

Witness Name: Gregor McGill  
Statement No.: 1  
Exhibits:  
Dated: 02.07.18

**THE INDEPENDENT INQUIRY INTO CHILD SEXUAL ABUSE**

---

**Witness Statement of Gregor McGill**

---

I, Gregor McGill will say as follows:-

1. I provide this statement on behalf of the Crown Prosecution Service ('CPS') in response to a request received on 4 May 2018 under Rule 9 of the Inquiry Rules 2006.

**Authority of Witness**

2. I have been the Director of Legal Services at the CPS since 1 January 2016. I joined CPS London as a crown prosecutor in 1991 before progressing to the position of Branch Crown Prosecutor in 2001. In 2002 I left the CPS to join HM Customs and Excise. In 2005 I transferred to the newly formed Revenue and Customs Prosecutions Office (RCPO) and I set up and headed the Serious Organised Crime Division at RCPO in late 2005/early 2006. Following the merger of RCPO and CPS, I was appointed Head of the Fraud Prosecution Division at the CPS before taking on the role of Legal Director for CPS London in 2010. From 2012 until the end of 2015 I was the Head of the Organised Crime Division at the CPS.
3. I have been asked to provide a statement about the CPS' involvement in the prosecution of the former Bishop of Gloucester, Peter Ball. None of these matters are within my personal knowledge. In order to provide this statement I have caused research to be conducted on my behalf. I have also caused enquiries to be made of current and former members of CPS staff in order to ensure that the account provided here is comprehensive.

**Summary of CPS involvement**

4. This statement will cover three key time periods;
  - the 1992/3 Gloucestershire investigation into Peter Ball which resulted in him being formally cautioned;
  - the 2007/8 Northamptonshire investigation of Colin Pritchard, during which further allegations against Ball became known; and
  - the 2012-2015 further investigation and prosecution of Ball.

5. In order to set these events in context I will firstly explain the organisational structure of the CPS and the development of relevant policies and guidance during the time periods under consideration.

#### Overview of the CPS

6. The CPS is the Government Department responsible for prosecuting criminal cases investigated by the Police and other law enforcement agencies in England and Wales.
7. The CPS was created by the Prosecution of Offences Act 1985 and is headed by the Director of Public Prosecutions (DPP). Prior to this, police forces in each of the 43 areas were responsible for the investigation of most crime, for deciding whether to prosecute following the investigation and for conducting the process of prosecution when a decision to prosecute had been made. A small number of the most serious and complex cases were referred to the DPP who then assumed responsibility for prosecuting.
8. From 1986, the newly created CPS was divided into 41 areas each with a Chief Crown Prosecutor (CCP). This was restructured into 13 areas and the central casework divisions in 1993. The purpose was to create a national framework and to devolve the great majority of casework to local areas which became key operational units, combining preparation of cases in both the magistrates' and Crown courts.
9. In January 2010 the CPS merged with the Revenue and Customs Prosecutions Office. The prosecution functions of the Department for Environment, Food and Rural Affairs were transferred to the CPS as of September 2011 and those of the Department for Work and Pensions in April 2012.
10. As the principal prosecuting authority in England and Wales, the CPS is responsible for:
  - a) advising the Police and other law enforcement agencies on cases for possible prosecution;
  - b) reviewing cases submitted by the Police;
  - c) determining any charges in all but minor cases;
  - d) preparing cases for court, and
  - e) presenting cases at court.
11. The DPP is independent but operates under the superintendence of the Attorney General, who is accountable to Parliament for the prosecution service.
12. The DPP is supported by a Chief Executive, who is responsible for running the business on a day-to-day basis, allowing the Director to concentrate on prosecution, legal issues and criminal justice policy.
13. The DPP is further supported by a Director of Business Services, a Director of Legal Services and a Director of Corporate Services. The Director of Business Services ensures the continuous improvement of our business systems and operating model.

The Director of Legal Services has lead responsibility for the continuous improvement of our casework quality and legal decisions. The Director of Corporate Services is responsible for the continuous improvement of corporate support services e.g. finance, communications and human resources.

#### Relevant CPS guidance and policies

14. What follows is a summary of the relevant guidance and policy for each of the three time periods under consideration, covering:
- The Code for Crown Prosecutors
  - The prosecution of sexual offences;
  - Administering cautions in 1992/93;
  - Guidance about when to refer cases to Headquarters.

#### The Code

15. All criminal prosecutions brought by the CPS are governed by the Code for Crown Prosecutors ('the Code'). This is a public document which is laid before Parliament. The current version was issued in 2013.
16. The Code provides guidance to prosecutors on the general principles to be applied when making decisions about prosecutions. Prosecutors may only commence a prosecution when the case satisfies the Full Code Test. The test is set out in Chapter 4 of the Code. It has two stages: the first is the requirement of evidential sufficiency and the second involves consideration of the public interest.
17. To satisfy the first stage, a prosecutor must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction. This means that an objective, impartial and reasonable jury (or bench of magistrates or judge sitting alone), properly directed and acting in accordance with the law, needs to be more likely than not to convict the defendant. It is an objective test based upon the prosecutor's assessment of the evidence (including any information that he or she has about the defence). If the case does not pass the evidential stage, then consideration of the public interest does not arise.
18. Only once a case has passed the evidential stage may the prosecutor go on to consider whether a prosecution is required in the public interest. It has never been the rule that a prosecution will automatically take place once the evidential stage is satisfied. However, a prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those in favour.
19. The Code sets out some common public interest factors tending for and against prosecution. However, assessing the public interest is not an arithmetical exercise involving the addition of the number of factors on each side and then making a decision according to which side has the greater number. Rather, each case must be considered on its own facts and its own merits. It is quite possible that one factor alone

may outweigh a number of other factors which tend in the opposite direction. Even where there may be a number of public interest factors which tend against prosecution in a particular case, the prosecutor should consider whether the case should go ahead but with those factors being drawn to the court's attention so that they can be reflected in the sentence passed.

**1986 Code for Crown Prosecutors, 1<sup>st</sup> Edition [CPS002784]**

20. I set out a more detailed summary of the 1<sup>st</sup> Edition of the Code to provide a backdrop to the evolution of the Codes to the present. The test for a prosecution as set out by the first CPS Code was one of sufficiency of evidence. The Code required prosecutors to be;

*"satisfied that there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by an identifiable person."*

The Code continued,

*"The Crown Prosecution Service does not support the proposition that a bare prima facie case is enough, but rather will apply the test of whether there is a realistic prospect of a conviction. When reaching this decision the Crown Prosecutor as a first step will wish to satisfy himself that there is no realistic expectation of an ordered acquittal or a successful submission in the Magistrates' Court of no case to answer. He should also have regard to any lines of defence which are plainly open to, or have been indicated by, the accused and any other factors which in his view would affect the likelihood or otherwise of a conviction."*

*The Crown Prosecutor in evaluating the evidence should have regard to the following matters:-*

- (i) In respect of any evidence, having regard to the requirements of the Police and Criminal Evidence Act 1984 and Codes of Practice, are there 'grounds for believing that breaches of the requirements may lead to the exclusion of the evidence under Part VIII of the Act?*
- (ii) If the case depends in part on admissions by the accused, are there any grounds for believing that they are of doubtful reliability having regard to the age, intelligence and apparent understanding of the accused?*
- (iii) Does it appear that a witness is exaggerating, or that his memory is faulty, or that he is either hostile or friendly to the accused, or may be otherwise unreliable?*
- (iv) Has a witness a motive for telling less than the whole truth?*
- (v) Are there matters which might properly be put to a witness by the defence to attack his credibility?*
- (vi) What sort of impression is the witness likely to make? How is he likely to stand up to cross-examination? Does he suffer from any physical or mental disability which is likely to affect his credibility?*
- (vii) If there is conflict between eye-witnesses, does it go beyond what one would expect and hence materially weaken the case?*
- (viii) If there is a lack of conflict between eye witnesses, is there anything which causes suspicion that a false story may have been concocted?*

(ix) Are all the necessary witnesses available and competent to give evidence, including any who may be abroad?

(x) Where child witnesses are involved, are they likely to be able to give sworn evidence?

(xi) If identity is likely to be an issue, how cogent and reliable is the evidence of those who purport to identify the accused?

(xii) Are the facts of the case such that the public would consider it oppressive to proceed against the accused?

(xiii) Where two or more defendants are charged together, is there a realistic prospect of the proceedings being severed? If so, is the case sufficiently proved against each defendant should separate trials be ordered?

*The Prosecutor must be prepared to look beneath the surface of the statements. He must also draw, so far as is possible, on his own experience of how evidence of the type under consideration is likely to 'stand-up' in court."*

21. The 1986 Code, like those that followed it, set out relevant public interest factors to consider. These included:

- likely penalty,
- staleness, in particular,

*"The Crown Prosecutor should be slow to prosecute if the last offence was committed three or more years before the probable date of trial, unless, despite its staleness, an immediate custodial sentence of some length is likely to be imposed."*

- youth offender,
- old age and infirmity of accused (including the risk of repetition),
- mental illness or stress of the accused,
- complainant's attitude,
- peripheral defendants.

22. In relation to sexual offences, the Code stated:

*"Sexual offences*

*(a) Whenever two or more persons have participated in the offence in circumstances rendering both or all liable to prosecution the Crown Prosecutor should take into account each person's age, the relative ages of the participants and whether or not there was any element of seduction or corruption when deciding whether, and if so in respect of whom, proceedings should be instituted.*

*(b) Sexual assaults upon children should always be regarded seriously, as should offences against adults, such as rape, which amount to gross personal violation. In such cases, where the Crown Prosecutor is satisfied as to the sufficiency of the evidence there will seldom be any doubt that prosecution will be in the public interest.*

*Should doubt still remain, the scales will normally be tipped in favour of prosecution as if the balance is so even, it could properly be said that the final arbiter must be the Court."*

23. The **Second Edition** was issued in 1992. Few changes to the 1<sup>st</sup> Edition relevant to the present strand were made. The test to be applied when considering the institution or continuation of criminal proceedings remained unchanged. [CPS002785]

**1994 Code, Third Edition. [CPS002786]**

24. In 1994, fundamental changes were made to the 1992 Edition of the Code. The language used was simplified and made clearer. Technical legal expressions were removed where possible so that general principles could be understood by non-lawyers.
25. The focus of the revised Code was on basic principles, and the sections which were also dealt with in separate CPS guidance were removed. New sections were added (General Principles, Review, Relationship between the Victim and the Public Interest, Police Cautions, Re-starting Prosecution Decisions and Conclusion), many of which already represented good established practices, different topics were placed into separate sections and the contents were re-ordered to make it more logical.
26. The 1994 Code set out more explicitly than before some key principles applicable to Crown Prosecutors, stating that they

*"...must be fair, independent and objective. They must not let their personal views of the ethnic or national origin, sex, religious beliefs, political views or sexual preference of the offender, victim or witness influence their decisions. They must also not be affected by improper or undue pressure from any source."*

27. At this time, the Code introduced a two stage test, the Evidential test and the Public Interest test. Originally, in 1986, the Code set out "*evidential sufficiency criteria*" and "*public interest criteria*". It was not however referred to as a two stage test. It also did not stress that a prosecution must not proceed where the evidential test is not satisfied, instead, simply stating that "*the prosecutor must satisfy himself that the evidence itself can justify proceedings*". The 1994 revision placed emphasis on the order of the tests, namely that there was a need to consider the evidence before the public interest. The Code however was clear and spelt out that if the evidential test was not satisfied, there must not be a prosecution, no matter how serious the case or how great the public interest.
28. The revision also provided a definition of a realistic prospect of conviction, stating;

*"a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged."*

It will be noted that this remained (and remains) a higher test than that used by a judge at a dismissal application or by a judge or magistrate on a submission of "no case" at the end of the prosecution evidence at trial.

29. Originally in 1986 a clear set of factors in favour of prosecution was not provided. The question of the Public Interest was considered in light of eight categories identified and it advised that cases falling within these categories would be an indication that proceedings may not be required. The 1994 Code identified distinct and separate factors tending in favour of and against prosecution. Factors identified in 1994, were short, concise and understandable and set out in list form;

Factor in favour of Prosecution	Retained from 1992	New factor introduced
a A conviction is likely to result in a significant sentence		✓
b A weapon was used or violence was threatened during the commission of the offence		✓
c The offence was committed against a person serving the public (for example, a police or prison officer, or a nurse)		✓
d The defendant was in a position of authority or trust		✓
e the defendant was a ringleader or an organiser of the offence	✓	
f There is evidence that the offence was premeditated		✓
g There is evidence that the offence was carried out by a group		✓
h The victim was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance		✓
i The offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual preference		✓
j There is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption		✓
k The defendant's previous convictions or cautions are relevant to the present offence		✓
l The defendant is alleged to have committed the offence whilst under an order of the court		✓
m There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct	✓	
n The offence, although not serious in itself, is widespread in the area where it was committed	✓	
Factors against prosecution	Retained from 1992	New factor introduced
a The court is likely to impose a very small or nominal penalty	✓	
b The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)		✓
c The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement		✓
d There has been a long delay between the offence taking place and the date of the trial, unless: the offence is serious; the delay has been caused in part by the defendant; the offence has only recently come to light; or the complexity of the offence has meant that there has been a long investigation	✓	
e A prosecution is likely to have a very bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence		✓

<p>f The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated. The CPS, where necessary applies Home Office guidelines about how to deal with mentally disordered offenders. Crown Prosecutors must balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public</p>	<p>✓</p>	
<p>g The defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution simply because they can pay compensation)</p>	<p>✓</p>	
<p>h Details may be made public that could harm sources of information, international relations or national security</p>	<p>✓</p>	

- 30. Unlike the 1986 and 1992 Codes, reference to sexual offences as a specific public interest factor is not present in the 1994 Code. However, the 1994 code did refer to 'defendant was in a position of authority or trust' and 'the victim of the offence was vulnerable' as specific public interest factors.

**2000 Code, Fourth Edition [CPS002787]**

- 31. In the 2000 edition, the sections and headings were retained and much of the content remained the same but with some additions.
- 32. A paragraph was included within the General Principles section specifically confirming that the CPS was a public authority for the purposes of the Human Rights Act 1998 and that Crown Prosecutors must apply the principles of the European Convention on Human Rights in accordance with the Act.
- 33. This edition also expanded the criteria for determining whether evidence was reliable, adding two further points for prosecutors to consider.
  - 1) what explanation has the defendant given; and
  - 2) are there concerns over the accuracy or credibility of a witness.

This took from three points of consideration in 1994 to five in 2000.

- 34. The section entitled "The Relationship between the Victim and the Public Interest" which had been contained in the 1994 Code, was included again in 2000. However, the section was re-worded to highlight the need to;
  - 1) take into account the consequences for the victim of the decision whether or not to prosecute;
  - 2) consider any views expressed by the victim's family; and
  - 3) keep a victim informed of any decisions which make a significant difference to the case.
- 35. The 4<sup>th</sup> edition also widened the consideration for the victim. It spoke of taking account of the:



*"...consequences for the victims of the decision whether or not to prosecute, any views expressed by the victim or the victim's family",*

rather than as stated in the 1994, simply considering the

*"...interests of the victim, which is an important factor".*

36. The section concerning the Acceptance of Pleas was also revised.
37. The public interest factors themselves remained the same, with one additional factor added, namely,

*"The defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution."*

**2004 Code, Fifth Edition [CPS002787]**

38. Significant changes were made in this review in that, the 5<sup>th</sup> edition introduced new concepts (such as the "Full Code Test" and the "Threshold Test"). Also other sections were added or re-ordered, whilst other changes included references to diversion and greater consideration of victims (including their families).
39. This version of the Code coincided with the roll-out of statutory charging. In 2004 the CPS took over responsibility for making charging decisions, instead of the police, in all but minor cases.
40. The edition highlighted the constitutional importance of the independence of Crown Prosecutors making specific reference to casework decisions being taken with fairness, impartiality and integrity.
41. For the first time contained within the Introduction were references to witnesses and defendants, whereas previously only victims had been mentioned. It was acknowledged that justice had to operate in relation to these groups, stating it should

*"...help deliver justice for victims, witnesses, defendant and the public.;*

as well as an amendment to the Introduction (paragraph 1.3):

*"By applying the same principles, everyone involved in the system is helping to treat victims, witnesses and defendants fairly...."*

42. Within the General Principles it was now said (for the first time, paragraph 2.4) that

*"Prosecutors should provide guidance and advice to investigators throughout the investigative and prosecuting process. This may include lines of inquiry, evidential requirements and assistance in any pre-charge procedures. Crown Prosecutors will be proactive in identifying and, where possible, rectifying evidential deficiencies and in bringing to an early conclusion those cases that cannot be strengthened by further investigation."*

- 43. Diversion was also now cited as a reason why a prosecution might not take place:  
  
*"A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour, or it appears more appropriate in all the circumstances of the case to divert the person from prosecution."*
- 44. All of the Public Interest factors as listed as tending for or against prosecution in 2000 were included in the 2004 edition. However, additional factors were added. In particular, prosecutors were now told that a prosecution was more likely if;
  - the offence was committed in the presence of, or in close proximity to, a child; and
  - that a Prosecution would have a significant positive impact on maintaining community confidence.
- 45. There were no additions to the factors tending against a prosecution.

**2010 Code, Sixth Edition [CPS002789]**

- 46. There were changes to the language which included "prosecutors" rather than "Crown Prosecutors" and instead of referring to "defendant" the Code now referred to "suspect" or "offender" where appropriate.
- 47. With regards to the Full Code Test, new paragraphs were inserted at 4.2 – 4.4. The Code now permitted prosecutors to decide, prior to the collection and consideration of all the likely evidence, that the public interest did not require a prosecution.
- 48. This was a significant change which marked a departure from all previous versions of the Code where the formulation of the two stage test required evidence to be satisfied before any consideration of the public interest. However, the instances in which this action could or should be taken were described as rare and prosecutors were told that they should only take such a decision when they were satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest.
- 49. However, this meant that the original formulation of the two stage test did not reflect current practice as the original Code was written with the firm understanding that prosecutors would be reviewing cases post-charge, after the evidence had been obtained from police officers. However, since statutory charging roll out, prosecutors became involved pre-charge.
- 50. The explanation of what was meant by a "Realistic prospect of conviction" was expanded, stating that it was  
  
*"an objective test based solely upon the prosecutor's assessment of the evidence and any information that he or she has about the defence that might be put forward by the suspect."*
- 51. Paragraphs were added to include the possibility of hearsay and bad character evidence.

52. The section asking "Is the evidence reliable" now encompassed 8 points for consideration, three more than were included in the 2004 5<sup>th</sup> Edition. Whilst one of the previous factors had been split into two, there were two new factors, namely,

*h) Is there further evidence which the police or other investigators should reasonably be asked to find which may support or undermine the account of the witness? And*

*k) Is there any further evidence that could be obtained that would support the integrity of evidence already obtained?*

53. There was also greater emphasis on the victim. This section originally opened with the line, "*The Crown Prosecution Service does not act for victims or the families of victims in the same way as solicitors act for their clients.....*" The revised 2010 version reworded the section, by stating the need to take into account any views expressed by the victim.

54. The public interest factors in favour of a prosecution were largely retained from the 5<sup>th</sup> edition with some amendments made to the way factors were worded. One new factor in favour of a prosecution was added, namely that,

*"the offence was committed in order to facilitate more serious offending".*

Additional factors were included in the list of public interest factors tending against prosecution including,

*"The seriousness and the consequences of the offending can be appropriately dealt with by an out-of-court disposal which the suspect accepts and with which he or she complies" and "The suspect played a minor role in the commission of the offence".*

55. The wording of other factors were changed, the most relevant of which was the change to the consideration of the age and health of the offender. The reference to whether the offender was *elderly* was removed so that the mental or physical ill health continued to be factors tending against prosecution but the advanced age of the offender did not.

#### **2013 Code, Seventh Edition [CPS002790]**

56. The 7<sup>th</sup> edition was published in January 2013 after a 3 month public consultation which ran from July 2012 to October 2012. This remains the current edition of the Code<sup>1</sup> and is around 4,500 words, approximately two-thirds of the length of the 6<sup>th</sup> edition. It is now an overarching statement of principles, making it more streamlined and applicable to the variety of cases handled by prosecutors and police.
57. The aim of this edition was to provide a shorter, more streamlined version. Therefore, where information, such as that relating to victim's rights, could be found elsewhere in the publically available guidance and policies a decision was taken not to include it in the Code. Greater clarity of the police and CPS roles was provided with specific focus on the CPS's inability to investigate nor to direct an investigation. A reference to

<sup>1</sup> Although an Eighth version of the Code is due to be released for public consultation imminently.

consideration of whether the prosecution was proportionate was added having previously been included in the 1986 edition of the Code.

58. The Code no longer poses factors tending for and against prosecution, but now prosecutors are asked to address their minds to a series of questions to assist them in reaching an overall decision about the public interest. Those questions are listed as follows:
- a) How serious is the offence committed?
  - b) What is the level of culpability of the suspect?
  - c) What are the circumstances of and the harm caused to the victim?
  - d) Was the suspect under the age of 18 at the time of the offence?
  - e) What is the impact on the community?
  - f) Is prosecution a proportionate response?
  - g) Do sources of information require protecting?
59. Today, the Seventh Code provides a two stage test known as the Full Code test:
- (i) is there sufficient evidence to provide a realistic prospect of conviction; and
  - (ii) is a prosecution required in the public interest.
60. The Code provides examples of public interest factors to be considered when deciding whether to bring a prosecution – how serious is the offence, what is a suspect's culpability, what was the harm caused, was the suspect a youth at the time of the offence, is a prosecution a proportionate response, and are there sources of information which require protection?

**The development of guidance including in relation to sexual offences**

61. Since its inception, the CPS has produced Guidance relevant to the prosecution of sexual offences and safeguarding victims and witnesses of such offences. These include:

Name of guidance document	Dates in force	Comment
Policy Manual (CPS002791)	1988 – 1992	The Policy Manual was originally regarded by the DPP Allan Green Q.C as confidential. The version of the policy manual retained by the CPS appears to have been first available in 1988 but amended at various stages. The content relating to child abuse and sexual offences is most likely to be from 1990.
CPS Prosecution Manual (CPS002792)	4 Jan 1995 – July 2001	The Prosecution Manual consisted of seven volumes and was still marked as 'restricted'. The first edition was published on 4 January 1995 and was later updated to take account of the CJPOA 1995. The guidance relating to child abuse included information about child witnesses and referenced the UN Convention on the rights of the child. It defined a 'child' as someone under the age of 18 and tells prosecutors not to build hurdles in relation to the evidence of children. It was said to be rare that a prosecution of offences against children would not be

		in the public interest. In the 'Sexual Offences' chapter, it is recognised that the obligatory corroboration warnings had been abolished. There was a separate chapter entitled 'Child abuse and abduction' which required that allegations of child abuse should be reviewed ahead of other cases.
Guide for prosecutors on the psychological effect of rape upon victims (CPS002793)	October 2003	Dr Fiona Mason MB BS MRC Psych DFP Consultant Psychiatrist produced a guide for prosecutors about the psychological effect of rape upon victims.
CPS Policy statement on rape (CPS002794)	2004	Produced following the publication of the <i>Report on the Joint Inspection into the Investigation and Prosecution of Cases involving Allegations of Rape</i> in April 2002 and a CPS and police consultation. First time CPS had committed to specialist prosecutors being responsible for a case involving an allegation of rape from advice stage to conclusion.
Guidance to Police Officers and Crown Prosecutors issued by the DPP, 1 <sup>st</sup> edition (CPS002795)	May 2004	Guidance in respect of charging decisions.
Guidance to Police Officers and Crown Prosecutors issued by the DPP, 2 <sup>nd</sup> edition (CPS002796)	January 2005	Guidance in respect of charging decisions.
CPS Sexual Offences Legal Guidance (CPS002797)	2006 – 2012	Now publically available. Five pieces of relevant guidance: Rape, Indecent Assault, Unlawful Sexual Intercourse and Buggery, Gross Indecency, offences arising out of the Sexual Offences Act 2003. The Guidance dealt with, amongst other things, the elements to prove for the various offences. Amendments to the guidance mainly concerned developments in the law.
Code of Practice for Victims of Crime – Legal Guidance (CPS002851)	2006	Revised 2013 and further updated version published October 2015 (and is available to close family members of a victim of crime who has died).
Guidance to Police Officers and Crown Prosecutors issued by the DPP, 3 <sup>rd</sup> edition (CPS002798)	Jan 2007	Guidance in respect of charging decisions

Rape Manual of Guidance (CPS002799)	2008 – 2012	Designed to supplement the Legal Guidance and guide prosecutors through every stage of a rape prosecution. Each CPS area was to have a Rape Co-ordinator with various responsibilities. Suitably trained and experienced Rape Specialists were introduced to advise upon, review and have conduct of rape cases throughout the life of the case. Particular emphasis was placed on awareness that victims, for various reasons, may not have provided full details of the incident. The issue of societal "myths" was addressed for the first time.
Safeguarding Children as Victims and Witnesses (CPS002800)	2009	Guidance relating to prosecuting offences of child abuse. Included a section entitled 'Cases involving children' & 'Historical and institutional cases'.
Statement of Ethical Principles (CPS002801)	2009	Released by the DPP in November 2009. Sets out the ethical principles that underpin the CPS's work.
Guidelines on Prosecuting Cases of Child Sexual Abuse (CPS002802)	2009	Guidance on prosecuting offences of child abuse. The guidance stated that the evidence of a child was no less reliable than that of an adult simply because it came from a child. It was made clear that corroboration was no longer required.
Guidance to Police Officers and Crown Prosecutors issued by the DPP 4 <sup>th</sup> edition (CPS002803)	Jan 2011	Guidance in respect of charging decisions.
Guidelines on Prosecuting Cases of Child Sexual Abuse (CPS002804)	Updated 2012	Included a definition of 'child abuse'.
Rape and Sexual Offences Guidance (CPS002805)	2012	Replaced Rape Manual, Guidance on Buggery, Gross Indecency, Indecent Assault, Unlawful Sexual Intercourse, Rape and the Sexual Offences Act 2003. Contained 22 chapters and six appendices.
Safeguarding Children as Victims and Witnesses (CPS002806)	March 2012	Substantive update to guidance first issued in 2009. Referred to <i>R v. Barker</i> [2010] ECA Crim 4 re competency of a child and <i>R v. Malicki</i> [2009] EQCA Crim 365 – cases involving young complainants should be fast-tracked.
Interim Guidelines on Prosecuting Cases of Child Sexual Abuse (CPS002807)	11 Jun 2013 – 3 Oct 2013	Interim guidance subject to a three month consultation. The consultation was preceded by roundtable meetings attended by victims' representatives, police, lawyers, the judiciary, academics, experts, social services and other stakeholders with an interest or expertise in criminal justice.
Guidelines on	17 Oct 2013	Final guidance issued. The changes included an

Prosecuting Cases of Child Sexual Abuse (CPS002808)		annex setting out common myths and stereotypes in child sexual cases. Prosecutors were also told that some factors which had previously been considered to undermine a complainant's credibility were no longer to be seen as automatically doing so. These included such matters as: not reporting the offence immediately after commission; inconsistent accounts etc. Prosecutors were also reminded of the 'merits-based approach' to the evidential stage of the code test. The Prosecutor was told proceed on the basis of a notional jury which is wholly unaffected by any myths and faithfully apply directions from the judge.
Guidance to Police Officers and Crown Prosecutors issued by the DPP 5 <sup>th</sup> edition (CPS002808)	May 2015	Guidance in respect of charging decisions.
Safeguarding Children as Victims and Witnesses: Legal Guidance (CPS002810)	November 2015	Updated 2012 guidance.
Guidelines on Prosecuting Cases of Child Sexual Abuse (CPS002811)	27 Jul 2017	Guidance updated.

#### Guidance on administering cautions in 1992

62. On 16 July 1990 the Home Office issued Circular 59/1990 'The Cautioning of Offenders' which provided guidance to the Chief Officer of Police in respect of the cautioning of offenders [ACE000151]. We understand that this was the prevailing guidance in 1992/93.
63. The decision to administer a caution was a matter for the police although inter-agency involvement was supported. The guidance was intended to establish national standards for cautioning.
64. The National Standards for Cautioning were set out in Annex B. There were 3 conditions which must be met before a caution could be administered;
- there must be evidence of the offenders guilt sufficient to give a realistic prospect of conviction;
  - the offender must admit the offence;
  - the offender must understand the significance of a caution and give informed consent to being cautioned.

65. The Notes to the guidance make clear that the offender must make a clear and reliable admission of the offence (2B) and that in practice consent to the caution should not be sought until it has been decided that cautioning is the correct course (2D).
66. A caution must also be in the public interest. This included consideration of the nature of the offence, likely penalty, the offender's age and state of health, his previous criminal history and his attitude towards the offence. The Notes explain that the most serious offences, including indictable only offences, will not be suitable for a caution nor will offences where the victim has suffered significant harm or loss. The guidance states *"Where there is any doubt, the case should be referred to the Crown Prosecutor for him to consider whether prosecution would be more suitable"* (3A).
67. The views of the victim should be established before a caution is administered, their consent is desirable but not essential.

**Referral of cases to CPS Headquarters, Central Casework Divisions and Area Complex Casework Units**

68. In 1992 CPS guidance was contained within the CPS Policy and Procedure Manuals. The Manuals were in place from 1986 to 1995. These were hard copy manuals which provided guidance and information to all staff. They were periodically updated by sending out replacement hard-copy inserts to update the Manuals.
69. It was generally expected that decisions on prosecution in the majority of cases would be taken in local offices. The local CPS Areas were responsible for prosecuting all of the cases referred to it by the local police in that geographical area. However, certain cases were required to be referred to Headquarters, generally due to the complexity and sensitivity or else to ensure consistency in decision making.
70. Section D of the 1991 Manual outlines the division of functions between Headquarters and regional offices. An excerpt of the relevant section has been disclosed to the Inquiry (CPS ).
71. The Manual explained that certain cases should be referred to Headquarters for decision either because a central application of policy was desirable or because they raised evidential or other issues of which central consideration was desirable. Headquarters would then decide whether to retain conduct of the proceedings or return them to local offices.
72. Cases to be referred included; those requiring consent to prosecute from either the law officers or DPP; certain offences which were 'serious per se'; cases where suggestions of local influence should be avoided; cases of exceptional difficulty or exceptional public concern. In addition some specialised casework was required to be referred to headquarters, for example fraud, extradition, appeals.
73. In 2012 the relevant guidance was contained on the CPS intranet. The relevant section has been disclosed as (CPS ). That guidance, and indeed the current guidance, retained a list of cases which were required to be referred or notified to Headquarters,



which by that stage included the Central Casework Divisions, Strategy and Policy Directorate, Principal Legal Advisor team, Private Office and Press Office. In addition there were criteria for referring cases to Area Complex Casework Units and for notifying specified cases to senior managers.

74. For completeness a copy of the current referral criteria for cases has been disclosed as (CPS ).

#### **Principal Legal Advisor**

75. As will be seen, in 2012-2015 the further investigation and prosecution of Ball involved Headquarters being notified of the case. At that time the notification was to the Director's Principal Legal Advisor (PLA), Alison Levitt QC. The PLA was responsible for providing the DPP with advice and assistance on the top level of casework, as well as providing an assurance on legal standards across the wider Service.
76. The PLA was supported by a small team of Legal Assistants. The Legal Assistant to the PLA was required to support the PLA by providing legal advice, conducting research, and preparing briefings and guidance notes.
77. As explained above there were a list of certain cases or offence types which were required to be referred to the PLA. From time to time the Director would require the PLA to be advised of certain types of cases for monitoring or other purposes. The PLA would issue further instructions that such matters be referred to the PLA team. For example, in October 2013 an announcement was made (via the CPS intranet 'Gateway') that all 'conditional consent'<sup>2</sup> sexual offence cases were required to be notified to the PLA for her approval. A copy of that Gateway notice has been disclosed as (CPS ).

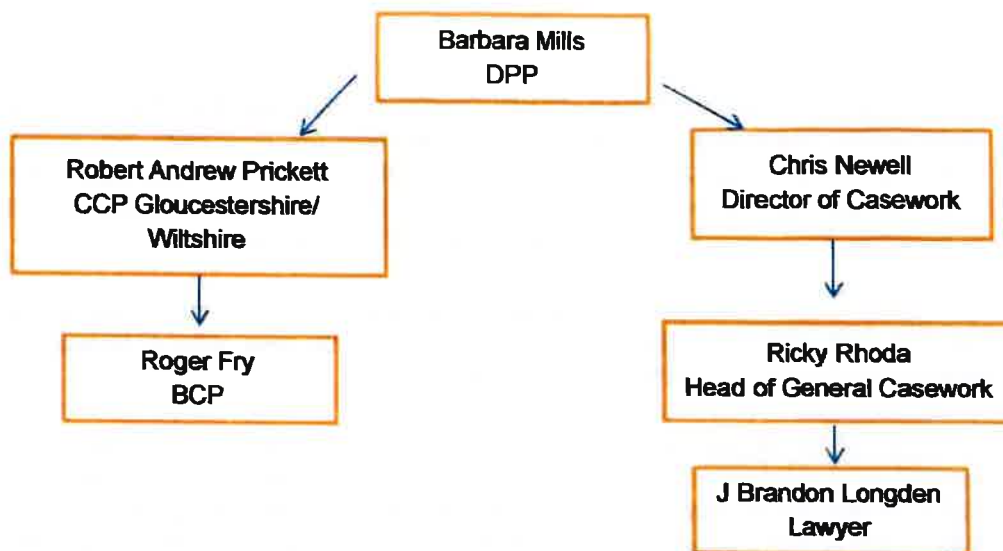
---

<sup>2</sup> 'Conditional consent' refers to allegation of sexual offences in which it is said that ostensible consent was not true consent, either because of a material deception or because a condition on which consent was given was not complied with.

The 1992/1993 investigation

**Overview**

78. From the available papers it appears that the following individuals were directly involved with the Peter Ball case;



79. In 1992 the head of the CPS, the Director or Public Prosecutions, was Dame Barbara Mills QC. Her then Private Secretary was Teresa Glackin.

80. As explained above, local CPS Areas generally dealt with the prosecution of all cases being investigated by the local police. In Gloucestershire the relevant CPS Area was headed by Andrew Prickett who was the Chief Crown Prosecutor. The Area had a number of local teams which were headed by Branch Crown Prosecutors, each of whom would report to the CCP. Roger Fry was the Branch Crown Prosecutor at Gloucester.

81. At that time the CPS Headquarters Casework directorate advised on and prosecuted certain specified types of cases. The Director of Casework was Chris Newell<sup>3</sup>. He had overall responsibility for all casework referred to Headquarters, management responsibility for over 200 people working at Headquarters as well as a wider role overseeing the casework of the CPS as a whole.

82. The Head of General Casework in Headquarters was Ricky Rhoda. Within his division would have been a number of prosecutors. Brandon Longden was a prosecutor within that division.

<sup>3</sup> Chris Newell has been asked for his recollection of events. He does not have any specific recollection of the case in 1993 or of any personal involvement in it. He does not believe that he would have had any role in the decision-making, other than to endorse a note any decisions taken by others and inform the Director accordingly.

83. In respect of the CPS involvement with the Bishop Ball investigation in 1992/93 the following chronology emerges:

Date	Description	Reference
12.12.92	On or about 12 December 1992 the police investigation into Ball commenced. Ball was arrested on 14 December 1992.	-
13.1.93	Ball's solicitors wrote to the CPS in Gloucester expressing a wish to make representations at such time that the police file is referred to the CPS. Branch Crown Prosecutor, R Fry replied the following day explaining that the CPS did not currently have a file from the police.	CPS000792 p182
14.1.93	The memo (see entry below) explains that on this date the CCP of Gloucester, RA Prickett spoke to the DPP's private secretary, T Glackin. The content of the memo suggests that the telephone conversation was a query about the 'present position' of the police investigation.	-
15.1.93	Prickett sent a memo to Glackin, and copied that memo to the Director of Casework, HQ, Chris Newell in which he confirmed that the police were still interviewing a number of complainants and that a file would be sent to the CPS in due course. He also sent a memo to Fry, asking to be kept informed about the case.	CPS001072 p63-64
25.1.93	DI Murdock, A/DS Wasley met the defence solicitors Peak and Read and their investigator Tyler at a Hotel in Gloucester at the defence request. They advised that Ball had made admissions to them in respect of Todd's allegations. They says 'the crux of the meeting was that Mr Peak wished [the DPP to be aware] that if you were so minded the defendant would be prepared to accept a formal caution for an offence of gross indecency'. The police acknowledged that there may not have been sufficient admissions in the first interview to satisfy the Home Office criteria. Investigating officers asked what would happen to Ball if he was cautioned and queried whether he would resign. Mr Peak said Ball would offer to resign.	P 293/306 police report OHY000098 <b>OHY003480_34</b>
2.2.93	Tim Renton MP wrote to the DPP in support of Ball.	CPS001072 p1-2
8.2.93	Prickett drafted a background note and draft reply to the MP's correspondence, explaining the test which will be applied to any allegations. He sent a copy of that to Fry and asked for the police advice file to be sent to him as soon as it was received	CPS001072 p56-59
9.2.93	Ball's solicitors wrote to Ricky Rhoda, the Head of General Casework, HQ, seeking to "urge [Rhoda] to authorise a caution". That letter contained detailed representations as to how the matter involving Ball could be disposed of and asserted "we understand the police have recommended a caution". The letter also purports to know from the police that only those matters involving Neil Todd were under consideration.	CPS000792 p183-186

1629

	That same day the case was referred from the CPS Gloucester office (by R Fry) to Rhoda, at CPS headquarters confirming he had received by hand a copy of the file that day.	CPS001072 p55
12.2.93	Prickett sent a note to Rhoda which included comment on the possibility of a caution	CPS000792 p348
15.2.93	Prickett sent a further note to Rhoda explaining that he had had several telephone calls with Ball's solicitors confirming he would resign if he was cautioned	CPS000792 p349
17.2.93	Rhoda wrote to Balls solicitors in response to their letter of 9 February and explained that the CPS were considering all of the evidence, not just that of Todd.	CPS000792 p188
18.2.93	Ball's solicitors wrote to the CPS explaining that they had Ball's deed of resignation in escrow.	CPS000792 p189
18.2.93	DPP wrote to Tim Renton MP, in response to his earlier letter of 2 February	CPS000792 p350
19.2.93	Rhoda drafted a hand written Note in which he appears to be reviewing the evidence in the case.	CPS0001072 p50-53
24.2.93	It appears that there was a meeting with the DPP and Chris Newell (which is referred to in his briefing of 1 March)	
26.2.93	There was a meeting with the police – at which R Rhoda, B Longden and Gloucester Police present. A handwritten note on the file by Rhoda appears to say there was a <i>“meeting with Supt. Bennett and officers, R Fry, B Longden and R Rhoda. Decided subject to views of DPP that a caution was the best solution on the basis that apart from the last complainant all the other victims were either time barred, or flawed by the issue of consent. In the event of a trial we would rely upon them for evidence of system.”</i> C Newell's note of 1 March described this as a conference with Gloucestershire Constabulary “when the totality of the evidence was reviewed and views were expressed as to disposal”.	CPS000792 p342
1.3.93	Newell approved a briefing note to the DPP advising her that it was proposed to offer Ball a caution. ‘Agree’ was written in manuscript in the top right-hand corner. That was written by Chris Newell approving the briefing which had been provided to him. It is unclear who the original author was.	CPS000792 p 351-354
2.3.93	Archbishop of Canterbury (George Carey) sent a letter to DPP	CPS000788 p202-203
	On the same day Glackin replied to acknowledging receipt and explained the DPP was on leave and that she had sent a copy of the letter to the lawyer considering the case.	CPS000794 p748
5.3.93	A letter was sent from Longden to Ball's solicitors offering a caution (there is an earlier, unsigned version dated 4 March). The defence replied on the same day to accept the caution.	CPS000792 p190-191
8.3.93	Caution issued	

## The 1993 decision making

### *The Police report*

84. The police sought the advice of the CPS at an early stage. There are a number of reasons why this might be so. The offence of gross indecency, which was under consideration, was an offence which required the DPP's consent. Additionally, a caution was one option in the contemplation of the police team; the Home Office guidance indicated that 'the CPS is always willing to give advice in difficult cases'. The case was high profile, having already attracted media interest.
85. On or around 9 February 1993 a file including a 306 page report was provided to the CPS. The report by DI Murdock and A/DS Wasley, contained a comprehensive outline of the evidence in respect of Ball. The report outlined evidence for two offences of gross indecency or, in the alternative, indecent assault in respect of Neil Todd<sup>4</sup>; it acknowledged that time limits might apply but also recommended in respect of Jonathan Beswick one offence of gross indecency and one offence of wounding (flogging which broke the skin on one occasion) and in respect of **AN-A117** one offence of gross indecency and one of assault occasioning actual bodily harm (flogging resulting in bruising). It also referred to additional matters reported by witnesses<sup>5</sup> which, it was said, fell short of allegations in themselves but which were generally supportive of the allegations being put forward.
86. Gross indecency between men contrary to s13 Sexual Offences Act 1956 made it an offence to commit, be a party to or procure an act of gross indecency by a man with another man. However, proceedings were required to be initiated within 12 months of the offence. As such only the allegations by Todd were within time.
87. Indecent assault contrary to s15 Sexual Offences Act 1956 was defined as an assault in circumstances of indecency. Whilst the allegations were prima facie indecent the question to be considered was whether there was an assault given that the parties appeared to have consented to what took place.
88. In respect of the allegations of assault (actual bodily harm and wounding) the issue was also noted as one of consent, although the report suggests that the issue of consent should be dismissed given the level of harm that was inflicted.
89. The file reported that **AN-A98** did not want to be identified as a complainant but 'a supporter of one who has already complained' (ie Todd) and that he would prefer that his allegations were not charged. However the officer believed he would support a prosecution and attend court to give evidence. The officer also reported that **AN-A98** was homosexual and had consented to the conduct. He queried whether the consent was obtained by falsehood in his case.

<sup>4</sup> He was 18 years old at the material time

<sup>5</sup> **AN-A108** **AN-A93** **AN-A99** Name Redacted

90. In respect of [AN-A117] the file reported that, as with [AN-A98] he made his statement to corroborate Todd's allegations. It says 'he is less inclined to be viewed as a complainant' but that, if charged, he is likely to be supportive.
91. The report concluded that there was a prima facie case in respect of two counts of gross indecency with Todd; that the allegations of gross indecency by [AN-A98] and [AN-A117] were time barred, but that there was a case to answer in respect of their allegations of wounding and ABH. The suggestion from the police was to proceed with the offences disclosed by Todd and use [AN-A98] and [AN-A117] as corroboration (noting that they were 'less inclined to be complainants'). The report put forward three options; charge, caution or not [to proceed] in the public interest.
92. In respect of the possibility of a caution the police asked, in the report, whether the Home Office criteria had been fulfilled (specifically in respect of whether there was sufficient admissions to meet the requirements). They stated that they believed a caution would be satisfactory to Todd if it was accompanied by an offer of resignation.

#### **Consideration by the CPS**

93. On 9 February, in accordance with established practice, the file was passed from CPS Gloucester to Headquarters. Fry has been spoken to and believes that there were a number of reasons for sending the file to Headquarters; the case involved a local Bishop and needed handling at a distance to avoid any suggestion of local prejudice or favour; as the case was bound to attract national interest; and as the local CPS Area had never dealt with a case of that nature at the time. In his view the case 'cried out for HQ involvement'.
94. The case appears to have been allocated to Brandon Longden as the reviewing lawyer although his direct manager, Ricky Rhoda appears to have taken an interest in the development of the case.
95. In 1993 the prevailing Code for Crown Prosecutors was the 2<sup>nd</sup> Edition. The Code required the prosecutor to first assess the sufficiency of the evidence before going on to assess the public interest. The Code stated "A prosecution should not be started or continued unless the Crown Prosecutor is satisfied that there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed..." It also outlined a number of matters the prosecutor should have regard to when evaluating the evidence including (para 5 (vi)) what sort of impression is the witness likely to make? How is he likely to stand up to cross-examination?
96. If the prosecutor is satisfied that the first stage is met they can go on to consider the public interest stage. The Code stated (at para 8) "...the interests of the victim are an important factor in determining the balance of the public interest... The factors which can properly lead to a decision not to prosecute will vary from case to case, but broadly speaking, the graver the offence, the less likelihood there will be that the public interest will allow of a disposal less than prosecution, for example, a caution". It refers to the Home Office Cautioning Guidelines and also lists a number of categories which, if present, may indicate that proceedings may not be required.

97. I have not been able to identify a charging advice document as I would expect to see today. However, a number of handwritten notes and memo's have been identified from which the thought process can be inferred. For example, there are continued references to issues of consent and that gross indecency is time barred for some of the allegations.
98. An unsigned, undated note within the file (CPS0001072 pg 6-7) states, in respect of **AN-A98**'s allegations:
1. G/1<sup>6</sup> - time barred
  2. No indecent assault – consented
  3. Wounding – no complaint, no medical evidence, consented
99. A note by Rhoda dated 19.2.93 (CPS0001072 pg 50-53) describes the case as 'extremely difficult' and identified that consent would be an issue in respect of the allegations of indecent assault, that we would be required to prove such consent was vitiated by deceit or manipulation. The note also identified that gross indecency was time barred in most cases.
100. Having considered the material available from that time and, in particular the notes from within the file, it appears that there was agreement within the prosecution team that the offence of gross indecency was time barred for **AN-A117** and **AN-A98**. I agree with that assessment.
101. It seems that the allegations of assault, at least in so far as **AN-A98** was concerned, were not proceeded with due to a lack of complaint about those matters, the issue of consent and the absence of medical evidence in support of the injuries. The reference to consent, and the lack of analysis around the decision making, is perhaps surprising since the issue of consent in serious assault matters was topical; the case of *R v Brown*<sup>7</sup> had recently been decided at the Court of Appeal, and was subsequently upheld in the House of Lords, to the effect that a person could not consent to conduct which results in more than transient or trifling injury. Arguably, following *Brown*, the fact of consent was irrelevant to the allegations of assault in their case and could have been prosecuted. The reference to a lack of medical evidence to support the level of injuries is a matter which we would consider today and which could prevent charges being authorised depending upon the circumstances of the case.
102. There is no record of why the allegations of actual bodily harm by **AN-A117** were not proceeded with. On the face of it the allegations are prima facie evidence of assault causing injury. However, I note that the police had remarked within the report that neither **AN-A98** nor **AN-A117** were keen to pursue complaints in their own right but that they were willing to support the allegations of others. I assume this was one factor which was considered by the lawyer(s) here. Without further contemporaneous notes from this time I am unable to understand why these allegations were not proceeded with (or at least considered in greater detail).

<sup>6</sup> This appears to be short hand for gross indecency

<sup>7</sup> [1993] UKHL 19, judgment delivered 11.3.93.

103. In respect of the allegations of indecent assault the issue was that the parties had consented to the conduct. In general terms, consent of the complainant will be a defence to indecent assault. The issue of vitiated consent – consent vitiated by deceit or manipulation – is complex and there is no certainty that such an argument would have succeeded, either then or now. I note that this is something which we grappled with again in 2012 and I will cover this in further detail later in my statement.
104. The two allegations made by Todd were interchangeably discussed as 'gross indecency/indecent assault'. Although the decision making is not recorded anywhere, the briefing to the Director (for which see below) refers to there being evidence to support two allegations of gross indecency. On the face of it that appears to be correct.
105. The reviewing lawyer(s) having reached a conclusion that at least some of those allegations passed the 'sufficiency of evidence test' would then have gone on to consider whether the public interest required a prosecution.

***The decision to caution and DPP involvement***

106. There is an unsigned, undated note (CPS0001072 pg 26) reviewing the evidence in the case which concludes with a list of factors for and against prosecution, including:

For:

- Corruption of young persons, substantial disparity in age, assaults were more than trivial and repeated
- Vulnerable victims and Ball in a position of trust ("role model")
- Abuse of power by authority
- Element of deceit
- Caution may be seen as cover-up/preferential treatment

Against:

- No previous convictions
- Charges confined to gross indecency with and indecent assault on Todd
- Traumatic experience for Church and victims in event of trial
- Possible light sentence"

107. It would therefore appear from this note that the prosecutor was considering the public interest factors in trying to reach a decision about whether or not a prosecution was required.
108. I am surprised to see reference to the impact on the institution (Church) as a factor being taken into account. However the prevailing Code at the time stated [para 9] that "*if... the Crown Prosecutor is still in doubt as to whether proceedings are called for, he will throw into the scales the attitude of the local community and any information about the prevalence of the particular offence in the area or nationally*". It is possible that this was considered in the context of the wider community impact. However in my experience this would not now be a relevant factor to take into account.
109. It would appear that on 24 February there was a meeting convened at which, at least, Chris Newell and the DPP were present. We have no record of who else was present



at the meeting or what was discussed although this meeting is referred to in the briefing on 1 March (for which see below). Additionally there is a handwritten note within the file (CPS0001072 p10-12) which reports "Discussion with D on 24/2/93".

110. On 26 February there was a meeting convened with Gloucestershire police. A file note by Ricky Rhoda records:

*"meeting with Supt. Bennett and officers, R Fry, B Longden and R Rhoda. Decided subject to views of DPP that a caution was the best solution on the basis that apart from the last complainant all the other victims were either time barred, or flawed by the issue of consent. In the event of a trial we would rely upon them for evidence of system."*

111. A handwritten note (CPS0001072 p10-12) records:

*"Conf with Police on 26/2/93 All evidence reviewed.*

*Accepted: -*

*1. no prospect of success in any pros. other than Todd.*

*1. time bar or age bar for G/I,*

*2. Consent is in issue for I/A.*

*Todd 2 alleg. To justify pros. Lower end of scale.*

*Other "victims" ev. Of system.*

*Caution or prosecution.*

*Consensus of view that the caution many attractions:*

*1. Contested – ev of system wld have to be introduced*

*2. Victim – fragile, Todd suicide, homo(sexual)*

*2. Harrowing pcdgs<sup>8</sup> for victims*

*3. Sentence likely to be light*

*4. The mischief is to prevent further abuse of trust by Bishop*

*5. Accept. of caution = end of career offer of resignation in return for caution made by Sols*

*More than 1 compl<sup>9</sup> = pcdgs. systematic breach of trust*

*As however 1 compl*

*We share the Police view = caution*

*If D is content our intention is to write to Def Sols that we would be prepared to authorise a caution for*

*As an alternative to prosecution. Point*

*out that if unequivocal admission. Were he to refuse a caution our view = pros"*

112. It should be noted that the content of this handwritten note is very similar to the briefing on 1 March and is likely to be an early manuscript draft of the later typed version.

113. It is not uncommon that in a complex or high profile case the prosecutor, and in some cases their manager, would attend a meeting with the police to discuss the issues and discuss possible outcomes. It would appear that the conclusion from that meeting was that the DPP's views should be sought but there was, by then, broad agreement that

<sup>8</sup> We believe this to be shorthand for proceedings

<sup>9</sup> We believe this to be complainant

1635

there was only sufficient evidence in respect of Todd's allegations and that a caution was the appropriate response.

114. I pause to add that I am aware that John Bennett (Gloucestershire Police) was present at a meeting and explains in his statement (CPS0002513 p86) that he attended the meeting with DI Murdoch and DS Wasley. He believed that around 8 or 10 people were present including the DPP. He says that the DPP asked questions about what sort of witness Todd would make and whether Ball would likely accept a caution and what the victims' views would be about this course of action. Bennett then says that the DPP announced that she had decided an official caution should be offered, and that he subsequently did this.
115. This is, of course, at odds with the contemporaneous note of a meeting on 26 February. There are two possible reasons; Bennett is referring to the 26 February meeting and is simply mistaken as to the presence of the DPP; Bennett was also present at the meeting on 24 February with the Director and is referring to that meeting. However, I observe that if the latter were correct it seems odd that a subsequent meeting would have been held two days later at which it was concluded that the DPP's approval would be sought to issue a caution.
116. On 1 March 1993 Chris Newell approved a briefing note to the DPP (CPS000792 p351-354). This is ordinarily the way in which the Director would be informed about a case and is usual practice within the CPS, albeit the format is now standardised to some extent. It is anticipated that the author would include all of the salient matters for the DPP's information and it is expected to be a summary. Such an approach means that it is highly unlikely that the Director would have reviewed the case papers in this matter.
117. The briefing highlighted the following factors:
- i. That any trial would be strongly contested... and that acquittal by a jury would have potentially disastrous consequence<sup>10</sup>;
  - ii. The impact of a trial on the victims and witnesses (He specifically refers to the fact that Todd has already attempted suicide);
  - iii. The level of indecency is at the lower end of the scale;
  - iv. The main objective is to prevent any further abuse and breach of trust by Ball and to make him resign his position;
  - v. Acceptance of a caution would be the end of Ball's career.
118. This briefing represents a summary to the Director of what the author considered to be the key matters she needed to be aware of. However, it is clear that the case had been considered in far more detail and had also taken into account additional matters including those against caution (see CPS0002513 p18-28). Upon reflection it is perhaps disappointing that the author did not also draw to the attention of the Director the countervailing arguments albeit this may well have been discussed at previous meetings. Today we would expect a briefing note to also contain information about the risks associated with any approach.

<sup>10</sup> At the time of writing it is unclear whether this is a reference to Neil Todd and/or the other witnesses.

119. The word 'agree' is written in manuscript in the top right hand corner of the briefing note. Chris Newell has reviewed the note and recognises his handwriting and initials on the document. He explained that it would have been prepared by someone else and submitted to him for approval before provision to the Director. He does not have any specific recollection of the document.
120. On 5 March the reviewing lawyer wrote to the defence solicitors explaining that there was sufficient, admissible, substantial and reliable evidence available to support proceedings against Ball for both indecent assault and/or gross indecency. In effect the lawyer was saying that the sufficiency of evidence stage of the Code was met. However, on any view this is incorrect because the decision reached was that the offence of gross indecency (not indecent assault) was made out.
121. He went on to explain that a caution would be offered in respect of one allegation of gross indecency. It is unclear why no action was recorded in respect of the second allegation of gross indecency.
122. The reviewing lawyer also explained that there must be a full and unequivocal admission of the offence. Whilst this is correct it is interesting to note that no admission is, as far as we can tell, ever forthcoming. The defence responded the same day to accept the caution on the terms set out within the letter
123. I have been asked to provide my views on the decision to caution and in particular whether the decision was consistent with the guidance at that time, the process for receiving and considering defence representations and whether or not the decision to caution was contingent upon Ball's resignation.
124. The decision to caution a suspect was a matter for the police. However, the guidance issued by the Home Office in July 1990 confirmed that "the CPS is always willing to give advice in difficult cases".
125. It can be seen from the available documents that the police sought guidance from the CPS in respect of the decision making in the case of Peter Ball. It can also be seen from the Police report that the option of a caution was one potential disposal under consideration. Indeed the investigating officers had met with the Defence Solicitors in January (for which see below) where the possibility of a caution was discussed and the question of Ball's resignation was raised.
126. Under the Home Office guidance at the time the first matter to consider was whether or not there was sufficient evidence for a realistic prospect of conviction. From the available papers it would appear that the CPS, and police, believed that this stage was met in respect of the two allegations made by Todd.
127. The second matter was whether or not there had been sufficient admissions made. It would appear from the police summary of the evidence that it was acknowledged at an early stage that the limited admissions made were not sufficient for these purposes.

128. However, the police appear to have discussed this with the defence solicitors in the January meeting who by then believed that sufficient admissions *would* be forthcoming. It seems that there was an acceptance from his instructed solicitors that he would admit the offence(s).
129. With respect, whilst this might have seemed expedient at the time, this was not the correct order of events. Only where sufficient admissions were made should the decision of whether to accept a caution be considered. In my view, for this reason, a caution should not have been offered or even considered.
130. In addition, as I have said above, there appears to be no good reason why the caution, if it was correct to offer it in the first place, was only offered in respect of one allegation when it had already been concluded that there was sufficient evidence to support two charges. This aspect also appears to be wrong.

#### ***Ball's resignation***

131. The above chronology explains that in January 1993, shortly after the file had been provided to the CPS, Ball's solicitors were seeking to make representations to the CPS as to the potential disposal of the case. It is not unusual that defence solicitors will preemptively write to the CPS to seek to put forward their client's case and to suggest a certain course of action that might be employed. This can sometimes be of valuable assistance to the prosecutor in seeking to understand the likely issues in a case.
132. I have been asked to comment upon a memorandum prepared by John Yates, the then Bishop of Gloucester, to the Archbishop's Council dated 28.12.92 [CPS002513 p 48-49] which suggests that the CPS would consider that Ball's resignation would be the difference between prosecution and caution. It states "*The police seemed to be hinting [illegible] that the CPS may suggest that they do not prosecute 'in the public interest' but that Peter's resignation would help them to come to that decision*".
133. I make two observations; the date of the document was before the case had been provided to the CPS and so it is unlikely that the CPS would have formed any view whilst the investigation was ongoing. Secondly, it is clear from the note that Yates is reporting what 'the police' believe that the CPS might do. This is quite different from having had a discussion with the CPS who have articulated this view. In my view this is conjecture about CPS decision making based upon an understanding of the factors that a prosecutor would no doubt consider. I do not take this to be evidence that the CPS had already formed a view. However, it is interesting that the police appeared to have already been considering this option and discussing it with Yates.
134. On 25 January 1993 I understand that DI Murdock and A/DS Wasley met the defence solicitors Peak and Read and their private investigator Tyler at a Hotel in Gloucester at the defence request. The defence advised that Ball had made admissions to them in respect of Todd's allegations. The police, in their report to the CPS, say '*the crux of the meeting was that Mr Peak wished [the DPP to be aware] that if you were so minded the defendant would be prepared to accept a formal caution for an offence of gross indecency*'. It further explains that Investigating officers asked what would happen to

Ball if he was cautioned and queried whether he would resign. Mr Peak said Ball would offer to resign.

135. From at least 12 February the CCP, Prickett, was of the view that a caution was the appropriate outcome. In his memo of that date he confirmed that he had had telephone conversations with Ball's solicitors and that they confirmed Ball would resign. I have seen a letter from those representing Ball (CPS000796 p 451-452) which similarly recounts a telephone conversation between Peckett (sic) and Peake (Ball's solicitor) on 11 February in which it says "He asked whether you are going to resign as Bishop of Gloucester. Informing him that we do not know this. He states that this is going to be an important factor in relation to the decision". It reports that Peake then spoke with Ball who confirmed he would resign and he communicated this to Peckett (sic) the following day.
136. In this case it is clear that Ball's solicitors were lobbying the CPS to offer a caution. They put forward their reasons why this would be an appropriate course of action. That included their suggestion that Ball would resign<sup>11</sup>. This does not appear to me to be an unusual course of correspondence in a criminal investigation. The defence sought to highlight factors which would reduce the public interest in prosecution.
137. I have been asked whether or not the decision to caution was "conditional" in any way. At the time the caution was offered there was no such thing as a 'conditional caution' and no mechanism by which a condition could be attached. There is nothing within the papers to suggest that a caution would be offered 'on the condition that' Ball resigned. See for example, the letter offering the caution on 5 March which is silent on the issue.
138. It is clear that from the chronology that the possibility of Ball's resignation was being discussed at an early stage. Ball's solicitors seemed to offer this as a concession in order to persuade the CPS that he would be penalised in any event and would pose less of a risk. This was a matter which was taken into account when determining whether or not the public interest required a prosecution. The fact that Ball would resign was relevant to the likelihood of his reoffending. In my view there is nothing inappropriate about taking this factor into account when assessing the public interest.
139. For completeness on this subject, there was correspondence in 1995 and again in 2001 from Ball to the CPS in which Ball queried whether his caution was conditional on his resignation (CPS000792 p 208-211 and CPS000788 p 556-558).
140. On 19 June 1995 Ball wrote to the Director. That correspondence was passed to the relevant CPS team (the General Casework Division in Headquarters by then had become the Special Casework Division). The Head of that Division replied to Ball on 11 July 1995 (CPS000792 pg 208-211). The particular issue was whether or not Ball's resignation was a condition of his caution. He explained the basis upon which the caution was offered.

<sup>11</sup> This appears to have been first raised by the police in a meeting on 25 January – for which see the Police report.

141. In 2001 Ball again sought further information about the decision. On 4 and 6 April 2001 it would appear that Ball wrote to the CCP of Gloucestershire, who was by then Withiel Cole, who replied on 23 April in general terms (see CPS000788 p555); on 1 June 2001 Ball also wrote to the CPS casework directorate, the Head of which replied on 12 June (see CPS000788 p558) and confirmed that she had nothing further to add to that which had been confirmed in 1995; on 10 September and 6 October 2001 he also wrote to Prickett who replied on 17 October 2001 (see CPS000788 p556) confirming that there was no 'deal' that he would be cautioned in return for his resignation.
142. The correspondence from the police, CPS and indeed the defence solicitors, which I have seen, tend to confirm that Ball's resignation was effectively offered by his solicitors as an inducement to dispose of matters by way of a caution. There is no suggestion that it was ever a specific 'condition' to the outcome.

### Correspondence

143. I have been asked to comment upon some of the correspondence received during this case.
144. The DPP regularly receives correspondence from members of the public, MPs and other individuals of public prominence. I have no reason to believe that the situation was any different in 1993. In respect of the case of Ball we are aware of at least 2 people who wrote directly to the DPP about the decision; Tim Renton MP (for which see CPS001072 p 1-2) and the Archbishop of Canterbury (see CPS000788 p202-203).
145. MPs correspondence is treated as a different category of correspondence within the CPS and follows a set procedure. Today correspondence from MPs to the DPP are replied to by the DPP but in order to aid that reply, the Area concerned will be asked to produce a background note and draft reply for the Director's consideration. This appears to have occurred in the case of Tim Renton MP and so I assume the process was very similar in 1993.
146. Where correspondence is received by the DPP from someone other than an MP it would usually be assessed by someone in a correspondence handling role to determine where it ought to be routed for reply. For example if a letter was received making allegations of a criminal offence, that would be passed to the police and the correspondent would be informed of that action in a short reply from the correspondence unit. If the correspondence related to a particular case it would be passed to the reviewing lawyer to reply. Where the correspondence is feedback or a complaint we now have a Feedback and Complaints policy which provides a tiered response process.
147. In the case of the correspondence from the Archbishop of Canterbury, he was corresponding about an active case and so I would expect that correspondence to have been passed to the local unit dealing with the case, as it did here. I have not seen a response provided from the Area. However, I note that the letter was replied to by a member of the DPP's Office to confirm that the letter had been passed to the

reviewing lawyer. I do not consider this to be an extraordinary course of events and appears to be consistent with general correspondence handling.

148. I have also been directed to a statement from the Archbishop (CPS002513, p67) which describes a phone call which he had on 8 March with someone senior in the CPS. He said he believed him to be the Director (or equivalent head) of the CPS. He recalled asking what might happen if further allegations of past indecency came to light (after Ball had accepted the caution) and he says he was informed that such matters would not be taken further and that the matter was closed. He asked that it be put in writing but he was told "I'm sorry Archbishop, but we don't intend to write to tell you anything more".
149. However I have also seen an updated statement from the Archbishop (WWS000143 – para 97) at which he says *"Having since had the opportunity to review some of the original files...I now believe that the telephone call I was recounting... may well have been one which I seem to have had with Chief Superintendent John Bennett of the Gloucestershire Police"*.
150. It is clear from the police and CPS file that numerous letters of support were provided on behalf of Ball. I have been asked whether the CPS views in 1993 were influenced by Ball's letters of support from prominent individuals. In my experience little weight would be afforded to such letters save that it would be acknowledged that he was previously a person of positive good character and that would be one factor to take into account when considering the overall public interest. There is no reference in the documents that I have seen to suggest that any weight was given to these letters.

#### The 2007/2008 'investigation'

151. I have been asked to provide a full chronological account of the investigation into Peter Ball by Northamptonshire Police in c2008/9 and the CPS involvement in these matters. The allegations against Ball came to light during an investigation into another priest, Colin Pritchard<sup>12</sup>.
152. Between March 2007 and July 2008 the CPS were advising Northamptonshire police in respect of the prosecution of Pritchard. Keith Taylor was a Senior Crown Prosecutor at CPS Northampton and he was the reviewing lawyer in that case. The case concluded in July 2008 when Pritchard pleaded guilty to a number of offences and was sentenced to 5 years imprisonment.
153. DC Charman was the investigating officer for the Pritchard case. I have seen a copy of his statement (OHY000135 p6-9) in which he explains that during his investigation into Pritchard he became aware that the Church held a number of letters of complaint about Bishop Ball and that he wanted to obtain copies of those letters to see whether or not they also included allegations against Pritchard. I understand that the Church

<sup>12</sup> Pritchard was a Parish Priest in Wellingborough in the late 70s and early 80s. He was the subject of allegations of indecent assault of boys and attempted buggery.

was initially reluctant to provide him with those letters and they were not provided to him until October 2008 (CPS000803 p159-229).

154. I understand that DC Charman then passed those letters to Keith Taylor, whom he had been dealing with during the Pritchard investigation, and asked him for his advice as to whether they disclosed any criminal offences. There is no written record of the request for advice. He says that Taylor advised him orally that there could be no charges based upon the allegations contained within the letters.
155. Unhappy with that advice, DC Charman says he sought a second opinion which was provided by William Falshaw, who echoed the earlier advice. At that time I understand that William Falshaw was another Senior Crown Prosecutor in CPS Northampton. He does not recall being asked for a second opinion.
156. DC Charman thereafter wrote to the authors of those letters in which he says he had shown the letters to the CPS and that the allegations made did not amount to a criminal offence (see CPS000803).
157. I have been asked to provide my view upon the advice which was provided. The advice said to have been provided by the CPS, and my view upon that advice is summarised below:

Author	Summary of allegation made in letter	Purported CPS advice recounted in DC Charman's letters	Current view
[Name redacted] (CPS000803 p160)	'Our son was 17' years old, when Ball 'suggested [he] should share his bedroom... and also enquired what [he] normally wore in bed'. No 'physical approach was made' and it was nothing 'more than innuendo' but he felt he had been indirectly propositioned.	'[The CPS] have advised me that the actions ...you described would not have been criminal under the Sexual Offences Act 1956. This act covered offences of gross indecency with children under 16. Your letter states that your son was 17 years old at the time...'	The letter does not disclose a criminal offence.  I should add that the advice recounted within the letter is misleading. There was no offence of 'gross indecency with children under 16'. The Act covered offences of gross indecency between men and also indecent assault (for which no-one under 16 can consent). The letter conflates the two offences.
AN-A99 (CPS000803 p174)	In 1992 Ball, as a form of initiation, required him to 'strip off all my clothes' and make vows in Chapel. He later suggested that 'I strip off again and caress him and him	'[The CPS] have advised me that the actions... you described do not amount to a criminal offence under the Sexual Offences Act 1956. This was the law in force at the time and covered gross indecency	I do not know how old AN-A99 was said to have been at the time of the allegations.  If he was over 16, on the face of it he provided consent to the



	me...I did go into chapel and caress him but I was unhappy with it.	with children under 16.'	contact and so indecent assault would not be available. Gross indecency was time barred.
[Name redacted] CPS000803 p186	'I have something which I am uncertain whether or not I ought to relate concerning a private meeting and talk which I had with Bishop Peter'.	'You do not refer to anything criminal.'	The letter does not disclose a criminal offence.
Mother of AN-A108 (CPS000803 p204)	My son 'was approached by the Bishop on a number of occasions with unwelcome suggestions of a homosexual nature'.	'[The CPS] have advised me that the actions of Bishop Peter Ball may have been criminal but this would have depended on the age of your son at the time. The Sexual Offences Act 1956 covered offences of gross indecency with children under 16.'	Insufficient information within the letter to form a view.
AN-A93 (CPS000803 p215)	'when I was a 17 year old...in 1980 Peter Ball...asked me to masturbate in front of him in order, he said, to allow me to relieve my guilt and tension'.	'[The CPS] have advised me that the actions of Bishop Peter Ball did not amount to a criminal offence under the Sexual Offences Act 1956 because it related to gross indecency with children under 16.'	The letter does not disclose a criminal offence. Gross indecency was time barred.

158. Keith Taylor has been asked for his recollection of these events. He does not have any recollection of the circumstances in which the letters were supplied to him but he recognised the letter from AN-A93. He has no recollection of matters being referred to William Falshaw for a second opinion.
159. Mr Taylor does not recall the advice he is said to have provided although he has stressed that he has no reason to question the account given by DC Charman. Mr Taylor has been asked whether or not he considers that the advice he is said to have provided was accurate. He has reviewed the letters and is of the view that whilst they disclosed behaviour that was morally questionable they do not disclose behaviour that contravened the criminal law at that time.
160. More generally Mr Taylor acknowledged that a verbal response to the enquiry by DC Charman is not, and was not, best practice. He would expect any advice to have been provided in writing. However, it would appear that the request for advice was an

16430

informal one<sup>13</sup> and he responded with similar informality. In his view, had he considered that the letters disclosed a criminal offence he has little doubt that he would have advised DC Charman to pass them to the relevant, local, police force for further investigation.

161. Finally on this topic, I have been directed to comments made by Kate Wood, who was then a safeguarding advisor within the Church, that she had been surprised by the decision of the CPS (see CPS000794 p1177). She appeared to believe that the rationale for determining that no criminal offences were disclosed within the letters was due to the age of the parties. I can only usefully add that there was no written explanation of the advice provided and so it is unsurprising that some confusion arose as to the exact nature and rationale behind the advice.
162. In my view the advice provided, that there were no criminal offences disclosed on the face of the letters, appears to be correct. However, those letters only provide a snapshot of information about the allegations and it is entirely possible that had those witnesses been traced and asked to provide further details that could have changed the complexion of the allegations.

**The 2012-2015 prosecution**

163. Ball was further investigated in 2012. From the available material the below chronology emerges:

<b>Date</b>	<b>Description</b>	<b>Reference</b>
25.7.12	Operation Dunhill investigation commenced.	-
13.9.12	Sussex Police provided MG3 for decision to be made about which CPS office handles this matter.	CPS000797 p35-51
28.9.12	MG3 (dated 03.08.12) sent to CPS RASSO team. The MG3 states 'sent to you for background info'.	CPS000797 p52-70
13.11.12	Ball and Vickery House were arrested.	-
07.01.13	MG3 submitted by the police. Ball had not, by that stage, been interviewed. The police had also identified further potential complainants and were in the process of locating those parties for interview	CPS000797 p12-32
6.2.13	RASSO referred the case to the CPS South East Complex Casework Unit (SECCU)	CPS000789 p1323
11.2.13	Case allocated to Simon Drew as reviewing lawyer	-
28.02.13	Police submitted a further MG3 providing an 'update as to the current situation', this included additional allegations from one complainant and allegations made by 4 further complainants. Ball was due to be further interviewed in March.	CPS000797 p2-11

<sup>13</sup> A formal request for advice from the CPS ought to be provided on an MG3 form clearly identifying the material that the prosecutor is being asked to review and the nature of the advice sought (ie a charging advice or early investigative advice).

4.3.13	Simon Drew emailed the CPS policy lead on Rape, Charlotte Triggs, for advice about prosecuting cases involving vitiated consent. She in turn raised it with the PLA team.	CPS000789 p1315
12.3.13	Tim Thompson, from the PLA team, replied to Simon and provided a suggested approach and gave him some general advice about the issues in such cases. He also offered to provide further guidance and support if required.	CPS000789 p1281 and p1311
10.5.13	An updated MG3 was submitted by the police	CPS000789 p817-845
13.6.13	PLA team emailed Simon Drew with copies of the papers from the 1993 case which they had identified. They also said <i>"given the issues regarding 'consent' that arise in this case, the PLA team would be extremely interested in your review of this case. It would therefore be beneficial to all, if you could provide us with a copy of your review decision in due course"</i> .	CPS000789 p1244
9.7.13	Simon Drew provided his draft advice to the PLA team (v1). The advice proposed charging Ball with 21 offences relating to 15 complainants.	CPS000789 p1050-1079
12.7.13	PLA team considered the advice. Given that conclusions had been reached which would require overturning an earlier decision <sup>14</sup> , they reminded the lawyer of the need for CCP approval <sup>15</sup> to institute charges but also determined that the case ought to be provided to the PLA and DPP for agreement. As such they asked that a more full analysis was provided. They did not offer an opinion on the conclusions but identified areas where further detail was required.	
13.8.13	John Rees, a senior partner at Winckworth Sherwood and Diocesan registrar, wrote to the police providing information about the 'Ecclesiastical legal background' including the role of a Bishop, the Priory and Scheme and the training available to vulnerable parishioners. It would appear that this was prompted following a telephone conversation between DC Upton and Rees.  This letter and attachment was forwarded to Simon Drew.	CPS000789 p1001-1003
17.9.13	Simon Drew finalised the second version of his advice on 6.9.13 and this was provided to PLA team. The advice proposed 13 charges against Ball in respect of 10 complainants.	CPS0001578
	PLA team considered the advice and liaised with Simon Drew for further information and clarification.	
5.10.13	Lord Lloyd wrote to DPP (Keir Starmer QC). The CPS Area provided a draft reply and background note (as is usual). <sup>16</sup>	CPS001583, CPS001584
31.10.13	Sussex Police (DCC York) wrote to the DPP (Keir Starmer QC) expressing concern about the delay in the charging decision <sup>17</sup> .	CPS001072 p41
12.11.13	DPP (Alison Saunders) briefed and recused herself because she was acquainted with one of the complainants.	

<sup>14</sup> ie the 1993 decision not to proceed with allegations made by AN-A117 and AN-A98

<sup>15</sup> This was a reference to s10 of the Code which explains the situations in which an earlier prosecution decision can be reconsidered.

<sup>16</sup> We have been unable to locate the final version of the letter which we sent.

<sup>17</sup> We have been unable to locate a response to this letter.

20.11.13	Following a careful review by the PLA team a conference was arranged with the reviewing lawyer and police team to discuss the advice. Further actions were agreed.	CPS001592 CPS001593
18.12.13	Email from Tim Thompson to the police saying that the PLA team were <u>considering</u> whether the behaviour could amount to misconduct in a public office ('MIPO').  The police were asked to obtain evidence about whether a Bishop held public office.	CPS001604
19.12.13	Tim Thompson spoke to Jonathan Rees, explaining what information was required (in respect of the 'public office' query) and copies of relevant documentation was subsequently provided on 16.1.14	CPS001770
28.1.14	PLA team became aware that a hearing in the case of Mitchell <sup>18</sup> was due to be heard on 12 February 2013 which would be relevant to the question of who is a public officer.	
11.2.14	Tim Thompson wrote to DCI Hughes, Sussex Police, informing him that there would be a further delay in providing advice and explaining that he hoped to have finalised the review by the end of March.	CPS001072 p33
18.3.14	PLA advice provided in which they proposed three charges; MIPO in respect of 16 complainants, indecent assault of Sawyer and indecent assault of Johnson. Enquiries were to be made of <u>AN-A117</u> and <u>AN-A98</u> to see if they would be willing to support a prosecution.  See email dated 21.3.14 – CPS0001982 (4401)	CPS0001982
27.3.14	Simon Drew adopted the advice and drafted a further MG3 authorising charges of MIPO, and two counts of indecent assault.	CPS000788 p42
19.6.14	A further complainant – <u>AN-A2</u> – had come forward and <u>AN-A117</u> had indicated he was willing to support the prosecution. The police requested further charging advice and Simon Drew authorised two further charges of indecent assault in respect of these matters.	
14-15.1.15	Legal argument on abuse of process and dismissal were heard before Sweeney. J. In due course the Judge found in favour of the prosecution on all arguments. The written Judgment was provided on 3 July.	CPS003460
24.7.15	Defence counsel contacted prosecution counsel to discuss a potential basis of plea. Prosecution counsel was on leave until w/c 17 August.	CPS003471
18.8.15	A conference was held with prosecution Counsel and members of the CPS to discuss the basis of plea. The CPS replied to the basis of plea the following day.	CPS003468
1.9.15	The defence provided an updated basis of plea which was ultimately considered to be acceptable to the prosecution. The police were asked to seek the views of <u>AN-A2</u> and Johnson, as no pleas were forthcoming in respect of their allegations. Their views were communicated to the prosecution on 3 <sup>rd</sup> and 4 <sup>th</sup> September.	CPS003458

<sup>18</sup> [2014] EWCA Crim 318

8.9.15	Ball pleaded guilty in line with the agreed basis of plea. He was subsequently sentenced on 7 October 2015.	
--------	---	--

164. As can be seen from the above chronology, the case first came to the CPS in September 2012. At that time the case was being handled by the RASSO team who are usually the appropriate team to deal with allegations of rape and serious sexual abuse. However, in certain circumstances the case might be more suited to the Complex Casework Unit due to its size and complexity.
165. In November the RASSO unit head queried with the Head of the CCU whether or not it was a case which they might consider taking on. However, based on the information received at that time it did not appear to satisfy the referral criteria and so remained with the RASSO unit.
166. By February further information was known about the shape of the investigation. I have already exhibited the referral criteria which were in operation at that time. It can be seen that one of the factors which might make a case suitable for referral to a CCU is that it involves a 'serial sexual assault where there has been a protracted investigation' another criteria is where the case is considered to be a 'sensitive, serious or complex cases of major media interest'. The RASSO team submitted that these criteria were satisfied and, upon review SECCU took over conduct of the case.
167. The case was allocated to Simon Drew in February 2013 and following his review of the evidence he quickly identified that in respect of the allegations of indecent assault there would be an issue around whether or not the complainants had consented to the conduct and whether we could prove that the consent had been vitiated by fraud of deceit. It would appear that this was a topical issue<sup>19</sup> at the time and he, quite rightly, sought advice from the policy lead <sup>20</sup>on rape and later the PLA team given the unusual features of the case. From the emails it appears that the PLA team had an academic interest in the issues and outcome but did not, at that stage, require the case to be submitted to them under the referral criteria nor were they being asked to authorise the advice. They provided some general guidance and requested to be kept informed about developments.
168. In July 2013 the reviewing lawyer reached a provisional conclusion and provided a copy of that advice to the PLA team. His initial advice proposed charging Ball with 21 offences relating to 15 complainants. At that stage it became apparent that charging some aspects of the case would require a reconsideration of an earlier prosecution decision, which had been approved by the DPP at the time (namely the 1993 decision), and on that basis the PLA team determined that the decision making ought to be approved by the PLA and DPP. They reverted to the lawyer and asked to be provided with a more detailed analysis of the case for review.

<sup>19</sup> See judgments in Assange and F which were made around this time.

<sup>20</sup> The CPS has a number of policy advisors who lead on particular subject matter areas and are available to provide advice and support to the Areas.

169. Between July and September the PLA team and reviewing lawyer kept in contact and the PLA team provided ad hoc advice. On 6 September the reviewing lawyer finalised his advice and sent a copy of that to the PLA team shortly thereafter. The advice had been revised and now proposed 13 charges in respect of 10 complainants. The reviewing lawyer considered that the issues around consent could be overcome, albeit noting that this would not be without difficulty.
170. Between September and November there was further contact between the PLA team and reviewing lawyer to clarify aspects of the advice. The PLA team provisional view about the prospect of conviction can be seen in the victim schedule which was produced and annotated CPS000789 p 972-976.
171. Tim Thompson requested a conference with the police and reviewing lawyer to discuss the provisional views which he had reached. That conference occurred on 20 November.
172. At the meeting on 20 November it would appear that the allegations were discussed in detail and agreement was reached that a number of the allegations could not be prosecuted. A number of further actions were agreed. (see conference note CPS001593).

#### **Misconduct in a public office**

173. It can be seen that by November 2013 the PLA team, the reviewing lawyer and the police were in broad agreement that there were a number of issues with the allegations which meant that many could not be prosecuted. Broadly these related to evidential issues (inconsistencies in accounts, undermining material etc), issues of consent and/or the offence being time barred.
174. The issue of consent was the main area of concern. This is fully explained in the Advice of Alison Levitt QC (CPS0001982). In short, the allegations were primarily that of indecent assault. Consent of the complainant generally provides a defence to indecent assault. In this case most of the complainants had agreed, albeit reluctantly in the case of some, to the behaviour. However they stated that they only did so because they believed that what was proposed had a religious purpose; had they appreciated that Ball's true motivation was in fact sexual they would not have consented to the acts in question. The common law position was that deception as to (a) the identity of the person in question or (b) the quality or nature of the act could vitiate consent but that other deceptions could not. The complainants were not deceived as to the nature of the act itself; they knew that physical contact was being proposed. Thus the prosecution would be required to prove that they were deceived into believing that it was a religious act; that there was not a genuine spiritual purpose to the act and that Ball did not believe that there was some spiritual benefit. The PLA team were of the view that there was no realistic prospect of establishing that the consent was vitiated by deception.

175. However the team continued to develop the case for those allegations which they considered could be prosecuted, albeit that encompassed a much smaller victim group.
176. In December 2013 Tim Thompson informed the team by email that the PLA team was exploring whether the behaviour could amount to misconduct in a public office<sup>21</sup>. The benefit, of course, was that those allegations initially thought incapable of prosecution could be reflected in this wider overarching charge. The police were asked to obtain a statement to prove that a Bishop would be a public office holder.
177. On 19 December 2013 Tim Thompson spoke with John Rees. His recollection is that Rees had been approached by Sussex Police for information in respect of the 'public office' of a Bishop. Rees had indicated that he would find it helpful to discuss exactly what information was sought and called Tim Thompson to discuss. Thompson says he regarded Rees as a potential expert witness and so was content to discuss matters with him and to talk about material which might assist the CPS to form a view. He recalled that Rees proffered a view on the merits of the point but as Thompson had not solicited his legal opinion on the general issues he did not regard it as relevant. He made it clear that he only required information and details of what material might exist. Rees subsequently provided the police with further material on 16 January 2014.
178. In February 2014 the Court of Appeal handed down judgment in the case of *Mitchell*. The case determined the approach to be taken when considering whether an individual was acting as a public officer. Following this the PLA finalised her advice. This was provided to the reviewing lawyer on 18 March 2014. It proposed three charges; MIPO in respect of 16 complainants, indecent assault of Sawyer and indecent assault of Johnson. Enquiries were to be made of **AN-A117** and **AN-A98** to see if they would be willing to support a prosecution.
179. The reviewing lawyer effectively adopted that advice and charges were authorised against Ball shortly thereafter through the completion of an MG3 charging decision. I have been informed that DCI Carwyn Hughes, the Senior Investigating Officer, said that he was only provided excerpts of the PLA advice and that a number of documents were withheld from him at the time. I understand that this was out of an abundance of caution by the PLA team who were conscious that an abuse of process argument might be made in respect of the earlier 1993 decision making and the way in which the investigation, at that time, proceeded. As such the sections of the PLA advice and material which related to that were initially not provided to the police team until after those legal arguments were heard<sup>22</sup>.
180. As this case was deemed to be a media interest case the CPS put in place a media handling plan which included issuing a press release when Ball was charged (see 4436).

<sup>21</sup> Tim Thompson has been asked for his recollection of his involvement in the case. He believes that the possibility of misconduct offences being considered was first raised by him and then developed in discussion with the PLA.

<sup>22</sup> We believe sections [C] and [G] and the Appendices were removed from the PLA advice. The police team were provided with the remaining advice document which ran to 158 pages.

181. In June 2014 a further complainant, **AN-A2** came forward making allegations against Ball<sup>23</sup>. Those matters were considered by the reviewing lawyer and additional charges were brought in respect of this matter. Additionally **AN-A117** had confirmed that he was willing to support the prosecution and thus charges in respect of his allegation were also authorised.
182. The reviewing lawyer retained conduct of the case and, as explained within his statement, conducted a substantial disclosure exercise in order to get the case ready for legal argument, which was heard on 14 and 15 January 2014 and about which the Judge ultimately found in the prosecution's favour.
183. In July defence counsel made contact with prosecution counsel about a potential basis of plea. A conference was held on 18 August to discuss this further and a view was reached in principle about the acceptability of the pleas.
184. The prosecution had formed the view that the pleas which had been put forward properly reflected the gravity of the offending behaviour and gave the court sufficient sentencing powers. In accordance with the Victims Code and our Direct Communications with Victims guidance, views were sought from the complainants Johnson and **AN-A2** as no pleas were forthcoming to the allegations relating to them.
185. The complainants were understandably disappointed and, through the officer, made their views known to the CPS. These views were considered but ultimately the decision about whether or not to accept a plea is one for the prosecutor.
186. I note that in the draft opening speech for sentence, Counsel said in respect of these matters *"Two other charges of indecent assault will not be proceeded with and after Mr Ball has been sentenced they should be left on file. As I said on that date and repeat now, the Crown does not accept his denials but the Prosecution is satisfied that a trial of these two charges is not required in the public interest."* (INQ001348 para 5).
187. The pleas were accepted and Ball pleaded guilty on 8 September. The prosecutor wrote to **AN-A2** and Johnson to explain the decision which had been taken and to offer to meet with them in person to discuss the matter should they wish.
188. As is usual practice we issued a press release upon conviction (CPS002295). We acknowledged that the 1993 decision to caution Ball was wrong.
189. I have been asked whether any formal complaint was received from Johnson about this matter. Other than that which I have outlined above, no formal complaint has been identified.

<sup>23</sup> He had heard about the investigation in the News in February and came forward to the police. His statement was taken on 9 April 2014.



190. Ball was sentenced to a total of 32 months imprisonment for misconduct and 15 months on each of the indecent assault counts, all to run concurrently.

#### **Delay**

191. I accept that the CPS decision making in this case was protracted; it was just over a year between the case being allocated to the reviewing lawyer and the charging advice. However there will be occasions, as here, where the issues are complex and require careful consideration and further investigation. It is clear from the papers that I have seen and in particular the helpful analysis contained within Alison Levitt QC's advice, that the issues in this case were complex and involved multiple historic allegations of abuse and previous police investigations. At the same time the law was developing around consent and the question of who was a public office holder had been clarified by the Court of Appeal. In my view the length of time this decision took was not extraordinary in light of these factors.
192. It is clear that all of the CPS lawyers who were involved in this case were committed to achieving justice for the victims and were keen to find an offence which reflected the criminality of the case and ensured that there was sufficient evidence for a realistic prospect of conviction.

#### **Why was PLA involved**

193. The intervention of the PLA team came about organically but it is exactly the type of case we would expect, both then and now, to have been notified to headquarters to ensure a consistent approach and to enable advice and support to be provided to our lawyers.
194. I have been asked whether the level of detail within the PLA advice was commonplace or only reserved for prosecutions likely to be in the public eye. In my experience the PLA always provided comprehensive advice. In cases where the issues are complex, as here, it is important that a thorough and careful review is conducted analysing the strengths and weaknesses of the evidence and availability of offences. Simon Drew's advice, whilst lengthy for an area review, is equally not uncommon in complex cases. In short, the level of detail in an advice is likely to increase with the level of complexity of the facts or issues in a given case.

1651

**Statement of Truth**

I believe that the facts stated in this witness statement are true.

Signed: **DPA**

Dated: 02.07.18