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Your reference no: PC/05920/14

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23 November 2016

Dear Ms Gareeva

This letter is about your appeal about Metropolitan Police Service, which we received on 13 May 2016.

We are independent of the police. Our role is to look at the way the police investigated your complaint, not to re-investigate it.

I have decided to partially uphold your appeal because I do not agree with the findings of the investigation. When making my decision I considered:

- your letter dated 13 May 2016;
- the report by the police investigator, Detective Chief Inspector (DCI) John Foulkes, dated 24 March 2016;
- the evidence referred to in the report; and
- the rules and standards for how the police should investigate complaints.

Our legal duties are set out in paragraph 25 of Schedule 3 of the Police Reform Act 2002 or Regulation 77 of the contractor regulations if your complaint is about a contractor working for the police. We have to see:

1. if the findings need to be reconsidered, either by us or the police;
2. if any person has a case to answer for misconduct or gross misconduct or whether a person's performance is unsatisfactory;
3. if the proposed police action is appropriate, for example if there needs to be any disciplinary action or other actions;
4. if the Crown Prosecution Service should be involved so that they can decide whether a crime might have been committed by someone working for the police; and
5. if the information you were provided with was sufficient?

My letter to you will consider each point:

## 1. Do the findings need to be reconsidered, either by us or the police?

To make a decision I have to see:

- if the investigation dealt with all of your complaint(s);
- if the investigation was carried out in a proportionate manner and if enough evidence was gathered; and
- as the police decided that there is an indication that the officer or contractor working for the police may have committed a criminal offence OR behaved in manner which would justify the bringing of disciplinary proceedings I must decide whether the right decisions have been made by the appropriate authority about whether or not there is a case to answer for misconduct/gross misconduct [and/or] a criminal offence may have been committed.

This appeal assessment is in relation to a re-investigation of a complaint initially made on the 6 October 2014 and further complaint letter dated 15 May 2015. The re-investigation was undertaken by DCI Foulkes. You raised this as an issue in your appeal dated 16 May 2016. I contacted the Appropriate Authority to establish the extent of DCI Foulkes involvement in the initial criminal investigation and I was advised the following by Matt Fernandez.

*'To confirm DCI Foulkes oversees all 4 north CAIT teams. In that capacity he was informed at an early stage that there was an allegation of Sexual assault involving a large number of persons and would be classified as a critical incident and would attract media attention.*

*He was not involved in the day to day running of the job that was done by myself and DI CANNON.*

*Mr FOULKES was kept informed as we were looking at needing extra resources in line with arrest interview strategy'*

It would therefore appear to me that DCI Foulkes had oversight of the team that dealt with the original criminal investigation and therefore I question whether it was appropriate for him to carry out the re-investigation.

In my opinion the re-investigation outcome report is still lacking in detail as it does not sufficiently address the complaints.

I have considered this case in great depth and have deliberated over the various options available.

### **Point 1 – Officers failed to investigate thoroughly and properly the allegation of sexual abuse against your children**

In my previous appeal assessment dated 23 October 2015, I indicated that there was insufficient explanation as to what the officers investigating the criminal allegations did and why, or justification for what they did not do, in order to address your police complaints. Although the IO report does provide information in relation to this I still have concerns regarding the length of the investigation, the fact that young children's retraction statements caused the investigation to be closed and the various lines of enquiry that weren't

pursued and various actions that were not carried out during the 12 days the criminal investigation was open. These include but are not limited to;

- failing to view the audio recording or video clips provided by Special Constable Yaohirou despite this effectively being the initial disclosure of the allegations. Special Constable Yaohirou also states that 2 officers and a Sergeant listened to the clip at his house
- failing to obtain the medical reports according to the IO report by DCI Foulkes
- failing to search Mr Dearman's property (police stated they did not have his address, however A clearly provides the address in her initial ABE interview). The IO report states that the police work closely with the local authority and Children and Social Care. The medical report was provided to Chantelle Stevens Senior Practitioner (Clinical) of Family Services and Social Work, Children Schools and Families. This is alleged to be the same Chantelle that Mr Dearman had been in contact with. There is no information provided as to whether the police officers investigating the allegations contacted the local authority or any other professional in order to see if they could obtain an address for Mr Dearman.
- failing to interview any other suspects – DI Cannon (in his undated Statement under caution) states that the *'names provided by Ella Dearman that the children are reported to have said were involved were long and extensive. It would not have been proportionate at the beginning of the investigation to attempt to conduct checks on every person.'* There is no rationale as to who, if anyone, they decided to conduct checks on and why or equally why not
- failing to arrest Mr Dearman meaning that they then had no power to seize his mobile phone or computer despite G stating that his father had photographs of him and his sister on those devices. DI Cannon makes an entry on 6 September 2015 stating that they had grounds for arrest but no address. There is a note entered by DI Cannon on the CRIS on 6 September 2014 which shows 5 addresses linked to Mr Dearman. It is unclear how Mr Dearman found out that the police were looking for him and why he was not arrested for interview on 15 September 2015. No justification has been provided as to why the necessity criteria for arresting a suspect had not been met. On 8.9.16 there is a further entry on the CRIS by DI Cannon that a strategy meeting had been arranged which included representatives from the school and as a *'priority' 'search any addresses linked to Ricky Dearman.'* But no search was ever done despite his interview being a week later and the *'retractions'* being done over a week later.
- At 00:44 on 6/9/14, mere hours after the allegations were reported, it is noted on the CRIS by DI Cannon that *'...there is no supporting evidence from the wider community to support this allegation and no*

*other witnesses/victims to support this.'* I wonder how the officer could be so certain at such an early stage in the investigation and I question what enquiries had been made for him to come to this prompt conclusion.

The IO refers to a Judicial Review made by Ms Draper in December 2014 which was refused in February 2015. This is prior to the police outcome letter dated 8 July 2015 and prior to appeal to the IPCC which was upheld in October 2015. It is unclear why this is now being referred to. Ms Draper's solicitor refers to the fact that the police response at court in respect of the JR stated that they were still investigating the allegations of sexual abuse however, having considered the background papers provided by the police, it is my understanding that the case was closed as a result of the retraction statements on the 17 September 2014 which was months prior to the JR. I am not able to make a determination when it is unclear what the actual facts are.

### **Issues re Mr Dearman**

#### **Point 2 – Mr Dearman was informed of the investigation prior to action being taken against him thereby alerting him and allowing him to destroy evidence**

The IO report states that '*police worked closely with Children and Social Care on this case as well as professionals from Education and Health.*' It is entirely possible that one of these professionals alerted Mr Dearman that the police were looking for him. On the balance of probabilities, I am of the opinion that the police officers discussed the case with professionals in good faith and did not alert Mr Dearman directly.

#### **Point 8 – The power of arrest was not used against Mr Dearman and that PACE Code G was breached in not using the power of arrest**

The IO has referred to the legislation and why technically Code G has not been breached.

I note that legislation provided in the IO report in relation to this point. I am not clear why Mr Dearman was not arrested prior to his interview on 15 September 2014 bearing in mind the allegations were made on the 5 September 2014. It was noted in the CRIS that arrest was necessary. I am unclear as to whether there was reference to the elements of arrest under Section 24 PACE in this case.

Element 1 - Was Mr Dearman never suspected of involvement or attempted involvement in the commission of a criminal offence? When was that decision made and where is the rationale detailed?

Element 2 – Were there no reasonable grounds for believing that the person's arrest was necessary? Again when was this decision made and where is the rationale detailed.

The necessity criteria has to be met before a suspect can be arrested.

The criteria includes;

(d) to protect a child or other vulnerable person from the person in question

(e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question

In my opinion I do not have sufficient information to totally understand the reasoning for the actions taken/or not taken by the officers investigating these criminal allegations.

**Point 9 - No forensic search was conducted on Mr Dearman's flat**

The available evidence indicates that the flat in question did not belong to Mr Dearman. It did not fit the description the children had provided and the property was empty and had been for some time. I agree that there was insufficient evidence to conduct a forensic search of the flat. With regard to issues relating to locating where Mr Dearman lived in order to conduct a search of his actual address, I have referred to this in point 1.

**Point 10 – The decision not to arrest Mr Dearman was not clearly documented**

I agree that there is not a clearly documented reason for not arresting Mr Dearman. There are various entries in the CRIS for reasons why he should be arrested but no clear rationale for not arresting him prior to the 15 September that I have seen. The IO gives detail of DI Cannon's entry and rationale why '*immediate arrest is not required*'. Having considered the rationale, I am of the opinion that this is not justification for not arresting Mr Dearman at all but that there is a risk with arresting him immediately. I query when the decision was made that arrest was no longer necessary? Was it when he made contact with the police on 15 September?

**Point 11 - Mr Dearman was interviewed about 1 specific allegation but not the full allegations of satanic abuse**

The IO has found that this was the first interview of Mr Dearman and that there was to be a further series of interviews subsequently however these did not take place due to the withdrawal of the allegations by the children. Having considered the evidence, it is clear that the course of action suggested has not been detailed in writing. I cannot be sure therefore whether DS Fernandez failed to put all the allegations to Mr Dearman or whether this was intentional due to further interviews being expected to take place. The IO has upheld this head of complaint and stated that there is a case to answer against DS Fernandez for failing to ensure that all the allegations were put to Mr Dearman. He has stated that DS Fernandez will be subject to management action in this regard which, in my opinion is appropriate.

**Point 3 – no suspects were interviewed**

The IO report states that the police officers named by the children as being involved in the abuse were checked and it was established that these officers did not exist. In the initial video recording by Special Constable Yaohirou the police officers alleged to be involved were specifically stated to be from

Haringey. I note that officers stated that they searched the system for officers from Hampstead. Although the allegations by the children were specific in both location where the officers worked and their names, the children were very young and I wonder whether any wider searches were done.

With regard to the medical reports, it is not clear why the case was closed prior to the medical reports being provided as these could have been valuable evidence. There is no explanation as to whether the police tried to obtain these sooner or if they did not, why not.

The IO refers to a Judicial Review made by Ms Draper in December 2014 which was refused in February 2015. This is prior to the police outcome letter dated 8 July 2015 and prior to appeal to the IPCC which was upheld in October 2015. It is unclear why this is now being referred to. Ms Draper's solicitor refers to the fact that the police response at court in respect of the JR stated that they were still investigating the allegations of sexual abuse however, having considered the background papers provided by the police, it is my understanding that the case was closed as a result of the retraction statements on the 17 September 2014 which was months prior to the JR. I am not able to make a determination when it is unclear what the actual facts are.

I note that the IO states that '*...the inconsistencies, lack of supporting evidence and subsequent withdrawal of the allegations dictated that any further interviews would be unjust.*' I will discuss the retraction statements below.

There is insufficient information for me to properly assess this aspect of the appeal.

### **Retraction Statements**

**Point 4 – Retraction statements were inadequate due to the level of detail in the initial complaints**

**Point 18 – Retraction statements were coerced from the victims and inconsistent. Concerns raised over the language used by the interviewing officer**

**Point 19 – The officer led child Q to retract the allegations regarding the murder of children**

The IO states '*the children retracted their statements of their own volition whilst in foster care.*' It is apparent, and not denied by the police officers involved, that conversation took place between the children and the officer conducting the ABE interviews whilst in a car travelling to the venue where the children then made retractions in their interviews. This conversation was regarding retracting the allegations. The interviewing officer states that he spoke with the girl but did not go into discussion with her brother. I have not been provided with any record of these conversations. I would have expected that a written note of such important discussions be made and would have been made available during the local investigation/appeal. It is also noted that the children continued to make reference to the allegations after 17

September to their foster carer.

Having watched the interviews, I have concern in relation to the retraction statements. It is clear that the retraction was discussed by DC Martin and A in the car on the way to the interview. I have not seen any recorded notes of the conversation that took place. Regarding the way G's retraction interview was progressed is also of concern. DC Martin, in my opinion, appears to lead the retraction. He asks questions and when G gives an answer that is not the desired one, DC Martin pursues this until G agrees that it did not happen. It is my opinion that this is inappropriate. In my opinion the IO report does not accurately reflect the extent of this questioning.

In addition to that, at the beginning of the interview DC Martin states;

*'Tell me if you are tired and we'll stop.'*

G replies *'Well I'm tired'*

DC Martin *'Yes if you're tired we'll stop.'* He then continues to discuss the 'rules' and continue with the interview completely ignoring G's desire to stop.

#### **Point 5 Retraction statements were made after the children were threatened**

Sufficient evidence has not been provided to substantiate your complaint regarding this point. The children have not raised any issues with regard to having been threatened by anyone. They have been provided counselling and have had the opportunity to speak to someone regarding any threats that were made to them but nothing has come to light. In the absence of any evidence to indicate otherwise I find that there is no misconduct on the part of the police with regard to this point.

#### **Point 6 – There was a lack of investigation due to concerns that the case would cause a stir in society**

In my opinion, any lack of investigation was not likely to be due to concerns that the case would cause a stir in society. The police have many high profile cases and do need to be aware of potential issues with publicising such cases, however this does not necessarily mean that they would just not investigate. On the balance of probabilities, I do not find any merit in this allegation.

#### **Point 7 – The case was not referred to specialist units in the MPS (listed)**

The IO report clearly outlines the roles of the various teams that you allege the allegations should have been referred to. I am satisfied with the explanation provided and am of the opinion that the CAIT team were the relevant team to deal with these allegations.

#### **Medical Evidence**

**Point – 12 The evidence and specifically that from Dr Hodes should have triggered arrest and seizure of computers / phones etc**

It is still unclear why the findings in the medical report by Dr Hodes were not pursued and why they were not put to Mr Dearman when he was questioned under caution.

In the IO report DCI Foulkes states that the medical report from Dr Hodes was not received by the police until January 2015. DC Martin states (within the court transcript) that Dr Hodes report findings were circulated to the officers involved in the case by the 13 September. Had the conclusions of that report been provided during the time the investigation was open and, even if they hadn't, it is my opinion that the medical report was of paramount importance to the criminal investigation. The IO states that the first Child Protection medical took place on the 12 September 2014 and that a verbal report was provided to police. The IO further states that the doctor described the injury but she did not report that the injury was consistent with sexual assault. She did, however, provide potential medical reasons for the injuries. An entry on the CRIS dated 13 September 2014 states '*DS Fernandez spoke to Dr Hodes re CP medical who said she was alarmed at the account from the children and had grave concerns.*'

DS Matt Fernandez, in his witness evidence at court, explains that he became aware of the significant medical evidence in the form of what Dr Hodes considered '*might well be the physical signs of blunt trauma to both of the children's anuses*' on the 13 September 2014. Mr Ageros, cross examining Matt Fernandez, refers to that medical report being the information which was the outcome of the child protection medical which had taken place on 12 September 2014. The IO's explanation of the medical findings does not seem to be consistent with this. It is not clear why the report wasn't taken more seriously at the time as it would seem that the potential for other explanations only became clear when the report was received some time after the case was closed.

I agree with the IO in relation to the failure to seize the computer and mobile phone of Mr Dearman. In my opinion this would have been a necessary action to take in order to ensure a thorough investigation. It is unclear why DS Fernandez did not do so and I am unsure of his rationale taking into account the specific allegations the boy makes regarding pictures on Mr Dearman's mobile phone and the fact that the retraction statements had not been made at that time. I do agree that DS Fernandez has a case to answer in this respect. The IO has stated that DS Fernandez will be subject to management action for failing to request immediate possession of the computer at the time it was offered.

**Point 13 – Suspects should have been medically examined for scars/ distinguishing marks**

The IO refers to the fact that there was a distinct lack of evidence and also contradictions within what the children were saying. There were doubts surrounding the validity of the allegations and further actions were being undertaken to try to ascertain the authenticity of the allegations. I understand that the officers had concerns about arresting a large number of suspects



especially when various pieces of information provided by the children had proved to be incorrect or untrue. In my opinion there was insufficient evidence to arrest all the suspects named prior to the retraction and obviously there was no power of arrest after the retraction. I do not find any misconduct on the part of any officers in respect of this complaint.

**Point 14 – The recordings made by officer Yaohirou were not made available nor reviewed by the investigating team**

Whilst I take the point of the IO in that the officer conducting the ABE interviews should not have viewed the recordings prior to interview, it is of concern that there is inconsistencies with regard to who viewed the recordings. The officers state that the footage was not viewed. The IO states in his report '*This material would have been viewed in due course and I do not believe there was a failing that it had not been viewed prior to your childrens' retractions.*'). However, Special Constable Yaohirou specifically states that two officers and a Sergeant viewed the footage when they attended his property to seize it. Whether the footage should or should not have been viewed aside, there are discrepancies as to whether it actually was viewed or not which is not acceptable. Clarity needs to be provided.

**Point 15 – No search warrant was requested at the church. No forensic team was deployed**

A full search of the church was conducted. Although it is stated that no prior warning was given before the officers attended so there was no opportunity for evidence to be moved or destroyed, it is clear that the school and church were assisting with enquiries and were aware of the allegations prior to the search by consent. Matt Fernandez states in his court witness evidence dated 20 February 2015 that '*no*' notice was given that he was going to attend the church. DI Cannon (in his undated Statement under caution) states '*On Saturday 13 September 2014, a search of the Church was conducted by DS Fernandez and DC Martin. A search warrant was not required, the search was agreed by consent. Both the school and linked Church were fully aware of the investigation through their involvement in the Strategy meetings being conducted by Camden Social Services.*'

Detailed descriptions of the church had been provided by your children however the actual interior of the church and the layout did not match the descriptions they had given. This appears to have been on a structural basis rather than just fixtures and fittings alone. It is, in my opinion, understandable that a forensic team was not deployed given that your children's accounts were undermined by the fact that the church did not and could not fit the description they had given.

**Point 16 – There was a lack of information documented regarding CCTV enquiries**

It is my understanding that CCTV enquiries would need to be made at the very earliest opportunity in order to secure potential evidence before it is

overwritten or deleted. I do not recall seeing any rationale or consideration regarding securing any CCTV. Although CCTV of an alleged incident involving Christie and the children was secured promptly.

**Point 17 – There was a police failure to link a previous allegation**

The IO has explained that the officers were aware of this allegation but that it was felt that it was not directly linked with the new allegations involving the children. It is in my opinion that, on the balance of probabilities the officer's decision in this respect was appropriate.

**Point 20 – The children did not withdraw the swimming pool allegations and they were not pursued**

Having watched the interview where the children retract their statements, I agree that the children did not retract this specific claim. I do however note from the IO report that an officer has visited the swimming baths and has taken measurements of the various cubicles and has determined that it would not have been possible for the allegations to have been true. In the appeal letter it refers to the fact that the boy does not allege that all of the people were with him in the cubicle at the same time. Having considered all the evidence, it is my opinion that he does actually specifically state that there were 20 people in the cubicle at one time. In my opinion, it is more likely than not that this did not happen. I think the evidence available points to the balance of probabilities being that if it did happen it would have raised concerns with other members of the public, the poolside life guard and other staff at the leisure centre.

**Point 21 – That the MPS perverted the course of justice in either**

- 1. Redacting the CRIS report to delete considerations to arrest Mr Hollings and Ms Forsdyke**
- 2. Serving a different report on the complainant, or**
- 3. DC Martin not recording considerations on the CRIS report referred to them whilst giving evidence at the High Court**

I have not been provided sufficient information to consider these points.

**Original Complaint Points not Explored**

The IO has not made any attempt in his report to cover the complaint that there were procedural irregularities within the investigation regarding vital evidence not being secured or possibly being allowed, deliberately or negligently, to have been concealed or destroyed. The IO has also failed to make any reference to the fact that the complainant alleged that policy had not been followed and this was highlighted in my previous appeal assessment. Again I cannot see that the IO has covered this aspect of the complaint in his most recent report.

The IO has not provided any satisfactory explanation or reasoning regarding

the comments made about the children *'becoming relaxed and happy and showing a complete change in attitude, when they were taken into care. The officers believed this was as a result of fear and dislike they had of Mr Christie.'* The IO has not explored the reasoning behind these assumptions or explored other possibilities despite this being highlighted in my previous appeal assessment.

The IO report refers to CCTV of Mr Christie and a young girl discussing killing babies and that members of public had called police to report it. No evidence has been provided of this.

### **Discrepancies and Inconsistencies that need to be considered**

To be explored further by the AA in the re-investigation

- DI Cannon states (in his undated statement under caution) that Mr Dearman was interviewed on 15 September 2015 without a solicitor present however the tape transcript refers to a Catherine Watts, legal representative being present.
- In relation to the film Zorro, A gives a very comprehensive overview of the film but does not mention anything about killing babies and draining their blood to drink. The investigation team seem to believe that the children have made up the allegations and the ideas came from the film but it is unclear how they have come to this conclusion.
- DI Cannon refers to (in his undated statement under caution) issues with staffing levels at the time when the allegations were raised and how he completed an application for more resources but it was declined by the SMT. In his witness evidence at court he is asked if it was fair to say that at the beginning of this investigation he wouldn't commit a huge amount of resources until more enquiries had been made and DI Cannon states *'That's correct'*. Throughout the IO report there are references to *'a unit with limited resources'* and *'the investigation which was thorough and appropriate considering the resources available'* and *'DI Cannon had to balance the investigation with ongoing demands from unrelated allegations recorded on a daily basis.'*
- Note by DI Cannon in the CRIS that the initial ABE interviews were stopped as interviewing officers were *'of the opinion that the children needed support from specialist practitioners and did not feel it was in the best interest of the victim to conduct full ABE.'* Considering this it does not appear that either of the children had support in the following ABE interviews in any event despite that fact that social workers were in attendance in the viewing room on during the girls second ABE interview but left prior to the boys interview.

The appeal is upheld on findings in relation to points 1, 3, 4, 8, 9, 10, 14, 16, 18, 19, 21 as a reinvestigation is required.

With regard to points 2, 5, 6, 7, 11, 12, 13, 15, 17, 20, I find no case to answer as there is insufficient evidence on which a reasonable tribunal properly directed, could find, on the balance of probabilities, misconduct or gross misconduct.

**2. Does any person have a case to answer for misconduct or gross misconduct or was any person's performance unsatisfactory?**

Here I have to look at the decision that the appropriate authority has made about whether any officer or contractor may not have acted within the behaviour and standards expected, or if any person's performance may have been unsatisfactory.

I am not able to comment at this point because in my opinion further investigation needs to take place in respect of points 1, 3, 4, 8, 9, 10, 14, 16, 18, 19, 21

**3. Are the appropriate authority's proposed actions following the investigation appropriate?**

Where there is a case to answer that the standards have not been met or any person's performance is unsatisfactory the discipline and performance system provides for a range of outcomes. These range from a hearing where the officer or contractor may be dismissed to action taken by their superiors to address their failings. In this part of your appeal I have considered how appropriate the proposed action is against my view of the investigation's findings about a case to answer, the seriousness of the conduct alleged and the underlying evidence.

I am not able to comment at this point because in my opinion further investigation needs to take place in respect of points 1, 3, 4, 8, 9, 10, 14, 16, 18, 19, 21

**4. Should the Crown Prosecution Service (CPS) be involved?**

The CPS decides whether to take action against someone working for the police because they may have committed a crime.

I am not able to comment at this point because in my opinion further investigation needs to take place in respect of points 1, 3, 4, 8, 9, 10, 14, 16, 18, 19, 21

**5. If the information you were provided with was sufficient?**

I am not able to comment at this point because in my opinion further investigation needs to take place in respect of points 1, 3, 4, 8, 9, 10, 14, 16, 18, 19, 21

**Action(s) to be taken by the appropriate authority**

It is my decision that the most appropriate action in this case is for the

appropriate authority to conduct a further re-investigation into this matter in order to answer the questions that are still outstanding. Given the concerns raised about the appropriateness of the IO and the fact that this will be the second re-investigation, I would recommend that a different IO is appointed who is not connected in any way with the original criminal investigation.

I would also suggest that the IO considers the appeal letter dated Friday 13 May 2016 consisting of 101 pages as it is extremely thorough and details the areas of concern in significant detail.

The Metropolitan Police Service may contact you about the actions they need to take. Please contact them directly if you do not hear from them within 28 days.

You are unable to appeal about the assessment of your appeal. I hope my decision and the reasons for it are clear. If you have any questions or need more information about the way we have looked at your appeal please contact me using the details at the end of this letter.

We are committed to providing the highest possible standard of customer service, but are aware that sometimes things might go wrong. If you are unhappy with the service you have received from us, please tell us and we will do our best to put things right. We will listen to you and try to resolve issues quickly.

Yours sincerely

*Helen Alderson*

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