

South Wales Police

Destruction of specific documents leading to the collapse of the R v Mouncher & others trial at Swansea Crown Court on 1 December 2011

Independent Investigation
Final Report

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Introduction

1. This matter originated with the murder of Lynette Deborah White. Ms White was found dead in a bedsit at Flat 1, 7 James Street, Cardiff on 14 February 1988. She was 20 years old and had suffered multiple stab wounds. A murder investigation was conducted at that time by officers from South Wales Police.
2. This original investigation led to the following five men being charged with Ms White's murder:-
 - Stephen Wayne Miller
 - Yusef Abdullahi
 - Anthony Paris
 - John Actie
 - Ronald Actie
3. The five men stood trial for murder at Swansea Crown Court between May and November 1990. At the conclusion of the trial Mr Miller, Mr Abdullahi and Mr Paris were convicted and sentenced to life imprisonment. John Actie and Ronald Actie were acquitted.
4. On 10 December 1992 the Court of Appeal quashed the convictions of Mr Miller, Mr Abdullahi and Mr Paris. The Court of Appeal in its decision expressed criticism over the actions of the police conducting the murder investigation. The case attracted widespread and sustained media attention with the three men acquitted on appeal becoming widely referred to as the Cardiff Three.
5. Following the Court of Appeal hearing South Wales Police initially decided that there would be no immediate re-investigation of the murder. However, in June 1999 South Wales Police commissioned a review of the original murder investigation by two retired Lancashire Constabulary senior detectives, John Hacking and Bill Thornley. After this review had

been completed, South Wales Police launched a full re-investigation of the murder of Ms White. This was known as Lynette White Phase 2 (LW2).

6. In March 2003, as a consequence of advances in the forensic use of DNA profiling, the LW2 investigation team arrested Jeffrey Gafoor, then aged 38 years, for the murder of Ms White. On 4 July 2003 Mr Gafoor appeared before Swansea Crown Court and pleaded guilty to the murder of Lynette White and was sentenced to life imprisonment.
7. The conviction of Mr Gafoor led South Wales Police to believe that there was prima facie evidence of perjury and perverting the course of justice on the part of several key witnesses. It was felt that their evidence at the original trial was false and had led to the wrongful convictions of the three men freed by the Court of Appeal in 1992. This in turn raised concerns that certain police officers involved in the original investigation may have behaved criminally.
8. On 14 July 2003, South Wales Police appointed Detective Superintendent Christopher Coutts, subsequently promoted to Chief Superintendent, to lead an investigation into these aspects of the original murder investigation. He was the Senior Investigating Officer (SIO) throughout. This investigation, which was termed Lynette White Phase 3 (LW3), was substantial. It utilised a Major Incident Room (MIR) which was finally located at Ministry of Defence premises in St Athan and was managed via a Home Office Large Major Enquiry System (HOLMES) database.
9. South Wales Police initially referred this investigation to the Police Complaints Authority (PCA) at that time. In January 2004 the PCA advised that the investigation should be re-referred by South Wales Police if any evidence of misconduct was found. Close liaison was established with the Crown Prosecution Service (CPS) at the outset of the LW3 investigation and continued throughout.
10. On 24 August 2004 the LW3 investigation was re-referred to the IPCC,

which by that date had replaced the PCA. After referral it was decided that the LW3 investigation should be supervised from that point on by the IPCC Commissioner for Wales, Tom Davies.

11. The focus of the LW3 investigation was twofold. It examined both non-police witnesses who had given evidence during the original trial and the conduct of those police officers involved in the original investigation. Numerous arrests of individuals falling into both categories took place.
12. By December 2008 three of the original non police witnesses faced prosecution for perjury. These were Leanne Vilday, Angela Psaila and, Mark Grommek. Ms Vilday, Ms Psaila and Mr Grommek all pleaded guilty to perjury and each of them was sentenced to 18 months imprisonment. A fourth defendant, Paul Atkins, had earlier been found unfit to plead.
13. Following these convictions, a total of 13 retired police officers involved in the original murder investigation faced prosecution for various criminal offences. The trial of eight of these officers, together with two other non-police witnesses commenced at Swansea Crown Court on 4 July 2011. This trial was known as R v Moucher and others. The remaining five retired police officers were then scheduled to face a separate trial after this trial had been concluded.
14. As the R v Moucher and others trial had progressed concerns had been almost continually raised by those representing the defendants. These concerns were in relation to alleged non-disclosure by the prosecution of relevant material which defence counsel believed could undermine the prosecution case or assist the defence.
15. By 28 November 2011 these ongoing defence questions resulted in the trial judge, Mr Justice Sweeney, ordering the prosecution to produce to him specific documents. The material specified was all documents which had been initially assessed by a police officer as being potentially liable for disclosure as possibly undermining of the prosecution case or assisting the defence but which a prosecution lawyer had then decided

was not discloseable at that stage. Four specific copy documents were found to be missing from their expected location and so could not be produced to the judge in accordance with his instructions.

16. Initial investigation showed that these documents, which were copies of original documents obtained from a third party, had first been found to be missing on 24 February 2010. On this day a conversation had taken place between two police officers, recorded contemporaneously in writing by one of them, to the effect that the copy documents had been destroyed on the instruction of the SIO, DCS Coutts.
17. Having received the information that the copy documents had been destroyed Nicholas Dean QC, leading counsel for the Crown, informed the Swansea Crown Court on 1 December 2011 that *“the prosecution can no longer sustain a position maintaining that the court and the defendants can have the required confidence in the disclosure process, the confidence that my Lord has referred to with all its importance to our criminal justice system. In those circumstances I formally offer no further evidence and will invite my Lord to direct the jury to return not guilty verdicts”*. No further evidence was offered against the 10 defendants and the case was discontinued.
18. On 17 January 2012 the copy documents which Swansea Crown Court had been informed had been destroyed were recovered in the South Wales Police premises at St. Athan from which the LW3 investigation had been managed.
19. This investigation is narrow in scope and specifically focussed on the four copy documents referred to at Swansea Crown Court on 1 December 2011. There is a separate, wider, review by Michael Fuller, Chief Inspector of Her Majesty’s Crown Prosecution Service Inspectorate (HMCPSI) into the overall disclosure process adopted by the prosecution.

Terms of reference

20. The original terms of reference were amended slightly on 27 January 2012 to take account of the fact that the copy documents believed to have been destroyed had been recovered on 17 January 2012. This was achieved by the addition of a fourth sub term below.
21. The terms of reference for the investigation were:
- To establish the date that each of the four specific copy files of documents came into the possession of the Disclosure Team on the Lynette White 3 investigation.
 - To establish what disclosure process each of the four specific copy files of documents was subjected to by any police officer or police staff member and any recording process used to detail that disclosure process.
 - To establish if any decision was made to destroy any of those four specific files of documents and if so whether any police officer or police staff member properly recorded the reasoning and rationale for such a decision.
 - To establish the movements and location of the four specific copy files of documents from the time they originally came into the possession of the Lynette White 3 investigation until their discovery on 17 January 2012 still in the possession of South Wales Police.

To identify whether any subject of the investigation may have committed a criminal offence and, if appropriate, send a copy of the investigation report to the Director of Public Prosecutions (DPP) for him to decide whether criminal proceedings are to be brought.

To identify whether any subject of the investigation may have breached their standards of professional behaviour. If such a breach may have occurred, to determine whether that breach amounts to misconduct or gross misconduct and whether there is a case to answer.

To consider and report on whether there is organisational learning, including:

- Whether any change in policy or practice would help to prevent a recurrence of the event, incident or conduct investigated.
- Whether the incident highlights any good practice that should be disseminated.

Subjects to the investigation

22. The following South Wales Police officers are considered to be the principal officers within this investigation:
 - Detective Chief Superintendent Christopher Coutts – Senior Investigating Officer (SIO).
 - Detective Chief Inspector John Penhale – Deputy Senior Investigating Officer – senior police officer present in court.
 - Detective Sergeant Mark Allen – Lead Disclosure Officer until December 2009.
 - Detective Sergeant Edward May – Office Manager in February 2010.
 - Detective Constable Gary O'Connor – Lead Disclosure Officer in December 2010 (as acting Detective Sergeant).
23. Under the Police (Conduct) Regulations 2008, as amended, police officers are to be served with a Regulation 14A Notice in instances where it is believed that an officer's actions may have breached the standards of professional behaviour. These are issued where the breach is sufficiently serious that formal misconduct proceedings may be brought.
24. After continuing consideration of all of the available evidence, no Regulation 14A Notices have been served on any police officers in connection with this investigation. The investigation has therefore not been subject to Special Requirements.

25. The IPCC investigation has established that the documents relating to this investigation were all copies of third party material obtained by the LW3 investigation from the IPCC. The IPCC had at all times up until 28 November 2011 retained possession of the original documents from which the copies had been made.
26. The documents consisted of the following material:-
 - A copy of a statement from Mr William Peter Evans relating to complaints against the police made about the LW3 investigation team. This lengthy statement and an associated shorter one had been obtained by a South Wales Police Professional Standards Department investigator on 20 April 2009. Copies had then been forwarded to the IPCC on 13 May 2009.
 - Three full copies of original IPCC files in respect of complaints against the police made by John Actie. These were three different complaints made by Mr Actie relating to the conduct of police officers towards him on three separate occasions and were unconnected to the LW3 investigation.

Policies and procedures

27. Legislation covering disclosure in criminal prosecutions is detailed within the Criminal Procedure & Investigations Act 1996 (commonly referred to as the CPIA) and the Code of Practice issued under it. The LW3 investigation commenced after 1 April 1999 but before 4 April 2005 so that the disclosure provisions of Part 1 of that Act in their original form applied to the investigation. The process adopted is outlined in a document known as the Joint Operational Instructions for the Disclosure of Unused Material (referred to as the JOPI) which outlines the concepts of primary, secondary and ongoing disclosure.
28. The JOPI states that police officers are required to record and retain material obtained in a criminal investigation which may be relevant to the investigation. It also details that anyone other than the investigator or the prosecutor is to be regarded as a third party who has no duty under the

legislation. The police must make reasonable enquiries of third parties to ascertain if they have information which may be relevant to a criminal investigation and any material coming into the hands of the investigator or the prosecution via a third party will then be material obtained in the course of an investigation. If it is relevant it must be recorded and dealt with just like any other material.

29. The Code requires that material of any kind which is obtained in the course of a criminal investigation and which may be relevant to the investigation must be retained. Relevant material is widely defined in the Code as being anything that has some bearing on any offence under investigation or any person being investigated, or to the surrounding circumstances of the case, unless it is incapable of having any impact on the case.
30. The JOPI gives advice that large and complex cases will inevitably need close and early liaison between the disclosure officer and the prosecutor and that where appropriate they may agree to look at the material together before the schedules are prepared.
31. In this case, pursuant to that advice, a formal document entitled '*Protocol for Disclosure of Unused Material*' was drawn up which identified the prosecutor as Howard Cohen, Senior Crown Advocate, the Disclosure Officer as DS Mark Allen and the Disclosure Junior Counsel as being James Haskell of Guildhall Chambers, Bristol. The role of Mr Haskell was to advise and assess documents for disclosure purposes. By July 2009 Mr Haskell was spending a great deal of time advising the investigation and assessing material for disclosure and had his own accommodation within the MIR at St Athan.
32. This Protocol gave advice on judging relevance but highlighted that "*a working assumption should be made that all material held is relevant. The assumption may only be displaced only where it is absolutely clear that specific material is incapable of having any impact on the case.*" The Protocol went on to advise that "*material ultimately deemed to be*

irrelevant must be retained and made readily identifiable.....At the stage of secondary disclosure material previously deemed to be irrelevant must be re-reviewed and scheduled if new information renders specific material relevant.”

33. The disclosure process adopted has been explained in emails to the IPCC from Mr Haskell. It entailed documentary material coming into the possession of the investigation team being registered on the HOLMES computer system and given a unique reference number automatically generated by the HOLMES computer system. Having been registered it was then assessed by a police disclosure officer. Should that officer believe the material to be firstly relevant and secondly either undermining of the prosecution case or of assistance to the defence then it would be listed on a document referred to as an eCatalogue which would show the unique HOLMES reference number given to that documentary material. It would then be passed to Mr Haskell for his consideration.
34. Mr Haskell would assess the material and record his decision on the eCatalogue about whether he considered the material to be relevant. Should it be considered relevant he would instruct the listing and description of the particular material on whatever disclosure schedule – Form MG6C (Schedule of non sensitive unused material), MG6D (Schedule of sensitive unused material) as considered appropriate. In addition the police prepared the MG6E (Disclosure Officers Report which was used to highlight material that is both relevant (and therefore on the MG6C or MG6D) but also considered to be potentially undermining of the prosecution case or assisting the defence.
35. Administrative procedures and the document routing to be used within Major Incident Rooms are comprehensively laid down in a document entitled Major Incident Room Standardised Administrative Procedures (commonly referred to as MIRSAP). This gives an instruction to the Receiver to attach an ‘other document form’ to anything to be registered as such and guidance that the indexer should then register the document

to the most appropriate record.

Chronological summary of events

36. During early 2009 the LW3 investigation commenced a process known as third-party disclosure. This is where notification is given to outside agencies and other internal police departments which it is believed may be in possession of material that was potentially discloseable during the prosecution process. Part of this third party disclosure process concerned documents believed to be in the possession of the IPCC.
37. On 31 March 2009 DS Allen sent what is known as a third party letter to the IPCC. This is a standard letter, an example of which is shown within an appendix to the JOPI. The letter requests the third party to search and then detail if they possess relevant material, allow the prosecution to inspect it and ultimately retain the material.
38. The letter was received by the IPCC on 2 April 2009 and was brought to the attention of Mr Chris McCoy, a Senior Casework Manager who was assisting Commissioner Davies with supervision of the LW3 investigation. There followed more communication via letter, telephone and email, between Mr McCoy and DS Allen.
39. The statement of Mr Evans had been obtained from him by Mr Sean King, a South Wales Police Professional Standards Department (PSD) investigator on 20 April 2009. The statement related to complaints against police made by Mr Evans on behalf of himself and his wife Carole Evans. Ms Evans had been arrested by the LW3 investigation in 2005 whilst she was a serving police officer with Dyfed Powys Constabulary. The Evans' complaints were but one of numerous complaints against police that had been made by those under investigation by LW3 in respect of the conduct of DCS Coutts and his team.
40. These complaints had been considered individually and many had some IPCC involvement. To provide a further degree of independence such

complaints against police requiring an IPCC involvement had been dealt with by the IPCC North West office at Sale rather than the Wales and South West office at Cardiff. The administration of these complaints at the IPCC Sale office was conducted by IPCC Casework Manager, Sunny Bhalla.

41. Mr Bhalla has confirmed that the copy statements of Mr Evans taken on 20 April 2009 are within the relevant file at Sale together with a covering letter from South Wales Police PSD dated 13 May 2009. Mr Bhalla also confirmed that he has email records indicating that he sent a copy of this file via courier to Mr McCoy at the IPCC Cardiff office on 24 June 2009.
42. The ongoing communication between DS Allen and Mr McCoy led to a visit to the IPCC Office in Cardiff by DS Allen on 23 July 2009. He met personally with Mr McCoy. The purpose of their meeting was to examine material held by the IPCC for third party disclosure purposes. Ahead of the visit Mr McCoy had sorted potentially relevant material into 14 bundles and had attached a brief schedule to each bundle. DS Allen was allowed to examine this material whilst at the IPCC office.
43. DS Allen expressed interest in material listed within two particular bundles. These were Bundle 13 and Bundle 14. Bundle 13 contained IPCC files relating to complaints against the police made by or on behalf of police officers and former police officers who had been arrested as part of the LW3 investigation. Bundle 14 contained several diverse complaints against the police made by Mr Actie. All the complaints by Mr Actie were of interest to DS Allen but he was only interested in a small part of the complaints by arrested police officers, namely the statement made by Mr Evans on 20 April 2009.
44. Mr McCoy stated that DS Allen requested him to provide full copies of all the IPCC files relating to the John Actie complaints against the police. Mr McCoy recalled that he probably requested a member of his staff, Victoria O'Flaherty (also known as Marndon) to photocopy the files and put them

in similar folders to the originals.

45. Ms O'Flaherty recalled copying the IPCC files relating to the complaints against the police made by John Actie at the request of Mr McCoy. She was unable to date exactly when this occurred but made the copies up in similar folders to the originals and labelled these in her handwriting.
46. DS Allen believed that he collected this material from the IPCC Office in the days following his visit on 23 July 2009 and that he then took it to his office in the MIR at St. Athan. DS Allen stated that he then discussed the material informally with Mr Haskell. DS Allen stated that Mr Haskell requested that certain parts of the material be listed on an eCatalogue in order that he could consider it in accordance with the normal procedure. DS Allen believed that the material that Mr Haskell specifically wanted listing on an eCatalogue were three of the John Actie complaints against the police and the statement of Mr Evans. DS Allen asked one of his disclosure team, DC Robert Rowlands, to list the material on an eCatalogue and then submit it to Mr Haskell.
47. DC Rowlands recalled being asked to list some copy IPCC material on an eCatalogue by DS Allen and then pass it to Mr Haskell for assessment. The eCatalogues were produced on a computer system whereby each officer had an individual log on. The individual listing of each document had seven possible column entries on the eCatalogue but in this case only three were completed in respect of each of the four copy documents. These were the *document number* and the *issue description* which were completed by DC Rowlands and the *comments* which were completed by Mr Haskell.
48. This investigation has established that the normal and correct procedure would have been for the copy IPCC material to be first registered on the HOLMES system and be given unique HOLMES reference numbers which would be entered on the eCatalogue as the *document number*. This process would provide a solid link between the HOLMES system and the eCatalogue. For reasons which are unclear the eCatalogue was

completed before the material had been registered on the HOLMES system. DC Rowlands therefore entered the numbers 1 to 4 in respect of the *document number* on the eCatalogue with 1 being the Evans statement and 2 to 4 inclusive being the three John Actie files.

49. As shown on the printout of the eCatalogue DC Rowlands listed the four documents and briefly described each within the *issue description* column. He believed that he then passed the eCatalogue and the material to Mr Haskell. The issue description recorded on the eCatalogue by DC Rowlands for each of the four documents was as follows:
- 1) *Statement of complaint Peter Evans. Makes complaint re search of premises and arrest of wife Carole Evans. Complains about D/Supt Penhale, ACC Cahill, Tom Davies IPCC and DC Gari Jefferies and the Police Authority.*
 - 2) *Complaint of racial abuse by police officers towards John Actie October 2005. May undermine Actie's credibility as it is suggested that the complaint may be malicious and investigating officer suggested in a report of considering prosecuting Actie for wasting police time.*
 - 3) *Complaint following drug search of John Actie 3 October 2006 alleged false imprisonment, assault, use of force and abuse of authority etc against searching officers and appeal against finding of no case to answer (appears to be irrelevant).*
 - 4) *Complaint July 05 of assault after being sprayed with CS Spray Louisa Place after being requested to assist police by Supt Bob Tooby (appears to be irrelevant).*
50. DI Richard Holder of South Wales Police PSD has conducted an examination of the "shared drive" of the computer system used for this eCatalogue on 13 March 2012. This showed that the relevant eCatalogue was created by DC Rowlands at 9.08am on 4 August 2009 and amended by Mr Haskell at 12.22pm on 12 August 2009.
51. Mr Haskell considered the four copy files of documents listed on the

eCatalogue and determined that the statement of Mr Evans was not relevant and therefore did not require scheduling. Mr Haskell recorded his decision on the eCatalogue. He determined that the three IPCC files relating to complaints against the police made by Mr Actie were relevant but were not at that stage undermining of the prosecution case or of assistance to the defence. Mr Haskell instructed that the three John Actie files should be scheduled on the MG6C and considered again at the secondary disclosure phase when Defence Case Statements had been received.

52. Mr Haskell inserted his relevant comments on the eCatalogue. It is unclear exactly what happened to the eCatalogue and the associated material immediately after this date. In respect of the four documents his comments recorded were as follows:
- 1) *I have reviewed this lengthy statement. Mr Evans is plainly very hostile to the whole investigation & is angry that his wife (Carol Evans) was arrested on suspicion of conspiracy. Within his statement are a number of unsubstantiated allegations & a number of derogatory remarks. These relate on the whole to John Penhale, Gari Jefferies, Tom Davies and Stephen Cahill. In my view, there is nothing to suggest that the credibility of those individuals will be an issue in the ongoing proceedings. Consequently, this material is not relevant to the current prosecution. The crown has a continuing duty of disclosure & if in the future (after DCS) the credibility of these officers does become an issue, this material can be re-visited. No need to schedule.*
 - 2) *This material is relevant. I have considered whether this should be disclosed. Does it undermine Actie's credibility? The first point is that it is unclear to what extent his credibility will be an issue; in any event I am unconvinced that this does undermine him. He has made complaints and whilst they have not been proven, that is not to say the allegations were untrue. I do not agree entirely with Inspector Bohun's observations. He says the complaint "may be" malicious but cannot support that conclusion other than say that the evidence neither proves nor disproves the*

complaint. For the moment, I am satisfied this material should be on the MG6C. It can be re-assessed if it is apparent from the DCS that credibility is an issue.

- 3) *My view is that this material is relevant (John Actie is a prosecution witness) and should be scheduled on the MG6C.*
- 4) *My view is that this material is relevant (John Actie is a prosecution witness) and should be scheduled on the MG6C.*
53. Around the same time DS Allen was also dealing with third party disclosure from South Wales Police Legal Services Department. He received five files relating to civil claims against South Wales Police. The five files related to claims by serving or former police officers who had been arrested by LW3. These individuals included Mrs Carole Evans the wife of Mr Evans. These files were forwarded with a letter dated 28 July 2009 from the Legal Services Department to DCS Coutts.
54. The process for registering documents on the HOLMES system is such that the material is initially submitted to a Receiver. This role is responsible for initial consideration of the material and attaching a HOLMES document label describing the material and giving relevant instructions to the Indexer (sometimes referred to as the Registrar) who is then responsible for registering the documents on the HOLMES database. The registration generates a unique consecutive reference number for each document. The Indexer should then write this unique number on the HOLMES document label which should remain with the documents at all times as the documents are moved through the required processes within the MIR.
55. Any audit trail within a HOLMES database can only commence once the Indexer has registered the documents and obtained the unique reference number. The HOLMES database in relation to matters relevant to this investigation has been independently examined by Jill Lodge an IPCC Investigation Support Manager who is qualified and experienced in

HOLMES based investigations.

56. Carole Williams is a police staff HOLMES indexer. It has been established via the HOLMES audit that on 18 August 2009 she initially registered the copy IPCC material and the copy South Wales Police Legal Services material which had been obtained separately by DS Allen. Ms Williams had no specific recollection of doing so but accepted that the HOLMES audit records were correct.
57. HOLMES audit records obtained by the IPCC show that Ms Williams registered D7447 on the HOLMES database at 8.10am on 18 August 2009. The material was described as *“18/08/2009 Independent Police Complaints Commission document regarding complaints by John Actie against South Wales Police.”* The HOLMES audit records showed that Ms Williams made further entries and cross references on D7447 until 8.13am that same day.
58. Similar HOLMES audit records show that Ms Williams registered D7448 on the HOLMES database at 8.16am on 18 August 2009. The material was described as *“18/08/2009 five files in relation to civil claims against South Wales Police by John Murray, Carole Evans, Michael Daniels, Erica Coliandris and Adrian Morgan”* within the HOLMES database. The HOLMES audit records showed that Ms Williams made further entries and cross references on D7448 until 8.23am that same day.
59. Although Ms Williams had no specific recollection she believed that the audit records indicated that she has registered D7447 and D7448 immediately after each other on 18 August 2009. Ms Williams believed that it was likely that she would have been in possession of all the material making up both D7447 and D7448 at that time. Ms Williams believed that the description she entered on the HOLMES database would have been copied from that on the label completed by the Receiver prior to her commencing the registration process.
60. DS Allen, after being informed of the HOLMES audit information for

D7447 and D7448 which indicated registration on 18 August 2009 stated that he believed that he had tasked Ms Williams with registering the documents on that date. He was therefore fulfilling the role of MIR Receiver.

61. Again HOLMES audit records obtained by the IPCC showed that between 11.26am and 11.31am on 28 August 2009 DS Allen updated the Disclosure Records for D7447. This involved placing a description of the document on the HOLMES database which was *“Material from IPCC relating to four separate complaints by John Actie against the South Wales Police. First complaint (July 2005) when he was sprayed with CS Spray; second complaint (October 2005) when he was allegedly racially abused; third complaint (October 2006) when he was subject to stop and search; and fourth complaint (April 2007) when he was allegedly verbally abused. All complaints were unproven.”* The HOLMES system required an entry to be made detailing the location of the document and this was shown as *“Incident Room St. Athan.”* There was now a discrepancy between the eCatalogue which deals with three separate complaint files relating to John Actie and the HOLMES computer records which detailed four complaint files relating to Mr Actie. The complaint from April 2007 when Mr Actie was allegedly verbally abused was therefore shown as part of D7447 but had not been listed on the eCatalogue by DC Rowlands.
62. At this time D7447 was shown as *“relevant, sensitive can be edited and listed on the MG6C.”* The disclosure queue was shown as *“ready for defence statement.”* There are disclosure notes on the record showing a code ZH with an entry alongside giving a description of this code as meaning *“this material has been assessed by DS 3640 Allen.”*
63. Similar HOLMES audit records showed that between 11.31am and 11.37am on 28 August 2009 DS Allen updated the Disclosure Records for D7448. This involved placing a description of the document on the HOLMES database which was *“Five files which relate to Civil Claims brought against South Wales Police by John Murray, Carol Evans,*

Michael Daniels, Erica Colliandris and Adrian Morgan in 2008. The claims allege false imprisonment and personal injury. Each file contains documents including a claim form, consent order and correspondence between the parties. All civil claims have been stayed pending the outcome of the criminal proceedings.” The HOLMES system required an entry to be made detailing the location of the document and again this was shown as *“Incident Room St. Athan.”*

64. At this time D7448 was shown as *“relevant, sensitive, can be edited and listed on the MG6C.”* The disclosure queue was shown as *“ready for defence statement.”* There are disclosure notes on the record showing a code ZH with an entry alongside giving a description of this code as meaning *“this material has been assessed by DS 3640 Allen.”*
65. Overall the HOLMES audit records for D7447 and D7448 indicated that both were likely to have been together on 28 August 2009 and in the possession of DS Allen at that time.
66. The paper MG6C forms are printed as part of the HOLMES computer system. It cannot be ascertained via audit exactly when the forms relating to D7447 and D7448 were printed. The forms were signed and dated by DS Allen on 14 October 2009.
67. The next and last time that there is any HOLMES audit information for D7447 and D7448 is on 28 October 2009 when the queue status for both documents was changed on the HOLMES database at 10.39am and 10.45am respectively. This was completed by DC House who moved them both into a state of *“no reading required.”* DC House, whose role was that of MIR Receiver at this time, had no recollection of this transaction and whilst he accepted being responsible for these transactions he believed that he would not have been in physical possession of the documents at that time.
68. DS Allen stated that he believed that after the documents within D7447 and D7448 had been through the disclosure procedure in 2009 he kept

the material together in a box in his office at St. Athan. DS Allen stated that some material within D7447 and D7448 was sensitive as it referred to officers on LW3 subject of complaints and for that reason he believed it should not be stored within the MIR in the usual manner. A policy decision had been made by South Wales PSD that such material should not be disclosed to the LW3 officers subject of such complaints. DS Allen also understood that Mr McCoy of the IPCC had insisted on a firewall between such material and those officers subject of complaint. DS Allen therefore decided to store it together within the box in his shared office at St. Athan. He believed the box and its contents remained at that location until and after he left the LW3 investigation on 4 December 2009. DS Allen did not recall any specific conversation with any other officer, particularly DCS Coutts, at this time. He did not record either his rationale for not storing them within the MIR normally or their location.

69. DCS Coutts stated that he had no specific knowledge of the material within either D7447 or D7448 and believed he had never seen that material prior to 17 January 2012. He recalled a conversation with DS Allen in 2009 involving complaints against himself and other officers and being informed that copy material relating to those complaints had been recovered from the IPCC. He asked DS Allen to confirm that:-
- The copy material had been secured and that the originals were with the provider, in this case the IPCC.
 - The material had been registered and assessed by an LW3 disclosure officers and James Haskell.
 - Third party letters had been served, to ensure the originals were retained by the IPCC.
70. DCS Coutts stated that as the material involved complaints against him and other members of the LW3 team he recalled giving an instruction that the copy material was not to be retained within the MIR. He gave this instruction in order to maintain the integrity of the complaints process against himself and the other officers. The expectation of DCS Coutts

was that the copies of such material would, following assessment and scheduling for disclosure purposes, be returned to and then retained by the third party concerned, in this case the IPCC. The disclosure schedules and the HOLMES database would then reflect that position. He was adamant that at no time had he given DS Allen or anyone else any instruction to destroy or shred any material, copies or otherwise.

71. On 24 February 2010 DS May, in the role of Office Manager conducted an audit of documentary material held within the MIR. The purpose of the audit was to ensure that all required documents were present to be scanned. He found that D7447 and D7448 were missing from their expected location and made enquiries to ascertain their whereabouts.
72. Those enquiries consisted of DS May contacting DS Allen who had by then left the investigation. DS May made a note of their conversation within his "day book" and that note reads verbatim as follows:-
 - *"D7447 + D7448 contacted DS Mark Allen @ PSD – he stated that both docs were copies of info held by IPCC + our legal services. James Haskell had looked at D7447 and decided it wasn't relevant to our enquiry so Mark shredded them (they were scheduled on the MG6C phase 13). With regards D7448 the complaints include Carol Evans whose husband had made official complaints against SIO and others – SIO instructed Mark to get rid of them so he shredded them. Originals are with IPCC + legal services, Holmes updated."*
73. DS Allen does not recall the conversation but does not dispute that it occurred. He stated to the IPCC that as he cannot recall the conversation he is unable to say whether the record made by DS May is accurate. He believed that it was most unlikely that he told DS May that he had been responsible for shredding any documents that formed part of the unused material disclosure process.
74. Ms Williams, the HOLMES Indexer, had a clear recollection of the incident on 24 February 2010 but she was unable to date it. She stated that she

could remember DS May speaking to her about documents after he had had a conversation with DS Allen. She recalled that this was when DS May was conducting an audit of outstanding material that required to be scanned and he had been unable to locate some documents. She recalled that DS May had spoken to DS Allen by telephone to ascertain if he had any knowledge of the whereabouts of the documents and can remember that when DS May came off the telephone he was shocked and annoyed and said something to Ms Williams like *“He’s shredded them.”* Ms Williams recalled that DS May then went on to tell her that the documents he was referring to were copies of original material held by the IPCC and South Wales Police Legal Services Department and that he asked her to update the relevant records on the HOLMES database.

75. Examination of the HOLMES database showed that the “other information” field on the records of D7447 showed an entry stating *“this document is held by the IPCC”* and an entry for D7448 in the same field stating *“this document is held by the Legal Services Department at Police Headquarters, Bridgend.”* Enquiries have been made with UNISYS the manufacturers of the HOLMES computer system and unfortunately entries within the “other information” field are not auditable and therefore it has not been possible to ascertain the time and date that these entries were made.
76. Ms Williams believed that she made those entries on the HOLMES database on 24 February 2010. This belief is now supported by a note she made within her notebook on 24 February 2010 which has been recovered from the MIR at St Athan. Ms Williams had forgotten that she had made this entry until the notebook was found at St Athan on 29 March 2012. The notebook had an entry dated 24 February 2010 in the following terms:-
- *“As a result of not being able to locate documents D7447 document from IPCC re complaint by N9 ACTIE and D7448 files re civil claims against South Wales Police, DS MAY spoke to DS ALLEN who has now left*

enquiry and was informed the original copies of D7447 was held with IPCC and D7448 was held with Legal Services the copies had been destroyed.”

77. In the autumn of 2010 following receipt of defence case statements a secondary disclosure process took place involving D7447 and D7448. This involved a re-assessment by a police disclosure officer of material listed on the HOLMES MG6C records and deciding whether the material was now, in the light of the contents of the defence case statements, undermining of the prosecution or of assistance to the defence. Should the police disclosure officer consider this to be the case then the material should again be listed on an eCatalogue for consideration by Mr Haskell.
78. The secondary disclosure process was managed by means of the MG6C lists being printed off the HOLMES system and endorsed by a police disclosure officer when the secondary disclosure process had been completed. The signed MG6C list relating to D7447 and D7448 have been recovered from the MIR at St Athan. The relevant page lists the documents from D7436 to D7450 inclusive and indicated that it was printed on 29 September 2010. It had been endorsed and dated “A. Morris 13/12/10” which has been confirmed by the officer himself as being DC Andrew Morris who was a disclosure officer on LW3 at that time. The numbers for all documents apart from D7447 and D7448 have been struck through. The number for D7447 has been circled and a handwritten annotation added “*with IPCC.*” The number for D7448 has been circled and a handwritten annotation added “*with Legal Services.*”
79. DC Morris had no recollection of this specific matter but accepted that he had made the handwritten entries, almost certainly on the date indicated, 13 December 2010. He believed that he made those entries having found D7447 and D7448 missing and therefore unavailable for assessment in respect of secondary disclosure by him. He had no recollection of how he obtained the information as to the current location of this material but believed that it may have been from the HOLMES database. He

expected that he would have brought the unavailability of D7447 and D7448 to the attention of the Lead Disclosure Officer, at that point DC O'Connor (who was an acting DS at that time), but he had no actual recollection of having done so.

80. DC O'Connor had only a vague recollection of what occurred when DC Morris brought the absence of D7447 and D7448 to his attention around 13 December 2010. It is a recollection of a conversation he had with Mr Haskell at that time. DC O'Connor stated that Mr Haskell advised him that he had already seen these documents and made the primary disclosure assessment himself. DC O'Connor had no knowledge or involvement with these documents prior to this stage. DC O'Connor stated that he could only assume (but strongly believed) that he was told that it was not necessary to retrieve the documents by James Haskell. He had only taken up a disclosure role on LW3 investigation in the summer of 2010 and therefore could not see any other reason for having a recollection or prior knowledge of the documents.
81. DC O'Connor accepted that normal practice would have been to retrieve these documents but they were in a fluid and informal system of advice with a disclosure barrister sitting five feet away from him. DC O'Connor stated that in this situation it would have been impossible to note or otherwise record every conversation he had with Mr Haskell. With hindsight DC O'Connor stated that had Mr Haskell not been so readily available then he would have automatically either tried to retrieve the documentation or as a minimum recorded the contact with Mr. Haskell and his decision.
82. Mr Haskell is emphatic that no such conversation with DC O'Connor took place. In an email to the IPCC Mr Haskell stated that if he had been made aware that D7447 and D7448 were missing he would have instructed that further copies of the material be obtained in order that the legal requirements of secondary disclosure could be complied with.
83. Mr Haskell stated that he provided written advice to police officers on the

secondary disclosure process in October 2010. This advice, which has been recovered from the MIR at St Athan, stated that in addition to consideration of the defence case statements it should be utilised as a further quality assurance process of the primary disclosure decisions.

84. The R v Mouncher and others trial commenced at Swansea Crown Court on 4 July 2011 with Mr Justice Sweeney presiding. DCS Coutts stated that shortly after the completion of the prosecution opening speech and the oral testimony of the first tranche of witnesses, some defence advocates approached Nicholas Dean QC, leading counsel for the Crown and objected to DCS Coutts being present in court.
85. DCS Coutts recalled that a skeleton argument was prepared to argue that he should remain in court but that it was never put before the judge. DCS Coutts stated that it became apparent to him that Mr Dean did not wish to argue the point. Mr Dean asked him to remain out of court for the victim and key witness evidence and DCS Coutts agreed to do so.
86. When this phase of the evidence had concluded DCS Coutts went back into court to hear other witness testimony. He then saw William Coker QC, leading defence counsel for the defendant Graham Mouncher, approach Mr Dean and object to DCS Coutts' presence in court. DCS Coutts stated that Mr Dean then told him that he felt it was better if he left court. DCS Coutts requested that DCI Penhale be present in court in his absence.
87. DCS Coutts added that as the SIO in previous cases he had always attended court for high profile trials. In such trials he had remained present for the duration even when he was due to give oral evidence about the conduct of the investigation later as planned in this trial. He considered that the defence objections to his presence in this case were tactical but when it became clear that Mr Dean did not wish to argue the point he conceded out of respect to him.
88. The court transcript shows that counsel for the defendants had objected

to Mr Coutts remaining in court from the outset. As it became clear that he would be required to give evidence and that his evidence was contentious, there was no realistic prospect of any change in the defence position, and the Judge was unlikely to depart from the general rule that a witness should not remain in court while other evidence is being given.

89. DCI Penhale and DS May both provided background as to how the trial progressed in terms of the overall disclosure issues. Whilst this investigation is concerned only with particular and specific documents the overall context of the size and history of the LW3 investigation and the amount of documentary material generated needs to be considered. It was believed that the LW3 investigation dealt with approximately 800,000 pages of documents.
90. DCI Penhale stated that by 28 November 2011 it was obvious that the trial judge, Mr Justice Sweeney, had become increasingly concerned about what were alleged to be prosecution failings with disclosure. DCI Penhale stated that Mr Justice Sweeney set an exercise for the prosecution that DCI Penhale believed was concentrated on testing the decision-making of Mr Haskell in respect of material that police officers had suggested was discloseable but that Mr Haskell had decided was not. DCI Penhale's view is supported by the court record for 28 November 2011 where (at page 38) Mr Justice Sweeney stated *"I am much more interested in material which an officer has thought can be discloseable which someone has decided is not."*
91. Mr Justice Sweeney then approved a process to test Mr Haskell's decision-making which was outlined by Mr Dean (at pages 42-43 of the court record) *".....the physical material is held at St. Athan. It is being brought here now. We will conduct an exercise where we go through the whole of the material. The schedules themselves run only to I think two lever arch files and so are relatively easily reviewed, where we will flag up all instances where Mr Haskell has, as it were, not agreed with a disclosure officer, and we will then follow the history of that document,*

providing that document itself and indicating whether it has subsequently been disclosed and at what stage and, if we can, why. That is a task that will take us until first thing tomorrow morning.”

92. The trial at Swansea Crown Court was then adjourned until 12 noon on 29 November 2011 in order to allow the prosecution and police team to complete the production for examination of all relevant material. DS May, who was a central part of the team conducting this process, stated that some time later on 28 November 2011 the material within the eCatalogue originated by DC Rowlands on 4 August 2009 and considered by James Haskell on 12 August 2009 was identified as falling into the category of material requiring production. DS May stated that the eCatalogue had shown no HOLMES reference numbers on them at the time of the eCatalogue being submitted with the documents being simply referred to as 1, 2, 3 and 4. This indicated to him that these documents *“had not actually been registered in the MIR at the time of the assessment, even though they obviously were later registered as D7447 and D7448 and did later appear on the MG6C.”*
93. It was then requested that copies of D7447 and D7448 be brought from the MIR at St Athan to Swansea Crown Court. D7447 and D7448 were not present within their expected location.
94. The exact sequence of events is unclear in what was a fast moving situation but DC O'Connor has stated to the IPCC that at some point during the afternoon of Monday 28 November 2011 he telephoned the MIR at St Athan. DC O'Connor believes that by this time he was in possession of information obtained from the HOLMES system suggesting that the documents may not be at St Athan. Nevertheless he then spoke via telephone to DC Arthur Kingsbury who was present at St Athan. He asked DC Kingsbury to look for D7447 and D7448 in their expected location. He did not really expect DC Kingsbury to locate them and was not surprised when he was informed by DC Kingsbury that the documents were not in their expected location. DC O'Connor further stated that he did not ask DC Kingsbury to conduct any sort of search of St Athan and

there was no expectation on his part that any such search would be conducted.

95. DC Kingsbury has informed the IPCC that he recalled being contacted by a member of the team present at Swansea Crown Court on 28 November 2011 and being asked to look for numbered files. He recalled being told that one of these files related to John Actie. He looked in the appropriate place within the files room and then reported back to colleagues at Swansea Crown Court that the files were not present. He recalled then being asked to *“have a quick look around the MIR mainly to see if anything was out on desks”* but DC Kingsbury could not locate them. He did not conduct anything that could be considered as a search of the building and certainly did not look for the files in the office of DCS Coutts as *“this would be the last place I would consider looking for a document that should be stored in the MIR.”*
96. The continuing information being gathered caused DS May to interrogate the HOLMES database and he found information indicating that D7447 was located with the IPCC and that D7448 was located at the Legal Services Department. This jogged DS May's memory and he recalled his conversation with DS Allen on 24 February 2010. Late on the 28 November 2011 DS May travelled back to St Athan from Crockett police station where he located his day- book which contained a note of the conversation
97. DS May stated that this information was then relayed to Mr Dean. DS May believed that contact was made with DS Allen by Mr Dean during the evening of 28 November 2011 to request a statement concerning DS Allen's recall of events. DS May believed that DS Allen had indicated to Mr Dean at that stage that he had a vague recollection of the instruction from DCS Coutts and of shredding material. DS May also believed that Mr Dean had spoken directly with DCS Coutts that evening and that DCS Coutts had told Mr. Dean that he had never given an instruction for the material to be destroyed or shredded. DS May stated that he was instructed not to speak with either DS Allen or DCS Coutts at this time for

fear of contamination of his evidential recall. DS May was then asked to provide a statement for submission to the court.

98. Enquiries were then made by DS May with the IPCC and South Wales Police Legal Services Department to retrieve the original material relating to D7447 and D7448.
99. Mr McCoy of the IPCC stated that sometime during the afternoon of 28 November 2011 he received a telephone call from DS May. The urgent requirement for the original material was explained to him. It was felt that, owing to its volume, there was not time to make another copy of the original material. At 5.45pm that day at the IPCC Cardiff office Mr McCoy handed the original IPCC files to DC Kingsbury from the LW3 investigation for them to be taken to Swansea Crown Court.
100. DC Kingsbury has confirmed that he collected documents from the IPCC office in Cardiff at that time and took them to Cockett Police Station in Swansea.
101. The recollection of DC O'Connor is that from the early evening of Monday 28 November 2011 onwards there was a growing acceptance, that D7447 and D7448 had been destroyed and therefore there would be no reason to search for material which it was presumed had ceased to exist.
102. DS Allen stated that at about 8.10pm on 28 November 2011, whilst off duty and at home, he received a telephone call from Mr Dean. DS Allen stated that the call was unexpected, surprising and that at the time of the call he had consumed several glasses of wine. Mr Dean asked DS Allen if he could recall a conversation with DCS Coutts about shredding a document. DS Allen told Mr Dean that he could not recall such a conversation.
103. DS Allen stated that he explained to Mr Dean that he could only ever recall discussing one document with DCS Coutts and that was in respect of complaints about members of the LW3 investigation team. DS Allen

stated that Mr Dean continued to probe his recall regarding a conversation with DCS Coutts about shredding a document and he told Mr Dean that he had not had such discussions with DCS Coutts.

104. DS Allen recalled that his telephone conversation with Mr Dean continued around documents originating from the IPCC coupled with a confirmation that there were shredding machines within the MIR. Mr Dean then concluded the conversation by explaining to DS Allen that he should provide a statement surrounding what they had just discussed and that he should not talk to anyone else about their conversation. DS Allen's recollection is that no timescale as to when the statement was required and no explanation of why a statement was required.
105. Mr Dean made a note of his telephone conversation with DS Allen, he has recorded that DS Allen will make a statement in the morning. The CPS lawyer, Simon Clements has also recorded that DS Allen was asked to make a statement "in the morning".
106. DS Allen stated that he attended South Wales Police PSD, his usual place of work, the following morning, Tuesday 29 November 2011. He stated that at 8.19am that day he received a telephone call from DCI Penhale asking for his statement. DS Allen stated that he was now starting to panic and worry. He asked DCI Penhale what was going on and if he was in any sort of trouble. DS Allen stated that DCI Penhale would only say, *"This is the culmination of other problems with disclosure and that this was the straw that broke the camel's back"* and that his statement was required by 9.00am.
107. DS Allen stated he was further contacted by DCI Penhale over his statement at 9.37am after which he sent a statement, which is brief and vague, to an email address identified by DCI Penhale. The relevant part of the statement reads as follows:- *"On Monday 28th November 2011 I received a telephone call at home from Mr Nick Dean. Mr Dean asked me if I could recall during my time on the re-investigation whether having a conversation with Chief Superintendent Chris Coutts regarding the*

shredding of a document, and could I produce a statement regarding that matter. I can recall having a conversation with Mr Coutts in his office regarding a sensitive document that I considered too sensitive to put through the incident room, as it involved complaints against current members of the investigation team. As far as I can remember the document would either have come from my examination of files held at The Professional Standards Department Head Quarters Bridgend, or from my visit to the IPCC in Cardiff. I can recall the document would have been a copy of an original, and that it would have been shown on lists provided by both IPCC and PSD. Following our discussion in respect of how to deal with the document I cannot recall how I disposed of that document.”

108. DCS Coutts stated that on the evening of 28 November 2011 he was contacted at home by Mr Dean. Mr Dean asked him if he had ever given any instruction to shred or destroy case material or copies of case material. DCS Coutts informed Mr Dean that he had never given any instruction to destroy case material, copies or otherwise. Mr Dean then informed DCS Coutts that there was an issue with the absence of copies of complaints material but he was unable to discuss the matter further with him. He told DCS Coutts not to attend court the following morning and that DCI Penhale would update him.
109. At 9.30am on 29 November 2011 Mr Dean addressed Mr Justice Sweeney in Chambers at Swansea Crown Court. He outlined a brief description of the specific documents, that they were copies of IPCC material and that the copies did not appear to be held.
110. Mr Dean continued his address to the judge in Chambers by stating that he had asked that the originals be recovered from the IPCC but that in the course of discussing what may have happened to the documents DS May *“indicated to me that he had a recollection that there had been an instruction to shred material given at some point in time by Mr Coutts, and as My Lord might imagine, the use of the word ‘shred’ in this context gave rise to some considerable concern.”* He went on to say that he had

subsequently made contact with DS Allen who *“to a certain extent, prompted by what I was able to tell him, he was able to give me some vague information about some recollection of having been told to shred documents.”* He also informed the judge that he had *“not discussed these matters in any detail with Mr Coutts. He is aware of the, as it were, query, but no more than that.”*

111. Mr Dean went on to explain that his information was that Mr Haskell during primary review had instructed that the particular material should have been subject to further review at the secondary disclosure stage following receipt of defence case statements. This could not have been done because the material was not available at that time. There was at that point no way of knowing whether the original *“material recovered from the IPCC (on 28 November 2011) was exactly the same material that was initially reviewed or not. It may have been added to; it may have been subtracted from.”*
112. In the light of this information Mr Dean requested an adjournment until 1 December 2011 in order that the Crown could consider its position. Mr Justice Sweeney acceded to this request but displayed his viewpoint at this time by saying *“I think that if one gets to the stage where in a trial like this that the court can no longer have confidence in the light of concessions made by the Crown as to the disclosure process and hence the fairness of the trial, then the nettle just has to be grasped and matters have to be brought to a very final conclusion. I am afraid that’s the only fair way out.”*
113. On 1 December 2011 Mr Justice Sweeney addressed the jury. He gave an overview of the legal requirements surrounding disclosure in criminal trials and a brief history of the disclosure problems encountered during the trial. He then stated that *“...material that meets the criteria for disclosure must be disclosed in good time and the schedules must contain sufficient detail to allow the defence to know the nature of the remaining unused material that the police hold. In this case the scale of*

the task was very substantial indeed, with something in the order of 800,000 items of unused material, covering a period of some now 23 years.”

114. Mr Dean then formally addressed Swansea Crown Court. He explained in broad terms the circumstances around these documents stating that *“DS May found an entry in his records for 24 February 2010 recording his ongoing audit of material held by the investigation and a conversation with DS Allen in which DS Allen had confirmed that he had destroyed the copies of the four files of IPCC material seemingly because in relation to one of the files Mr Coutts had instructed him to dispose of it and in relation to the remaining three because Mr Haskell had said that they were irrelevant.....Mr Coutts has not been able to be asked in detail about his recollection of those events and Mr May’s notes represent the clearest available account.”* Mr Dean then formally offered no further evidence and invited Mr Justice Sweeney to direct the jury to return not guilty verdicts. Such verdicts were then entered in respect of each defendant on all charges faced.
115. Immediately following the collapse of the trial all police premises utilised by the LW3 police investigation team were “locked down” by South Wales Police and no officers or staff who had been working on the investigation were from that point onwards allowed access to any of these premises without independent supervision. The original items obtained from the IPCC on 28 November 2011 were removed from Swansea Crown Court to St. Athan on 7 December 2011 under the direct supervision of DI Paul Peters.
116. On 17 January 2012 DCS Coutts, who was being compulsorily retired from South Wales Police as part of a planned reduction in staffing in response to cuts in the force budget was allowed access to his office at St Athan in order to remove personal property. His visit was supervised by David Jenkins, Senior Investigative Assistant with South Wales Police PSD. Mr Jenkins stated that they arrived at 10.00am. DCS Coutts’ office

was located at the far corner of the building. It contained a desk, shelves and a number of storage cupboards and cabinets. Piled up in the room were a number of large storage boxes. DCS Coutts went through the cupboards and cabinets to identify personal material, which was not subject of the LW3 investigation and that he wished to take away.

117. At about 11.40am that day, DCS Coutts alerted Mr Jenkins to a storage box which he had found amongst others located in the corner of his office. This was an Iron Mountain box which appeared to contain significant items. The IPCC was contacted and attended at the location. The box and its undisturbed contents were securely sealed in an evidence bag and removed to South Wales Police Headquarters, Bridgend.

118. The contents of the box recovered from DCS Coutts office were fully itemised by Mr Jenkins. Of particular note was the following:-

- Iron Mountain boxes are not used by South Wales Police but are used by the IPCC.
- Taped to the top of the box was a typed schedule titled '*Rubicon index 14*' consistent with that produced by Mr. McCoy prior to the visit of DS Allen on 23 July 2009.
- Inserted between this schedule and the lid was a handwritten note "*MG6C material from IPCC relating to four separate complaints by John Actie..... (concludes) – All four complaints were unproven. Mark Allen reference D7447.* '

119. Supervised inspections of the contents of the Iron Mountain box recovered by DCS Coutts on 17 January 2012 have been undertaken by the following individuals with the significance indicated:-

- Ms O'Flaherty of the IPCC identified the copy John Actie files as being those she made up on a date unknown after direction from Mr. McCoy. The folders of all these files bear numerous handwritten parts which Ms O'Flaherty identified as her handwriting.
- Mr McCoy of the IPCC identified some small tags, JA1, JA2 etc, found on

the copy Actie files as being produced by him and bearing his handwriting.

- DC Rowlands identified some 'post it' notes as bearing his handwriting
- DS Allen identified his handwriting as partially making up the note inserted between the lid and the schedule referred to above.
- DC House identified a note attached to a brown envelope within the box which contained the Evans statements as being in his handwriting. This note stated "*shown to James Haskell and not relevant.*"

120. Shortly after the initial recovery on 17 January 2012 another Iron Mountain box was recovered from the main part of the building where DI Peters had supervised the depositing of items removed from Swansea Crown Court after 1 December 2011. This second box and its undisturbed contents were securely sealed in an evidence bag and removed to South Wales Police Headquarters, Bridgend. This second box was found to contain the original IPCC material taken to Swansea Crown Court on 28 November 2011.

Conclusions

121. The IPCC acknowledges that, at this stage, questions remain about the action undertaken by the CPS and individuals other than police officers or police staff in the period after 28 November 2011. These questions are outside the remit of the IPCC and the terms of reference for this independent investigation. The IPCC understands that these issues have been addressed by the HMCPSI Review. The HMCPSI Report is being published simultaneously with this report and should be considered together.
122. The IPCC concludes that the material referred to at Swansea Crown Court on 1 December 2011 as having been destroyed consisted of those documents listed on the eCatalogue examined and endorsed by James Haskell on 12 August 2009. These documents were the lengthy

statement of William Peter Evans and three IPCC files relating to complaints against the police made by John Actie.

123. The IPCC concludes that the problems with these documents had their origin in the action taken when the specific copy material first came into the possession of LW3 investigation from the IPCC. There was no record made by DS Allen of the exact nature of the material he had obtained from the IPCC following his visit to their offices on 23 July 2009 nor of the actual date he had come into possession of that material. There was no association between Mr Evans' statement and the John Actie complaints against the police files other than the fact that both had come from the IPCC.
124. The IPCC concludes that the copy material obtained from the IPCC in July 2009 fell into two distinct and unrelated categories. MIRSAP dictates that Mr Evans' statement should have been registered as a separate document from the John Actie complaint against the police files and that a separate 'other document form' should then have been attached to each bundle. This should have occurred immediately after this material came into the possession of LW3 investigation and before any further consideration of the material took place. Had this occurred a HOLMES audit trail would have commenced from that point onwards and unique HOLMES document numbers could have immediately been inserted on the relevant eCatalogue thereby providing a firm link between the HOLMES database and the eCatalogue.
125. The IPCC concludes that DS Allen came into possession of the four specific copy documents on a date unknown between 23 July 2009 and 4 August 2009. DS Allen then asked DC Rowlands to list these four documents on an eCatalogue and submit them to Mr Haskell. DC Rowlands had completed this task by 12 August 2009 at the latest.
126. The IPCC concludes that on a date unknown between 4 August 2009 and 12 August 2009 the eCatalogue and the four specific documents referred to therein were considered by James Haskell. Mr Haskell had completed

his consideration by 12 August 2009. He determined that Mr Evans' statement was not relevant and that the three John Actie complaints against the police files should be listed on a Form MG6C.

127. The IPCC concludes that, in accordance with the Disclosure Protocol for the LW3 investigation, Mr Evans' statement, despite being considered not relevant by Mr. Haskell, should have been retained and made readily identifiable so that at the stage of secondary disclosure the relevance of those statements could be re-reviewed. This would have occurred had Mr Evans' statement been correctly registered on the HOLMES system immediately after they came into the possession of LW3.
128. The IPCC concludes that on a date unknown between 12 August 2009 and 18 August 2009 the IPCC material was combined by DS Allen with other third party material originating from South Wales Police Legal Services Department.
129. The IPCC concludes that on 18 August 2009 this material was consecutively registered on the HOLMES system as D7447 and D7448 Holmes Indexer Carole Williams. No HOLMES 'other document' forms have ever been recovered but the amount of information placed on the HOLMES system at this time and the fact that the two document numbers were registered immediately after each other indicates that Ms Williams was likely to have been in possession of D7447 and D7448 at this time.
130. The IPCC concludes that on 28 August 2009 DS Allen moved D7447 and D7448 through the HOLMES disclosure queues. The amount of information placed on the HOLMES system at this time and the fact that the two document numbers moved through the queues immediately after each other indicates that DS Allen was very likely to have been in possession of D7447 and D7448 at this time.
131. The IPCC concludes that on 24 February 2010 DS May found D7447 and D7448 to be missing from their expected locations. He spoke with DS Allen on that date and although the terms of their conversation are

disputed it is clear that DS May's understanding at the time was that DS Allen told him that the copy material, relating to D7447 and D7448 had been destroyed on the instruction of DCS Coutts. DS May made a note of his conversation with DS Allen and asked Ms Williams to update the HOLMES records. Ms Williams also made a note of the conversation between DS May and DS Allen as reported to her by DS May.

132. The IPCC concludes that on 24 February 2010 DS May made a note of his conversation with DS Allen, immediately or shortly after it had occurred. DS May then asked Ms Williams to update the HOLMES records.
133. The IPCC concludes that, on the balance of probabilities, Ms Williams did update the HOLMES records to show the location of D7447 and D7448 on 24 February 2010.
134. The IPCC concludes that on 24 February 2010 Ms Williams also made a note, immediately or shortly after it had occurred, of the conversation between DS May and DS Allen as reported to her by DS May.
135. The IPCC concludes that, in accordance with disclosure legislation and procedure, the notes made by both DS May and Ms Williams on 24 February 2010 should themselves have immediately been considered as documents material to the investigation and then been subject to the disclosure process. Had this occurred at that time the fact that these copy documents could not be located would have been raised with Mr Haskell and immediate efforts made to rectify and resolve the problem.
136. The IPCC concludes that on 13 December 2010 D7447 and D7448 were again found to be missing from their expected location by DC Morris during the secondary disclosure process and therefore neither document was assessed for secondary disclosure as required by the CPIA. On the balance of probabilities it is likely that DC Morris reported this fact to DC O'Connor.

137. The IPCC notes that the fact that D7447 and D7448 were missing is recollected by DC O'Connor as possibly having been the subject of informal discussions between him and Mr Haskell around 13 December 2010. The IPCC finds that no record was ever made of such discussions by DC O'Connor if such discussions took place. The IPCC also notes that Mr Haskell is emphatic that no such discussions did take place. Therefore it is impossible to decide whether such discussions did take place but the IPCC conclude that no effort was made at that time either to retrieve the original documents or obtain further copies of those original documents from the third parties in whose possession they were.
138. The IPCC concludes that on 28 November 2011 D7447 and D7448 were again found to be missing from their expected location in the MIR and DS May's record of the conversation between himself and DS Allen on 24 February 2010 was brought to the attention of Mr Dean when he arrived at court on the 29th November 2011.
139. The IPCC concludes that the record of that conversation by DS May was accepted as being the most persuasive account despite the contradictory information as to the reliability of its contents being obtained from DCS Coutts. The IPCC finds that no effort was made at that time to locate D7447 and D7448 in the possession of South Wales Police.
140. The IPCC concludes that the original material forming D7447 and D7448 was recovered from the third parties concerned on 28 November 2011. This was considered to be unsatisfactory as there could be no certainty that the copy material considered and assessed by Mr Haskell on 12 August 2009 was identical to the original material.
141. The IPCC concludes that there can be no doubt that the Iron Mountain box recovered from the office of DCS Coutts on 17 January 2012 contained various items which constitute all the material referred to both within D7447 and D7448. The contents also include all the material listed within the eCatalogue originated by DC Rowlands on 4 August 2009.

There are, however, no HOLMES document labels.

142. The IPCC concludes that, on the balance of probabilities, the material which was recovered from the office of DCS Coutts at St Athan on 17 January 2012 is the material which the prosecution had informed Swansea Crown Court on 1 December 2011 had been destroyed on the instructions of DCS Coutts.
143. The IPCC concludes that, on the balance of probabilities, no instruction was ever given by DCS Coutts or any other officer to destroy the copy documents obtained from the IPCC. The only evidence about such an instruction comes from DS May and his conversation with DS Allen. Whilst DS May's recollection is the only one supported by contemporaneous written records, DS Allen cannot recall saying this, and DCS Coutts, alleged via hearsay to have given such an instruction, is adamant that he did not and would not ever have issued it. The fact that it is now clear that the documents were never destroyed is the deciding factor leading to this conclusion.
144. The IPCC concludes that, on the balance of probabilities, a conversation did take place between DCS Coutts and DS Allen around the storage of third party material relating to complaints against DCS Coutts and the LW3 investigation team. As the specific material had not come into the possession of LW3 until 23 July 2009 at the earliest and DS Allen left the investigation on 4 December 2009 it is most likely that any such conversation took place between those dates.
145. The IPCC concludes that, on the balance of probabilities, DCS Coutts gave an instruction to DS Allen that this copy material was not to be stored within the MIR. The expectation of DCS Coutts was that following disclosure assessment the copy documents would be returned to the third parties concerned and not be stored normally within the MIR.
146. The IPCC concludes that, on the balance of probabilities, DCS Coutts did not at any time give an instruction that this copy material was to be

destroyed.

147. The IPCC concludes that, on the balance of probabilities, there is no misconduct by any police officer that would justify the bringing of misconduct proceedings. There are however breaches of policy and procedure by individual officers which the IPCC feel should be considered as performance matters and which the IPCC recommend South Wales Police address appropriately.
148. The IPCC recommends that DS Allen should receive appropriate management action to ensure that in future the correct procedure in fully recording the receipt, transmission, storage and disposal of material obtained from third parties for disclosure assessment is always followed. This performance issue should be brought to the attention of the officer by their senior manager in order that any ongoing performance issues or training needs are addressed.
149. The IPCC recommends that DS May should receive appropriate management action to ensure that in future all material gathered during an investigation is subject to the required disclosure process at the earliest possible opportunity. This performance issue should be brought to the attention of the officer by their senior manager in order that any ongoing performance issues or training needs are addressed.
150. The IPCC recommends that DC O'Connor should receive appropriate management action to ensure that in future disclosure processes are followed correctly and that if advice to the contrary is ever received from a prosecution lawyer, then such advice is recorded appropriately. This performance issue should be brought to the attention of the officer by their senior manager in order that any ongoing performance issues or training needs are addressed.
151. The IPCC accepts that this incident highlights wider issues concerning the rules on disclosure legislation and the associated procedures which are being addressed by the HMCPSI Review. It is recognised that the

disclosure process within any criminal prosecution is a shared one between the CPS and the police.

152. The IPCC recommends that following the completion of the HMCPSI Review information from that is considered in depth in conjunction with the outcomes from this investigation. At this time the IPCC believe that such consideration of all potential learning is probably best achieved during a full structured debrief hosted by South Wales Police and involving attendance by all interested parties.

Andy Riley

Lead Investigator, IPCC

Date 4 July 2013