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# STATES OF JERSEY



## **SUSPENSION OF CHIEF OFFICER OF THE STATES OF JERSEY POLICE ON 12TH NOVEMBER 2008: REPORT BY BRIAN NAPIER Q.C.**

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**Presented to the States on 15th November 2010  
by the Chief Minister**

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**STATES GREFFE**



**Suspension of Mr. Graham Power, Chief Officer of the States of Jersey Police**  
**on 12 November 2008**

**Report to the Chief Minister of the States of Jersey by Brian Napier QC**

1. On 25 March 2010 I was commissioned by the Chief Minister of the States of Jersey to produce a report into the suspension of the then Chief Officer of Police, Mr Graham Power, in November 2008. The terms of reference given to me required me to look into the sequence of events leading up to the decision by the then Minister of Home Affairs to suspend Mr Power and the conduct of the principal officers involved in that decision. The full terms are as follows:

*Terms of Reference*

*The purpose of the Review is to:-*

- a) *Examine the procedure employed by the Chief Minister's Department and the Home Affairs Minister in the period leading up to the suspension of the Chief Officer of Police on 12 November 2008.*
- b) *Review the manner in which senior officers managed the assembly of key information used in the decision making process that ultimately led to the suspension of the Chief Officer of Police.*
- c) *Investigate whether the procedure for dealing with the suspension was correctly followed at all times including:-*
  - i. *The reason for the immediate suspension of the Chief Officer of Police*

*ii. Whether there were any procedural errors in managing the suspension process.*

*d) The Report should highlight any areas where in the opinion of the Commissioner sufficient evidence exists that would support, in the interests of open government a full Committee of Inquiry into the manner in which the Chief Officer of Police was suspended on 12 November 2008.*

2. I was asked, in compiling my report, to distinguish between issues which were suitable for general publication and those which required confidentiality in the light of the disciplinary proceedings which, at the time when the inquiry began, were a possibility. The position has now changed, and the possibility of disciplinary proceedings being brought against Mr Power has now disappeared. On that basis I have not sought to make any distinction between parts of the report which are appropriate for general publication and parts which need to be kept confidential until the completion of the disciplinary procedure.
3. Between April and July 2010 I made four visits to Jersey. I had access to a wide range of official documents and I conducted recorded interviews (which were subsequently transcribed and are kept on file) with most of the main protagonists involved in the decision to suspend Mr Power. I also conducted an interview with Mr Power himself who travelled to speak to me in Edinburgh, and this too was recorded. All the official documents I requested to see were made available to me.
4. I regret the delay in producing this report. The delay is unfortunate but was unavoidable, largely due to the unavailability of witnesses at critical times and to conflicting commitments. An interim and provisional version of this report was provided to the Deputy Chief Executive, on request, in mid-July 2010.

5. Having regard to the Terms of Reference I have structured the report as follows:
  - Outline chronology
  - General background Information
  - Use of disciplinary procedure
  - The act of suspension on 12 November 2008 and related issues
  
6. In the light of my views on the above, I give my conclusions on whether there is, having regard to the interests of open government, a need for further investigation into the suspension by a committee of inquiry.
  
7. I should also make it clear, in view of the release of the findings of the Wiltshire Inquiry into how Operation Rectangle was conducted and the criticisms which are made in that report of Mr Power, that I am not concerned at all in this report with whether or not Mr Power's conduct in relation to the historic abuse investigation warranted the bringing of disciplinary charges, far less whether his conduct was in fact culpable. Nothing that is said here should be taken as expressing a view on the substantive complaints made against him. This report is concerned solely with the events and procedures in the period up to and including his suspension. I should add that I have not seen the full report of the *Wiltshire Police Investigation into the management and supervision of the Historic Child Abuse Enquiry by the Chief Officer of Police – Mr G. Power*. Given the absence of overlap between the procedural issues which formed the subject matter of my investigation and the substantive issues considered by the Wiltshire Report, I am content with that arrangement.
  
8. In accordance with normal practice in investigations of this nature, a draft version of this report was made available to persons whose conduct was or might be seen as the subject of criticism. Comments and observations were made, and the final version of the report takes these replies into account. Separately, a copy of the draft final version was made available to the Law

Officers for checking on grounds of accuracy, in relation to matters of which the current Law Officers had direct knowledge.

9. In the course of my investigation, I held recorded meetings with Mr Andrew Lewis, Mr Bill Ogley, Mr Ian Crich, Mr David Warcup, Mr Graham Power and Mr Frank Walker. Where I have ascribed views or opinions to others, I have done so only on the basis of information that was provided to me in interview or in documentation I have read. It is no part of my remit to make findings about whether such views were in fact held, and I do not do so. Nothing in the report should be read as indicating otherwise.
  
10. On a few occasions I found it impossible to reconcile different versions of events given to me from different sources. Where that has occurred, and the matter is of importance, I have sought to make this clear in the text. Where appropriate I have given an indication of my own view, but given the limited extent to which I have been able to test what I have been told, the conclusions I have expressed in these circumstances should be treated with caution.

### **Sequence of key events**

#### *Identification of key actors*

11. The following abbreviations are used:

GP.....Mr. Graham Power (Chief Officer, States of Jersey Police)  
DW.....Mr. David Warcup (Deputy Chief Officer, States of Jersey Police)  
BO.....Mr. Bill Ogley (Chief Executive, States of Jersey)  
IC.....Mr. Ian Crich (Director of Human Resources, States of Jersey)

AL.....Mr. Andrew Lewis (Minister of Home Affairs October – December 2008; Assistant Minister 2006 – October 2008)  
 FW.....Mr. Frank Walker (Chief Minister, States of Jersey)  
 SG.....Solicitor General (Tim Le Cocq QC)  
 LH.....Mr. Lenny Harper (Deputy Chief Police Officer, States of Jersey Police, retired July 2008)  
 AG.....Attorney General (Mr William Baillache QC)  
 WK.....Senator Wendy Kinnard, Minister of Home Affairs (resigned 20 October 2008)

**Outline Chronology**

2008 (before 22 May)	Meeting FW, BO, WK, GP - At which attempts are made to get GP to take more public role in Operation Rectangle – i.e. instead of LH. GP says his views based on what he had been told by LH.
June	WK delegates oversight of the investigation to her Deputy Minister, AL.
6 Aug	DW has first briefing meeting with AL (then Assistant Home Affairs Minister)
11 Aug	DW takes over formal responsibility for Operation Rectangle
27 Aug	Report from Metropolitan Police is commissioned by DW, with agreement of GP and following Associated Chief Police Officers recommendation.
4 Sep	DW meets BO
24 Sep	DW meets FW

24 Sep	BO asks SG about procedure for disciplining Chief Officer of Police
6 Oct	DW talks to AL. AL asks when will there be a media release.
8 Oct	BO meets (twice) media consultant.  Meeting BO, media consultant, and FW.
8 Oct	AG phones DW to ask what progress with GP. DW tells him of his concerns.
8 Oct	DW gets call from BO regarding development of media strategy.
8 Oct	DW assures BO he could not agree with the stance GP was taking with regard to developing a media strategy and tells him he has shared that view with GP himself.
9 Oct	DW speaks to AL about need to sort out media issues.
10 Oct	BO sends memo to States Employment Board re concerns about views attributed to GP
10 Oct	DW speaks to Brian Sweeting (of Met Police) re his email to Mick Gradwell (Senior Investigating Officer) concerning command and control parts of investigation.
13 Oct	Email from SG to BO stating he has had “the chance to consider whether or not the Home Affairs Minister can delegate any disciplinary matters relating to the Chief Officer of Police and arising out of the Historic Abuse Investigation to the Assistant Minister and, if so, how that delegation might be made.”
16 Oct	Meeting DW, AG, BO. Discussion of need to get agreement with GP re media release.
17 Oct	BO passes responsibility for HR aspects of any disciplinary process to



	IC.
20 Oct	WK resigns as Home Affairs Minister; AL takes over, w.e.f. 22 Oct
23 Oct	Withdrawal of request to Met Police to extend terms of inquiry.
28 Oct	Email IC to Mike Pinel (Human Resources), detailing scenario for “Possible disciplinary proceedings against the Chief of Police”.
29 Oct	DW speaks to Sweeting and Brittan, officers carrying out the Metropolitan Police inquiry, and gets account of their meeting with GP.
31 Oct	Meeting IC and SG (and others).  Agreement that Disciplinary code should be followed. Procedure should be para. 2.3 re “serious breaches of discipline”.
3 Nov	Meeting BO, FW, IC. Issue of possible suspension when individual concerned is on holiday is one of the topics discussed.
3 Nov	IC sends email to SG
6 Nov	Advice SG to IC. In response to “whether or not it would be possible, should the circumstances merit it, for the Minister for Home Affairs to suspend the CPO whilst the CPO is absent from the island.” Mentions that anticipated Met report “might raise matters that would in the view of the Minister be of such gravity as would lead him to suspend the CPO”
7 Nov	First day of leave of GP (left overnight on ferry on night of 6/7)
7 Nov	DW phones GP to ask if he wanted to be involved in press conference.
7 Nov	DW meets BO re press conference. Absence of GP from conference discussed.

8 Nov	<p>Suspension letters typed (first draft version) by IC.</p> <p>Letter from AL to GP notifying him that he had been suspended from duty (08.48)</p> <p>Letter from AL to GP notifying him that disciplinary process had been commenced. (08.44)</p> <p>Draft R &amp; P to the States prepared. States “the outcome of the [Metropolitan Police] investigation confirms that the inquiry was very badly mismanaged by the local Force. This raises serious questions about the role of the Chief Police Officer....”</p>
10 Nov	<p>Interim Report from Metropolitan Police received. Para. 1.1 makes the point that review enquiries are still on-going and certain individuals (including LH) are still to be interviewed. “Hence any observations in this report may be subject to amendment.”</p>
10 Nov (13.12)	<p>Email IC to Office of SG. “My only concern is that such a challenge [by GP to the procedure being followed] should not prevent the Minister suspending if that’s what he decides to do.”</p>
11 Nov	<p>DW provides BO with letter containing his report written at the request of BO and referring to Interim Report received from the Metropolitan Police. Letter refers to DW immediately on taking up post conducting strategic review “as a result of which it quickly became apparent that there were a number of failings in respect of the command, control and conduct of the enquiry.”</p> <p>DW says in letter “The interim findings of the review by the Met Police fully support my previous comments and the opinions which I have expressed therein.”</p>
11 Nov	<p>Email IC to Mick Pinel, enclosing final version of amended</p>

	disciplinary code.
11 Nov (14.00)	First draft of Letter from AL to BO, notifying BO of AL's decision to invoke disciplinary code and asking for preliminary investigation
11 Nov (13.05)	Email Office of Solicitor General to IC, with unreviewed Memo from SG, giving further advice on suspension. Contains advice on content and structure of final version of letters to CPO.
11 Nov (16.31)	Email IC to SG. With amended drafts of letters re suspension. "I have a meeting this evening to review these letters with the Minister and Chief Executive."
11 Nov (21.15)	Email IC to SG. Post meeting with Chief Minister, BO, AL and AG. Revised draft of letters
11 Nov	Pre-press briefing – briefing for Ministers
12 Nov	Meeting (GP, BO, AL) at which GP suspended
12 Nov	Press briefing (p.m.)
12 Dec	Final report from Metropolitan Police submitted.

### **General background information**

12. Mr Power was appointed Chief Police Officer in 2000. Under Article 9(3) of the Police Force (Jersey) Law 1974, he was accountable initially to the Home Affairs Committee; subsequent to the change to ministerial government in 2006 he became accountable to the Minister for Home Affairs. In the period 2006 to 20 October 2008 this was Senator Wendy Kinnard. When he was appointed he was referred to a disciplinary code which was unique to his office; that code continued to apply to him (with certain modifications to reflect the change to ministerial government which took place in 2006) until his suspension in November 2008.

13. Mr Power came to Jersey after a long and distinguished career in four police forces within the United Kingdom. As of the date of his suspension, he had 42 years of police service to his credit. Immediately prior to his appointment to Jersey he was Deputy to H.M. Chief Inspector of Constabulary for Scotland. He is the holder of the Queen's Police Medal. During his time as Chief Police Officer of the States of Jersey, the force was inspected by HMIC and received favourable reviews. His record as a senior police chief was unblemished, until the events culminating in his suspension in November 2008. In 2007 his appointment had been extended, following an assessment of his performance in post.
14. Prior to the events leading to his suspension, he enjoyed a good professional relationship with his senior colleagues in the police and with politicians and administrators. He served as a member of the Corporate Management Board, a group of senior officers representative of different agencies involved in the provision of public services. The former Chief Minister (Mr Frank Walker) spoke of him, referring to the period before the historic abuse enquiry, as a good Chief Officer of Police and a good professional. Before the transition to ministerial government in 2006 he was answerable to the Home Affairs Committee.
15. In the affidavit prepared by Mr Power for proceedings in connection with an application for judicial review, Mr Power refers to a meeting in July 2007 of the Corporate Management Board at which he was encouraged to participate in a "vote of no confidence" against the then Minister of Health. He declined to do so, and refers to this as being his "first noteworthy experience of the formation of an 'inner circle' of politicised senior civil servants loyal to the Chief Minister." Amongst that group he numbered the Chief Executive, Mr Bill Ogley and the head of Human Resources, Mr Ian Crich. Mr Power also makes an allegation that the Chief Executive spoke, in a meeting held on 24 October 2008, in a way that he interpreted as "a further indication of the 'in crowd' closing ranks against the 'threat' of the abuse enquiry." Mr Crich's recollection of that meeting does not accord with that of Mr Power.

16. Mr Power also refers to a meeting he attended around May 2008, together with Senator Kinnard, the Chief Minister (Mr Frank Walker) and the Chief Executive (Mr Bill Ogley). He narrates how, at that meeting, there was a strong difference of views between the Chief Minister and Senator Kinnard with regard to the conduct of the ongoing Historic Abuse Enquiry. Mr Power's recollection of that meeting was that the then Chief Minister berated the enquiry and complained of the damage it was causing because of the bad publicity it was generating. Senator Kinnard defended the enquiry but was, according to Mr Power, subjected to verbal bullying by the Chief Minister who stated that he was "under pressure to suspend both the Chief and the Deputy Chief." In recounting this event in the course of being interviewed, Mr Power made no secret of his dislike of Mr Walker, nor what he saw as his bullying tendencies.

17. The recollections which both the Chief Minister and the Chief Executive have of these meetings are quite different, both with regard to the content of the meetings and how they were carried out.<sup>1</sup> Neither accepts that there was any improper conduct on their part. I am not in a position, having heard the competing accounts, to decide which version of events is accurate, or even which versions are more accurate than others. I mention these matters simply to draw attention to the existence of differences between Mr Power and two senior colleagues within the political and administrative spheres public sector of the States of Jersey (Chief Minister Walker and Chief Executive Ogley). This is important by way of providing a backdrop to the events in the autumn of 2008 which directly led to Mr Power's suspension from his post in November 2008. Mr Power's position, as set out in an affidavit sworn by him is that there was a tension between those conducting the enquiry and a number of people who were viewed as possible "suspects" (as perpetrators of child abuse) in the early stages of Operation Rectangle and who held senior positions within public services. This militated against the idea of a "joint

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<sup>1</sup> Mr Ogley confirms in an email sent to Mr Frank Walker and others dated 13 November 2008, that his recollection of the meeting here referred to is very different from that of Mr Power.

partnership” way of working and, in Mr Power’s opinion, made it more difficult for the independence of the police operations to be maintained.

18. According to Mr Andrew Lewis, who worked with him as Deputy Minister from 2006 and then Minister of Home Affairs after the resignation of Senator Kinnard in October 2008, Graham Power was respected as a professional policeman who conducted himself in an appropriate way in his job. He described him as someone who kept his distance socially, but in a way that reflected the need for someone holding the office he held to be independent. Mr Power’s own way of putting much the same point, in his affidavit of 5 January 2009, was to say that “[i]n an environment in which Ministers and others are accustomed to a more direct control over public services, I have sometimes found it necessary to make the point that the police are not a department of government, and to assert the independence of the force from direct political control.” He regretted the absence of formal structures to give effect to these points of principle.
19. When the historic abuse investigation (Operation Rectangle) began in October 2007, it was placed under the control of Deputy Chief Officer Lenny Harper as Senior Investigating Officer. It is now a matter of record that Mr Power remained distant from operational control of the investigation. This was, by his decision, left to DCO Harper, while Mr Power dealt with the political side of the investigation.
20. Mr Lewis’ statement made to Wiltshire Police as part of their inquiry, to the effect that he had no reason to believe before reading the letter sent by Mr David Warcup (the Deputy Chief Officer of Police) to Mr Ogle (the Chief Executive) that the police were not managing the investigation well was not wholly accurate. His position in interview was that the interim report from the Metropolitan Police was important objective confirmation of concerns that he had in the light of information he had received from Mr Warcup, who had shared with him his concerns about the management of the investigation under Mr Power. Although Mr Lewis was emphatic that Mr Warcup, in giving him

information in the briefing sessions he had had with him, had not been criticising Mr Power directly, he accepted that by implication the criticisms made of the investigation impacted upon Mr Power, as the Chief Officer. As Mr Lewis said, “the buck stops with the Chief Officer.” Mr Lewis also said that he knew from discussions he had with Mr Warcup that Mr Warcup felt that Mr Power did not seem to want to listen to his (Mr Warcup’s) concerns about how the enquiry had gone, and this attitude on the part of Mr Power was something that also troubled Mr Warcup. Mr Warcup’s position on this, which I accept, was that he kept Mr Power aware of the meetings he was having with persons outside the Police Force and at no time sought to conceal what he was doing from Mr Power.

21. In the course of being interviewed, Mr Power did not deny that he had not taken a prominent role in relation to the Metropolitan Police inquiry into the investigation and the setting right of mistakes made. He said this was partly because he thought it appropriate to take a low-key approach to the whole issue, described as “evolutionary and non-sensationalist,” and partly because he thought that it was really Mr Warcup’s responsibility, in view of the fact that he would be taking over from him (Mr Power) as CPO in due course.
  
22. In interview Mr Lewis mentioned that immediately prior to the suspension he was coming under a lot of pressure from fellow politicians about how the historic abuse enquiry had been handled, and, in particular, about how the media strategy had been handled. That was also a concern of the Chief Executive, Mr Ogley, and this went back to before the time of Mr Ogley’s first meeting with Mr Warcup, on 4 September 2008. Mr Ogley confirmed in interview that he was aware of many people who were unhappy about how the investigation had gone, and in particular had concerns over the reports emanating from the Police about the searches at Haut de la Garenne. There were also widespread concerns about the level of expenditure and lack of financial controls on the investigation. These concerns, which were already being expressed prior to the appointment of Mr Warcup, were strengthened by the briefings which Mr Lewis was getting from Mr Warcup in the autumn of 2008. As already noted, that covered not only Mr Warcup’s belief that the

investigation had not been properly managed more or less from the beginning, but also his concerns that Mr Power did not appear to be properly or fully engaging with resolving the problems which the handling of the operation under Mr Harper had occasioned, and which, in the view of Mr Warcup and the Attorney General, posed a threat to pending criminal prosecutions.

23. In criminal proceedings related to the inquiry, it has been observed by the Royal Court (Sir Christopher Pitcher, Commissioner) that “...Mr Harper, by constant and dramatic press conferences and informal briefings, whipped up a frenzied interest in the inquiry...in respect of what had turned out to be completely unfounded suggestions of multiple murder and torture in secret cellars under the building.”<sup>2</sup>
24. Mr Warcup took the view that the approach of openness with the media and the public (advocated by DCO Harper in order to encourage people with information about historic abuse to come forward) was not one which he personally thought was correct, and he took up his appointment in August 2008 with the intention of taking a very different approach.
25. The reluctance of Mr Power to engage with the concerns expressed by his deputy was a cause of growing concern and frustration to Mr Warcup, over the first months of Mr Warcup’s appointment. He emphasised to me how his sense of frustration grew as a result of numerous meetings with Mr Power at which he raised concerns about the conduct of the enquiry, but to no effect. Mr Warcup did not share the view (which he attributed to Mr Power) that there was serious bias in the criminal justice system and the prosecution of offenders. On his arrival, Mr Warcup quickly became aware of the poor relationship between the police and the prosecuting authorities and had set about attempting to improve relations between the police and prosecuting authorities. He freely acknowledged that in this exercise he encountered no opposition from Mr Power. While Mr Warcup accepted that a view held by some was that the prosecuting system was corrupt, his own position, expressed

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<sup>2</sup> Att. Gen v Aubin, Donnelly and Waterbridge [2009] JR 340 at para. 15.



to me in interview, was that he had seen no evidence to support such a serious criticism.

26. Mr Power's view of events was very different. While he accepted that he took a backseat in relation to reviewing the way in which the historic abuse inquiry had been managed, this he said was because he anticipated the inquiry would soon be the responsibility of Mr Warcup, when he replaced him. Mr Power stated in interview that in the autumn of 2008 he was actively considering the possibility of standing down as Chief Police Officer in early 2009, when a new administration would come into office. This would lead to Mr Warcup taking over as CPO rather earlier than had been planned, but Mr Power was quite happy that this should be the outcome.
  
27. The overall picture which emerges is that, even before Mr Warcup was appointed and began to voice his own concerns and criticisms about the historic abuse enquiry, there was a fairly widespread feeling of dissatisfaction amongst many politicians and senior administrators that Operation Rectangle had been mismanaged by the police. In particular there was a questioning of how media relations had been handled by Mr Harper. The concerns voiced in due course by Mr Warcup about the handling of the historic abuse inquiry under Mr Harper and Mr Power's subsequent reluctance to take a leading part in the press announcements judged necessary to put right the mistakes that had been made, tended to add force to a critical view of Mr Power that was already prevalent in many quarters.
  
28. A measure of the concerns about Mr Power which would appear to have predated any adverse comments made by Mr Warcup in his briefings to Ministers is the approach made by the Chief Executive to the Solicitor General by phone on 24 September 2008. A file note made by the SG's office and an email sent in reply suggests that the original inquiry from Mr Ogley was being made as to the power to dismiss the Chief Officer of Police, though Mr Ogley is insistent that his concerns at this point in time did not go beyond the issue of initiating a disciplinary process.

29. The concerns of Mr Warcup were, however, independent of the concerns of others within the administration. Mr Ogley confirmed in interview that the decision to commission a report from the Metropolitan Police was a decision implemented by Mr Warcup, without input from government. The inquiry worked to a cut-off date of 8 September 2008, which is important since it meant that it had no remit to consider the conduct of Mr Power in arguably failing to deal satisfactorily with media arrangements and the proposed press conference that eventually took place on 12 November 2008. The Metropolitan Police Inquiry was thus solely concerned with the handling of Operation Rectangle as it had progressed, not with the attempts made to rectify the consequences of the policies of DCO Harper after his departure in August 2008.
30. The concerns which Mr Ogley had over the management of the historic abuse inquiry were taken a stage further in early October 2008. A public relations specialist who had extensive experience in working with the police was brought to Jersey by Mr Warcup to advise on the development of the public announcement that in his (Mr Warcup's) view had to be made by the police to counteract the risk of abuse of process arguments derailing pending criminal prosecutions. This was a reference to the possible prejudice to accused persons that might arise because of previous announcements made by the police when the historic abuse inquiry was under the operational direction of DCO Lenny Harper. In that context, the consultant had an unsuccessful conversation with Mr Power on 8 October, the gist of which he communicated to Mr Ogley. According to Mr Ogley, the consultant had indicated Mr Power was resistant to explaining publicly the nature and status of the investigation and he had also expressed two thoughts which Mr Ogley found very troubling. First, the view that the public had no right to know the facts, and, secondly, the view that Jersey society was corrupt and the corruption had to be dealt with by whatever means were required.
31. Mr Power confirmed in interview that he saw Jersey society as characterised by a lack of integrity and a dislike for openness in government. He described Jersey culture as being one where things are kept secret unless someone can

force you to tell it, and where there was little support for what he termed “proactive enthusiasm” on the part of the police. That view of the status quo fits with the reports which the consultant took away after his meeting with him, and which were then relayed to Mr Ogley via Mr Warcup.

32. Mr Ogley was so troubled by the reported views of Mr Power that he arranged for the consultant to come to meet him and to present his views to a meeting attended by the then Chief Minister, Mr Walker, as well as himself. The incident served to reinforce serious concerns which Mr Ogley had as to Mr Power’s conduct, following from the reports he (Mr Ogley) was getting from meetings of the “Gold Group”, a strategic and planning committee that had been set up by Mr Warcup to advise on the progress of the enquiry. Reports from that group (on which Mr Ogley had his own representative) tended to indicate that there had been serious failings in the investigation carried out under the direction of DCO Harper. Thus by 10 October Mr Ogley had a sound basis for a concern that, when the shortcomings of the police handling of the enquiry became public, there would be calls for Mr Power to be disciplined. He anticipated (and I accept had good reason to anticipate) that the authority and judgement of the Chief Police Officer would be called into question.

33. Subsequently, he (Mr Ogley) sent a memo to the States Employment Board on 10 October 2008, expressing his concerns about Mr Power. Mr Ogley went to the S.E.B. because he was unsure to what extent the ministerial powers to take disciplinary action resided in Mr Lewis, or Senator Kinnard. He had received advice to the effect that while the Minister (Senator Kinnard) had the power, she would not exercise it because of her personal circumstances and she had delegated her powers to her deputy, Mr Andrew Lewis. In his letter to the Board, Mr Ogley referred to his belief “there may be a significant problem with the leadership and management of the force.” Mr Ogley has confirmed that this, by implication, also was the message contained in the criticisms he was hearing from Mr Warcup around this time which related to the management of the historic abuse investigation. But the criticisms linked to the report made by the consultant of his meeting with Mr Power related not to

how Operation Rectangle had been managed, but rather to Mr Power's views on what should be done to put matters right. Mr Ogley went on to indicate his intention to collate information and present his concerns to the Home Affairs Minister (who at this stage was Senator Kinnard), but he did not go directly to Senator Kinnard because of her conflicted status. (She had removed herself from involvement with any matters relating to the historic abuse inquiry). In not approaching Senator Kinnard himself, Mr Ogley was acting in accordance with advice from the S.E.B., who advised him that an approach to the Minister would be made by the Chief Minister, in accordance with the rules for ministerial conduct.

34. According to Mr Ogley, he had spoken to Mr Power around this time about media handling, but he had not had any success in persuading him that there was a need to be open and transparent in how the press was brought up to date with the progress of the investigation, or in convincing him that more was needed than a short one-paragraph announcement. Mr Ogley said he was aware that the intention was that, at the media announcement that was going to take place, Mr Warcup would have in his possession the report for the Metropolitan Police that he had commissioned. But Mr Warcup was also asked by Mr Ogley to produce a report setting out his evaluation of Mr Power's approach to supervision and quality control. This is referred to by Mr Ogley in his letter to Deputy Lewis of 11 November 2008, which makes mention of Mr Warcup's report having been received by Mr Ogley on that day. Mr Warcup has no recollection of being asked to produce a report and is adamant that his letter of 10 November was written on his own initiative, prompted by a breakdown in his relations with Mr Power on or about 7 November, when he was told by Mr Power that he (Mr Power) had no intention of attending the press conference that was scheduled to take place a few days later.
35. Mr Warcup said in interview that he wanted a report from the Metropolitan Police in order to give substance to the media announcement that was to be made on 12 November 2008. Mr Ogley said that the media briefing was delayed to allow for the production of the Metropolitan Police report, but that

the final date for the media briefing was fixed by reference to the demands of the Crown prosecution lawyers, who were concerned that prosecutions about to go before the courts might fail because of “abuse of process” arguments. As it turned out the full version of the Metropolitan Police report was not made available for the press conference held on the 12 November; only an interim report was provided, and this came in very late in the day, arriving on Mr Warcup’s desk on 10 November.

36. The letter from Mr Ogley to Deputy Lewis dated 11 November refers to the report from Mr Warcup as something which “draws heavily from and reflects the Metropolitan Police report into the investigation” and states that “He [i.e. Mr Warcup] is taking advice from the Attorney General as to whether it is appropriate to release the full Metropolitan Police report to either me or you.” That might be read as suggesting that the full report was in the possession of Mr Warcup, but of course that was not the case. All that Mr Warcup had been sent on 10 November was an interim report, qualified as previously noted.
37. In the letter Mr Ogley observes “The previous Deputy Chief Officer was made the Senior Investigating Officer and it should therefore have been the responsibility of the Chief of Police to ensure that appropriate arrangements were in place. As Gold Commander he should not only have ensured that effective command structures were in place, but he should also have used them to ensure that the investigations was thorough, professional and met the required best practice standards. There appears to be no evidence that he has fulfilled that role.”
38. Mr Ogley was convinced that, in seeking to obtain the Metropolitan Police report in advance of the press briefing that was to take place, Mr Warcup’s only motivation was to ensure he was in the strongest possible position to prevent the prospective derailment of the coming criminal prosecutions by reference to “abuse of process” arguments. That was Mr Warcup’s position too. Mr Warcup denied that he wanted the Metropolitan Police report for the purpose of undermining Mr Power’s position, and I have no reason to

disbelieve him. As I make clear elsewhere, I accept that Mr Warcup was acting in good faith, even though I do not agree with all the decisions he took.

39. The resignation of Senator Kinnard from her position of Minister for Home Affairs took place on 20 October 2008, and her replacement was Deputy Andrew Lewis. That was a significant development, as Senator Kinnard had been resolute in her defence not only of the police generally, but in particular in her endorsement of the actions of DCO Harper in conducting the investigation. Mr Lewis, who took over, was a man of different views. He was not inclined, in the absence of hard evidence to the contrary, to accept that there was a conspiracy against justice in high places within Jersey. Mr Lewis had moreover been in receipt of constant briefing from Mr Warcup during the latter's time on the island. As previously mentioned, these briefings had contained not only criticisms of how the inquiry had been managed when DCO Harper had been in operational charge of it, but also criticisms of Mr Power's failure to engage with the attempts that were being made (by Mr Warcup) to put right mistakes that had been made.
40. The briefings provided by Mr Warcup continued when Mr Lewis took over as Minister for Home Affairs from Senator Kinnard. Mr Warcup confirmed in interview that he did not accept, as Mr Power had done, the view that Jersey society was marked by an "old boys' network" and "deep-seated corruption." He (Mr Warcup) had seen no evidence to support such a view. And Mr Lewis, for his part, was also disinclined to accept such criticism, in contrast (as I understand from what I was told) to his predecessor in office. Mr Warcup's views, reflected in the briefings he gave, took account of the negative views being expressed by the SIO appointed by him, Mr Mike Gradwell (the officer who had been appointed by Mr Warcup as the new Senior Investigating Officer), as to how the Historic Abuse enquiry had been run. While DS Gradwell was principally critical of the role of DCO Harper in running the enquiry, he also made reference to "lack of involvement or discussion" on the part of Mr Power, in the context of written observations given to Mr Warcup on 6 October 2008.

41. According to Mr Ogley, it was only when he received Mr Warcup's letter of 10 November 2008, with his report on feedback from the Metropolitan Police investigation and listened to the briefing for Ministers provided by Mr Warcup on the evening of 11 November 2008, that he decided he should advise the Home Affairs Minister to pursue the disciplinary route. Prior to receipt of the report, disciplinary action existed only as a possibility, albeit one for which preparations had to be (and were) made. For him, the existence of the interim report was important. Without it, in his view, the decision to suspend Mr Power would have been far harder to take. His position expressed to me, however, was that apart from the interim report he was in receipt of reports emanating from the meetings of the Gold Group (on which he had an official from his department) which were indicative of significant failings in the management of the enquiry, and of course these by implication placed blame on Mr Power.
42. The meeting to give advice to the Minister was, according to Mr Ogley, requested by the Minister himself, at the end of the press briefing delivered to Ministers by Mr Warcup and Mr Mike Gradwell. It is clear, however, that the preparations for possible disciplinary action against Mr Power had been in place for some time, though Mr Crich was at pains to emphasise that, as far as he was concerned, it was not the inevitable outcome. As mentioned earlier, Mr Ogley had asked for advice from the Solicitor General about the powers of the States of Jersey to discipline the Chief Officer of Police as early as 24 September 2008, and he had been in receipt of reports from the Gold Group meetings since that body started to meet in early October 2008. . That was some time before Mr Power had been seen by the officers carrying out the Metropolitan Police inquiry – an event which, from remarks made by Mr Warcup in interview, appears to have taken place a month later, on 29<sup>th</sup> October 2008.
43. An important stage in the run-up to the decision to pursue disciplinary action was the decision taken by Mr Warcup as to the format of the pre-press conference briefing for Ministers scheduled for 11 November, the day before the press conference itself was to take place. It was, according to Mr Ogley,

Mr Warcup's decision to make that a detailed briefing. As such, it was bound to have important implications for the position of Mr Power, and that was appreciated by Mr Warcup and, in my view, also by other senior figures. The date of that decision as to the format of the meeting is not known. Mr Power's position was that he was unaware that there was to be any Ministerial briefing in advance of the press conference/media announcement that he knew was to take place on 12 November.

44. There was a meeting on 3 November, attended by Mr Ogley, Mr Walker and Mr Crich. At that meeting there was discussion of the possibility of suspension [of Mr Power] when he was on holiday. Subsequently that same day Mr Crich wrote to the Solicitor General asking advice as to the legality of so proceeding, i.e. carrying out suspension when the individual was not present in person. A reply was given on 6 November which noted that no decision to suspend the CPO had been taken and that the Minister would only consider such a course of action once he "has had a chance to consider the [Metropolitan Police] Report." The Solicitor General went on to give his advice on the assumption that "the contents of the Report will cause such concern that the Minister would be minded to suspend the CPO."
  
45. Further advice from the Solicitor General to Mr Crich on 11 November emphasised the need for there to be objective evidence to support any act of suspension in advance of receipt of the full report from the Metropolitan Police. A file note made in the Solicitor General's office records Mr Crich as saying, in the course of a telephone call that day, that Mr Ogley had said there would be a précis of the headlines of the [Metropolitan Police] report available on Tuesday and that Mr Warcup had also prepared his own review which would inform the decision making process. The note taker records a conversation in the following terms: "I said [to IC] that there must not be any provisos or caveats to the Metropolitan Police's conclusions otherwise it would be potentially inappropriate to act [ask]" and that "I had advised that there must be strong and cogent reasons to justify action at this stage against the Chief Police Officer."



46. If that note accurately reflects what Mr Crich said and what he was told by Mr Ogley, it would be consistent with a situation where Mr Ogley expected that on the day before the press conference he would have in his possession the report which he had asked Mr Warcup to prepare, and that this report would contain, in addition to Mr Warcup's own views on how the inquiry had been managed, information about the main findings which would in due course be in the Metropolitan Police report, as and when this was completed and sent to Mr Warcup.

### **Use of Disciplinary Code**

47. When Mr Power was appointed in 2000, he was provided with a Disciplinary Code that related to him in his position of Chief Police Officer. I have no doubt that he was entitled to see this Code as part of the terms of his engagement – whether or not his employment was that of someone employed under a contract of service, or some other legal model more appropriate to his special status. This Code was never amended in substance, though it was changed by operation of law<sup>3</sup> immediately prior to his suspension in order to reflect the change to ministerial government which had taken place in 2006.

48. The terms of that Disciplinary Code made reference to the disciplinary procedures which were to be followed in the event of issues concerning the “performance, conduct, capability etc.” of the Chief Officer, and set out a procedure to be followed. Provision was made for suspension in defined circumstances, pending the outcome of the procedures set out in the Code.

49. Before considering the different stages envisaged by section 2 of the Code, dealing with “Discipline Procedure” it is appropriate to note the existence of section 4, which is headed “Breakdown of Normal Relationships”. That

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<sup>3</sup> i.e. States of Jersey (Transfer of Functions from Committees to Ministers)(Jersey) Regulations 2005.

section makes provision for the Minister for Home Affairs (formerly the Home Affairs Committee) taking action in circumstances “In the event of [the Minister] feeling that the relationship with [the] Chief Officer is breaking down.” It is provided that if this happens the Minister should bring it (meaning, I take it, the perceived breaking down of the relationship) to the “early notice” of the Chief Officer and the Chief Executive, Policy and Resources Committee, so that steps to improve the relationship can occur, or alternative action be taken.”

50. Only if the procedure set out above “fails to resolve the problem to the satisfaction of the Chief Officer” will the Disciplinary Procedure, set out in section 2.3 and relevant to where there is a “continued or serious breach of discipline/poor performance/capability”, be invoked.
51. What is clearly envisaged here is that before any formal steps are taken in a situation where there is a perception on the part of the Home Affairs Minister that the relationship between Chief Officer and Home Affairs Minister is breaking down, there should be an approach made by the Minister to the Chief Officer in order to allow steps to be taken to improve the relationship. That structure and content survives in the modifications made to the Disciplinary Code by Mr Crich (finalised on 10 November 2008) to take account of the move to ministerial government. It is an important part of the disciplinary document, since it clearly envisages a mechanism whereby action may be taken to retrieve a deteriorating situation, before it is necessary to have recourse to the more formal procedures set out in section 2.3.
52. It is also the case that section 1 of the Disciplinary Code makes provision for the Home Affairs Minister attempting to raise and resolve issues arising “which concern the performance, conduct, capability etc. of the Chief Officer on a personal basis.” That provision is qualified by the rider “In the normal course of events” and the letter that was written by Mr Lewis to Mr Power dated 12 November 2008 headed “Disciplinary Code” expressly states that he (AL) had decided that the procedure contained in section 1.1 was not applicable, since “the issues in the [Metropolitan Police interim] report relate

to alleged serious matters of performance and capability, which cannot be treated as something occurring ‘in the normal course of events’ as set out in that paragraph.”

53. Thus the procedure envisaged by section 1 was considered and specifically rejected. But I am not aware that any such approaches as are envisaged by section 4 of the Disciplinary Code were ever made by the Minister in advance of the triggering of the disciplinary procedure on 12 November 2008. I was told, however, that the possible use of s.4 was the subject of full discussion with legal advisers, with the view eventually being taken that its use in the particular circumstance of this matter would be inappropriate. I find that somewhat surprising since it had been evident, several weeks before that date, that there were thought to be significant problems with the way in which the Chief Officer was responding to legitimate criticisms of his handling of the historic child abuse enquiry. The indications from my investigations are that Mr Warcup was briefing Mr Lewis both before and after Mr Lewis took over ministerial responsibility from Senator Kinnard on 22 October of the difficulties he was experiencing in working with Mr Power, and that Mr Lewis shared the sense of frustration that was being expressed by Mr Warcup about the Chief Officer’s attitude. Even if Senator Kinnard, as Minister, did not have any understanding of a deteriorating relationship with her Chief Officer, that situation changed once Mr Lewis took over on 22 October. As has already been noted, he had his own concerns over aspects of the investigation, especially the media handling strategy, which predated the arrival of Mr Warcup.
54. These concerns were augmented by the criticisms expressed to him in the briefings provided from Mr Warcup. As early as 28 October there was in existence a document created by Mr Crich setting out a possible scenario for “Possible disciplinary proceedings against the Chief of Police”. By this time Mr Lewis had taken over as Minister from Senator Kinnard. Yet no steps were taken Mr Lewis to try to resolve the differences that were seen as emerging, not only by him but by his senior advisers. Mr Lewis’ position was that he did question the need to proceed by way of possible suspension with

both Mr Crich and Mr Ogley at around this time, but was told that preliminary discussions about conduct with Mr Power would not, in all the circumstances, be appropriate. Certainly, by this stage senior officials were well aware that things were going wrong. Even before Mr Lewis took up his responsibility as minister on 22 October, Mr Ogley was aware of the difficulties which Mr Warcup was having with the Chief Officer, in particular over how media relations should be handled and Mr Ogley had his own concerns about Mr Power's opinions, as expressed in his memo to the States Employment Board on 10 October 2008.

55. My view is that an opportunity to attempt to resolve the issues relating to competence and capability that eventually lead to Mr Power's suspension on 12 November 2008 was missed when Deputy Lewis took over from Senator Kinnard. Prior to that changeover I accept that the Minister (Senator Kinnard) did not share the growing misgivings of officials about Mr Power's competency, and that made it unlikely she would be prepared to get involved in anything that might be seen as a challenge to his handling of affairs. Whilst the Disciplinary Code has been widely criticised by officials as a document that was inadequate and badly drafted, it did at least contain within its terms two mechanisms designed to head off a breakdown of relations between the Chief Officer and the Home Affairs Minister, such as eventually occurred. The confrontation with Mr Power was seen coming by officials weeks in advance of 12 November, and I do not know why the opportunity to head it off (or at least attempt to do so) was not taken. I am inclined to think that the answer is that there was, at the highest level of the administration, a belief that the suspension and the taking of disciplinary action against the Chief Officer was not only what was likely to occur (by reason of the decision of the Minister, after the changeover from Senator Kinnard to Mr Lewis), but also what should happen. Efforts were accordingly concentrated on preparing for that scenario, to the exclusion of other possible mechanisms for resolving perceived failures in performance.

56. I do not say that Mr Lewis shared that view. He has confirmed to me that he was not at any stage planning with others to bring down the Chief Officer and I have no reason to doubt the accuracy of that statement.
57. In the case of Mr Ogley, there was a conscious decision not to raise disciplinary issues with Mr Power until there was an evidenced basis for so doing. His particular concern was that, if the matter had been raised at an earlier stage, Mr Power might have responded in a way that put at risk the media announcement that was seen as essential in allowing the criminal prosecutions to go forward in the courts. That was an outcome which Mr Ogley saw as wholly unacceptable. Accordingly, he saw as justified the decision not to tackle Mr Power informally about the issues which were to lead to his suspension.
58. The Disciplinary Code (as amended by the updating carried out by Mr Crich) makes provision for how disciplinary issues not suited for being dealt with under the informal procedure set out in Section 1 are to be progressed. As I read the Code, the sequence of events is that (a) there should be a preliminary investigation carried out by the Chief Executive to the Council of Ministers “to establish the relevant facts.” Such an investigation will not, however, invariably take place. Provision is also made (section 2.1.1) for the matter to be dealt with at a meeting of the Minister and the Chief Officer, if that is seen as appropriate by the Chief Executive. The outcome of such a meeting may be a decision by the Minister that the complaint be not pursued.
59. If the complaint is pursued, the Chief Executive will go on to carry out a preliminary investigation. The results of that investigation will be discussed by the Minister, the Chief Officer and the Chief Executive.
60. At that stage, a decision will be taken (implicitly by the Minister, after the discussion mentioned in the previous paragraph has taken place) as to whether the matter is to be heard under the section (s.2.2.1) concerned with “Minor breaches of discipline or poor performance/capability” or the section (s.2.3) that is concerned with “Continued or serious breach of discipline/poor

performance/capability.” Both alternatives have the matter being dealt with by the Minister, but, in relation to s.2.3 matters, the procedure is appropriately formal. It is of course the case that the disciplinary charges against Mr Power never reached the hearing stage, and have now been wholly abandoned in the light of Mr Power’s resignation from the Force.

61. Under s.2.3.3 it is stated that “In more serious circumstances the Chief Officer may be suspended from duty on full pay, pending the outcome of this procedure.” The reference to “this procedure” I take as being to the procedure being followed *after* the preliminary inquiry by the Chief Executive, and *after* the decision has been taken (by the Minister) that this is a matter properly falling under s.2.3, as it relates to a “continued or serious breach of discipline/poor performance/capability.” In other words, the Code envisages that suspension should take place only in the context of “more serious circumstances” which fall within the wider category of “continued or serious breach of discipline/poor performance/capability.” That in my view is the reading which fits best with the structure of the Code and the location of the provision regarding suspension.
62. I have been told that the interpretation I have advanced of the Code was considered but rejected after advice had been taken from the Law Officers. I accept that there are different interpretations possible, and also that it would have been difficult for officials to go against the advice they were receiving from their most senior lawyers.
63. I would also accept that, although this is not spelled out in the Disciplinary Code, there must be provision for the immediate suspension of the Chief Officer in extraordinary circumstances – e.g. where he was apparently discovered committing or about to commit a serious criminal offence. I do not, however, see that the matters of present concern, given the state of knowledge (as opposed to belief or suspicion) of the Minister and his advisers that existed around 12 November 2008, fall within that narrowly-defined category. Prior to the media announcement the circumstances were admittedly special. No risk could be taken of the press conference not going ahead, since

that would prejudice criminal trials that were about to take place. But once that event had taken place, the need to take action against the Chief Police Officer could have been handled in ways that did not require immediate suspension. Of course he could not be expected to carry on as normal after what had taken place and what Mr Warcup had said and done, but there might have been ways of avoiding suspension, with all its connotations. As I have said earlier, Mr Power might, for example, have agreed to take immediate leave of absence, pending the holding of a preliminary inquiry, but that was never an option that was discussed with him and I do not know if anything like that was ever considered. (Whether it would in fact have been acceptable to Mr Power is, of course, another matter).

64. In the “Suspension” letter that was given to Mr Power on 12 November 2008 it is stated that “[the Minister’s] view is that the issues raised in the report [i.e. the interim report of the Metropolitan Police] fall into the category of ‘serious circumstances’ as set out in Paragraph 2.3.3. It therefore confines the basis for the suspension to the failures relating to the management of Operation Rectangle when DCO Harper was in operational charge; it does not seek to justify the suspension by reference to any failure on the part of Mr Power properly to engage with the planning of the media announcement that was to take place on the same day, i.e. 12 November. It continues to inform Mr Power that “I [the Minister] have decided, in accordance with the terms of your Disciplinary Code and the provisions of the Police Force (Jersey) Law 1974, to suspend you from duty, on full pay, pending the outcome of the investigation and any subsequent hearings.” Thus the Minister went immediately to suspension, without waiting for the results of a preliminary investigation into the facts in order to allow him to decide whether the matter was of the more serious kind or not.

65. In my view, that action did not give proper effect to the provisions of the Disciplinary Code, although I accept a contrary view was taken by the Law Officers, who were consulted in this matter and were throughout giving advice to the HR Director and Mr Ogley. The Code recognises the serious nature of any suspension by making provision for it to take place only after a

preliminary investigation into the facts. It also recognises the seriousness of suspension by making provision for “it” (i.e. the fact of suspension) to be “referred to the States of Jersey”, although it is not clear what exactly such referral will involve. In my view, the Minister should have, before proceeding to suspension, asked the Chief Executive to carry out the preliminary investigation envisaged under s.2.1.2. That need not have taken long to complete, given the work that had already been done by way of preparation for the meeting of 12 November, but it would have given the Chief Officer the chance at least to put forward his version of events in response to the criticisms emanating from the Interim Report. Save in the most serious of cases (of which this was not one) the step of suspension should only have been undertaken after there had been a preliminary investigation carried out by the Chief Executive, and the Minister had been apprised of the result by way of report from the Chief Executive, and there had been a meeting between the Minister, Chief Executive and Chief Officer, as described in para. 48 above.

66. I would also, in this context, draw attention to the question whether suspension was in all the circumstances merited at the time. While suspension is of itself a “neutral” act, in terms of not imputing guilt of any putative offence, it was appreciated by all concerned that, in the context of Mr Power and the office he held, it was a step of considerable significance. One senior official involved in the process (Mr Crich) described it to me as a “huge event”. It was seen as impacting upon the chances of the Chief Officer ever returning to his post, a concern which subsequent facts have shown was well-founded. I do not seek to suggest, in making this observation, that those involved in making the decision to suspend were not aware of the significance of what they were doing; Mr Lewis clearly was, as he had raised with a responsible third party (HMIC) the question whether suspension would be justified, and had been told that it would be, in all the circumstances.

67. A measure of the concern about the use of suspension is to be found in the advice (previously referred to) which was given by the Solicitor General’s office by email to Mr Crich. On 6 November the advice recommended that if the CPO were not to be absent from the island at the appropriate time, it would



be more appropriate for him to be shown the Met Report which, it was assumed, would be a cause of serious concern for the Minister. This would afford the chance for the CPO to offer some explanation and for the Minister, before taking any decision to suspend, to have fuller information. Further advice was sought of the Solicitor General and given on 11 November 2008. It is stated in that advice “I reiterate my advice that if this action [suspension] is being considered in advance of the full report [of the Metropolitan Police], there must be sufficient objective evidence available to justify what is proposed. I would urge that particular caution be exercised to check that there are no provisos or caveats to any of the conclusions reached upon which reliance is to be placed and that the reasons for actions are robust.” I would agree entirely with this view and also with the following passage, which states “...it is usually argued that suspension is a neutral act, but this is arguable, especially given the position of the CPO.”

68. There can be no doubt, in my view, that in giving this advice the Solicitor General was well aware of the potential which the act of suspension would have for the future employment of the CPO, and was appropriately cautious in outlining the circumstances in which such suspension might properly take place.
69. It is a matter of record that the contents of the Interim Report from the Metropolitan Police were pivotal to the taking of the decision to suspend by Mr Lewis. The letter informing Mr Power that he was being suspended with immediate effect, handed to him in the meeting he had with Mr Lewis and Mr Ogley on 12 November 2008, makes reference to the Interim Report and contains excerpts from its contents. Mr Ogley, in interview, said that it would have been much harder for him to recommend (as he did) suspension in the absence of the Interim Report. Yet that report was in heavily qualified terms. The report, in para. 1.1, draws the attention of the reader to the interim nature of the report, to the fact that it is concerned “to highlight initial findings and areas of concern” and that key individuals have yet to be interviewed. It expressly states that “any observations in this report may be subject to amendment.” It also makes it clear that “the cut-off date” for the review was 8

September 2008, thus excluding any conduct on the part of Mr Power after that date, and specifically anything concerned with the making of preparations for the press conference that took place on 12 November.

70. No reference to the above qualifications and reservations which are contained in the Interim Report are to be found in the letter sent by Mr Warcup to Mr Ogle on 11 November. Further, it is apparent to me that, quite apart from the interim report itself, the decision to suspend was informed by opinions expressed about Mr Power and his competencies by a number of responsible officials (including the new SIO, DS Mike Gradwell). Yet no reference is made to this in the letter.
71. The letter of suspension suggests, by its first paragraph, that the letter from the Deputy Chief Officer of Police (Mr Warcup) was written because of the interim report. In point of fact, however, it would appear that Mr Warcup produced his letter dated 10 November 2008 only after he had been asked to produce a report by Mr Ogle. Explicit confirmation that Mr Warcup had been asked by Mr Ogle to produce a report recording his evaluation on the approach to supervision is found in a letter from Mr Ogle to Mr Lewis on 11 November 2008. Both Mr Ogle and Mr Warcup are, however, clear in their recollections that the main letter of 10 November was written by Mr Warcup on his own initiative, and not in response to any request from Mr Ogle. The letter sent by Mr Warcup to Mr Ogle does not itself record that it had been written at the behest of Mr Ogle; the opening sentence simply states "I am writing further to our previous meetings and my previous briefings to the Home Affairs Minister Mr Andrew Lewis." The precise circumstances which led to the writing of the letter remain somewhat unclear.
72. I cannot see that a report as qualified in its contents as was the Interim Report meets the stringent tests which were identified as appropriate (rightly, in my own opinion) in the advice from the Solicitor General's office on 11 November 2008 before any act of suspension should take place. In my view the concerns quite properly flagged up by the Solicitor General with regard to the act of suspension in his advice of 6 and 11 November were not given

sufficient weight in the taking of the decision to suspend, either by the Minister or by those advising him (a group which did not include, in this respect, Mr Warcup).

73. Mr Power, in his version of events, goes further. His interpretation of events sees the decision to suspend being in effect taken by Mr Walker. He believes Mr Walker was not well-disposed towards him, because of the distress and embarrassment caused by the historic abuse inquiry for which he held Mr Power responsible. Mr Power believes that Mr Walker then coerced Mr Lewis into taking the decision to suspend him. But I have to say that there is no independent evidence of such a conspiracy, and the existence of it, or anything like it, has been expressly denied by both Mr Walker and Mr Ogley. Mr Lewis for his part was insistent that the decision to suspend was his, albeit one which was supported by advice given by his advisors. He does not accept that he was bullied or coerced into making that decision by Mr Walker and/or Mr Ogley. It is clear to me, in the light of the investigations I have carried out, that the criticisms of Mr Power, made by implication in the Interim Report and, separately, in the report of Mr Warcup, found a receptive audience when they came to the attention of Mr Walker and Mr Ogley. That is, however, a very different matter from accepting that they (with or without the knowing participation of Mr Warcup) were plotting to find a way to have Mr Power removed from office, and were using suspension as the first stage in achieving their objective. I have seen no evidence that gives credence to such a radical suggestion and I reject it, together with any suggestion that Mr Lewis was party to such a plan.

#### **The act of suspension and the documentation relating to it**

74. It has become clear that the documentation which was used in the course of the suspension of Mr Power on 12 November 2008 had its origins in a drafting exercise that began at least four days previously. The letters of suspension and the letter advising Mr Power that the disciplinary procedure (as amended) would be invoked were first drafted on the morning of 8 November. They

were drafted by Mr Crich, acting on instructions from Mr Ogley. That timescale is consistent with a view that, in the meeting that took place on 3 November between Mr Walker, Mr Ogley and Mr Crich, a decision in principle to prepare all documentation needed for the suspension on or about the time of the pending press conference was taken.

75. At that meeting of 3 November involving Mr Walker, Mr Ogley and Mr Crich there was discussion of the question of suspension when the individual concerned was on holiday. As it is put in an email sent by Mr Crich to the Solicitor General later on that same day, “It may be that, at the time one might want to suspend, the individual concerned may be on holiday.” Although Mr Power is not directly mentioned in that email, there is no doubt that it was his potential suspension that was being considered.
76. In an email dated 17 October, sent by Mr Ogley to the Solicitor General, it is said by Mr Ogley that he has “asked Ian Crich to map out in detail the stages and processes to be followed should we need to” and the context makes it clear that what is being envisaged here is possible suspension in the context of disciplinary procedures.
77. This ties in with the approach made by Mr Ogley to the Solicitor General’s office on 24 September, when he had requested information (according to the email reply to the inquiry sent by the Solicitor General) “for information concerning the power of the States to dismiss the Chief Officer of the Police.” Mr Ogley’s firm recollection at interview was that what he had meant was information about the disciplinary process, but the wording used in the Solicitor General’s reply is that the request was looking beyond inquiry to outcomes. As already mentioned, at this point in time there was no objective basis for thinking that disciplinary action might be justified, other than the comments that were being made by Mr Warcup in his briefings to Mr Lewis, which were, according to Mr Warcup and Mr Lewis, directed not to the conduct of Mr Power personally but rather to how the historic abuse enquiry itself had not been properly conducted. As earlier noted, there was by this time a widely held view that the inquiry had been mismanaged, and that was

independent of any representations made by Mr Warcup. But that view, though strongly held in some if not many quarters, was no more than popular opinion, and had no basis in any objective scrutiny.

78. On 13 October 2008 the Solicitor General, in a reply to an inquiry coming from Mr Ogley, makes reference to a “decision to suspend” in the context of commenting on the extent of the delegation of powers which has taken place from the then Minister (Senator Kinnard) to her then Assistant Minister (Deputy Lewis).
79. Having regard to the documentary evidence I have seen, and also to what was said to me in the interviews conducted for the purposes of this inquiry, my conclusion is that by the end of September (at the latest) a view at the highest level of the administration had formed that the conduct of Mr Power in his management of the historic abuse inquiry was such as to render him potentially liable to disciplinary action, with suspension from office being seen as a possible part of any such proceedings. That view, however, was not shared by the then Minister (Senator Kinnard) who was supportive of the police operation and how it had been carried out. And she, as Minister, was the only one who could order suspension under the Disciplinary Code. Suspension pending any disciplinary inquiry was nevertheless seen by Mr Ogley as a real possibility for which preparation had to be made, and for which preparation was duly made. It is difficult to say with any degree of precision when such a view was first formed. Preparatory work to provide support for such an eventuality was certainly underway by mid-October, by which time it had been decided that a press briefing to rectify misinformation that had been put out about the enquiry and its findings would have to take place with a view to allowing criminal proceedings to carry on. There were by then doubts about the competency of Mr Power, and these were being reinforced because of information that was coming out in the meetings of the Gold Group which was looking at what had and had not been done. Mr Ogley confirmed that as from 10 October he was making preparation for the possible suspension of the Chief Officer, but it seems likely that the possibility of suspension had at least been actively considered by him even before then, by

24 September at the latest, in the context of looking at the options for possible disciplinary action against the Chief Officer.

80. It has been represented to me that there was nothing wrong in the administration preparing for possible outcomes, and I accept that is so as a matter of principle. But nevertheless there was little objective basis for planning such precautionary measures as at 10 October. And as at 26 September there was even less to warrant disciplinary proceedings being contemplated. There was, apart from a general public dissatisfaction about how things (particularly media policy) had been handled, only Mr Warcup's criticisms of the management of the inquiry contained in his briefings to Mr Lewis. While it is true that DS Gladwell was expressing to Mr Warcup criticisms of how the enquiry had been handled, the main thrust of his comments was directed at DCO Harper, and only by implication at Mr Power. The Gold Group meetings were producing material that could certainly be read as critical of the running of the enquiry but again there was little directly that pointed to what had been done, or not done personally by Mr Power, as opposed to Mr Harper. Mr Warcup himself was expressing his views that things had not been properly done in briefings to Mr Lewis, but if these criticisms were, as Mr Warcup and others maintained, carefully expressed so as not to amount to personal criticisms of Mr Power, then equally they were not a proper basis for taking action which was directly related to alleged lack of competence on the part of Mr Power himself, especially when any disciplinary action or act of suspension was bound to have serious consequences. Mr Warcup was adamant that the criticisms he had expressed to Mr Lewis never went beyond what he saw as professionally proper, and that he never directly attacked the Chief Officer himself. That version of events was supported by what Mr Lewis himself said. Only by implication were Mr Warcup's comments critical of Mr Power. Mr Warcup's primary concern, he insisted, was to rectify the operational mistakes that had, in his view, been made and which posed a danger for the prosecutions that were about to begin in the court. His position was that he was not seeking to undermine his superior officer in the briefings he was giving, and I accept that was his intention.

81. What remains unclear to me is exactly when Mr Warcup was in receipt of feedback from the Metropolitan Police inquiry which tended to corroborate the views he personally held about failings in how the historic abuse investigation had been managed. If the inquiry officers only saw Mr Power on 29 October, as Mr Warcup said was the case, then the feedback on that meeting must have come to Mr Warcup after that date. The views attributed to the Metropolitan Police tended to give support to the popular view that there had been, at the least, a lack of competence and professionalism on the part of Mr Power. But it was in my view wrong to place so much importance on what was being said as the inquiry proceeded. As I have stated above, on 10 November (when the Interim Report was received) its conclusions and findings were heavily qualified. It is reasonable to assume that the earlier any feedback on the Met Report's findings had been transmitted to Mr Warcup, the less reliable it was in providing an objective basis for taking the important step of suspending Mr Power.

82. Mr Warcup was, by his own version of events, well aware that others might draw inferences adverse to the Chief Officer from the information and views he was passing on to Mr Lewis in the autumn of 2008. The same point was appreciated by Mr Ogle who accepted that by implication the criticisms made of how the historic abuse inquiry had been managed were directed against Mr Power. Mr Warcup in his description of events was insistent in interview that he had never sought to criticise Mr Power – only the (lack of) management of the investigation. That was for him a crucial distinction, allowing him to distinguish between criticisms of the process (which he saw as acceptable and proper) and criticisms of the individual, in the person of Mr Power, which he saw as unacceptable, and which he denied making. Mr Warcup's account is supported by what Mr Lewis told me. He said that in the briefings he had received, Mr Warcup had been concerned (until just before 12 November) with criticising only how the investigation had been handled and not Mr Power personally. My impression, based on what I have been told by those involved in the process at the time is that while Mr Warcup was certainly aware that a consequence of the briefings he was giving (both to Mr Lewis and

Mr Ogley) was likely to lead to an undermining of confidence in Mr Power, he did not initially make his criticisms with that end in mind. I accept that was his point of departure. That had changed, however, by the time he came to write the letter of 10 November. By then he was prepared to make a direct criticism of the Chief Officer. He has confirmed to me that, for him, the turning point (and the factor which caused him to commit his views to paper in his letter of 10 November) was the telephone conversation he had with Mr Power around 7 November, when Mr Power confirmed he would not be attending the press conference that was scheduled to take place. Mr Warcup's letter of 10 November contains the following: "the purpose of this letter was to set out details of what I consider to be failings of command within the States of Jersey Police with regard to the ongoing Historic Child Abuse enquiry. I believe that these failings have the potential to undermine the integrity and reputation of the force and to seriously affect public confidence in policing in Jersey." By the time he came to write these words, Mr Warcup was unambiguously expressing criticism of Mr Power. He acknowledged that he knew that by doing so his position as Deputy Chief Officer of Police would have been untenable, were Mr Power to have remained in post and to have had knowledge of what his deputy had said about him.

83. Mr Warcup was keenly aware that he stood in a difficult position by speaking out, directly or indirectly, against Mr Power. If he openly criticised Mr Power, his superior officer, he risked being thought disloyal. On the other hand, if he said nothing, he was behaving in a way which conflicted with his understanding of his professional obligations. He emphasised in interview his appreciation of the need in the run up to the press conference to set the record straight and, in particular, to prevent what he saw as mistakes that had been made in the past by the police from jeopardising the criminal prosecutions that he knew were pending. These of course were matters which did not directly relate to how Mr Power had performed as Chief Officer, save that, on one view, had he been more competent the mistakes might not have been allowed to happen. I have no reason to doubt that in explaining the basis of his concerns that the criminal proceedings should not be blocked by mistakes that had been made by the police Mr Warcup was speaking genuinely. Further



confirmation of the care taken by Mr Warcup not to overstep the boundaries of what was proper and professional comes from what Mr Walker said. Mr Warcup met Mr Walker on 24 September (their only meeting, according to Mr Warcup) and Mr Walker has confirmed that he (David Warcup) was saying only that the investigation had not been properly managed.

84. When Mr Power left on leave on 6 November he was, he said, shown a draft script by Mr Warcup for the press conference which turned out to be very different from that which was eventually used. He found it odd and suspicious that the script changed between he saw it and the time when it was actually used on 12 November. Mr Power also maintained that, when he went on leave, he knew only about the press conference scheduled for 12 November. He had no knowledge of the briefing for Ministers that took place on 11 November. Neither did he know of the meeting involving Mr Lewis, Mr Walker, Mr Ogley, the Attorney General and Mr Crich which took place after that briefing session. Mr Warcup's version of events was that he told Mr Power that the version of the script for the press briefing which he (Mr Power) had seen was inaccurate, but he (Mr Power) never asked to see the corrected version. Again, I find it very difficult to know where the truth lies as between the conflicting versions of events. But I can say that the Attorney General has confirmed that he can corroborate precisely what Mr Warcup said to me, as he was given by him the same version of events at the time.

85. The criticisms Mr Warcup made of the handling of the investigation did not stand alone, as has already been mentioned. Mr Lewis spoke of the fairly widespread concerns of politicians and others who were dismayed at how the investigation appeared to have been allowed to proceed, but who of course did so without any detailed knowledge of what had and had not been done by the Chief Police Officer. Mr Ogley confirmed that by the summer of 2008 there was a general view held by many politicians and others that the investigation when under DCO Harper had, to say the least, not gone well.

86. The conduct of Mr Power himself at this time certainly contributed to these growing concerns as to his competence. In particular it seems clear that his

statements made to the public relations expert, who had an unsuccessful meeting with him on 8 October, when transmitted to Mr Ogley caused the latter serious concerns. Two days after meeting with the consultant, Mr Ogley sent to the States Employment Board a memo recording his concerns about the views which, according to the consultant, Mr Power had expressed to him. The attitude of Mr Power to the prospective media announcement is of course something that is separate from his handling of Operation Rectangle, but there can be no doubt that what was seen as a negative attitude towards the making of any media announcement contributed to the growing worries of senior administrators and politicians. Mr Power's own interpretation of his position at this time was that he accepted he had a distinct lack of enthusiasm for what the consultant had to offer, and did not agree with format for the media announcement he (the consultant) thought was appropriate, but this was for a good reason. He (Mr Power) favoured a more low-key and "evolutionary" approach towards the media announcement. He did not support the high profile approach which he associated not only with the consultant but also with a coalition of views that included the Attorney General, Mr Ogley, Mr Walker and Mr Warcup. The view of the Attorney General was that a disclosure made without any media event by the Police would not have been sufficient to meet the prosecuting authorities' duty of disclosure.

87. Shortly after the sending of the memo to the States Employment Board (on 13 October) there is email traffic between the Solicitor General and Mr Ogley which records discussion of possible disciplinary action being against the Chief Police Officer. But still, the basis for any informed criticism of Mr Power's competency in handling the historic abuse investigation (as opposed to his attitude towards accepting that mistakes had been made in the course of that investigation and needed to be rectified) was insubstantial. There is no indication that the Minister (Senator Kinnard) had any loss of confidence in Mr Power up until her resignation from office on 20 October.

88. It is the view of some observers that the gravamen of the growing list of complaints about Mr Power was not because of any belief that he had been incompetent in his handling of Operation Rectangle, but rather that he was

displaying a willingness to challenge the status quo by his allegations of partiality and corruption within the political system, and the administration of justice in particular. In other words, the suggestion is he was being targeted (and was eventually suspended) not primarily because of what he did or did not do in connection with the historic abuse enquiry but because he was challenging the way politics and public life operated within Jersey. It is impossible to prove that this was not a concern of Mr Ogley and/or Mr Walker, but, equally, neither can it be proved that it was. Mr Ogley was clearly troubled by what he saw as ill-judged criticism of the island's politicians, but that was on the basis that, so far as Mr Ogley was concerned there was no evidence for this, and such attacks showed, at the very least, a worrying lack of judgement on the part of Mr Power.

89. My own view, having considered the available evidence and interviewed the main protagonists in the affair, is that there were, in the period leading up to the decision to impose suspension on 12 November, serious doubts as to Mr Power's professional competence on the part of Mr Ogley and Mr Lewis, based on a belief that he had not properly managed the historic abuse enquiry and had, in particular, failed to exercise proper control over DCO Harper. These doubts were not without foundation. Both Mr Ogley and Mr Lewis were in possession of information emanating not only from Mr Warcup but also from the meetings of the Gold Group which indicated that serious mistakes had been made. There were indications that Mr Power had not done his job well. But that is as far as it goes. There was no conspiracy to act against Mr Power because he was seen as a threat to the political status quo and to the vested interests of people of influence within Jersey. Neither is there any evidence that Mr Ogley or Mr Walker sought to exercise improper influence on Mr Lewis who, as the new Minister, alone had the power to order suspension and the commencement of disciplinary proceedings. Mr Lewis himself, in my opinion, took his responsibilities seriously, and did his best to explore alternatives to suspension in the run-up to the meeting of 12 November.

90. Against the background of growing concerns about Mr Power's conduct, the awaited report from the Metropolitan Police became more and more important. It was something that had the potential to provide the objective evidence of incompetence which was lacking in the run up to 12 November, and which the Solicitor General had expressly said (in his notes of advice to Mr Crich of 6 and 11 November) should be present before any suspension took place. Yet it would appear that the administration was actively preparing for suspension some time before the Interim Report was sent to Mr Warcup on 10 November and that those responsible for making preparations for suspension, should the Minister so decide, were making significant assumptions about what the Metropolitan Police report would contain. The first draft of the suspension letter from Deputy Lewis to the Chief Officer and the letter informing the Chief Officer that the Disciplinary Code was to be invoked was the work of Mr Crich on the morning of 8 November. This documentation was sent, with other draft documentation, to the Solicitor General for comment and advice. The draft letters to the Chief Officer in the version of 8 November refer to the "outcome" of the Metropolitan Police investigation, yet the covering memo to the Solicitor General from Mr Crich makes it clear that this had not yet arrived. The memo also says that this could be "as early as Tuesday 11 November" but it is not clear from the context whether what is being referred to is the arrival of the report of the investigation or the act of suspension itself. Be that as it may, what is clear is that the first version of the draft letters to be used in the event of a decision to suspend were written on the basis that both suspension and the invoking of the disciplinary code were warranted by reference to the content of a report which, at the time of writing, had not yet arrived.

91. The explanation for this apparent incongruity has to be, in my view, that the content of the Metropolitan Police report was anticipated because of information that had been provided by Mr Warcup. It was he to whom the officers carrying out the investigation were reporting as they carried out their duties. And it is reasonable to assume that he was passing on to Mr Lewis and others what he had been told the investigators had found and would in due course report. Indeed, this is verified by Mr Lewis, who was insistent that his

decision to suspend on 12 November was not taken solely of the information contained in the Metropolitan Police's Interim Report, but also on the basis of the information he had been receiving from Mr Warcup in the briefing meetings he had had with him. In relation to the small-group meeting that took place after the briefing of Ministers on 11 November, Mr Crich in interview said "we were ostensibly there talking about what Warcup had already told the Minister verbally." In other words, the contents of the Metropolitan Police interim report coincided with the verbal accounts which Mr Warcup had already passed on to Mr Lewis.

92. It is also my view that a version of the Report that Mr Ogley had requested Mr Warcup to provide (and which eventually became the letter dated 10 November from Mr Warcup to Mr Ogley) had been seen by Mr Crich when he sent to the Solicitor General, at 16.31 on 11 November, a draft version of the documentation that was to be used the following day. I do not believe Mr Crich had in his possession, when producing these drafts, the Report from Mr Warcup in its final form. If he had then I would have expected the draft letters he authored to have made reference to the Interim Report from the Metropolitan Police. As best as I can judge, Mr Crich probably became aware of the existence of the Interim Report only when that document (or at least a version of Mr Warcup's report referring to it) was brought to the small group meeting that followed the pre-press briefing to Ministers on the evening of 11 November.

93. In the light of the arrival and contents of the Interim Report, one interpretation of the facts is that an earlier draft of the Report of Mr Warcup was changed. Support for such an hypothesis can be seen in the further revision of the letters that were sent by Mr Crich at 21.15 on 11 November to the Solicitor General's office, which are said in the email to have been "amended in the light of this evening's conversation." The version of the letter headed "Suspension from Duty" now states "On the 11<sup>th</sup> November 2008 I received a letter from the Chief Executive to the Council of Ministers enclosing a copy of a letter he had received from the Deputy Chief Officer of Police concerning an interim report he (the DCO) had received from the Metropolitan Police into the conduct of

the historic child abuse enquiry in Jersey.” I must record, however, Mr Warcup’s assertion (which I have no reason to doubt) that his letter to Mr Ogley was not amended by him.

94. It would appear that, at the small group meeting, a decision was also taken that the meeting with Mr Power would take place before, and not after the press conference. The two letters headed “Disciplinary Code” and sent by Mr Lewis to Mr Power and Mr Ogley contained, in their 16.31 draft, the sentence: “I have carefully considered that report [i.e. from the DCO] and also the fact that following the press conference today the overall management of the HDLG enquiry has so publicly been called into question.” In the 21.15 draft this becomes “I have carefully considered that letter [i.e. from the DCO] and also the fact that, following the pre press briefing meeting held yesterday evening, the overall management of the HDLG enquiry will be so publicly called into question.”
95. The most likely explanation of these changes is that the late arrival of a document in the form of an Interim Report caused a revision in the plans that had already been made, should suspension be the decision of the Minister. It was decided by those at the small group meeting on the evening of 11 November that suspension would take place *before* and not *after* the detailed briefing to the Press by Mr Warcup which would draw attention to the mistakes that had been made. There were in fact two press conferences on 12 November; a Police force conference at 09.30 and a separate press conference which took place at 2 pm on 12 November, some two hours after Mr Power had been suspended.
96. Whether the decision to suspend would have been taken had the Interim Report not reached the hands of Mr Warcup on 10 November is impossible to know, but the overwhelming indications are that the advice to the Minister to suspend would have been the same. That advice would have been based on what was in Mr Warcup’s report and the content of the press briefing. I cannot see that the decision of Mr Lewis would have been different, but of course that is a matter only he can speak to.

97. Another late amendment to the letter of suspension was in relation to the way in which the meeting was to be structured. The letter of suspension as finally drafted as at 10.10 on 12 November and as given to Mr Power, makes reference to a “meeting earlier today”. Yet in fact there turned out to be only one meeting involving Mr Power on 12 November, at 11.10 a.m. The phrasing would suggest that it had been the intention to allow a period of time to elapse between the meeting at which Mr Power was told that suspension was being considered, and the meeting at which he was told that he was being suspended. The draft version of the same letter that was sent at 21.15 on 11 November by Mr Crich to the SG (following the meeting between Mr Walker, Mr Ogle, Mr Lewis and Mr Crich) contains amendments to the version produced earlier that day, but there is no reference there to there being a “meeting earlier today.” It would thus appear that the change to incorporate this reference came on the morning of 12 November and may have been done to accommodate advice given by the Solicitor General. The reason for the late change is not explained, but it would be wholly consistent with the advice given by the Solicitor General if the explanation for it was a perceived need to be seen to be acting fairly towards Mr Power before proceeding to the act of suspension. The revised format allowed for Mr Power being given the opportunity to consider his position and make representations to the Minister, before being given the notice of suspension from duty. As a matter of fact that did not happen, but that was because Mr Power chose not to take advantage of the pause in proceedings that was offered.

98. In this context I note that the version of the Interim Report which was in Mr Power’s possession, and which he showed to me, was provided to him as part of the Wiltshire Inquiry. It is the same document in content, but the title page on his version is different. It purports to be an “Officer’s Report” from an individual named Peter Britton, and bears the date 10/11/2008. Mr Warcup confirmed to me that he wanted the Interim Report in advance of the scheduled press conference on the 12 November, but was unsure of the date when he received it. The version of the Interim Report which was shown me

by Mr Warcup has a different title page, and clearly indicates it is an official Metropolitan Police document.

99. Mr Warcup, I should add, was adamant that he wanted the Interim Report to assist him in dealing with the issues being discussed at the press conference. He wanted it to help him clear a way through the mistakes that had been made by DCO Harper and which threatened to derail the criminal trials that were about to start. He insisted that he wanted it only for that reason and none other. He was not looking to the Interim Report as providing a reason for the taking of disciplinary action against Mr Power. I have no reason to think that is not an honest representation of his views at the time, although it is clear that as it turned out the Report was used for much wider purposes by the Minister and his advisors. In my view the prospect of the report being used for the taking of disciplinary measures against Mr Power is something that was probably known to Mr Warcup when he delivered his letter dated 10 November to Mr Ogley.

100. That letter makes express reference to him (Mr Warcup) receiving an “interim report” from the Metropolitan Police on 10 November. It does not, however, refer to the qualifications which were an important part of that report. I am surprised that, in circumstances where Mr Warcup did not disclose the primary document to either Mr Ogley or Mr Lewis, he did not see fit to mention the qualifications that were, on any view, of some importance. By not doing so, he gave the document an importance and status which, in my view, it did not merit. When Mr Ogley then wrote to Deputy Lewis on 11 November, Mr Ogley referred to the report which Mr Warcup (at his request) had provided, and said “I am assured [the report] draws heavily from and reflects the Metropolitan Police report into the investigation.” That assurance could only have come from Mr Warcup himself.

101. As previously has been noted, neither Mr Lewis nor Mr Ogley saw the Interim Report. Neither did they seek to see it. The reason given was the nature of the information that was contained therein. It was, said Mr Ogley, a police document and it was inappropriate that he (or anyone else) should have



access to it. Mr Ogle says that he was told both by the Attorney General and Mr Warcup that he should not look at the interim report and neither he nor Mr Lewis did so. I have seen no record of any advice given, but I have not explored all sources. The Attorney General does not recollect giving such advice and believes he never saw the Interim Report documents itself. It must therefore remain uncertain exactly what legal advice (if any) was provided, and, if advice was provided at what stage in the proceedings this took place. I have to say I am not convinced that operational confidentiality was a sufficient reason for not looking at what the Interim Report had to say about the management of the enquiry. Criticisms of Mr Power's leadership and management skills are matters which have no obvious connection with pending criminal prosecutions. It would have been possible for Mr Warcup to have redacted it, so as to exclude any material that it was not appropriate for anyone outside the Police to see, but retaining the parts which expressed criticism of the handling of the historic abuse enquiry. Yet, so far as I am aware, no such approach was made to Mr Warcup. And neither did Mr Warcup himself suggest such a course of action.

102. The process of suspension that took place on the 12 November was unremarkable, save in its brevity. It was over in about half an hour. The meeting was conducted by the Minister, Deputy Lewis, with the Chief Executive, Mr Ogle in attendance, taking handwritten notes. Mr Power had part of the letter headed "Disciplinary Code" read to him and was shown the letter. He was then offered, but declined, an opportunity of one hour to "consider his position".
103. Mr Crich, in conversation, confirmed it was his strong belief that suspension was not a fixed outcome of the meeting. In other words, there was, in his view, the possibility that when faced with the prospect of suspension, Mr Power might have said something which, in his words, would have caused the Minister to "take a step back." I have no reason to doubt that Mr Crich was honestly representing his belief, but I have to say I find it hard to imagine what Mr Power could have said that would have caused Mr Lewis to change his mind. It was, however, also the view of the Minister (Mr Lewis) that

suspension might not have taken place. I accept Mr Lewis' assertion that he would have been prepared not to suspend had Mr Power come forward with points of substance in answer to the complaints levelled against him at the meeting.

104. Since the Interim Report provided by the Metropolitan Police was not seen by either the Minister or the Chief Executive, reliance was placed on the summary of its contents contained in the letter sent by Mr Warcup to Mr Ogley on 10 November. Mr Warcup's letter states that "[t]he interim findings of the review by the Metropolitan Police fully support my previous comments [i.e. with regard to failings of command within the States of Jersey police with regard to the ongoing Historic Child Abuse enquiry] and the opinions which I have expressed therein." The letter does not, however, make reference to the important qualifications contained in para. 1.1 of the Interim Report, previously referred to above.

105. In circumstances where the report was used as a mainstay in establishing the grounds for the immediate suspension of Mr Power, no one in authority had access to anything more than a partial summary of its contents, provided by Mr Warcup. I do not regard that as a satisfactory basis on which to take a decision of such importance.

106. Subsequent to the meeting, the handwritten notes of the meeting taken by Mr Ogley were destroyed. That, I was told by Mr Crich, was in accordance with normal practice. I have to say that, in all the circumstances, it is my view that it would have been wiser to have retained all that was available by way of record of that crucial meeting. But I accept Mr Ogley's account - that he transcribed the notes immediately after the meeting and that they were subsequently typed up for the parties to sign.

### **Conclusions**

107. I have identified several failings of a procedural nature in the handling of the suspension of Mr Power, and I will not repeat here the details of matters set out in the above paragraphs. Whatever view may now be taken of the substantive criticisms that have been made of Mr Power's conduct of the historic abuse inquiry, the basis on which he was suspended on 12 November 2008 was in my view inadequate. There was at the time a lack of hard evidence against him showing lack of competence in relation to the running of the historic abuse enquiry. Too much reliance was placed on information coming from one source, Mr David Warcup. The contents of the letter dated 10 November 2008 from Mr Warcup to Mr Ogley were much less clear than they could have been. No reference is made in that letter to the fact that there had been a request from Mr Ogley to put his concerns about Mr Power on paper. The letter from Mr Ogley to Mr Lewis dated 11 November 2008 informing him of Mr Warcup's letter does not make clear that the report received by Mr Warcup from the Metropolitan Police was only an interim one, and that its author had heavily qualified its contents. While there was additional material (coming in from Mr Gradwell and from the reports of the Gold Group) that was indicative of failings on the part of Mr Power, no effort was made to collate this in a systemised way or to make reference to this material in the documentation provided to Mr Power at the time he was suspended. Mr Ogley had not been told by Mr Warcup about the Metropolitan Police report being expressly qualified, and he had given advice on the appropriateness of suspension without having had sight of even a redacted version of the Metropolitan Police interim report. He could and in my view should have asked for more before giving the advice he did. The Disciplinary Code applicable to Mr Power could and should have been read differently, and there should have been something in the nature of a preliminary investigation carried out before the step of suspension was invoked. Too much reliance was placed on the interim report provided by the Metropolitan Police and the existence of evidence from other sources was not acknowledged. There should have been a more sustained effort made by Mr Lewis and Mr Ogley to get access to the contents of the report itself (even if only in redacted form) in order to evaluate the criticisms of Mr Power which Mr Warcup referred to in his letter to Mr Ogley of 10 November 2008. Mr

Ogley and Mr Lewis should not have relied upon a summary provided by Mr Warcup (whose negative views of Mr Power were already well known) in a matter of such importance. The Interim Report could and should have been redacted by Mr Warcup for the purposes of removing any operationally-sensitive material that it would not have been appropriate for persons outside the Police to see.

108. In making these findings I do not underestimate the need for decisive action at the time to minimise the risks of abuse of process arguments undermining the criminal proceedings that were pending. I also recognise that it is easy to be wise after the event in criticising decisions that were certainly enormously difficult to take at the time. Nevertheless, it seems to me that the balance between safeguarding the public interest and ensuring that Mr Power's rights as an individual and senior office holder within the Police Force could have been better struck. Further, once the press conference had taken place, the need to find a way of removing Mr Power from operational control of the Force while a preliminary investigation was undertaken might have been achieved otherwise than by act of suspension. He might, as previously indicated, have been offered the opportunity of immediate special leave, with suspension only being used as back-up if that option had been declined. Whether Mr Power would have been prepared to accept any such arrangement I do not know – but no attempt to explore a voluntary standing down was, so far as I am aware, ever explored with him.

109. That said, the facts, as my investigation has led me to believe them to be, do not in my view warrant a further inquiry “in the interests of open government”. It is not at all surprising that there were serious concerns on the part of Mr Ogley (and others) about Mr Power's role in the management and oversight of the historic abuse enquiry in the light of information that was becoming available in the autumn of 2008. In my view, however, these legitimate and reasonable concerns about Mr Power's performance led to the making of decisions which were, from a procedural point of view, unfair to Mr Power.

110. Because of the criticisms I have made of Mr Warcup's behaviour in the drafting of his letter of 10 November, it is right that I should separately acknowledge that he found himself in an extraordinarily difficult situation. He had to choose between acting in accordance with his personal integrity and his understanding of his professional standards, and his duties of allegiance and loyalty to his commanding officer. I have expressed disagreement with some of the decisions he made, but I do not wish thereby to question his motivation or integrity. In my view he was genuinely concerned to do the right thing throughout the process leading up to Mr Power's suspension, and only stepped outside the normal limits of allegiance to his superior when convinced it was his professional duty to do so.

111. I do not see a need to investigate these matters further. As I have already said, I have found no evidence of a "conspiracy" to oust Mr Power for some improper reason. The background to the decision to suspend taken by Mr Lewis was a situation where there was a widespread feeling that the historic abuse enquiry, for which Mr Power, as Chief Police Officer, was ultimately responsible, had gone badly wrong. Key decision makers and advisers were, long before the events of 12 November, inclined to be critical of Mr Power. Perhaps because of that, officials were too ready to accept relatively weak evidence as sufficient to warrant the Minister taking the drastic step of imposing suspension on 12 November 2008. The enormity of that decision for Mr Power's career was not, perhaps, sufficiently appreciated, save in the advice that came from the Solicitor General. But while there were in my view some mistakes made in the way the whole matter was handled, I have seen no evidence to support the claims (which, if substantiated, would certainly point to a need for further investigation) that these were part of some plot or conspiracy within the public service to frustrate police investigation in Jersey.

Brian Napier QC  
10 September 2010