galley's property (home address and work) lawful?

From the material provided, the search of Galley's premises took place under the authority of a warrant (Sec 8 PACE) at his home address and by consent at his workplace. The warrant was granted by a District Judge after a comprehensive written information was laid.

However, it is interesting to note that the warrant contained reference to secret material. It is not clear why reference to this type of material is included, given the MPS scoping study, and the apparent absence of reported leaks at this level during Galley's time in the Home Office.

His office was searched by consent of [REDACTED] at the Home Office. [REDACTED] who is entitled to give consent, signed a form in Book 101 to this effect.

Given that the District Judge received a comprehensive written information, before granting a warrant, and the consent of Galley's employer was obtained before the searches, my view is that both searches are lawful.

Was the search of Galley's property (home address and work) proportionate?

There was a reasonable basis for considering he had committed several offences of Misconduct in a Public Office over an extended period of time, and that relevant material would be found at his home address or office, for example, relevant letters from Green.

Without search, this material may not have been recovered. There was a reasonable prospect of this material being found there. Failing to undertake the search would have been neglectful. Where consent could be secured, it was. A District Judge was given the opportunity to authorise a warrant (including giving consideration to proportionality and consent issues) and, it appears, concluded it was appropriate.

My view is that all the searches were proportionate.

Was the arrest of Green lawful?

For Green's arrest to be lawful one of a range of conditions of PACE as amended by S.110 of Serious Organised Crime and Police Act 2005 has to be met. These conditions include reasonable grounds to suspect an individual of being guilty of an offence for which an officer has reasonable grounds for suspecting has been committed.

The necessity reasons also need to be satisfied and these include S.24 (5) (e) 'to allow prompt and effective investigation of the offence or the conduct of the person in question'. This criterion can be met where arrest is necessary to obtain evidence by questioning and to prevent evidence being destroyed.

Advice was sought from the CPS. The CPS are unwilling to comment publicly on advice to police. They agree they discussed some issues with the MPS team. The MPS team indicate advice related to offences identified was given, but no advice was provided on whether he should be arrested or not.

What was clear to the investigators was that Green was named by Galley as a recipient of four pieces of leaked information obtained by Galley. Galley had indicated to police that Green apparently knew the origins of this material. This was, in part, corroborated by documents from Green (on House of Commons paper) found in possession of Galley. Therefore there were reasonable grounds for all the officers on this enquiry to suspect Green of being guilty of aiding and abetting, counselling or procuring Galley in offences of Misconduct in a Public Office.

The Gold Group minutes of 26 November 2008 summarise evidence to form the basis of reasonable grounds to suspect Green of an offence, and for the reasonable grounds for suspecting an offence has been committed. The subsequent note of the meetings gave significant consideration to issues of seriousness and proportionality. Notes in other documents (e.g. arrest strategy) about decision making rationale are narrower in their focus.

They cite a range of material as 'grounds for arrest' which address proportionality rather than legality in terms of necessity criteria as set out in PACE.

The SIO's decision log states there are sufficient grounds to arrest Green under the Criminal Law Act, on the basis of the suspected offences carrying a life sentence. The relevance of this, if any, goes to proportionality rather than necessity under PACE. The SIO also justifies arrest on the basis of obtaining evidence (computers, printers, documents, diaries and other relevant documents), which can be interpreted as part of the necessity criterion.

The arresting officer gives his reasons for arrest in his EAB 'misconduct in a public office and conspiring with Christopher Galley to commit misconduct in a public office'. He further explained the reason as 'to question him about what he had been arrested for'.

From the above, I believe it is possible to satisfy the necessity criteria in PACE in terms of allowing prompt and effective investigation of an offence on the basis it was necessary to obtain evidence by questioning. In other words, to ask him about his involvement.

In conclusion, my view is that there were reasonable grounds to suspect an offence had been committed. There was also a reasonable basis for the necessity of the arrest in order to obtain evidence by questioning.

Hence there was a lawful basis for the arrest of Green.

Proportionality of Green's arrest

For ease of reading, I repeat my basis for assessment of proportionality which I frame around the question 'Given the level of seriousness of the offences for which there are reasonable grounds to suspect the involvement of the suspect, were there comparably effective ways of dealing with the suspect which were less intrusive?'

The Investigative Team, and all MPS senior officers with whom I have spoken, up to and including AC Quick, have indicated a belief that there were very strong grounds to regard Green's arrest as proportionate. These include:

- From Galley's interview there were indications of Green's involvement in four pieces of leaked information (i.e. this was systematic activity over time and not a trivial one off).
- The place from which the leaks occurred was a significant government department, the Home Office, from where, over a period of years, there had been a number of leaks, including from secret categories (i.e. the context of the offences made them more serious).
- There is some basis for seeing Green as leading and encouraging Galley, who is seen as susceptible to Green. In fact, an allegation of 'grooming' was put to Green during his interview, implying a particular dimension of power to the relationship.
- In terms of applying an even-handed approach, there is a case that Green should be dealt with in the same way as Galley, who was arrested.
- The public will think it wrong if an MP is dealt with apparently more favourably than other members of society.
- A set of Gold Group minutes of 26 November 2008 indicate very careful consideration of proportionality was given by very senior members of the MPS.
- In terms of the seriousness of the offences committed, their collective impact affected the smooth running of government. [REDACTED]

I believe there are a number of reasons for regarding his arrest as disproportionate:

- The rationale set out in the decision log in terms of proportionality for arrest is not strong.
- Disposal of property is cited, but the arrest occurs a week after we are told by Galley that he has informed Green of his arrest.
- Risk of collaboration is also given as a reason. Similarly there is a week for this to occur before his arrest, and in fact Galley claims he did contact Green.
- The necessity cited in terms of prompt investigation could perhaps have been dealt with by way of arrest by appointment. While this could run the risk of material being disposed of, if Green was minded to do this, he had already had a long time to do it.

▪ [REDACTED]

- [REDACTED]
- I do not think there is a strong reasonable basis for a belief that Green is guilty of any more serious offences than Galley admits. Galley is our only link to Green.
 - It is clear by the time of Green's arrest that 'national security' issues are not the focus of the Galley / Green enquiry. There was no questioning of either man on more serious matters of this nature, which you might expect if this was in fact a strongly held belief. However, it should be noted that Green's interview was essentially 'no comment'.
 - None of the material provably leaked by Galley was above restricted level.
 - From the material given to the review team, all of the issues referred to in the 31 leaks reported to police can be categorised as 'government embarrassment' stories, except one, which occurred before Galley took up his post in the Home Office. None appear from their subject matters to directly impact on the security of the nation.
 - Given that there are only 31 reported leaks over a four year period, only one of which was of more serious matters, it is not immediately obvious how they could be seen to undermine effective government. [REDACTED]
 - For the four offences admitted by Galley, [REDACTED] it is questionable whether the arrest of Green for aiding and abetting, counselling or procuring these offences is proportionate [REDACTED]
 - On the evidence seen so far, my assessment of the level of direction by Green of Galley was low. Four out of four of the known meetings between them appear to have been instigated by Galley. The review team's analysis of episodes of exchanges of letter and email traffic shows it was all initiated by Galley, and in relation to phone and text, twice as much was initiated by Galley as Green (but some technological communication awaits analysis).
 - It is possible to interpret their relationship as less than clandestine, apparently with meetings in public places close to the Palace of Westminster, and written information being passed in envelopes addressed to Damian Green at the House, with no other marking on them, leaving them at risk of discovery by innocent office intermediaries.
 - The suggestion of employment emerges out of dialogue, and not direct offers by Green. Our analysis from available material shows conversations on the topic of employment were instigated six times by Galley and four times by Green.
 - It appears that Galley led the way, because he was motivated by a wish to ingratiate himself with the Conservatives. In interview it is suggested to Galley he has a 'loose' relationship with Green. Galley replies 'very loose'. This does not seem to indicate a strong 'dependency' relationship between them.

- The operational risk assessment contains little reference to the wider political / public reactions / community impact of this arrest, and this suggests that the impact of arrest may have been underestimated (although Gold Group minutes clearly recognise its sensitivities).

My view is that, although the arrest was lawful and a case can be made for undertaking it, on balance, a potentially better approach was to invite him in for interview under caution by appointment. However, S.29 PACE seems to preclude this and therefore the next less intrusive method is arrest by appointment.

The keys points for me are:

- By the time the investigators go to arrest Green, he has had ample opportunity to dispose of evidence, and to collaborate with Galley. In fact, Galley tells police he has informed Green, the day after Galley's arrest.
- The offences linked directly to Green are four cases of embarrassment level leaks (as are 30 out of 31 listed on the [REDACTED] report by [REDACTED] 'review of unauthorised disclosure of documents and other information'), which on their own may not have led to the criminal investigation of the leaks.
- The arrest of an MP will clearly arouse public interest on very significant levels about security, Parliamentary Privilege, and liberty issues, which, in my view, calls for additional considerations in the use of power.

I believe the principal operational aim to obtain evidence by questioning could have been achieved by the less intrusive approach available through invitation to attend a police station for arrest and interview, accompanied by his legal representative. This could have been timed to give the opportunity for the CPS to consider the evidence, and any public interest issues, which could help inform a view on proportionality, arrest and the way forward generally. Given the period of delay which had already occurred, it is difficult to see that much would be lost by this approach.

On balance, I think the operational aims could have been achieved by use of less intrusive methods. My view therefore is that police actions were disproportionate. However, it should be stated that operational decisions involving proportionality will not be interfered with by the Courts unless unreasonable or irrational.

Method of arrest

The material available to me shows that much thought was given to his arrest. Legal advice was taken [REDACTED]

Clear efforts were made to avoid the arrest of Green in front of his children (see Gold Group minutes of 26 November 2008). This led to a significant risk that Green would not be found at home – a risk, which in fact materialised. When he could not be found, David Cameron was contacted to encourage Green to come to police.

When Green was located in Kent at 13.37 he was arrested and released at 23.09 that day. However, this seemingly lengthy period comprised:

- 14.10 – arrival at, and search of, Green’s house in Charing, Kent
- 16.34 – arrival at Belgravia Police Station in London
- 18.02 – Michael Caplan QC, Green’s legal advisor arrives at Belgravia Police station. Officers give arrest disclosure to legal advisor.
- 19.01 – Green’s consultation with legal advisor.
- 21.00 – Green was interviewed for 32 minutes.
- 22.30 – Green was interviewed for 16 minutes.

Although Green was searched and DNA, fingerprints, and photographs were taken, (as is normal practice), he was not detained in a cell, nor was any form of physical constraint placed on him. A section of the custody suite was set aside for his privacy. At the conclusion I understand (but have not yet been able to confirm) he was offered transport home, and arrangements made for him to leave the police station in a way which least attracted public exposure.

Legality of the search of rooms in Portcullis House

The conditions of application for a search warrant specify that a Justice of the Peace is likely to refuse to issue a warrant if he / she is not satisfied that entry to premises will be refused without a warrant (S.8 (3) PACE). This, in effect, encouraged police to consider use of consent as the first option. Warrants can be issued for the Palace of Westminster.

Police evidence indicates the Serjeant at Arms was first approached by police on 20 November 2008 about consent to search. She was seen again on 26 November 2008 about the need to search offices of an MP. She gave her written consent on 27 November 2008 by letter, and signed a form in Book 101 confirming her consent.

Legal opinion obtained

[REDACTED]

[REDACTED]

The Speaker has now written to me, on his behalf and that of the Clerk and Serjeant at Arms, declining to contribute to my review, on the basis that it he considers it would not be appropriate to be discussed or answered elsewhere than within the House itself. This decision has also precluded a better understanding by me of Parliamentary Privilege, and its implication for legality and proportionality.

Whatever the outcome of any further legal iteration on this topic, I believe there is sufficient legal opinion to make a strong case that the search was lawful.

It should be noted that there appears to be very little in the way of a shared understanding of the meaning of Parliamentary Privilege amongst any of those I have contacted in this review.

Proportionality of the search of rooms at Portcullis House

A search by consent is, prima facie, the least intrusive form of search open to police. Given that Green had admitted to police that relevant material was in his offices, then it seems proportionate and necessary to recover the material. It is possible to assume that proportionality was a consideration of the consent given by the Serjeant at Arms. To clarify the issue of informed consent, I have contacted both the Serjeant at Arms and the Speaker to request information from them. The Speaker, on behalf of the Serjeant at Arms and the Clerk, has declined because these are matters properly determined in their own enquiry.

It is of interest that this is not the first time the Serjeant at Arms has dealt with a request for consent to search. In February 2008 'Plane Stupid' demonstrators gained access to the House. It was suspected a researcher, working for Emily Thornberry MP, was involved, and the same Serjeant at Arms gave consent for a search of the MP's offices. However, the circumstances in this case are different, as the MP was not the suspect, and in fact also gave her own consent to the search of her room. The point remains that the search by police of an office in the Palace of Westminster is not unique in the recent history of all concerned.

Parliament has laid down specific procedures for some professions to manage confidentiality, but chose not to do so for themselves. It is reasonable to assume the legislature envisaged a search of MP's property and its associated risk, when legislation on these issues was introduced. I have sought to better understand the relationship between search and Parliamentary Privilege, but in the time available have not been able to secure any consistent definitive view on this.

On balance, my view is that the search of Green's rooms in Portcullis House was proportionate on the basis it was done with considered consent, and was necessary, given Green had disclosed the existence of relevant evidential material there. I have in the time available been unable to consider the extent and manner of the search.

Lawfulness of the search on warrant of his other premises (homes and constituency offices)

These were undertaken by warrant issued by a District Judge. A comprehensive information was laid spelling out the basis for the search. However, it is of note that the warrants covered search for 'secret' material. In the MPS scoping document, none of the leaks in the Home Office while Galley worked there apparently relate to material at this level in the GPMS.

The information presented to the District Judge is comprehensive and offers a credible basis for the issue of a warrant. Sufficient material in the information can be confirmed to make it a reasonable basis for a warrant application.

My view is that the search of his other premises was lawful.

Proportionality of the search of his home addresses and constituency offices

The District Judge granting the warrant has to consider whether searches can be done with consent.

A District Judge considering an application under Section 8 of the Police and Criminal Evidence Act 1984, must apply the conditions set out in S.8(3) of the Act, namely:

- 'that it is not practicable to communicate with any person entitled to grant entry to the premises;
- 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 evidence;
- that entry to the premises will not be granted unless a warrant is produced;
- that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at a premises can secure immediate entry to them.'

If at least one of these conditions are not met then it follows that a consensual search should be sought. These are issues properly tested by a District Judge. I have not had time during my review to interview any District Judges or officers presenting the material in the information.

On balance I think the searches of his homes and constituency office were proportionate.

**To give a professional view on the
conduct of the investigation to date
in terms of diligence and inclusion**

To give a professional view on the conduct of the investigation to date in terms of diligence and inclusion

I will deal with diligence in the next section under Governance and Accountability.

I take inclusion to mean, who was taken into confidence before, during and after the arrests of Galley and Green. I have not included those involved directly with the enquiry, for whom there is a documented 'inclusion' policy.

Galley

The Cabinet and Home Office were aware of the enquiry, having passed it to the MPS in October 2008, and the Cabinet Office, in particular, having asked the MPS on 17 November 2008 to expedite it following a further unauthorised disclosure on 15 November 2008. The Cabinet Office were informed of Galley's arrest at 06.50 on 19 November 2008.

Green

I can find no material to indicate there was personal contact with the Home Secretary by the MPS either before or immediately after Green's arrest. Sir David Normington was the contact point throughout.

According to police records, the following were informed on 27 November 2008 of Green's arrest as below:

- At 13.07 David Cameron was informed that police were trying to locate Green, and he was advised of the arrest at 14.21 that day.
- Boris Johnson, Chair of the MPA, was informed of the pending arrest of Green at 13.19, and provided with a further briefing at 14.05.
- Kit Malthouse, Vice Chair of the MPA, was informed of the pending arrest of Green at 13.36, and provided with a further briefing at 16.05.
- Chris Wright, Director of Security & Intelligence, Cabinet Office was informed at 13.36.
- Sir David Normington, Permanent Secretary, Home Office, was informed at 13.39.
- Sir Paul Stephenson, Commissioner, MPS was informed at 13.43.
- Sue Hemming, Head of Counter Terrorism Department, CPS was informed at 13.46.
- Jill Pay, Serjeant at Arms, House of Commons was informed at 13.46 – (message left).
- Mike Fuller, Chief Constable of Kent Police, was informed at 13.51.

In my view this was an extensive and appropriate inclusion list.

**To examine and comment on the
diligence of the investigation and
the governance and accountability
arrangements**

To examine and comment on the diligence of the investigation and the governance and accountability arrangements.

At some stages in the investigation there is a gap between the existence of a number of documents and what would be expected in line with the procedural conventions normally associated with major investigations. There was significant back record conversion to achieve alignment at a later stage in the enquiry.

For example, interview plans do not seem to have been produced. While reasons are given for not initially using the HOLMES computer system, its earlier application would have generated benefits.

The use of covert tape recordings during the arrest of Green requires stronger grounds in terms of proportionality than is evidenced in the documents I have seen. Good practice for granting of such authorities usually means that the authorising Superintendent will come from outside of the line command of the investigation, which did not occur in this case. This, [REDACTED]

[REDACTED] provides rich material for an attack on the proportionality overall of the investigative approach.

[REDACTED]

The covert tape authority is requested on grounds of protection to both the arresting officers and Green, but if this was the only ambition overt recording was a less intrusive option.

There is also a challengeable relationship between some key documents. For instance, there are variations in the MPS's interpretation of the level of the seriousness of the alleged offences. The investigation began with a letter from the Cabinet Office alluding to damage to national security. The SIO's logs on 6 November 2008 refer to offences of Misconduct in a Public Office only, and rule out national security. Following the arrest of Galley, the Gold Group minutes of 26 November 2008 seem to re-escalate the issue, and make reference to national security and potentially secret material. The arrest strategy document contains no reference to secret material, but justifies seriousness through the position of Galley in the communication chain.

These changes in emphasis risk the allegation of a different interpretation of the threat to deal with different levels in a civil service / political hierarchy. Other interpretation, such as senior ranks taking a different view from junior ranks in the MPS is also possible, but there is an ambiguity in 'pitch', which runs throughout the documentation.

There are other anomalies between Gold Group minutes which take a broader and more serious (secret material) assessment of Green's involvement, and the interviews of both Galley and Green, whose questioning is more focused and does

not reach into these more serious areas. I have not been able to locate a written interview strategy, which could explain this.

This ambiguity has other implications because, at times, the lack of seriousness is used to justify non-compliance with some record keeping policies, and, at other times, seriousness is used to justify proportionality. Again, there may be a valid explanation for these interpretations, but if unexplained they could detract from the credibility of those running the operation, and in turn impact on the success of any future prosecution.

While there has been absolutely no attempt to disguise the time of making of records, the disparity of the approach, used by Operation Miser investigators, from current MPS and national policy is bound to lead to questions which are likely to impact on the credibility of the investigation.

Some documents should be ATR stamped and they are not (e.g. SIO logs). Some records made later are more comprehensive than the earlier originals, and in some cases may have been made much later (e.g. SIO logs), in a few cases as long as 8 weeks.

Some documents which you would expect to be contemporaneous do not appear to be (e.g. undated Gold Group minutes, which cover two meetings held on the same day). Given the significance of their content, this risks the allegation of belated post event justification of police action.

Warrants refer to secret material, while the informations refer to future potential of material injurious to national security, but investigation scoping documents exclude leaks at secret level. These and other disparities around seriousness might be of different significance in other circumstances, but the issue in Green's case is likely to be that he was intent on exposing government failings and was not leaking material injurious to national security. An apparent lack of consistency in this area could be seen as unhelpful.

These anomalies, while not necessarily leading to any legal exclusions, collectively could place hurdles in the way of a successful prosecution and the MPS needs to reassure itself that it has credible explanations in relation to some of the record keeping. Such explanations are not inconceivable, but are not clear to me at present.

What is clear to me from FOI requests and from correspondence from legal representatives is that the whole context of this operation will be subject to full and proper scrutiny, both now and during any future potential prosecution.

At a different level of concern, the Gold Group does not appear to have had a challenge / public facing membership to it. The planned arrest of Galley, with its possible links to an MP, did not seem to have been dealt with as a critical incident, although it more clearly was in the case with Green.

Overall, I believe there are some failures to follow MPS procedures, and some inconsistencies in documentation, which will prove a significant distraction in any future prosecution.

**To give a professional view on the
future direction / conduct of the
investigation**

To give a professional view on the future direction / conduct of the investigation

In relation to the future conduct of the investigation, I would advise that the anomalies to which I referred (mainly in the last section) are looked at to better understand their genesis and to clarify their impact on any potential prosecution.







In relation to the future direction of this enquiry, the MPS will need to take into account the views of the SIO on any potential further evidence emerging. My view is that sufficient material to radically change the future direction of this case is unlikely, although some communication material is still subject to analysis, and the claim of Parliamentary Privilege inhibits access to some other possible evidence.

Given that papers are with the CPS and that the enquiry continues, you may feel that you should await CPS assessment. Such an approach would have my support.

However, while I fully recognise the CPS role in this process, in discharging my obligations under the terms of reference set, I offer the following 'professional view' on the way ahead.

If continuing the prosecution route is chosen then I believe you should make my report available to CPS for them to assess and manage any relevant issues raised. Obviously I would brief the CPS if felt necessary and helpful.

I accept, at this stage, I have a limited level of knowledge, gained in a relatively short period of time and without all material being available to me. However, I have had the opportunity over 14 days to consider the investigation and its probability of success. I do believe there are significant challenges in pursuing this case for all the reasons set out in this report. In summary they are:

- My understanding of civil service practice is that the type of offences admitted by Galley would normally attract disciplinary proceedings, and subsequently probable dismissal. 

- If Galley is dealt with by way of dismissal then it may be that charging Green seems perverse, 


[REDACTED]

- My overall assessment of the case, is that what can be currently proven amounts to the four leaks admitted by Galley, all of which can be categorised as hostile and embarrassing for government, but none of which raise a threat to national security. There is no hard evidence, currently, for assuming that Galley is responsible for any other Home Office leaks, other than he is one of a significant number of people who were in that office over the years since 2004 when leaks recurred. Moreover, many of the more serious leaks occurred before he arrived in 2006.
- While none of the list of 31 leaks passed to, and considered by, the MPS in this case amount to national security issues, there is evidence of other significantly more serious leaks being passed to the MPS in the recent past, and of decisions being taken in those cases not to proceed. This could identify disparities in MPS and Cabinet Office decision making, and undermine the outcome of this case.

[REDACTED]

- Any trial is likely to be strongly contested, and there are potential procedural flaws (referred to above) in some of the investigative processes. While this is not a necessary barrier to prosecution, it could undermine prosecution credibility.
- Success in similar cases historically has been difficult to find. I have been unable to locate any relevant MPS records to put numbers around this judgement. Trials of politicians and civil servants have always been high profile and uncertain in outcome, not attracting universal public approbation.
- Other options exist. Galley's dismissal is a signal to others about risk, and would be in line with some recently expressed public opinion. [REDACTED]
- The investigation process and the setting up of this review shows that decisive action has been taken to respond to the leaks. In my view, the specific offences for which evidence is currently available does not give a strong foundation for a successful publicly supported prosecution, although this is obviously a matter currently in the CPS domain.

Other comments

Other comments

I have not been asked to make any generic recommendations, but you might wish to consider the following unrefined early thoughts:

- There is value in more closely aligning operational methodologies, amongst some serious crime investigators, with current policy and best practice in major investigations.
- I believe there should be discussions with the DPP / CPS about the handling of similar cases in the future, because they create real challenges for investigators in balancing the need for thoroughness, transparency and even handiness in investigations, with the responsibility of MPs to carry out their lawful duties robustly and in confidence.
- There may be an opportunity to refresh working arrangements between MPS, Home Office, and Cabinet Office on the subject of investigation of leaks.
- There is scope to enhance record keeping of similar cases in the MPS to help draw upon previous experience, and to better understand trends and the context of similar future enquiries. The absence of accessible data on past cases makes this difficult.
- Greater clarity is needed on the concept of Parliamentary Privilege. There is currently a rich variety of interpretation amongst lawyers, parliamentarians, investigators, and, I suspect, the general public. Greater clarity should lead to more widely understood conventions on search, and on other engagement by police with Members of the Houses of Parliament, while in the House or while engaged on parliamentary business.

Conclusion

Conclusion

I assess the arrest and searches for both men as having a lawful basis. The searches of their property I believe was proportionate, as was the arrest of Galley.

However, there is a strong question mark for me over the proportionality for the arrest of Green, given its timing seven days after Galley's arrest, and given the level of seriousness of the leaks in which there was a reasonable basis for a belief that Green was involved.

In my view, the manner of Green's arrest was not proportionate because his arrest could have been carried out on an appointment basis by prior agreement, and when he could be accompanied by his legal representative.

I recognise the significant political context in which the leaks occurred, and the professional anxiety they caused within the civil service. However, I regard the leaks for which Galley can be clearly held responsible in law, as amounting to 'embarrassment matters' for government. I do not think, from the material presented to me, that the leaks in themselves are likely to undermine Government's effectiveness.

For all the reasons set out in my review, I would recommend that the MPS seeks early advice from the CPS about the appropriate way forward in this case.

Ian Johnston
Head of ACPO Crime Business Area
Chief Constable, British Transport Police

16 December 2008

ANNEX B

Protocol on leak investigations

Introduction

Cabinet Office (CO) guidelines concerning leak investigations should be informed by the lessons learned from the Metropolitan Police Service (MPS) investigation into Home Office leaks conducted in 2008. Any revised guidelines should be endorsed by the CO, MPS and Director of Public Prosecutions (DPP) and underpinned by an agreed protocol.

In future leak investigations there should be a presumption in favour of the police not being involved unless there are:

- a) Reasonable grounds for believing an offence under the *Official Secrets Act 1989* (OSA) has been committed.
- b) Reasonable grounds for believing a serious criminal offence has been committed as an integral part of a leak(s), such as the example where an official is subject to bribery or corruption, or very exceptional cases which seriously threaten the UK in economic or integrity terms.

The *Official Secrets Act 1989* removed the protection of the criminal law as it relates to the disclosure of information other than that which is sensitive or important. The police should not investigate leaks which only have the effect of causing embarrassment to Government or no more disruption to the effective running of Government Departments than any leak would inevitably carry.

In cases where a Member of Parliament is suspected of an offence the impact of Parliamentary Privilege must be addressed and constantly assessed at every step of the leak investigation process. Ideally this would be through a designated Parliamentary official acting as a Single Point of Contact (SPOC) but unfortunately it has not been possible to formalise such an arrangement within the timescales of the review.

It is suggested future working practices should be determined by the attached model which describes a staged approach process. The model defines a 7 step approach to investigating leaks.

Step 1 – Internal investigation

It is the responsibility of Government Departments to ensure they have a security regime in place which: is fit for purpose; prevents leaks; encompasses whistle blowing; and fosters a culture of integrity regarding disclosure of information. Leaks should be investigated by suitably experienced internal investigators capable of exploiting investigative opportunities, with analytical support when appropriate. Before referral to the CO, Departments should be able to present a clear intelligence/evidence based package, meeting the threshold required to instigate police involvement.

Step 2 – Meeting the threshold for police involvement

The threshold for police involvement is high. Only in leak cases where the CO believes there is intelligence/evidence to suggest the criteria of *Official Secrets Act* criminality has been reached or in leak cases where the criteria has not been reached but there is compelling grounds to suspect a serious offence (as described in the introduction) has been committed should a case be presented to the Gateway process. Before moving to the Gateway stage, consideration should be given to the proportionality of police involvement, likely outcomes and other internal resolution options.

Step 3 – The Gateway Process

The Gateway can be accessed only through nominated Single Points of Contact (SPOCs). These SPOCs should occupy senior executive positions within the CO and other relevant participant organisations. In the case of the MPS the level has been suggested at Deputy Commissioner. The DPP and Commissioner of the MPS have agreed to high level Gateway representation as a useful development. Other representatives may be invited to attend as appropriate. The panel of SPOCs will assess the strength of the intelligence/evidence package and decide whether it meets the threshold for police investigation. At this early stage the panel should consider likely outcomes and other resolution options, eg using appropriate regulatory authorities; whether an investigation represents the best use of police resources; and if it is in the public interest to investigate. The panel might also require further scoping of the case to take place before deciding upon the next step. Each organisation represented clearly has its own responsibilities and independence in this process; the objective is to see if collective agreement can be secured on the value of going forward. It is also understood, that at any stage, each of these organisations can exercise their individual independence as necessary given their different roles. Notwithstanding this principle, in extraordinary circumstances it may be necessary for the police to act outside these guidelines and not to fetter their independence by doing so. These situations would be exceptional and require a transparent rationale for taking such action.

Step 4 – Scoping

The Gateway Panel may request further work to assist in their considerations of the most appropriate course of action. This may be undertaken by the CO/ Department or jointly with the police if they are able to bring added value to the process. If the police are engaged it should be clearly understood that this is not the start of an investigation, which should only commence once agreed by the Gateway Panel. Whilst undertaking the scoping, cognisance should be taken of the criteria applied in the Gateway.

Step 5 – Police investigation

Once an investigation has commenced progress should be regularly reviewed against all resolution options including ceasing to investigate. In common with national best practice derived from other high risk cases, police will establish an early relationship with a senior level CPS lawyer and take advice at key stages of the investigation. When the investigation has Parliamentary implications, seeking advice from a Parliamentary official at an appropriate stage of the investigation would be advisable. Both these relationships should be separate to any formal police review process.

Step 6 – Regular review

This should be an ongoing process involving the Police, CPS and any other representative adding value. It is suggested that the introduction of someone not forming part of the investigation command team, who can independently challenge decision making, would be an asset to the quality of decision making. The purpose of the review is to take stock of the investigation. By considering the likely outcomes, resolution options and other relevant factors, the review will be capable of deciding the most appropriate course of action. In doing so, levels of actual harm or damage as revealed by the investigation will inform the police/CPS decisions as to public interest.

Step 7 – Resolution options

At the conclusion of the investigation – assuming it has passed through the review process – there will be a determination of how the case will be concluded. The DPP will first decide whether any criminal proceedings should be pursued. In the event of there being no proceedings other resolution options should be considered.



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