Neutral Citation Number: [2005] EWHC 557 (QB)

Case No: HQ02X02953

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/04/2005

Before:

THE HON. MR JUSTICE EADY

- -

Between :

Christopher Miller	**Claimant**
- and -	
Associated Newspapers Limited	**Defendant**

- -
- -

Stephen Suttle QC and Lorna Skinner (instructed by **WHCG**) for the Claimant
Mark Warby QC, William McCormick and Adam Speker (instructed by Reynolds Porter Chamberlain) for the Defendant

Hearing dates: 28th February to 18th March 2005

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HON. MR JUSTICE EADY

Mr Justice Eady:

1. Introduction

1. The Claimant in these libel proceedings is Superintendent Christopher Miller, currently serving with the Hertfordshire Police ("Mr Miller"). The principal events which arise for consideration in these proceedings occurred between 1998 and 2001. During that period Mr Miller held the rank of Detective Chief Inspector in the Barkingside division of the Metropolitan Police ("MPS") and, following reorganisation within the force, in the Redbridge Borough.

2. Mr Miller was born in 1957 and was educated at the Colchester Royal Grammar School, where he was head boy and captain of both rugby and cricket. He also played rugby and cricket at county level. Having read classics at Cambridge he graduated in 1980 and, in September of the same year, joined the MPS on the Home Office High Potential Scheme. This was designed to ensure that police officers of promise received opportunities in career development which would equip them to occupy senior positions in the service. He has made steady progress through the ranks and, in the course of his career, has received a number of commendations for exhibiting such qualities as bravery, detective ability and leadership. He was in May 2003 awarded the police long service and good conduct medal. It emerged in evidence that he has received over the years numerous letters of appreciation from police colleagues and members of the public and also that he has never been the subject of any complaint from a member of the public.

3. In these proceedings, he sues Associated Newspapers Ltd as the proprietors of the *Daily Mail* and *Evening Standard* newspapers. The claim is in respect of articles published on 11th September 2001. The headline in the *Daily Mail* was " Hamilton sex case shambles to cost public £1m" and that in the *Evening Standard* "Yard admits it should not have arrested Hamiltons".

4. These articles were primarily concerned with the investigation between May and August 2001 of serious, and entirely concocted, allegations of sexual assault made by a woman called Nadine Milroy-Sloan against Mr and Mrs Neil Hamilton. These inquiries undoubtedly wasted a good deal of time and public money as well as causing inconvenience and distress to Mr and Mrs Hamilton. Indeed, Mr Miller's evidence was that the inquiry had more Borough resources devoted to it, and for longer, than any other inquiry he oversaw as Crime Manager at Redbridge. Eventually, in 2003, the woman concerned was convicted of attempting to pervert the course of justice and was given a three-year prison sentence. Thus, a manipulative liar (whose account of events was internally inconsistent, and whose evidence against the Hamiltons was uncorroborated) was allowed to run rings around the MPS for nearly four months.

5. It seems that she made the allegations in the first place, on 6th May 2001, with a view to making large sums of money from selling false information to the newspapers. No doubt with this in mind, she had a few days earlier approached Mr Max Clifford, who is a publicist well used to negotiating financial arrangements with the media on behalf of clients who have, or may have, stories to tell. He had apparently given her an indication that she might receive £100,000 if she could produce evidence of

misconduct on the Hamiltons' part. At that time, she was suggesting (again falsely) that they had some connection with internet pornography and/or prostitution. This interview occurred on Thursday, 3rd May 2001.

6. The allegations she made shortly thereafter related to events which were supposed to have taken place two days later, on Saturday 5th May 2001. What she alleged was that she had been raped and sexually assaulted in a council flat in Ilford, and that the Hamiltons were enthusiastic onlookers and participants in the sexual assaults. As later emerged, however, they were several miles away at the relevant time and had no connection with Nadine Milroy-Sloan of any kind.

7. A complaint was made of the articles in question by letter from Mr Miller's then solicitors on 6th September 2002, almost a year after publication, and particulars of claim were served on 23rd September.

8. The words complained of in the issue of the *Daily Mail* are as follows:

> "**HAMILTON SEX CASE SHAMBLES TO COST PUBLIC £1M**
>
> THE fiasco of the police inquiry into Neil and Christine Hamilton could cost taxpayers £1 million, it emerged last night.
>
> An internal police review has now concluded that the couple should never have been arrested.
>
> It found that the 115-day inquiry into allegations of sexual assault against them was characterised by embarrassing failures by detectives. Now the former Government minister and his wife are set to demand massive compensation.
>
> The allegations by mother-of-four Nadine Milroy-Sloan have already led to three expensive investigations by the Metropolitan Police.
>
> The latest is into whether the 28-year old perverted the course of justice – a probe which will involve interviewing publicist Max Clifford. Legal sources say the total cost to the force, including damages, could reach £1 million.
>
> The Scotland Yard internal report says the investigation into Miss Milroy-Sloan's claims in May – that the Hamiltons carried out sexual assaults while another man raped her – should have been dropped within weeks. Its devastating findings include delays, management failings and 'poor decision-making'.

Hamilton Bill fury

The secret report is understood to say that there was no forensic evidence, there were numerous discrepancies in Miss Milroy-Sloan's story and nothing she said could be corroborated.

The Daily Mail can also reveal that detectives were warned by police in Lincolnshire, where Miss Milroy-Sloan lives, of her capacity for telling 'a pack of lies' and of previous false allegations.

Sources in Lincolnshire say she once invented a story that her son had been assaulted by her estranged husband.

The CID in Ilford, Essex, where she alleged the attack happened, would also have known of her previous convictions, including assault, using threatening words and behaviour and burglary.

It has also emerged that the officer who led the Hamilton inquiry, Detective Chief Inspector Chris Miller, is facing disciplinary action over another sex case.

DCI Miller, based at Ilford, is accused of four counts of neglect of duty for his involvement in a 'grossly incompetent' investigation into the alleged abduction and rape of a 17-year old girl three years ago. A furious judge threw out the £400,000 case.

The detective has been investigated by Scotland Yard's Directorate of Professional Standards and a disciplinary hearing takes place next month.

Despite the lack of evidence, the Hamilton investigation dragged on for nearly four months, leading to the highly-public arrest of the couple at Barkingside police station in East London on August 10.

They immediately revealed they had a 'cast iron alibi' – they were throwing a dinner party at their own flat in Battersea on the other side of London. They said they had a mass of witnesses and documentary evidence.

Cleared: Neil and Christine Hamilton are suing their accuser

The case rapidly became a media circus. Within a week Miss Milroy-Sloan, a trainee college lecturer from Grimsby, dropped her legal right to anonymity as she accepted £45,000 from the News of the World to tell her story.

> Finally, on August 28, Scotland Yard announced that the case had been dropped.
>
> The internal report will provide valuable ammunition for the Hamiltons who have said they intend to sue Scotland Yard for unlawful arrest and detention. They are also suing Miss Milroy-Sloan for libel.
>
> The scathing internal condemnation of the inquiry is a huge blow to the Metropolitan force as it battles to restore its reputation after the Stephen Lawrence debacle.
>
> Commissioner Sir John Stevens is sure to demand a full explanation into how and why the investigation took so long to complete.
>
> A group of senior officers has been asked to review the whole investigation and compile a report. The case has exposed a number of worrying concerns about the handling of such a sensitive inquiry.
>
> It is now thought the Yard's Serious Crime Group should have taken the case rather than local officers in Ilford. Their expertise could have avoided the controversy.
>
> Police Federation sources say Detective Inspector Terry Summers who was in day-to-day charge of the inquiry has not been blamed.
>
> Details of the internal report emerged as police formally launched an investigation into claims that Miss Milroy-Sloan attempted to pervert the course of justice.
>
> They are likely to interview Mr Clifford, who brokered the newspaper deal, as well as executives from the News of The World. Detectives are expected to submit a file to the Crown Prosecution Service, which will recommend whether she should face trial.
>
> Barry Lehaney, a 60-year old arthritis sufferer she accused of rape, is currently on police bail, but it is thought unlikely he will be charged."

9. As is common nowadays, there was also complaint of the publication of an internet version on a Newsroom website, although there were some relatively minor variations which are of no great significance. Responsibility for this was denied, however, and the matter was not pursued.

10. The words complained of in the *Evening Standard* of the same date are set out in paragraph 6 of the particulars of claim:

"**YARD ADMITS IT SHOULD NOT HAVE ARRESTED HAMILTONS**

NEIL and Christine Hamilton should never have been arrested over allegations of sexual assault, according to a damning new internal Scotland Yard report.

Now the former Tory minister and his wife are set to demand massive compensation over the case – leaving taxpayers to foot a possible £1 million bill for the fiasco.

The Yard's internal review into the investigation of allegations by Nadine Milroy-Sloan – the woman who claimed the Hamiltons sexually assaulted her while another man raped her – says the matter should have been dropped within weeks.

The confidential report pinpoints crucial delays, management failures and "poor decision-making" by police. It is also understood to say there was no forensic evidence, while there were numerous discrepancies in Ms Milroy-Sloan's story and nothing she said could be corroborated. Her allegations have already led to three costly investigations by the Met – the latest to determine whether the 28-year old mother of four and trainee college lecturer should herself be charged with perverting the course of justice.

As a result, experts estimate the total costs to the Met, including damages to the Hamiltons – who have already said they intend to sue the Met for unlawful arrest and detention – could reach £1 million.

According to today's Daily Mail, the officer who led the flawed Hamilton investigation – Detective Chief Inspector Chris Miller, who is based at Ilford – is already facing disciplinary action over another sex case. He is accused of four counts of neglect of duty over his involvement in a "grossly incompetent" investigation into the alleged abduction and rape of a 17-year-old schoolgirl three years ago.

The case was thrown out of court after four days.

In the case of the Hamiltons, police in Lincolnshire – where Ms Milroy-Sloan lives – say they warned DCI Miller and his colleagues of false allegations she had made in the past and of her capacity to tell a "pack of lies". The Ilford detectives would also have been aware of her previous convictions – for assault, threatening behaviour and burglary.

Despite her worrying background and lack of evidence the Hamilton investigation dragged on for almost four months

> before the couple were arrested at Barkingside police station on 10 August in a blaze of publicity.
>
> From the start, the Hamiltons insisted they had a "cast iron" alibi.
>
> When police finally dropped the case on 28 August Mrs Hamilton said the episode had been "an absolute outrage". Barry Lehaney, 60, the arthritis sufferer who owned the Ilford flat and was accused of rape by Ms Milroy-Sloan, is still on police bail but it is thought unlikely that he will be charged.
>
> Police are now said to be likely to interview Max Clifford, the publicist, who brokered a £45,000 deal with the News of The World to tell Ms Milroy-Sloan's story."

11. So far as the Milroy-Sloan case is concerned, the Claimant attributed exactly the same natural and ordinary meanings to all the words complained of:

> "That the Claimant conducted a grossly incompetent inquiry into allegations of sexual assault made against Neil and Christine Hamilton by Nadine Milroy-Sloan, which has wasted up to £1 million of public money".

12. As to the investigation involving the earlier allegation of rape, the meaning attributed to the *Daily Mail* article was as follows:

> "That three years earlier the Claimant had conducted another grossly incompetent investigation into the alleged abduction and rape of a 17-year old girl which had wasted £400,000 of public money".

13. The only difference, so far as the *Evening Standard* publication is concerned, is that the reference to the waste of £400,000 of public money is omitted, because this had not appeared in the relevant article.

14. There was a later adjustment to the meanings pleaded on the Claimant's behalf. At the end of 2004 it was sought to amend in relation to the *Daily Mail* article (only) by adding the meaning that he "had had the Hamiltons arrested without any sufficient reason". That amendment was not opposed.

2. Resolving the dispute on meaning

15. There is a dispute about the meanings of the words complained of which will be for me to resolve. It is accepted, however, on the Defendant's behalf that the words published were defamatory. It was sought at one stage to plead qualified privilege, but this was rejected in November 2003: [2004] EMLR 698. The substantive defence now before the Court is that of justification. The Defendant seeks to justify the allegations against the Claimant according to its pleaded *Lucas-Box* meanings, and to criticise his conduct in relation both to the Miss B investigation and the Milroy-Sloan case. There is again dispute between the parties as to whether or not the words bear the meanings

the Defendant seeks to attribute to them. That is a matter which I shall have to consider in due course. Meanwhile, however, it is right to record the two *Lucas-Box* meanings as they now stand.

16. What is sought to be proved in relation to the Milroy-Sloan investigation is that:

> "… the Claimant, who had a leading role and responsibility for the inquiry into allegations of sexual assault made against Neil and Christine Hamilton by Milroy-Sloan, was amongst those responsible for important failures by detectives which included delays, management failures and poor decision-making, and led to the Hamiltons being arrested when this should never have happened".

17. With regard to the Miss B investigation, the Defendant seeks to justify the meaning that:

> "At the date of publication there were reasonable grounds to suspect the Claimant of neglect of duty in connection with the investigation of the alleged abduction and rape of a 17-year old girl three years earlier (the Miss B investigation). Further, the Claimant was in fact of guilty of such neglect".

18. It is not surprising that both parties have made reference to the recent decision of the Court of Appeal in *Chase v News Group Newspapers* [2003] EMLR 11. In particular, counsel have made their rival submissions as to the appropriate "level" of gravity in the light of the passage at [45] in the judgment of Brooke LJ, where he said:

> "The sting of a libel may be capable of meaning that a claimant has in fact committed some serious act such as murder. Alternatively it may be suggested that the words mean that there are reasonable grounds to suspect that he/she has committed such an act. A third possibility is that they may mean that there are grounds for investigating whether he/she has been responsible for such an act".

19. It is thus obvious that the Claimant contends that, in relation to each of the two identified inquiries, the articles accuse him of allegations at "level 1". That is to say, the articles go beyond suggesting merely that there are grounds to investigate or reasonable grounds to suspect him of incompetence. He says they actually impute the proposition that he conducted incompetent inquiries. On the other hand, it is the Defendant's case that the articles went no higher than "level 2". It is accepted that the articles accuse Mr Miller of having given grounds reasonably to suspect him of incompetence, but the Defendant rejects the proposition that the articles actually impute "guilt". What is more, on reflection, it has been decided on its behalf not to pursue the proposition that the articles were only pitched at "level 3". Nevertheless, the Defendant is prepared, if necessary, to justify in respect of each of the two inquiries the proposition that Mr Miller was in fact guilty of neglect of duty.

20. Logically, my first task should be to determine the meaning or meanings which the articles actually bore. That decision will clearly have a potentially significant impact on the legitimate scope of the Defendant's plea of justification.

21. It is clear that the *Daily Mail* article is alleging that the police inquiry into the Milroy-Sloan allegations was a "fiasco" and a "shambles". Whatever the precise sum may be, it is also clearly alleged that it cost unnecessarily a great deal of public money. It also adopts what is alleged to be the conclusion of "an internal police review" to the effect that the Hamiltons "should never have been arrested".

22. It is fair to point out that the only internal police review to which the article could have been referring was the interim report of Mr Yates of 29th August 2001. It has subsequently emerged that no relevant journalist or other employee of the Defendant had actually seen the document at the time in question. Nevertheless, that interim progress report was in evidence, as was the next progress report dated 14th September 2001 (i.e. a few days after the articles were published). It is thus possible to judge the extent to which the purported summary in the newspaper was or was not accurate. Legally, however, this is not critical to the defence of justification. It would be open to the Defendant to persuade the Court that certain conclusions are valid whether or not they were actually reached by Mr Yates. For the purposes of this defence, I am concerned with whether the defamatory allegations are substantially true, rather than with whether the Defendant published a fair and accurate account of the Yates report.

23. Clearly, the most important issue on meaning is as to the message conveyed to readers about Mr Miller's personal responsibility for the "fiasco" generally, the inappropriate or wrongful arrest, and the waste of public money.

24. The approach to be taken by a judge, sitting without a jury, for arriving at the natural and ordinary meaning of the words complained of has been the subject of consideration in the Court of Appeal on several occasions over the last ten years. I bear in mind particularly the guidance given in such cases as *Skuse v Granada Television Ltd* [1996] EMLR 278, *Gillick v BBC* [1996] EMLR 267 and *Gillick v Brook Advisory Centres* [2001] EWCA Civ 1263 at [7]. Those principles are well known and there is no need for me to set them out in the judgment, but I make it clear that I have borne them in mind in assessing counsel's rival submissions on the meaning of the words and in making my own assessment.

25. The subject-matter of the articles falls into two separate sections, namely the conduct of the Miss B inquiry and proceedings and, on the other, the investigation of the Milroy-Sloan allegations. So far as the articles themselves are concerned, the emphasis is very much on the (then recent) announcement that the Hamiltons were in the clear, and it was natural the readers' attention was directed primarily to this. I shall consider the submissions in relation to that dominant theme first.

26. Mr Miller contends that the article accused him of "conducting" an incompetent inquiry, whereas the Defendant suggests that it conveys the proposition that he was responsible for important failures, along with other officers, and that he had a leading role. He was the only person identified in the articles as being in the frame and, by contrast, it was made expressly clear that Detective Inspector Summers was *not* being criticised. He was described as being in day-to-day charge, and the message would be

that Mr Miller led the investigation and that his failures occurred in that context. They would thus appear to relate to such matters as leadership, planning, analysis and decision-making. Focus would appear, Mr Warby QC submits for the Defendant, to be primarily upon the lack of grounds for arresting the Hamiltons. The "blame" attaching to Mr Miller would thus appear to be the allegation that he was responsible for directing or permitting the arrest to take place without a sufficient basis. Mr Warby argues that the sting of the article is not so much that Mr Miller was solely responsible as that he should take his share of the blame. Although no other individual is identified, the criticisms would be taken by readers as directed at "detectives" in the plural.

27. He also emphasised that the reference to the waste of £1m of public money was not attributed in the articles to the cost of investigation alone. It embraced other related matters, such as the consequential investigations carried out by the police, the possibility of civil action by the Hamiltons seeking compensation and the investigation into whether or not Milroy-Sloan perverted the course of justice. Mr Warby suggests that Mr Miller's pleaded meaning is to that extent wide of the mark, in so far as it seeks to attribute the total figure of £1m, on a speculative basis, to the "grossly incompetent inquiry". It is, however, perhaps true to say that the precise figure does not matter, since readers would naturally appreciate that it was a rough estimate. It is not the precise sum that matters, but rather the allegation that Mr Miller's incompetence had, in one respect or another, led to the unnecessary expenditure of significant sums.

28. My own conclusion as to the sting of the allegations against Mr Miller, with reference to the Milroy-Sloan inquiry, corresponds broadly to the *Lucas-Box* meaning pleaded on the Defendant's part. I do not accept that the article means that Mr Miller, and he alone, was responsible for the incompetence of the inquiry, or for delays or poor decision-making, or for the fact that the Hamiltons were arrested. Readers would understand that others were involved. Nonetheless, since he was the only senior officer identified, they would surely infer that he was responsible to a significant extent for whatever failures there were.

29. Thus, in my judgment, in order to succeed in a defence of justification, it would not be necessary for the Defendant to prove that he was solely responsible. On the other hand, it would be necessary to go further than establishing merely formal responsibility for the failures, errors or omissions of more junior officers. No reasonable person would think of attributing direct personal responsibility to the Metropolitan Police Commissioner over this particular case, although in one sense he would be answerable for anything that goes wrong in the MPS. It is necessary in my view for the Defendant to bring home against Mr Miller more than formal responsibility in that sense. Some failure or failures must be demonstrated in the exercise of his own responsibilities. I would also accept that it would not be necessary, for establishing that the defamatory allegations were substantially true, to show that Mr Miller was directly responsible for the expenditure of £1m.

30. I turn to the parts of the articles concerned with Miss B. It is not accepted by Mr Warby that the allegations go beyond "reasonable grounds to suspect". At the time of publication, as readers were told, the outcome of the pending disciplinary inquiry was

not known. The question, therefore, is whether or not readers were led by the nose to believe that the outcome was already a foregone conclusion.

31. Mr Miller's meaning goes so far as to attribute to him the blame for actually conducting another grossly incompetent investigation. It is fair to say, however, that this is not alleged in terms. What is said is that he was "involved" in the earlier case. I have come to the conclusion that, in this instance, the defamatory imputation does not go beyond "level 2". My reasons are very close to those identified by Lord Reid in *Lewis v Daily Telegraph* [1964] AC 234, 259-60:

> "Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naive. One must try to envisage people between these two extremes and see what is the most damaging meaning they would put on the words in question. So let me suppose a number of ordinary people discussing one of these paragraphs which they had read in the newspaper. No doubt one of them might say – 'Oh, if the fraud squad are after these people you can take it they are guilty.' But I would expect the others to turn on him, if he did say that, with such remarks as – 'Be fair. This is not a police state. No doubt their affairs are in a mess or the police would not be interested. But that could be because Lewis or the cashier had been very stupid or careless. We really must not jump to conclusions. The police are fair and know their job and we shall know soon enough if there is anything in it. Wait till we see if they charge him. I wouldn't trust him until this is cleared up, but it is another thing to condemn him unheard.'
>
> What the ordinary man, not avid for scandal, would read into the words complained of must be a matter of impression. I can only say that I do not think that he would infer guilt of fraud merely because an inquiry is on foot."

32. It follows from my conclusions that it is not necessary for the Defendant to take on the burden which it has, nevertheless, willingly assumed. It is not necessary to prove either that Mr Miller conducted the Miss B investigation himself or that he was actually incompetent. Reasonable grounds to suspect failures on his part would suffice. As it happens, on the facts of this particular case, that distinction is not as critical as in some other cases. Again, I would emphasise that the evidence would need to go beyond merely formal responsibility and to establish reasonable grounds to suspect failures on the part of Mr Miller personally in his capacity as crime manager.

33. It is right that I should remind myself of the general principles applicable to a situation where a defendant is relying on a "level 2" defence of justification. They have been discussed recently in the Court of Appeal in *Musa King v Telegraph Group Ltd* [2004] EMLR 429 at [22]. See also *Al Rajhi Banking v Wall Street Journal* [2003] EWHC 1358 (QB) at [27]. They may be conveniently summarised as follows:

i) There is a rule of general application in defamation (dubbed the "repetition rule" by Hirst LJ in *Shah v Standard Chartered Bank* [1999] QB 241) whereby a defendant who has repeated an allegation of a defamatory nature about the claimant can only succeed in justifying it by proving the truth of the underlying allegation – not merely the fact that the allegation has been made.

ii) More specifically, where the nature of the plea is one of "reasonable grounds to suspect", it is necessary to plead (and ultimately prove) the primary facts and matters giving rise to reasonable grounds of suspicion *objectively judged.*

iii) It is impermissible to plead as a primary fact the proposition that some person or persons (e.g. law enforcement authorities) announced, suspected or believed the claimant to be guilty.

iv) A defendant may (for example, in reliance upon the Civil Evidence Act 1995) adduce hearsay evidence to establish a primary fact – but this in no way undermines the rule that the statements, still less beliefs, of any individual cannot themselves serve as primary facts.

v) Generally, it is necessary to plead allegations of fact tending to show that it was some conduct the claimant's part that gave rise to the grounds of suspicion (the so-called "conduct rule").

vi) It was held by the Court of Appeal in *Chase v News Group Newspapers* at [50]–[51] that this is not an absolute rule, and that for example "strong circumstantial evidence" can itself contribute to reasonable grounds of suspicion.

vii) It is not permitted to rely upon post-publication events in order to establish the existence of reasonable grounds, since (by way of analogy with fair comment) the issue has to be judged as at the time of publication.

viii) A defendant may not confine the issue of reasonable grounds to particular facts of his own choosing, since the issue has to be determined against the overall factual position as it stood at the material time (including any true explanation the claimant may have given for the apparently suspicious circumstances pleaded by the defendant).

ix) Unlike the rule applying in fair comment cases, the defendant may rely upon facts subsisting at the time of publication even if he was unaware of them at the time.

x) A defendant may not plead particulars in such a way as to have the effect of transferring the burden to the claimant of having to disprove them.

34. In the light of these principles I shall now turn to consider the defence of justification as pleaded and developed in the course of the trial.

3. The defence of justification generally

35. The defence of justification raises many sub-issues along the way but falls into two parts. First, in point of time, is the section dealing with the Miss B investigation in 1998 and the reasons for the collapse of the criminal proceedings in August 1999. Later came the events surrounding the arrest of Mr and Mrs Hamilton in August 2001 and the public announcement that they had been cleared on 28th August, which prompted the articles of 11th September. The link between the two episodes was Mr Miller, who was the only officer common to both inquiries. It has to be recognised that both these subjects, in general terms, were matters of legitimate public interest. That matters not for the purposes of justification, unlike fair comment, since truth at common law will always provide a defence in respect of defamatory allegations, however trivial. Newspapers are often criticised for intrusive and silly articles in the defamation context, but at least here it can be said that the subject matter of these articles was apt for investigation and comment in the national press. They concern the administration of justice, the exercise of executive power, the expenditure of considerable sums of public money, the way in which police disciplinary proceedings are conducted and, in particular, the approach in the MPS to the handling of sensitive rape investigations.

36. It has, for example, emerged clearly that Mr and Mrs Hamilton were not eliminated from police inquiries into Nadine Milroy-Sloan's totally false allegations of criminality until as late as 28th August (rather than, say, at the end of May) because of the awareness of police officers from the outset that Mr Max Clifford was in the background and that there might at some stage be media interest. They referred to the Hamiltons, perhaps rather patronisingly, as "minor celebrities". In other words, so central have public relations apparently become that it seemed natural to police officers, including at quite senior levels, that two innocent citizens should be treated quite differently because of their supposed "celebrity" status and the fear of close media scrutiny. Mr Terry Summers, who had been the investigating officer, frankly accepted that had it not been for these factors those falsely accused by Nadine Milroy-Sloan would probably have been cleared and relieved of the attendant concerns and anxiety some three months earlier. I shall set out that part of his evidence on 4th March 2005 verbatim, so that there is no room for confusion, but it is entirely consistent with all the other evidence in the case. Indeed, Mr Miller on 7th March accepted that it was accurate. What Mr Summers said was this:

> "My view was that this matter in any event was going to attract a high media attention, and would be difficult for me to handle. Probably, if it had not been Mr and Mrs Hamilton, we would have dealt with it earlier".

37. In these circumstances, plainly the newspapers were entitled to criticise the MPS' handling of this case in strong terms and to call it a "fiasco". Matters were strung out unnecessarily, at no doubt much increased cost to the public purse, not because the public interest or the interests of the supposed "victim" required it but, so far as one can tell, because MPS officers were troubled at the public relations ramifications for themselves. The strategy was described by one of the Redbridge police offers, Supt. Southcott, as "playing it long".

38. As to the issues in this litigation, however, the essential question is whether the Defendant newspapers have succeeded in proving that Mr Miller personally was, at least in part, to blame for this fiasco. That will need to be judged against all the background circumstances, as they have been explored in evidence, including the fact that on 29th June 2001 he argued positively that the Hamiltons should *not* be arrested because the evidence did not justify it at that stage.

39. The decision was taken by Commander Croll, at least provisionally, that they should be interviewed for the purposes of elimination and, only in the event of their failure to co-operate, should they be arrested and interviewed under caution. That is not what happened. Later, even more reason to doubt the Milroy-Sloan account emerged, but the arrest still took place. Since that time there has been a great deal of self-justification on the parts of most of those concerned and a certain re-writing of history. Various officers even sought, paradoxically, to blame the Hamiltons themselves (a) for not revealing their alibi sooner (even though nobody apparently told them the detail of the alleged assault or the time when they supposedly committed their criminal acts) and (b) for actually wanting the publicity surrounding allegations of indecent assault! I shall need to address these matters with some care in due course, but always focussing on the central issue of to what extent, if at all, Mr Miller can legitimately be blamed.

40. Correspondingly, with regard to the Miss B investigation, there is a complex history involving a number of officers, but again I must focus on the acts or omissions of Mr Miller and the extent to which the judge's ruling of abuse of process, in particular, can be laid at his door. The central charge against him is that he should have had a more "hands on" approach and especially in the light of the eccentricities of Det. Insp. Woodward, who was the officer in charge of the investigation. Mr Miller was his line manager. Could he, or should he, have stepped in to supervise what was taking place and thus avoided the shambles which led to the trial of the three suspects being aborted? The judgment on this aspect of the case has to be made in the absence of two of the key players who, coincidentally, have retired from the MPS with mental health problems (that is to say, Mr Woodward himself and Det. Constable Devine-Jones, on whose evidence the Judge placed considerable reliance for his ruling of abuse of process).

4. The Miss B investigation

Mr Miller's role in the inquiry

41. It is necessary to first consider the role of Mr Miller at the time between the commencement of the Miss B investigation and the collapse of the trial at Chelmsford (18th October 1998 – 19th August 1999). He was a Detective Chief Inspector with a general supervisory responsibility but also, in certain cases, he would become the senior investigating officer (SIO). Those are distinct functions. Where he became the senior investigating officer, this was not necessarily because of the gravity of the particular case, but rather because he was on a five-week roster together with four Detective Inspectors and would take his turn. Between April and December 1998 he had direct responsibility for two major inquiries via this route. He was also asked to look into an allegation of police corruption and an undercover drugs operation at the

Epping Forest Country Club in November and December 1998 and, at about the same time, he was SIO for a major burglary operation.

42. At the time, in the MPS, the policy was that for allegations of serious sexual offences the investigating officer should be of at least detective inspector rank. More recently, there has been such an increase in allegations of this kind that it is now accepted that this is not always possible and the investigating officer need only therefore be a detective sergeant or constable. A detective inspector will nonetheless be in overall charge in a supervisory capacity.

43. An attempt was made by the Defendant in this case to suggest that Mr Miller should have taken direct personal charge, as the SIO, in the Miss B investigation rather than exercising only supervisory functions. That is not borne out by the evidence. It does not seem to be how the MPS worked. He could not be the "hands on" investigating officer in every case of rape or serious sexual assault. No one has sought to underestimate the seriousness of the Miss B case, which included allegations of abduction (possibly with the assistance of drugs) and gang rape. Of course it was serious. But allegations of rape were a regular occurrence and all rape cases are to be taken seriously. Moreover, it is necessary to remember just how quickly this case was solved and arrests made. The first complaint was made on Sunday 18th October and the third and final suspect had been arrested and interviewed by 6.30 pm on Thursday 22nd October. Intercourse was admitted and the primary issue was consent. (It is fair to say that most of the credit for this early success should go to the team of relatively junior officers involved, and especially perhaps Acting Detective Sergeant Lelliott.) There is no doubt, however, that much less dramatic and more painstaking work needed to be done.

44. I am quite satisfied that there is no reason why Mr Miller should have overridden the roster system and become the SIO at any time during that week. The case was in the hands of Det. Insp. Woodward who was an experienced detective. One argument raised was that Mr Woodward "did not like rape cases, having a preference for fraud"! That is simply unrealistic. In a busy CID environment one cannot be allocated only the cases one "likes". Nor was there anything so exceptional that the case required, in general terms, the appointment of a detective chief inspector, as such, to be the SIO. Therefore the question becomes whether Mr Miller can be criticised for shortcomings in carrying out the role he did fulfil; that is to say, in his supervisory capacity. Mr Miller accepted that he would need to keep an eye on it to ensure how it was being handled: it seems to me right to judge his performance according to that criterion.

Mr Miller's late disclosure

45. I will shortly turn to the substantive matters pleaded against Mr Miller with regard to the Miss B investigation. Before doing so, however, I should address a satellite point seized upon by the Defendant which relates to non-disclosure by Mr Miller of the transcript of the observations on 19th October 2001 of the first of the two disciplinary boards he faced. His evidence is that he disclosed it to his solicitors as soon as he realised he had it, in July 2004, and was advised that he did not need to disclose it at that stage. It was in fact disclosed in September. The reason why the solicitor advised him as he did, initially, was that Mr Miller mistakenly believed that the transcript was

incomplete. Even if it had been incomplete, however, it should still have been disclosed (earlier) and the solicitor recognises that he was mistaken in this respect. Mr Warby wishes to rely on this (temporary) non-disclosure as evidence against Mr Miller that he recognised his guilt and wished to conceal it: see e.g. *Moriarty v LC and D Railway* (1870) LR 5 QB 314,319 and Phipson on Evidence (13th edn.) at 28-16 and 31-35. I see no reason to disbelieve Mr Miller in this respect or, for that matter, his solicitor (although it is fair to record that he did not give evidence orally and was therefore not tested in cross-examination). The non-disclosure was unfortunate but will not bear the sinister significance Mr Warby seeks to attach to it. As Mr Miller fairly points out, if he had truly wished to conceal the transcript he would not have given it to his solicitor in the first place. What is more, far from recognising his guilt, he is to this day quite angry about the way he was treated by Ms Barbara Wilding. He does not accept her criticism in relation to the Miss B inquiry (to which I shall briefly return in due course). I prefer to concentrate on the pleaded matters of substance from the relevant period.

The role of a DCI/Crime Manager

46. I need to bear in mind what was at the material time expected of an officer of Mr Miller's rank discharging his responsibilities. Mr Warby cross-examined Mr Miller about a document headed "Roles and Responsibilities of Detective Chief Inspector (Reactive)". Although it was undated, Mr Miller did not disagree that it reflected in general terms the functions and duties attaching to that rank. He would be line manager for detective inspectors in his office and responsible for reviewing and monitoring allegations of serious crime. Where required, he would have to give directions or make recommendations about the conduct of an investigation. Also he would be responsible for allocating and monitoring resources according to the gravity of the crime in question and the "priorities apparent in line with Service policy". Significantly, there would also be a duty to ensure the appropriate level of investigator and supervision for all investigations undertaken.

47. Mr Warby also relied on a document which post-dates the events in this case entitled the "Role Profile" for an MPS Crime Manager/Detective Chief Inspector. Again Mr Miller did not disagree that it would have broadly reflected his responsibilities at the material times. It listed, for example, the need to gather information regarding the performance of his team and individuals within it and to review performance. It also emphasised the need to "record all decisions, actions and their rationales".

48. I also heard evidence from Mr Todd and the former Commander Croll (now retired) on the proper role of a detective chief inspector (DCI) as crime manager. Mr Todd is now Chief Constable of Greater Manchester but in 2001 he was an Assistant Commissioner in the MPS and the Milroy-Sloan investigation was referred to him by Mr Kynnersley, who was then the Borough Commander at Redbridge. It was Mr Todd who referred it to Mr Croll to address.

49. One of the striking features of this litigation is how many police officers (currently serving or retired) have been called on the Defendant's behalf to give evidence adverse to Mr Miller. Mr Todd chose to do so despite the blandishments of Mr Miller's then solicitors, Carter-Ruck, who wrote to him on 28th June 2004 in these terms:

> "I understand from your recent telephone conversation with my colleague … that you said you would rather not give evidence in the above matter.
>
> I fully understand your reluctance to become involved. However, I have a duty to put all relevant evidence before the Court, and I believe that service of witness statements from all officers concerned with the Milroy-Sloan allegation and the proper arrest of Mr and Mrs Hamilton will prompt the newspaper to settle the claim and therefore avoid a trial.
>
> Accordingly, we would still like to interview you with regard to Mr Miller's case. We enclose a draft proof of evidence for your consideration which sets out the information that we would like you to include in your witness statement.
>
> Our understanding is that the investigation into allegations made by Nadine Milroy-Sloan that are the subject of the articles complained of was reasonably adequate and could not be fairly criticised. The fact is that the inquiry was hijacked by the publicity seeking Hamiltons, which in turn gave rise to the libellous newspaper articles featuring Mr Miller.
>
> Our view, corroborated by the people we have spoken to so far, is that the investigation was sound.
>
> Essentially, the more united the front we can present, the less room for manoeuvre Associated Newspapers has and the greater the chance that this case can be resolved without the need for trial.
>
> This is why we would be grateful for your evidence. We do not think of it as controversial and we trust that you can cooperate to support a former colleague from your time as part of The Metropolitan Police.
>
> Yours sincerely"

50. The draft proof enclosed was not based on any instructions Mr Todd had given to the solicitor. It included these words:

> "… Commander Croll was the most senior ACPO officer who could deal with the matter and as such my passing him the file for a decision on a local operational matter was normal procedure. Commander Croll was shortly to become the head of territorial policing in the North East Region and he was the most appropriate officer to decide an important issue arising from the investigation …"

This paragraph was annotated on receipt by Mr Todd with the word "Rubbish". As will shortly emerge, his evidence was to the exactly opposite effect.

51. In most civil litigation nowadays (the main exception being trials by jury) witness statements stand as evidence in chief. It follows that if, as here, a solicitor simply provides a potential witness with a pre-cooked statement of what he or his client wants to be said, so as to present a "united front", then unless the witness is sufficiently independent or strong-minded (as was Mr Todd) parties will simply introduce into evidence whatever they like. This was plainly not the intention behind the civil justice reforms.

52. I shall need to return to Mr Todd and Mr Croll in the specific context of the Milroy-Sloan inquiry, but for the moment I must consider their more general evidence about the functions of a crime manager – the role Mr Miller was fulfilling at the time of each of the two incidents in this case.

53. Mr Todd had responsibility for Territorial Policing, which covered all 32 London Boroughs. He can therefore speak with some authority as to the functions of a DCI, and I can see no possible reason for him to give evidence other than frankly. He would not appear to have any personal motivation to give evidence against Mr Miller or anything to gain from distorting the truth. Lest it be said he is giving evidence on a theoretical basis unrelated to experience, I take note of the fact that he served in the Essex police service as a DCI from 1990 to 1992. He is currently the chairman of the Professional Standards Committee of the Association of Chief Police Officers. During cross-examination, objection was taken to parts of his evidence on the basis that no permission had been given for expert evidence and he should only give evidence of fact. In this context the distinction drawn seems artificial. If Mr Miller was able to give non-expert evidence himself as to his responsibilities as a DCI, it is difficult to see why Mr Todd should not be permitted to do so as well. In any event, at no stage was I actually invited to rule out or ignore any specific part of his evidence, most of which was simply common sense.

54. He confirmed that the "Role and Responsibilities" document, referred to above, reflected the role and responsibilities of a DCI as they have been understood for many years. He should be strategic head of the "reactive aspect" of the CID, and the Senior Management Team lead on all aspects of the criminal justice system. (The word "reactive" refers to the management of CID investigations. In Redbridge, however, Mr Miller would have had responsibilities also for "proactive" police work – concerned with intelligence led activities and crime prevention.) It would be the DCI's function to ensure an effective police response in all aspects of CID work. Mr Miller would thus be "both responsible and accountable for the actions of the Detective Inspectors" under his command. He should respond to requests for support and guidance and not abdicate responsibility to others. He as a line manager should be aware of the conduct and performance of the individuals he was managing. According to the job description, and the evidence of Mr Todd, the DCI would be expected to review and monitor the investigation of allegations of serious crime. Both the Miss B and Milroy-Sloan investigations fell within that description.

55. Mr Todd stated that " … the DCI must become sufficiently involved in the investigations [of serious crime] to ensure that he … is satisfied that there is a clear investigative strategy, that the requisite evidence is sought, that the team is not struggling and that any problems which emerge are resolved". That evidence is clearly of central importance to this litigation and I can see no rational basis to reject

it. If one stands back, it might be said that the disastrous outcome of the Miss B case in itself provides reasonable grounds to suspect that the relevant DCI had failed to fulfil that responsibility.

56. In serious cases, said Mr Todd, the DCI should be prepared to question the DI and where necessary, according to the importance of the case, maintain a policy of "intrusive supervision". The justification for the crime manager role of a DCI is the need to make a professional judgment as to when to intervene when "things are going wrong". He should also be prepared to give accurate and reliable briefings on a regular basis to the senior management team in the Borough on matters of crime. It would surely follow from this that, where unusually a matter has been referred out of the Borough by the senior management team and a more senior officer (such as Mr Croll in the Milroy-Sloan case) needs to be briefed, in order to give advice or make decisions, the DCI should have particular responsibility to ensure that any such briefing is full and accurate.

57. It was also the evidence of Mr Todd that, without exception, the police service would expect the DCI to be prepared to delve into and supervise closely the investigation of serious sexual offences.

The pleaded criticisms of Mr Miller's role

58. The first point pleaded (in the Re-Re-Amended Defence at para. 10.7) is that Mr Miller should have "assumed direct responsibility for conducting the investigation as well as supervising it". I reject this proposition because there is nothing in the evidence about MPS policy and practice to support it. There was a Detective Inspector as SIO and that accorded with MPS requirements.

59. The next point (at paras. 10.8 and 10.9) is that he should have ensured that a detective inspector with appropriate qualities be directly responsible and that he should personally have exercised close supervision, ensured that adequate resources were made available and that the investigation was properly documented and subjected to effective and regular review. Had he done so, the "grossly incompetent" investigation could have been kept on track and the stay ordered by the Judge at Chelmsford on 19th August 1999 thereby avoided.

60. It is said that Mr Miller knew from the outset (i.e. 18th October 1998) that Mr Woodward was a bully or, if he did not, he should have. Here there is a clash of evidence which I need to address. One problem is that Mr Miller has bent over backwards to be fair to Mr Woodward, saying that his side of the story has never been properly heard and that everyone (including the disciplinary boards and the Crown Court Judge) has been too ready to condemn him. This persistence on Mr Miller's part seems to me to undermine his judgment to some extent in the light the evidence which has emerged.

61. There was, according to some witnesses, a history of bullying, brashness and insensitivity going back for several years prior to the Miss B investigation. Mr Miller denies knowledge of that. Some of the incidents pre-dated his arrival at Barkingside and, he says, he was not given any adverse briefing about Mr Woodward when his predecessor handed over. Yet one incident does seem to be beyond dispute.

Mr Woodward's intervention of 21st October 1998

62. On Wednesday 21st October 1998, while the trained chaperone officer Narinder Gill was still taking Miss B's statement at the police station, Mr Woodward interrupted the process, thereby causing considerable distress to Miss B and her mother. He suggested to her mother that Miss B had consented in the early hours of 18th October to the "abduction" and "gang rape" alleged and, at least according to Miss Baker's recollection, strongly implied that she was a prostitute. He also referred to how costly the police investigation would be. That not only suggests insensitivity but would plainly invite inquiry also as to his mental stability. It is interesting to note that Mr Heal (now a DI) described Mr Woodward at this time as "at best difficult to work under and at worst irrational to the point of nonsensical". That provides support for the proposition that, whether Mr Miller knew it or not, Mr Woodward's behaviour on 21st October was in, rather than out of, character.

63. Not surprisingly Miss B broke off from giving her statement. She said words to the effect, "If they don't believe me, I might as well go home". Miss Gill and Miss Baker tried to calm them down and offer reassurance. Miss Baker suggested that Miss B take a break and try again later. She and her mother left the police station and Miss Gill had to spend time on the following day on the telephone trying to persuade her to return. She did not speak to Miss B directly, but was told by her mother that Miss B had a sleepless night as a result of what had happened. She was therefore too tired to cope with the statement that day. Miss B eventually resumed her statement on Friday 23rd in the morning and it was completed by Miss Gill on Saturday 24th October at about 5 p.m. She had to work overtime to achieve this and that would have been authorised by Mr Miller.

64. On the following Monday, according to Mr Miller, she told him of her concerns over Mr Woodward's extraordinary behaviour. The first conversation took place on the tube, following a chance meeting on his way into work, and the second on a more formal basis in his office later in the day. Miss Gill thinks she told him earlier, on Thursday 22nd October. That would seem to tie in with the fact that he had authorised her to work overtime in order to complete Miss B's interrupted statement. But at any rate he certainly knew by the Monday. There is no doubt that other members of the team were also concerned at what had happened and voiced those concerns to Mr Miller at a meeting in the afternoon of 26th October. Mr Woodward was away on leave until Thursday 29th October and then Mr Miller was away until Monday 2nd November. He says he raised the matter with Mr Woodward at the earliest opportunity (but clearly did not do so with any sense of urgency). He claims that he was given an answer that satisfied him, in the sense that Mr Woodward's conduct fell within "a range of reasonable responses".

65. I cannot understand how Mr Woodward's interruption of Narinder Gill's interview could be justified at all. This incident occurred some three and a half days after Miss B had been, apparently, abducted with the aid of drugs and gang raped by three men. She was suffering soreness and tenderness in her genital area and, while she had been unconscious, it seems that her pubic hair had been shaved off. Some officers therefore suspected that, in view of her young appearance, she might have been videotaped for the purposes of providing child pornography. If ever there was a time for sensitivity, this was surely it. MPS policy at that stage required that allegations of rape should

only be put to one side and declared "no crime" after a full inquiry. On no basis could it be said that such an inquiry had been completed by the afternoon of 21st October, since Miss B's statement was incomplete and, what is more, only one of the three suspects had been arrested. The interruption was inexcusable. Even now Mr Miller is not quite able to acknowledge that.

66. Mr David Whelan is now police sergeant in the Greater Manchester service but in October 1998 he was a member of the Miss B inquiry team. His evidence was that he remembered Mr Woodward on 21st October saying that Arsenal were playing that night and "he wanted to get the inquiry over and done with". He said that he understood him to mean that he wanted to get to the bottom of whether or not Miss B's complaint was genuine "quicker than normal because he wanted to get to the game". Mr Suttle QC, for Mr Miller, invited him to withdraw this suggestion as being unworthy and unfair to Mr Woodward. He declined to do so and added "I am prepared to stick with my statement because that was my impression". There is no doubt that Mr Woodward did go to an Arsenal match that evening, when two of the suspects were about to be arrested, and that Mr Whelan complained about it at the time because he did not think it appropriate. (Mr Suttle pointed out, however, in fairness to Mr Woodward that he did return to the station after the match and put in a further hour's work.)

67. How then did Mr Woodward manage to put Mr Miller's mind at rest? I understand that he was told that Mr Woodward was concerned about the rights of the suspects. In his witness statement Mr Miller points out that subsequently those rights have been recognised by Parliament in the Human Rights Act 1998. Another point made to him by Mr Woodward was that they were all telling consistent stories of Miss B's consent at a time when they could not have concocted their accounts together. They had been kept separate and yet displayed consistency. I appreciate that I have not heard from Mr Woodward, but the evidence demonstrates clearly that by the time he interrupted Miss B's interview only one of the suspects had been arrested. The second was arrested at 9.10 p.m. on the same evening and the third at 12.45 the next morning. If Mr Miller's recollection is correct, therefore, it seems that he was satisfied that Mr Woodward had behaved "reasonably" on the basis of a false explanation – which could have been checked against police records in a matter of moments. Mr Miller was fobbed off with a cynical lie. In any event, since inquiries were manifestly not complete, Mr Woodward's conduct was plainly contrary to MPS policy. The notion that it fell within a range of reasonable responses would appear to be untenable. Mr Woodward was by then clearly in need, to put it no higher, of more than usual supervision. That was a matter falling squarely within Mr Miller's area of responsibility.

The omission to view the CCTV footage

68. By 22nd October it had become apparent that there was not going to be a problem over identification of the culprits, since the issue had been narrowed to that of consent. That may be the reason why a relaxed attitude was taken about the CCTV footage taken from the Atlantis Club (from which Miss B was said to have been abducted).

69. It had been seized by Constables Roach and Codrington on 19th October but, inexplicably, it was not viewed until 5th March 1999. Even at that stage, it was not

realised that they had been given the wrong tape. It did not apparently show the Atlantis Club at all. This only became apparent in June 1999 by which time the defence team had been given the opportunity to view it. It was then impossible to obtain the relevant tape.

70. This was, to say the least, unsatisfactory. Mr Codrington recorded on the CRIS report that "It is believed the security video would hold footage of the suspects arriving and leaving". The tape *might* have thrown light on Miss B's condition when she left, or how friendly her communication with the suspects had been, whether she had been administered a drug and whether there was a joint enterprise. In evidence, there was a document prepared by P.C. Roach on or before 26th October 1998 which was headed "Important things to do", which included "viewing of videos". It could hardly be denied that this was an appropriate step to take, notwithstanding the fact that it was not necessary at that stage for identification of the culprits. As Mr Whelan saw it:

> "The CCTV was likely to contain crucial evidence of what had happened at the scene of the alleged abduction. It needed to be viewed immediately by someone aware of the issues raised."

71. In due course, the incompetence of the investigation was criticised by the Judge at Chelmsford with reference specifically to the absence of the CCTV evidence, which *inter alia* prevented the defence from pursuing a particular line of inquiry. One of the suspects was supposed to have brandished a pack of condoms before leaving the Atlantis Club, which it was thought might have some bearing on the consent issue. They were prevented from making anything of this point in the absence of the tape. What the Judge said, more generally, was:

> "… It is clear that the video film of what occurred inside the club was of critical importance. That was evident to Police Constables Roach and Codrington, who had only viewed the film of the cloakroom area because their task at that stage was to obtain a video for identification purposes; and having seen film of someone answering [suspect R's] distinctive description, they were content to merely seize the tape without looking in detail at what was recorded in relation to the foyer and exit areas.
>
> Their belief was – and it remained – that the tape would be carefully studied, enhancements made if necessary and stills taken, for evidential purposes, to see what in fact happened inside the club as between these three defendants, or any of them, and [Miss B]; what her condition was when she left; whether she left with them or her friends; whether [R] could be seen administering anything to her; if so, whether this was part of a joint enterprise; whether [R] showed her a packet of condoms before they left the club. All of these matters were in issue, and were known by the officers investigating this case to be in issue from the moment these defendants had been interviewed …

> … Detective Inspector Woodward took no action with regard to the videotape. It remained in police custody until viewed some five months later, when it was found to be, almost certainly, the wrong tape. The suggestion has been made that it may have been the right tape but had been taped over. I reject that suggestion as wholly improbable…
>
> … The investigation into the matters referred to in counts 1 to 3 on this indictment was grossly incompetent. It was not biased; it was incompetent, and as such, was as unfair to the complainant as it was to these defendants. Better for [Miss B] that the matter be decided by a jury following a proper investigation and consideration of all the relevant evidence; better for these defendants had they been tried and acquitted on that self-same basis. It is now too late to correct the earlier failures to gather the necessary evidence. Put quite simply: it no longer can exist …"

72. It seems to be part of Mr Miller's case that the Judge's ruling on abuse of process was wrong - or at least flawed by reason of Mr Devine-Jones having misled him. Whether he did or not, the fact remains that the team seized the wrong tape and, having done so, failed to spot the error through omitting to view it.

73. I have acknowledged that Mr Miller's responsibility in relation to the Miss B case was supervisory only. But it has to be asked what he did by way of effective supervision and why, if it was effective, he failed to spot that at least one of the "important things to do" had not been done. It may be that the correct tape would not have assisted the defendants in the criminal trial at all, but the bungling meant that we shall never know and it plainly contributed to the stay for abuse of process. Mr Suttle battled on in cross-examination of some of the police officers called on the Defendant's behalf with a view to persuading them to agree that, despite the trial Judge's strongly expressed opinion, there had actually been no need to view the footage because the detailed evidence taken from Miss B's companions was unlikely to be improved upon. They did not accept that but, in any event, that is not the reason why the CCTV footage was not viewed. It was because of carelessness and lack of supervision.

74. Mr Miller's stance on the videotape is set out in his Amended Reply at para. 5.30:

> "The only way the Claimant could have identified the lack of appropriate viewing of the CCTV footage was if he had scrutinised all the interview records and examined every document. That was not the Claimant's responsibility".

I do not understand why he could not have asked Mr Woodward or Messrs. Roach, Codrington and Devine-Jones (or any one of them).

75. At para. 5.26 he admits that good practice dictated that the tape should have been viewed, but this is then followed by a somewhat circumlocutory qualification:

> "… or at least the officer who seized the tape should have been questioned to see whether viewing the tape would be useful to the investigation, if and only as long as there was reason to believe that it might contain relevant material".

I take this to mean that, if there was reason to believe that a tape might contain relevant material, one should ask the officer who seized the tape whether viewing it would be useful, although I am not sure how he could take matters much further without having viewed it! If "it might contain relevant material", surely the investigating officer should ensure that it is viewed.

76. Having regard to the fact that identification was not an issue, Mr Miller falls back on the proposition that:

> "… the tape was of such poor quality that the actions requiring corroboration (one of the suspects pulling out a packet of condoms) are unlikely to have been visible, especially since persons leaving the club would have had their backs to the camera".

That is inevitably pure speculation, but it misses the point. Had the tapes been viewed, we would not need to speculate. It was not something in Mr Miller's mind at the time and is based on the quality of other tapes from the premises he saw as late as September 1999.

77. There then follows the sentence:

> "The investigating officer who was responsible for viewing the tape was Detective Constable Devine-Jones …"

These propositions lie uncomfortably together. Either the tapes were of such poor quality that there was no point in viewing them or someone "was responsible for viewing the tape". Assuming that Devine-Jones was responsible for viewing the tape, it might be thought reasonable to suppose, since he was a detective constable, that someone was supervising him and checking that he had done it. Whoever it was, he or she failed to do so. Mr Miller stated clearly, however, that MPS officers do not deal with operational matters with line managers looking over their shoulders. He would, I believe, regard the suggestion that anyone, least of all himself, should have checked on Devine-Jones to see whether he had viewed the tape as unrealistic. He could not be expected to micro-manage junior officers in such a detailed way. On the other hand, supervisory responsibility must serve some purpose. If, every time junior and less experienced officers foul up, the supervising line manager remains beyond criticism, "responsibility" means little, since no one can be held accountable for failures in supervision.

78. Reliance was placed by the Defendant specifically on Clause 3.4 of the CPIA Code of Practice which is in these terms:

> "In conducting an investigation, the investigator should pursue all reasonable lines of inquiry, whether these point towards or

> away from the suspect. What is reasonable in each case will depend on the particular circumstances".

Mr Miller does not accept that this provision was breached. It was in this context that he went on to argue that the police had already presented to the defence much better evidence to the effect that Miss B's actions could be construed as consensual; namely the statement taken from the cab driver who drove her and the three men from the club. "His evidence was that she gave the appearance of engaging in consensual sexual activity in his taxi on the journey".

The misinterpretation of the taxi driver's statement

79. Mr Miller was cross-examined about this passage in his witness statement on 2nd March 2005, and he had to accept that the assertion had been included in his evidence without his having read the taxi driver's statement. He was shown extracts of what the driver actually said, such as "The girl had very short blond hair; she did not say anything at all. She looked a bit drunk, but I didn't think she was drunk because I've carried drunken people before and they normally speak slurred or fall asleep". He added, "I think she seemed very quiet. She did not even speak to the males". He also recorded that, "The males were talking and saying things. … The girl did not reply or say anything. She made no noise at all".

80. When he was pressed as to which part of the driver's statement supported consent, he was unable to give any convincing response. At one point he said: "The girl was not saying anything. I suppose silence is consent". That is surprising in view of the fact that silence could also indicate stupefaction through the administration of drugs. At all events, Mr Miller accepted that his statement was "too strong" in this respect.

81. Of great significance is the statement that "… at the traffic lights at Leytonstone High Road the girl leaned forward and put her head up to the seat and said 'Cab Driver' … I wasn't sure she was speaking to me". (He was the only person likely to be so addressed, and this rather feeble observation is likely to be tinged with retrospective guilt about ignoring her.) He said that at this point one of the men pulled her back and "seemed as if he was trying to calm her down". It should have been obvious that the purpose of her trying to attract the driver's attention *might* have been to ask for his help. It is to be remembered, moreover, that the following July (i.e. nine months later) the taxi driver provided a further statement to the effect that Miss B had actually said to him "Stop the car, please. I want to get out". It thus becomes even clearer that his original statement could hardly provide evidence of consent – let alone a satisfactory explanation for not having viewed the CCTV footage.

Does Mr Miller have any responsibility over the CCTV footage?

82. Mr Miller, however, had alternative explanations. He said that CCTV is increasingly available and its quantity can overwhelm investigations. Here, so far as I am aware, there was only one relevant tape and the police knew, to the minute, when Miss B had left the club. Nobody was likely to be overwhelmed by that exercise. He also suggested that what mattered was the issue of "consenting to sex several hours later, which was at the heart of the rape charge". Thus, he concluded that the critical issue

of consent to sexual intercourse could only be resolved by evidence from the suspects, the victim and the taxi driver as to what happened after they left the club.

83. Finally he said:

> "It is the duty of the Investigating Officer and the team to scrutinise the evidence arising from the investigations. It is just not practical for a DCI to undertake this massive task without a specific reason or request to do so".

84. I have accepted that Mr Miller's conduct must be judged in the light of his supervisory role and that he should not be appraised on an unrealistic footing. It must be remembered, on the other hand, that there were from an early stage "specific reasons" to keep an eye on this inquiry because of the need to address the resources required, and as to how widely the investigations should extend; for example, into the possible connection with child pornography. Also, there was the behaviour of Mr Woodward in relation to the victim, which suggested strongly that he could and should not be left to his own devices.

85. It is, in all the circumstances, difficult to resist the conclusion that as Mr Woodward's line manager Mr Miller should have conducted a personal review of the case and identified, in the course of doing so, the lack of action in respect of the video over several months. That is how the case is put at para. 10.14 of the Defendant's pleading. It is admitted that he did not do so. His case is that it was not his responsibility. That is difficult to sustain in the light of Mr Todd's evidence that a DCI should "delve into and supervise closely" all serious sexual offences. As he observed, in cases being dealt with by a DI on a Borough, if the DCI does not supervise the case then no one will.

86. One of Mr Miller's propositions is that one has to have a realistic approach to the resources available. I believe he thinks Mr Todd was advancing a counsel of perfection. To paraphrase his case, I hope not unfairly, good detective inspectors do not grow on trees and, even if he had the jurisdiction to do so, it would not have been easy to replace Mr Woodward as the investigating officer. His primary case, however, is that there was no need to do so. Nevertheless, what seems to be clear is that Mr Miller (even assuming no knowledge of the earlier allegations of bullying) should have kept a particular eye on the Miss B investigation and how it was being handled once Mr Woodward's bizarre behaviour of 21 October came to his attention. He should, moreover, have picked up that the explanation Mr Woodward gave him (a) did not permit the conclusion that his conduct fell within a range of reasonable responses, and (b) was, in any event, false. This was (one hopes) an exceptional situation requiring exceptional measures – and at least close supervision.

The omission to interview other potential witnesses

87. Another criticism made by the Defendant (in paras. 10.15 to 10.17) is that Mr Miller had failed to do anything about the omission of the team to take statements from potential witnesses (with certain exceptions) who had been present at the Atlantis Club in the early hours of 18th October 1998. The purpose of taking such statements would be similar to that underlying the need to view the CCTV footage; that is to say,

to see if light could be thrown by anyone on whether Miss B was drugged, how she was behaving in the presence of the suspects and whether she had gone with them consensually. The only such statements taken were from one of the doormen (known as "Pepe") and from the sisters who had been with Miss B in the club. I was told that Mr Lelliott, Mr Devine-Jones and Miss Baker wished to take further "negative" statements but were told by Mr Woodward to keep them to a minimum in order to reduce cost.

88. It is pointed out on Mr Miller's behalf that police officers were at the club on 3rd November conducting inquiries, which suggests that Mr Woodward had done nothing by that stage to inhibit such inquiries. Nevertheless, it is the Defendant's case that junior officers complained directly to Mr Miller, at some point, that Mr Woodward had forbidden the taking of further statements at the club. The Defendant's evidence did not manage to pin down, however, when any such specific complaint was made, or by whom, and Mr Miller denied that any officer raised the matter with him. In any event, it seems that he would have been disinclined to do anything about this either, partly because he had a general dislike of officers going over Mr Woodward's head and inviting him to intervene in an inquiry of which he (Mr Woodward) was the investigating officer, and also partly because he thought Mr Woodward's decision not to pursue such further inquiries was reasonable.

89. As I understand his case, Mr Miller accepted that there were difficulties in tracing the relevant persons and spending time tracking them down would have been a disproportionate use of limited resources in relation to any possible benefit. So far as doormen were concerned, he drew attention to the fact that the Club's staff list was not up to date and that they were often casual labour paid in cash. Also, there would have been about a thousand people at the club that night, so that the chances of anyone having noticed anything useful would be minimal. Likewise, with other "club goers". He said that to have pursued inquiries with them would have submerged the team of detectives and would have had only a minuscule chance of success.

Other potential lines of inquiry

90. It is possible to criticise other decisions that were taken, although any judgment has to be made against the background of the limited resources available and the need to prioritise (a problem which senior police officers live with day in and day out, as Mr Todd explained).

91. There was a belief among some of the officers involved in the Miss B case that the possible involvement of the three suspects (one in particular) in pornographic videos should have been pursued. The taxi driver said that he had on occasions delivered packages from one of the suspects to various addresses. From his description it was conceivable that they were videotapes. If he was supplying such material to paedophiles, that would clearly be a legitimate line for police to pursue. It has to be said, however, that such activities were taking place (if at all) outside the Redbridge area and, moreover, the pornographic videos seized were not in themselves supportive of the theory. Mr Woodward did not wish to pursue these inquiries; nor did he apparently pass the information to other investigative officers (perhaps in another Borough) who might be more suited to pursuing them. With the benefit of hindsight,

Mr Miller told Supt. Hinksman, who was looking into the matter in 2000, that he accepted Mr Woodward's judgment in this respect had been wrong.

92. Another course of action suggested, but rejected by Mr Woodward, was that in view of cocaine found in Miss B's body following examination one of the suspects should also be charged with supplying her. The view was taken, however, that it would not be possible to establish supply beyond reasonable doubt. This would presumably be on the basis that Miss B might not be believed if she gave evidence to the effect that it could not have entered her body other than during her ordeal on 18th October. Mr Miller sought to defend the decision by an *ex post facto* legal argument which I did not find convincing, but the point was at least worth pursuing to the extent of obtaining legal advice. Whether an additional count of supply would have been worthwhile, or made any difference to the outcome of the proceedings, is another matter.

93. Such issues as these are less significant in the case. While the decisions are no doubt open to legitimate criticism, there was probably room for genuine disagreement. They did not lead or contribute to the stay of proceedings. Nor could they so readily fall within the trial judge's characterisation of "gross incompetence".

The Judge's reasons for finding abuse of process

94. As I have already pointed out, on 19th August 1999 the Crown Court Judge held that the investigation had been grossly incompetent and had led to such potential unfairness that the proceedings would have to be stayed. So far as the gathering of witness statements was concerned, he made these observations:

> "… The detective inspector [Mr Woodward] also took no action to obtain any witness statements whatsoever from anyone who had been in the club at the critical time, the early hours of the morning of 18th October. No doorman was interviewed. The probability was that such persons could have assisted this inquiry one way or the other.
>
> The need to obtain such statements was recognised by other officers. I have seen a copy of an action plan prepared by Detective Constable Codrington and headed "Important things to do", with an exclamation mark, and I have been told of flow charts, none of which were actioned or effectively actioned.
>
> In particular, Detective Constable Devine-Jones – who, in late December, took over the role of investigating officer but who had been a member of Detective Inspector Woodward's team from the outset – pointed out the need to get statements from witnesses at the club and asked for permission to obtain them. But permission was refused. That refusal on the part of an experienced senior officer I find entirely bizarre. But his whole conduct of this investigation caused grave misgivings, particularly in the minds of some, at least, of the members of his team. On two occasions, according to Devine-Jones - whose

> evidence I accept - he went with other officers to see Detective Chief Inspector Miller, to report his concerns at the way Detective Inspector Woodward was conducting the operation, only to be told that Detective Inspector Woodward was in charge …"

Mr Miller does not accept that Devine-Jones gave the Judge an accurate account. It may be that he was drawn in cross-examination to accede to "deliberate obstruction" on Mr Woodward's part, although he would not have chosen to express his concern in those words. But for the moment I am only concerned to highlight the specific defects in the investigation which led him to stigmatise it as "grossly incompetent". It is obvious that the failure to view the CCTV footage and the omission to interview witnesses loomed large in his reasoning. Mr Miller, however, boldly invites this Court to reject that approach and to conclude that neither of these steps was necessary.

The prosecution would have had to be abandoned in any event

95. As a matter of fact, by that time the Crown had decided that the proceedings would have to be dropped for a different reason. This was that a possible conflict had been created between two Crown witnesses, namely Miss B herself and Mr Devine-Jones. Although the potential area of conflict related to rather collateral issues, Counsel felt that he was now in a position where he could not place them both before the jury as witnesses of truth. The root of the problem, according to the Defendant's case, was that Mr Devine-Jones and Miss Baker had been allowed to become too close to Miss B. It appears that as early as late October or early November 1998 Miss Gill, the chaperone, had told Mr Miller of her concerns in this regard, but he took no action. There is a conflict of recollection between Mr Miller and Miss Gill in this respect. It is agreed that Miss Gill is an "excellent" police officer and it is quite obvious to me that this case greatly troubled her at the time, not least because of Mr Woodward's blundering intervention on 21st October and because she had, the following August, to break the news of the Judge's stay to Miss B. It has tended therefore, in significant respects at least, to lodge in her mind. I believe her recollection is likely to be reliable in this respect.

96. There were two particular complaints. In the first place, there was a conflict between Mr Devine-Jones and Miss B as to whether or not they had been, together with Miss Baker, to a shooting club or whether they had simply stopped outside it. I found this a puzzling aspect of the case. Although Miss Baker gave evidence, she was less than forthcoming on this matter and I felt that I simply could not get to the bottom of it. The visit to the shooting club occurred during a deviation from the obvious route on a journey to the police station with Miss B (possibly on 1st July 1999). With a burst of speculative inspiration, Mr Warby suggested that they had taken her on a trip out to cheer her up and re-fortify her because she was getting "cold feet" about giving evidence. That is not borne out by anything from Miss B and, if it were the case, no doubt Miss Baker could have told me. As to why it occurred I have no cogent explanation. Nonetheless, it does appear that they had gone to collect Miss B from her home on the instructions of Mr Woodward.

97. Secondly, Miss B claimed that she had been given information about one of the suspects which should not have been revealed to her, in particular, on 28th June 1999

about alleged involvement in drug dealing, and on 28th October 1998 about the finding of bullets following the execution of a search warrant.

98. What is clear to me, however, is that Miss B could not have known about the confidential material unless she had been told of it by police officers. This was also the conclusion of Mr Lodder, prosecuting counsel, in his Advice of 26th August 1999. It appears from Miss B's statement of 18th August that she was given the information by Mr Devine-Jones and I have no reason to reject that account.

99. The Judge at Chelmsford did not need to address these points because he had decided to stay the proceedings by reason of unfairness brought about by the grossly incompetent way in which the investigation had been conducted. Even so, the Defendant relies upon the decision of Mr Lodder, based on the conflict, as further evidence of incompetence for which Mr Miller should take his share of responsibility.

100. It is probably fair to say that a contributory factor to the problem about the officers becoming too close to Miss B was the vacuum left by Miss Gill's departure in about February, with the result that there was no assigned chaperone until she was re-introduced in July 1999 at the request of DI Crawford. If there had been a chaperone at the time of the visit to the shooting club, the difficulty would have been avoided. A chaperone can look after a "victim" without compromising the investigation, from which she is separate and apart. The absence of a chaperone was probably attributable to Mr Woodward's lax supervision of, or lack of interest in, the Miss B case. Yet it would not have any relevance to the inappropriate information passed to Miss B on 28th October 1998.

The extent of Mr Miller's responsibility for the mishaps

101. Turning back to the Judge's reasons, I have to ask myself whether his decision about the incompetence was incorrect, as Mr Miller suggests, either because he was misled by Mr Devine-Jones' evidence or for some other reason. Secondly, if he was correct in his conclusion, can Mr Miller because of his merely supervisory role escape responsibility for the incompetence of the inquiry?

102. After considering those issues, I should also address the extent to which (if at all) Mr Miller can be fixed with responsibility for allowing Mr Devine-Jones and/or Miss Baker to become too close to Miss B. That is a factor which would, in other circumstances, have led in itself to the discontinuance of the criminal process and thus deprived Miss B of her legitimate expectation that those she accused of abduction and rape should be brought to trial.

103. It has to be remembered, as Miss Gill and Mr Whelan pointed out, that the Miss B case was one of the first investigations involving the alleged use of a "date rape" drug. She thought at the outset that it had important wider ramifications for that reason. It must surely have been obvious that this factor would impact significantly upon the inquiry team's approach to the conduct of Miss B and the issue of consent. It was necessary for the team to think through the implications of this and how traditional methods and attitudes would need to be questioned. It is very remarkable that Mr Miller should, without even adverting to the point, have stated that there was evidence of consent to be found in the taxi driver's statement. It is even more remarkable that,

in the witness box, upon apparently reading it for the first time, he should have asked rhetorically whether her apparent silence connoted consent. The drug factor would have been an obvious point for an alert DCI to have made, when confronted with Mr Woodward's apparently ante-diluvian attitude towards Miss B's character and veracity. Apart from anything else, they should have addressed how the date rape drug could have affected Miss B's conduct in the taxi. I can be confident it was not addressed because Mr Miller only picked up the point in March 2005. Yet it was a strategic matter which required focus and direction from the most senior levels in the Borough.

104. I am prepared to proceed on the basis that Mr Miller did not know that Mr Woodward was a bully until May 1999. Up to that point, he had thought him no more than "a bit blunt". I accept, on the other hand, that he was well known by most people who had worked with him to be a bully. That emerges with depressing consistency from the statements of Miss Gill, Miss Baker, Mr Roberts, Mr Devine-Jones, Mr Lelliott, Mr Jessop, Mr Whelan, Mr Heal, Mr Benton and Mr Roach. The evidence is overwhelming that he was. Indeed, Mr Lelliott described Mr Woodward's influence as "corrosive". If Mr Miller did not know about it, that is a reflection on the way he discharged his obligation to know what was going on. Also it would tend to confirm the evidence of those officers who did not find Mr Miller particularly approachable or supportive. Yet this is almost by the way so far as the Miss B case is concerned. Mr Miller did not need to know that Mr Woodward was generally brash, rude and bullying. He already had the specific information from Miss Gill as to how he had behaved towards Miss B and her mother.

105. There was an unfortunate lack of leadership in the Miss B investigation for which it is difficult to see how the Crime Manager can avoid taking responsibility. Mr Whelan drew a contrast between Mr Miller's style and that of his predecessor, DCI Crofts, whom he described as "highly respected":

> "DCI Crofts managed his investigators in a very hands-on way. He would always be popping into the office and asking questions about cases. He was very much on top of the detail of the cases his investigators were working on. As a result, he had a clear overview of the investigations. This was very important as it meant he was in a position, if he felt it was necessary, to make decisions about the direction particular investigations should take. He always knew enough about investigations to be an effective sounding board for his DIs if they wanted to talk a case through before making a key decision. He was also very aware of the different capabilities of his investigators which meant he could assign the right people to the right jobs.
>
> … Unlike DCI Crofts who used to come into out office to ask about investigations very regularly, Mr Miller rarely came into our office or asked us how a case was going or what we were working on".

Of the Miss B investigation he said that he had no recollection of Mr Miller being involved at all in the first week. He added, "It is not correct that Mr Miller gave us

guidance, advice or leadership on how the investigation should be taken forward at [the meeting of 26th October] or at any other time".

He went further:

> "As a result of certain aspects of the Miss B investigation and the way it was handled by Mr Miller, I decided towards the end of 1998 that I no longer wished to become a CID officer. I therefore returned to uniform duties around January or February 1999 when I also transferred from Ilford to Hackney Borough".

Mr Whelan was a credible and impressive witness and he had no reason to misrepresent the position, so far as I can tell. Miss Baker too described Mr Miller as "very unwilling to get involved". DI Heal, now of West End Central police station, said of his time at Barkingside CID from November 1998 to June 1999, "I had no faith in the senior management". I cannot accept that these officers are merely pretending that morale was low. Clearly it was.

106. From 29th December D.C. Devine-Jones was shown as the investigating officer. As it happens, from the second week of the inquiry he and Miss Baker had in effect constituted the scaled down Miss B inquiry team. I readily accept that at this time Mr Woodward was engaged away from Barkingside on a case about the disappearance of a Turkish girl and that he did not have access to the CRIS computer system while he was working at Woodford. The significance of this is that, had he remained as the designated investigating officer, internal e-mails would have been automatically generated every time DC Devine-Jones made an entry on the CRIS system. He would not be able to acknowledge them from Woodford. Thus, unnecessary bureaucracy was avoided if Devine Jones was himself the investigating officer.

107. In theory, however, Mr Woodward remained in overall control. But Mr Devine-Jones and Miss Baker, who assisted him from time to time, found themselves lacking guidance. This may have been in part because Mr Woodward was described (by Mr Whelan) as disliking Mr Devine-Jones intensely and as taking every opportunity to bully and undermine him. Other evidence was given by Mr Lelliott to the effect that Mr Woodward actually said that he had left the Miss B case for Mr Devine-Jones to handle in order to see if it would "break" him. That obviously suggests a deliberate policy of *not* giving guidance. The evidence of these officers discloses an extraordinary state of affairs.

108. This led to a number of problems, most notably the failure to check on the video material, muddles over disclosure, and the undue closeness to Miss B. Those are matters which should have been avoided. According to the evidence of Mr Todd, which comes as no surprise in any event, that would fall within the responsibility of the Crime Manager. When things start to go wrong, it would be his job to step in and put them right.

Mr Woodward gets a glowing reference

109. It was provided in an MPS Special Notice in March 1999 that line managers should be aware of the conduct and performance of the individuals they manage. Although that came part way through the period of the Miss B inquiry, it is hardly a novel proposition and would have been applicable also between October and November 1998. One of the surprising aspects of the case is that in November 1998, when the unhappy events of 21st October should have been fresh in his mind, Mr Miller wrote what amounted to a glowing reference for Mr Woodward in support of his (successful) application for a transfer to the Fraud Squad. Among other things the form required information on "interpersonal skills". What Mr Miller wrote about Mr Woodward was this:

> "I thoroughly recommend DI Woodward for this post. He has all the skills and experience required. He also has the determination to ensure that an investigation, once begun, is brought to a proper and soundly founded conclusion. There are few better or more careful investigators around."

110. A cynic might think Mr Miller was keen to get rid of Mr Woodward, but that is probably unfair in the circumstances. He undoubtedly did think well of his "terrier-like" investigating skills. It was put to him, however, in cross-examination on 3rd March that he suppressed Mr Woodward's "serious weaknesses in the area of interpersonal skills and sensitive issues", but although he thought "suppression" too strong he did not suggest an alternative. He said he gave him a positive reference to encourage him. He bore in mind that people would not be frank in appraisal exercises if they thought that everything discussed would find its way into references on job applications. The incident does at least support the proposition that he failed in the DCI's task of getting to understand the qualities of his staff and what was going on in his department at the time of the Miss B inquiry. It is especially curious in view of the fact that Mr Miller told Mr Orde's disciplinary inquiry (the second one he faced) that he had words with Mr Woodward about his "interpersonal skills" not only because of the Miss B incident but also because he had even been rude to him (Mr Miller).

The criticism by the first disciplinary board

111. Mr Miller was later criticised after a disciplinary hearing chaired by Deputy Assistant Commissioner Barbara Wilding on 19th October 2001 in these terms:

> "The Board is firmly of the view that in looking at the rape investigation as a whole, as a crime manager your role extended from the time the allegation by [Miss B] was made through to the case disposal at court. The public and the Metropolitan Police have a right to expect the crime manager to exercise much closer supervision in a complex and sensitive case of this nature. In our view you failed to exercise that supervision".

112. The four disciplinary charges were actually dismissed. There has been semantic debate over whether "not proven" is the same as "not guilty". The truth is that the

charges were effectively dismissed. The criticism was directed at him despite that. I propose to ignore it. It is expressed in terms of which he had no warning and there was no opportunity for him to answer it. It seems to have been an afterthought. That is apparently inconsistent with the rules of natural justice. As far as this Court is concerned, it carries no weight whatever. My task is to form my own judgment on the facts before me. In any event, a defendant who seeks to establish reasonable grounds to suspect is confined to the factual position as it stood at the date of the defamatory publication. Ms Wilding's comments were made several weeks later.

113. The actual disciplinary charges were:

Offence(s)	Particulars of Alleged Offence(s) including time, date and place
Discipline Code 4(a)	Between 19 October 1998 and 19 August 1999, being a member of the Metropolitan Police Service, without good or sufficient cause, neglected or omitted to attend to or carry out with due promptitude and diligence anything which it is your duty to attend to or carry out, and which concerned the reported rape of [Miss B], in that you did not open or supervise the CRIS report relating to this rape at any time.
Discipline Code 4(a)	In October or November 1998, being a member of the Metropolitan Police Service, without good or sufficient cause, neglected or omitted to attend to or carry out with due promptitude and diligence anything which it is your duty to attend to or carry out, and which concerned the reported rape of [Miss B], in that when PC Gill, the chaperone, complained to you relating to the behaviour of Detective Inspector Woodward towards the victim, you were 'non-committal and vague', and took no action to deal with the complaint.
Discipline Code 4(a)	In or after November 1998, being a member of the Metropolitan Police Service, without good or sufficient care, neglected or omitted to attend to or carry out with due promptitude or diligence anything which it is your duty to carry out, and which concerned the reported rape of [Miss B], in that you attended a meeting of the investigation team where concerns were made clear to you relating to the behaviour of Detective Inspector Woodward and the investigation. You took no action in relation to these concerns.
	In or after July 1999, being a member of the Metropolitan Police Service, without good or sufficient cause, neglected or omitted to attend to or carry out with due promptitude or diligence anything which it is your duty to carry out, and which concerned the trial in the rape of [Miss B], and that you said to DC Baker words similar to "if you get any more problems with this rape trial, do not come to me."

I simply take note of the fact that none of them was upheld.

The finding of Mr Orde's disciplinary board

114. There was another disciplinary hearing before Mr Orde in November 2001. This time there were three charges, of which one was upheld. This concerned Mr Miller's failure to deal adequately in May 1999 with an anti-semitic comment (which I shall not repeat) made by Mr Woodward to Sgt. Jessop. Mr Miller explained that he was already taking action in relation to other activities of Mr Woodward which had been drawn to his attention on 12th May 1999. He was being disciplined over an act of simulated buggery against a junior officer in the canteen. As a result, he had been removed from Loughton and was being given advice by the MPS Occupational Health Department. He had broken down in tears and had severe domestic worries at the time. In these circumstances, Mr Miller chose not to pile Pelion upon Ossa by adding separate disciplinary proceedings over the racist remark. There is no suggestion that Mr Miller condoned it. On appeal, the sentence imposed on Mr Miller was in February 2003 reduced to a caution (from a reprimand). A caution survives only for a year and it was thus effectively spent by the time it was imposed by the Appeal Board.

Should Mr Woodward still be left in charge after the anti-semitism and simulated buggery?

115. Whether Mr Miller was right to take the course he did, in those most unusual circumstances, is not directly germane to the present proceedings, since the racist remark had nothing whatever to do with the Miss B investigation. It comes into the case because the Defendant argues that what he said to Sgt. Jessop, and the simulated act of buggery, provided further evidence, if any were needed, of Mr Woodward's unsuitability to run a sensitive rape inquiry. It is said that he should finally have been removed from responsibility for the Miss B case.

116. The matter had been, by May 1999, in the hands of the CPS for about five months. It is fair to say, on the other hand, that Mr Woodward was by no means *functus officio*; nor was he a harmless figurehead. Since he broke down in May 1999 and was regarded by Mr Miller as fit for a period of light duties and counselling, it hardly seems appropriate that he should have remained responsible for the Miss B case in the run up to trial (originally planned for June but postponed until mid-August). Mr Miller informed the second disciplinary board that Mr Woodward was not in a fit state to do anything terribly meaningful. As late as July, he was misbehaving by trying to conceal the statement he himself had been asked to provide by prosecuting counsel about the events on 21st October. Eventually DI Crawford (of whom everyone spoke very highly) was brought in on 15th July to take over responsibility for the Miss B case. It seems now to be starkly obvious that this step was taken far too late. At the very latest Mr Woodward should have been taken off the inquiry when Mr Miller finally recognised in May that he had cracked up.

My conclusions on the Miss B investigation

117. The only reason for me to consider at all (somewhat presumptuously) the correctness of the Crown Court Judge's decision is to evaluate the acts or omissions of Mr Miller. On the face of it, if one of the criminal cases for which a crime manager has responsibility is stayed for abuse of process, for the reason that the investigation was

"grossly incompetent" leading to unfairness, one might be forgiven for thinking it reflected on his supervisory capacity. Not so, says Mr Miller, because not only was it wrong to stay the proceedings but also there was no basis to find incompetence. Of course, the Judge's decision is not binding in this litigation, but it is entitled to careful consideration and respect. I do not understand Mr Miller to be criticising the Judge's competence, but rather suggesting that he came to his conclusion on a misunderstanding of the facts, in particular, as to the potential usefulness of the CCTV footage and further witness statements. The Judge's reasoning would appear to speak for itself and, with respect, I find myself unable to fault it. Mr Suttle explained Mr Miller's criticism of the Judge in closing. It was not so much that his reasoning was based on misinformation from Mr Devine-Jones, but rather that he allowed himself to "over-react", because he was given a picture not of mere omission but of actual obstruction.

118. It is, I suppose, possible that other judges might have taken a more robust attitude and refused a stay. Even if that is true, however, his response can at least be said, to coin a phrase, to fall "within a range of reasonable responses". As such, it ought to have been anticipated by an experienced investigating officer.

119. Having read the Judge's comments, I cannot agree with the bold contention put forward in the letter before action in September 2002 that, in connection with the Miss B investigation, no reasonable criticism attaches to Mr Miller. Having heard and read evidence from the officers who formed part of the team, and who have given evidence for the Defendant, and having also heard the evidence of Mr Todd and Mr Croll as to the responsibilities of a DCI/Crime Manager, I am unfortunately driven to the conclusion that as at 11th September 2001 there were reasonable grounds to suspect Mr Miller of neglect of his supervisory responsibilities in connection with the Miss B investigation. Moreover, with the benefit of hindsight, I believe that he did indeed fall short of the very high standards expected of him. I have in the end come to the same view as that expressed by DAC Wilding on 19th October 2001. (It will be noted that I have come to these conclusions without reliance upon any controversial evidence from Mr Devine-Jones. I have not heard him cross-examined and Mr Miller would have wished to have that opportunity.)

120. I accept naturally that Mr Miller is a hard-working and generally conscientious officer and that, at the material time, he had a very heavy workload in relation both to administrative duties and a large number of serious crimes. I also acknowledge that I, like all judges, have the advantage of hindsight. Yet none of this should deter me from recognising the essential weakness of his position on the specific issues. It is powerful mitigation, but it does not justify the award of libel damages.

5. The Milroy-Sloan case

The complaint is treated as a "critical incident"

121. This saga began on Sunday, 6th May 2001, when Milroy-Sloan reported to Peckham police station that she had been raped and indecently assaulted in a flat in Ilford belonging to Mr Barry Lehaney. That evening, at 11.55 pm, the matter was passed to Ilford police station, by which time it had been declared a "critical incident". It continued to be treated as such. This would appear to be correct in the light of Mr

Todd's evidence that "it is blindingly obvious that these allegations needed to be dealt with as such".

122. The policy document on "critical incidents" to which reference was made in the trial was entitled "Managing and Preventing Critical Incidents", Version IV, which was published in 2001. This was a draft and, although I was told by Mr Croll that a final version had later emerged, this was not something which seemed to be available to either of the parties. I do not consider this to matter greatly, in view of the agreement that the designation was in this instance correct. It applies where the effectiveness of the police response is likely to have "a significant impact on the confidence in the police service on the part of the victim in question, the victim's family and/or the community at large". It appears that only a tiny proportion of the criminal investigations in any MPS Borough would be treated in this way.

123. The main requirements of such an investigation would be:

a) to ensure effective leadership, including effective supervision, the provision of clear direction, documented decision making and clear levels of accountability;

b) to develop clearly defined roles for all members of the investigation team;

c) to implement effective review procedures as an integral element of the investigation, and for such reviews to coincide with significant milestones in the investigation;

d) to develop an intelligence-led approach to an investigation, including strategic analysis;

e) to exploit all available forensic opportunities;

f) to form, in most cases, a "Gold Group" as a practical means of addressing the above requirements and developing a co-ordinated response.

124. As with so much of the modern MPS documentation in evidence in this case, this is largely composed of public relations jargon and, although like motherhood and/or apple pie, one could hardly take objection to any of the elements, it is more difficult to apply to the particular circumstances of a developing case. The underlying philosophy appears to be that more resources will be focussed upon a case if it is likely to impact upon the esteem in which the MPS is held. The corollary must be that less time and money will be spent on investigating serious crimes unlikely to attract the attention of the media. This may not be a priority to which all taxpayers would necessarily subscribe.

DI Terry Summers becomes the investigating officer

125. The person who took immediate control of the Milroy-Sloan investigation was the unfortunate DI Terry Summers (now retired). Everyone agrees that he was a very experienced detective and well suited to be the investigating officer in a case

concerning a serious sexual offence. As I have already made clear, however, in the citation from his evidence above at [36], he was less comfortable in the field of public relations or in the glare or potential glare of publicity. One can hardly blame him for that, but it should have been apparent at the outset that, partly for this reason and partly because of the designation as a "critical incident", more than usual supervision was going to be required notwithstanding his long experience as a detective. In any event, I need to remember that for two periods, while Mr Summers was on leave, Mr Miller was actually standing in as investigating officer (18th to 29th May and 13th to 20th June).

The policy on serious sexual offences

126. I have already referred, in the context of the Miss B investigation, to the then prevailing policy with regard to sexual offences in the MPS and, specifically, for the requirement to treat the alleged victim's allegations as truthful and only to declare a "no crime" situation after a full inquiry. There are clearly good policy reasons underlying this approach, but the Milroy-Sloan case illustrates only too well how easily it can be exploited by the unscrupulous, greedy and dishonest. In these circumstances, one can hardly fail to have sympathy for the officers charged with the responsibility of addressing Milroy-Sloan's allegations, but what it certainly needed was leadership and careful monitoring.

127. Indeed, there is some other material to which reference was made by Mr Miller suggesting that the victim had to be believed unless positive evidence had been discovered demonstrating his or her account to be false. Thus, it would not be enough for detectives merely to disbelieve the victim or to conclude that there was no corroborative evidence. It would almost be necessary to prove the negative. This was the National Crime Recording Standard, to which reference was first made in this litigation on 1st March 2005. At para. 2.3, it contains the words:

> "Once recorded, a crime would remain recorded unless there was additional verifiable information to disprove that a crime had occurred".

This seemed to me to be irrelevant for at least two reasons. First, it is on its face addressed to the recording of crime (not to decisions about arrest). Its purposes are declared as twofold:

a) to promote greater consistency between police forces in the *recording* of crime, and

b) to take a more victim oriented approach to crime *recording*.

Secondly, it was not suggested that its criteria were being applied, or even borne in mind, in the context of the Milroy-Sloan allegations during the summer of 2001.

The heavy guns are brought to bear

128. Mr Todd (as Assistant Commissioner) received a written request from Chief Superintendent Kynnersley, the Borough Commander at Redbridge, accompanied by a memorandum from Mr Summers dated 30th May 2001. Unfortunately this document

was rather skimpy and failed adequately to reflect the true state of the evidence as it then stood. While it is true that it did refer, among other matters, to the visit to Max Clifford and a financial motive, it was described on the Defendant's behalf as "flawed, selective and seriously misleading". The object of the senior management team was to refer the decision whether or not to arrest Mr and Mrs Hamilton out of the Borough, not because of any particular complexity in the case from a detective's point of view, or because of any overwhelming public interest in the objective sense, but because of the possible adverse publicity and public relations implications for the MPS. There is an important distinction to be drawn, as Mr Croll pointed out in the course of his evidence, between keeping senior management informed and alerting them to public relations implications, on the one hand, and referring operational decisions to them, on the other hand, which would normally be the responsibility of those investigating the allegations at Borough level.

129. Mr Kynnersley gave evidence that it would have been a bit foolish not to refer it to more senior officers. He added, " … that is the nature of a hierarchical organisation like the Metropolitan Police". Mr Todd said that this request was unprecedented in all his experience as a police officer. He added:

> "On reading the memorandum, I regarded the request as quite ridiculous buck passing and I could not see how I could ever take such a decision without being in a position to review the facts and evidence in relation to the case in some detail. I was concerned that it appeared that no one within the Borough appeared able or prepared to take this decision. A decision on arrest is not something that should be beyond the capability of the Crime Manager for the Borough to take, even in a sensitive and high profile investigation such as this. It is understandable that his advice was sought by his Detective Inspector, but this request for guidance should have been within the expertise of Mr Miller to deal with. There is a clear distinction between making the decision to arrest and briefing senior officers to assist in dealing with the consequent management of the decision to arrest.
>
> Frankly, it was a ridiculous request to make of me. The decision on whether or not to arrest required a careful and balanced review of the evidence, which those in charge of the investigation were uniquely in a position to undertake. They are the investigators and they have the information at their disposal".

130. Thus it came about that Mr Todd referred the matter to Commander Croll, since he was shortly due to take over territorial responsibility for the Redbridge Borough among others. Mr Todd asked him to sort the issue out and to find out what was going on. He emphasised that the issue which concerned him was "the Borough's unwillingness or inability to make this decision". This was, of course, the evidence which I described earlier as being exactly the opposite of what was presented as a draft statement for him to sign on Mr Miller's behalf (see [49] and [50] above). Mr

Miller wanted Mr Todd to say that what he actually found "unprecedented in all [his] experience as a police officer" was "normal procedure".

131. This is the context of the issues underlying this part of the case. I shall need to address them shortly, in the light of the evidence, but meanwhile it is necessary for me to return to what happened after Mr Summers took over responsibility just before midnight on 6th May.

The lack of evidence against Mr and Mrs Hamilton

132. Milroy-Sloan gave various accounts, which were confusing and by no means consistent with one another, of how she was raped and assaulted in the early evening of 5th May 2001 in Mr Lehaney's flat. Although she had been to see Max Clifford the previous Thursday, and was hoping to make money by dishonestly "exposing" the Hamiltons in connection with pornography and prostitution, she did not mention them as being involved in the assaults at Ilford until more than a week later, on 14th May 2001. When she did implicate them, they were supposed to have been present during the rape by Mr Lehaney and to have been involved in masturbation and attempts at oral sex. As is well known, once the Hamiltons had been arrested and subjected to the humiliating publicity, on 10th August, they provided alibi evidence and were swiftly cleared. It is necessary to focus in the course of the judgment on why it took so long and whether it was necessary to have arrested them at all.

133. The only evidence against Mr and Mrs Hamilton consisted in the allegations of Milroy-Sloan herself. The Defendant relies, in its plea of justification, upon the substantial body of evidence showing that Milroy-Sloan was dishonest and unreliable and motivated by financial gain. It is argued that the great majority of the evidence relied upon ultimately at the Central Criminal Court, to demonstrate beyond reasonable doubt that she was guilty, was also material in the possession of the investigators well before 10th August 2001, when the arrest took place.

134. It is emphasised on the Defendant's behalf that it is no part of its case to suggest that the officers at Redbridge should have departed from the MPS policy in relation to serious sexual offences: it would have been possible to clear the Hamiltons and declare the case "no crime" while complying with that very policy. This was because, it is submitted, a "full inquiry" had revealed that there were, to put it no higher, "substantial indications that the allegations were actually false".

135. The nub of the Defendant's case against Mr Miller in this respect is to be found in two paragraphs of the defence:

> "It was in any event the Claimant's responsibility to make the decision on whether or not the Hamiltons should be arrested, and had he taken that responsibility he would or should have informed himself of the detail of the evidence he obtained; had he done that he would or should have concluded that the Hamiltons should not be arrested, and that the allegations should be classified as "no crime"; the Claimant failed to shoulder this responsibility, but passed it on to others, and then failed in his duty to ensure that those others were furnished

> with full and accurate information so as to allow adequate decision making, and further failed to ensure that their decisions once made were properly implemented;
>
> The Claimant thereby bore a large share of the responsibility for the fact that the Hamiltons were arrested amid huge publicity, and subjected to the inevitable distress and humiliation attendant on such an arrest, when this should never have occurred and would not have occurred had the police investigation been diligent and properly resourced rather than defective and inadequately resourced."

136. There is no doubt that these allegations against Mr Miller are supported by the formidable evidence of Mr Todd and Mr Croll, who were called on the Defendant's behalf. Mr Miller therefore has something of an uphill task. His case may be summarised, I hope not unfairly, as being that it was Mr Croll who was responsible for the Hamiltons' arrest rather than himself. He relies, particularly, upon the fact that at an important meeting on 29th June 2001 he argued against the arrest – despite the fact that he had permitted Mr Summers' memorandum of 30th May to be sent to the Assistant Commissioner confirming that there were grounds to justify an arrest. Against this background, the Defendant relies upon the telling evidence of Mr Todd:

> "It is [Mr Miller's] job to make his views known and if he felt strongly in his professional opinion as the Borough Senior Detective that there should not be an arrest, I find it astonishing that he did not make this clear with a reasoned analysis to support his view … Mr Miller's responsibility for this investigation continued after the involvement of Commander Croll. It was his responsibility to ensure that any briefings [to] Commander Croll were accurate and reliable ".

137. Mr Todd addressed what Milroy-Sloan had had to say about the Hamiltons and concluded his witness statement as follows:

> "These were extremely unpleasant allegations. Such allegations have been known to destroy people's marriages and can have horrendous consequences for the people concerned. If, apart from the allegations of a discredited 'victim', there was a total absence of evidence to support the allegations, they should have been put to the Hamiltons with great care, discretion and sensitivity.
>
> In conclusion, I would have expected Mr Miller to have led the investigation and to have made the decision on arrest. If he felt this decision was not one he was competent to take, at the very least he should have ensured that he understood the evidential position and that it was accurately summarised for the benefit of those to whom he had passed the decision. I have read Mr Miller's Amended Reply and his description of his role and responsibilities. They fall far short of the standards expected of

> a DCI at the relevant time, or any time in my experience. From what I have seen, he has shown a lack of leadership, guidance and competence in his handling of this investigation".

138. It is right to record that objection was taken to this evidence, in a schedule served on 2nd February 2005, but it seems to me to be admissible on the proper role and functions of a crime manager in these circumstances. In my judgment, what really matters is the Defendant's case that Mr Miller did not provide Mr Croll with a "reasoned analysis to support his view" that the Hamiltons should not be arrested. That was especially necessary in the light of the tentative conclusion of Mr Summers in his memo of 30th May. A clear analysis of the evidence would be required, so as to demonstrate why, between 30th May and 29th June, it had become apparent that the Milroy-Sloan case should be regarded as " no crime" after all. The validity of these points does not depend on their having been voiced by any particular witness. They emerge quite clearly from the totality of the evidence.

Mr Warby's (approximately) 52 points

139. Mr Warby relied upon 52 points, of which some were not surprisingly more cogent than others. It is necessary to consider those in some detail in order to decide whether, as Mr Miller submits, "this was a close judgment call" as at 29th June and/or 10th August 2001 or whether, by contrast, it was by then clear that in accordance with MPS policy the conclusion should have been "no crime".

140. There was, of course, the fact that no corroboration was ever obtained for the Milroy-Sloan allegations against the Hamiltons. In addition, her own evidence had been undermined so fundamentally that reliance could not be placed upon it. As Mr Miller accepted in cross-examination, it was sufficiently undermined by all the information available to them for there to be "no chance of getting any conviction by a court, and therefore it would be very unlikely there would be a prosecution or charge against the Hamiltons supported by the CPS". Her credibility was in his view "thoroughly undermined" in the light of the information gathered. He thought the allegations against the Hamiltons "absolutely absurd".

141. Despite this, he still sought to defend the view expressed by Mr Summers in his 30th May report that there were "grounds for arrest at that date". In other words, despite the thorough undermining of Milroy-Sloan's account, he seemed to take the view that a signed witness statement from the "victim" would in itself provide grounds for arrest. This is clearly why Mr Todd was of the view that Mr Miller and other members of the senior management team in Redbridge were applying the MPS policy on serious sexual offences too "slavishly". In the light of this stance, Mr Warby took Mr Miller through his 52 points in cross-examination. It is the Defendant's case that, when combined with the complete absence of corroboration for her story, the cumulative effect of these undermining factors meant that the case should be classified as "no crime" and the Hamiltons not be arrested.

142. All of these points related to matters known to the police by the time the arrest actually took place on 10th August.

143. The first point was that Milroy-Sloan's account should be approached with great caution because she was known to have criminal convictions, including for dishonesty. Mr Miller pointed out, quite fairly, that many victims of crime themselves have criminal convictions and investigating officers could not ignore allegations of rape simply because the alleged "victim" herself had a criminal past. Obviously that must be right, but nevertheless it raised a serious question mark over her uncorroborated allegations. Indeed, Mr Miller himself told the Clarke inquiry, which looked into these matters and reported two years afterwards, that it was one of the key factors which he thought thoroughly undermined her credit.

144. The second point is that one of Milroy-Sloan's friends, called Mandy Wheelton, had between 29th June meeting and the date of the arrest informed the police that Milroy-Sloan had been boasting to her of the money she was going to make and attempting to coach her in a dishonest story she was supposed to tell the police. This information was passed on by Mr Summers (at Mr Miller's request) to Commander Croll on or about 31st July 2001. It plainly ought to have rung the loudest of warning bells with all concerned. It seems that it was not enough to change the plan of action.

145. Thirdly, information had been made available from the Lincolnshire child protection authorities about previous false allegations she had made, in particular an allegation of assault against her former partner in relation to a child. "It was concluded that this, again, was a spurious allegation and another instance of Nadine attempting to manipulate the Police and Social Services into becoming involved in the animosity between her and other family members". The report from Lincolnshire also referred to her "history of providing unreliable information". Mr Summers says he raised the matter at the meeting with Commander Croll, but he was not actually shown the report. Mr Croll said in evidence that he recalled mention of some information from Lincolnshire as to her unreliability but he was unaware of the existence of the written report. Both sets of grandparents of the child in question, including Milroy-Sloan's own parents, were also known to be troubled about her mental state.

146. The fourth point was that she had made mention in conversation with Lehaney of her intention to implicate a police officer in impropriety. He mentioned it in his police interview on 7th May 2001. She told him she was "shagging" a police officer in Grimsby and planning to put in a complaint against him and claim some compensation. Her scheme was to suggest that he was abusing his position, as he had first met her in the course of his duty (because "she'd had some trouble with the druggies"). A pattern is already emerging. Whatever reservations the police might have had about Lehaney, this account of Milroy-Sloan making dishonest allegations for personal advantage is clearly consistent with the information from Mandy Wheelton and the Lincolnshire child protection authorities.

147. Fifthly, she had told Lehaney of a plan to blackmail food suppliers by poisoning food in supermarkets. This too came from Lehaney's interview. He reported that Milroy-Sloan and Mandy Wheelton were planning to insert excreta into Marks and Spencer sandwiches and claim that it was present when they purchased them. This obviously links up with Point 2.

148. These first five points were all grouped by Mr Warby under the general heading of dishonesty. He next turned to those factors which supported the proposition that Milroy-Sloan had a strong financial motive to invent a false story.

149. The sixth point was that she was known to have been to visit Max Clifford on 3rd May 2001 in the hope of selling a story about the Hamiltons. There was obviously therefore a financial motive. The allegations of rape came only a couple of days after she learnt that she stood to gain £100,000 from exposing them.

150. The seventh point was that she had not mentioned her visit to Max Clifford to the chaperone at all and, when she did address the point, she lied about it – saying that she stayed in a waiting room while her uncle had spoken to Max Clifford. Mr Clifford had already made it clear that he spoke to her personally.

151. The next three points (8, 9 and 10) were devoted to supporting the proposition that the allegations were inherently improbable. Point number 8 was that Lehaney was 18 stone, registered disabled and suffering from arthritis. As he put it, "If I could get on top of her, at 18½ stone, with my knee caps, it would be a bloody miracle". He was, in any event, impotent. Mr Miller made the point that they did not have a medical report on Mr Lehaney and his physical problems, but if they had reason to doubt him this was a step which could have been taken. I have now seen a report from a Dr. Sinha confirming the extent of his difficulties.

152. Point number 9 was that the Hamiltons were *prima facie* unlikely to be involved in such serious criminal offences. They were both middle-aged and "of previous good character". Mr Southcott (Mr Miller's line manager and a member of the Redbridge Senior Management Team) gave evidence to undermine this proposition by saying that there was nothing inherently improbable, citing the example of a back bench member of parliament some years ago who was found dead with a bag over his head. That was a desperate point, since there had been no criminality involved and no connection whatever with Mr or Mrs Hamilton. Some might think it reasonable, at least, to approach with caution allegations against a former member of parliament and minister of the Crown to the effect that that he was involved in rape and indecent assault. Statistically, at least, it would seem unlikely. The incidence of serious sexual offences in this section of the populace would appear to be below average. At trial Mr Miller accepted the inherent absurdity of the allegations. It is nonetheless understandable how an investigating officer grappling with the MPS policy on serious sexual offences would be troubled about relying on previous good character, or inherent absurdity, because this would in itself run counter to the requirement that the alleged victim's assertions be treated as truthful. There has to be a full inquiry, in which the alleged assailant's good character will be no doubt a significant factor, albeit one that cannot be treated as determinative. Here, of course, it was merely one of many factors – all pointing in one direction.

153. Point number 10 was closely related. Mr Lehaney himself had pointed out the implausibility of the Hamiltons, who lived up in Cheshire, becoming involved in sordid criminal offences in a council flat in Ilford. He made compelling common sense observations in his second police interview on 22nd May 2001:

> "The guy lives up in Cheshire or somewhere, right up north somewhere in a bleeding million pound mansion. What the hell's he doing, you know, with me down in Ilford in a one-bedroom council flat? I mean, anyone with half a brain could see that."

To say the least, the allegations required to be approached with caution. One would certainly be on the look out for corroboration.

154. Point 11 was that the police had ample evidence that "Hamilton" was an alias used by Mr Lehaney. This was confirmed by an examination of his computer. He had a car, driving licence and Tesco card registered in that name and used it for sending e-mails.

155. There was thus reason to suppose that the name "Hamilton" was, at least at first, introduced by Milroy-Sloan for that reason, possibly out of confusion. That was point number 12.

156. Next Mr Warby turned to internal inconsistencies in Milroy-Sloan's story. Point 13 was that when Milroy-Sloan's uncle, Mr Iles-Blackmore, first reported the alleged crime to Max Clifford he referred to his niece having been attacked by a "chauffeur" called Barry and did not mention the Hamiltons being involved in the offence.

157. Point 14 concerned a document which the police had available. There was an e-mail exchange and a photograph which Mr Blackmore had provided to the police as early as 8th May. It appears that at 4.40 p.m. on Sunday 6th May Milroy-Sloan sent an urgent e-mail to a Mr Matthew Stokes (who described himself as a "random chat partner") asking him to send her a photograph. She was using the address "sexpot" (sexybaby @tesco.net). It was in these terms "URGENT. BABE. CAN U SEND A COPY OF THAT PIC OF JOAN 4 ME ASAP. WILL EXPLAIN LATER. NADSXX". Mr Stokes sent back a photograph as requested at 6.28 p.m. This exchange was suggested by Mr Warby to be significant because he described it as "chirpy", despite the fact that the request was made 15 minutes before she gave her first account to the police of the alleged assault. She did not at that time implicate the Hamiltons in any assault, but claimed to have been raped at Lehaney's flat by him and three other persons. Those other persons were, respectively, a woman called "Joan", a man called "James" and a further male who was unnamed. At the meeting, by contrast with the tone of the e-mail, she put on a tearful front.

158. Point 15 is simply that in her initial account to the police (like her uncle) she failed to identify the Hamiltons as assailants. She had also told officers at Peckham of "Joan" and "James".

159. Point 16 was that when she was examined by Dr Butler, also on 6th May, she gave her an account which did not name the Hamiltons either.

160. Point 17 is less formidable. On 8th May Mr Iles-Blackmore provided the police with the photograph identified as "Lady Joan" sent by Mr Stokes on the Sunday evening. He reported that this woman was the female assailant. Everyone agrees the naked woman in the photograph is not Mrs Hamilton.

161. Point 18 was that Milroy-Sloan returned to Grimsby and became "evasive". That was how Mr Summers described it on 9th May. (The Summers report presented to Mr Croll gave the impression, not that she was "evasive", but rather that she was "traumatised" by her experience.) It is fair to say, on the other hand, that he saw her being interviewed on 16th May and at that stage apparently found her performance credible.

162. Point 19 was that Milroy-Sloan only named the Hamiltons as assailants on 14th May, some eight days after her first complaint. The allegation was apparently first made to DC Pridige in the course of a telephone call.

163. Closely related is point 20. She thereafter pretended that she *had* named the Hamiltons as assailants from the outset. She claimed that she told the story to Constable Kilgallon at Peckham police station. This was denied by the officer in question.

164. Next there followed four points (21, 22, 23 and 24) relating to claims made by Milroy-Sloan about material she could produce, which she never made good.

165. She claimed to have audiotapes available of the Hamiltons threatening to "feed her to the fishes" (Point 21). These never materialised. Point 22 was that she claimed to have given such tapes to a PC Bone at Grimsby, but he denied that. Point 23 was that she said she had pornographic e-mail exchanges with Mr and Mrs Hamilton – which again she failed to substantiate.

166. Point 24 was that Milroy-Sloan claimed to have photographs of Mr and Mrs Hamilton with a naked fourteen-year-old girl which, again, she failed to produce.

167. Point 25 was that Mr Stokes made a statement on 19th June 2001 to the effect that she had been attacked "along with her cousin". This was either a different version of the supposed events of 5th May or an account of a different attack altogether. It was never substantiated and appears to be another example of fantasy.

168. Next Mr Warby turned to lack of corroboration. Point 26 was that the medical report was neutral. It was no more than consistent with Milroy-Sloan's account and could not be described as corroborative. Certainly, there was nothing to corroborate the story about the Hamiltons (e.g. by means of DNA). Mr Croll said that he was told that the medical evidence actually *supported* Milroy-Sloan's allegation. Yet the distinction between "consistent with" and "corroborative of" is critical.

169. Point 27 was that a fax from Chepstow laboratory on 25th May 2001 revealed that there was no evidence of semen on Milroy-Sloan's tampon, swabs, breasts or bracelet. Nor specifically, it would follow, was there any evidence of semen from Neil Hamilton, who she was alleging had ejaculated on to her breasts. (That would follow, of course, even though he had not been asked for intimate samples.) This was, however, of marginal relevance in view of the fact that, on her own account, she had been made to have a bath (thus removing relevant traces). One of Lehaney's photographs shows her with wet hair which would tend to confirm at least a voluntary bath or shower.

170. Point 28 was that all the finger print evidence obtained from Mr Lehaney's flat belonged to him.

171. Point 29 was that there was no evidence to suggest that Milroy-Sloan had been drugged. The relevance of this is that, if drugs had been found in her body, as was the case with Miss B, it might conceivably explain why she should have chosen to stay on in Lehaney's flat and socialise with him despite the gang rape. The point does not go very far, however, because any such drug might have dispersed anyway.

172. Point 30 was that a statement emerged on 12th July 2001 showing that there was no forensic evidence of vaginal intercourse with ejaculation. This is not especially impressive since Milroy-Sloan told Dr Butler that she did not think ejaculation occurred. It would at least be consistent with Lehaney's evidence that the only sexual activity was a little consensual masturbation.

173. Point 31 was that examination of Milroy-Sloan's computer revealed no evidence of the contact she claimed between herself and the Hamiltons.

174. Point 32 was similar, in that the examination of Lehaney's computer was equally negative.

175. Point 33 was that the uncle and aunt were not willing to assist the police by providing statements at any time prior to the Hamiltons' arrest. Mr Miller described this unwillingness of her relatives to assist her, in pursuing an allegation of gang rape, as "deeply troubling".

176. Point 34 was that Lehaney gave an account that was quite inconsistent with that of Milroy-Sloan and was in itself open, consistent and plausible. From 7th May onwards his case was: "To be polite, it's total bollocks". Nothing ever emerged to gainsay that proposition.

177. Point 35 was that e-mail traffic did show that Milroy-Sloan was in contact with a "Joan Hamilton", but that was actually a name used by Mr Lehaney.

178. Point 36 was that a neighbour of Mr Lehaney (Mrs Hollinshead) had told police on 16th May 2001 that Mr Lehaney had told her in advance that he was having a visit from Milroy-Sloan (which might at least suggest a relatively normal social relationship rather than a planned gang rape).

179. Point 37 was that neighbours had told the police that there had never been any mention to them by Mr Lehaney that he knew the Hamiltons or had acted as their chauffeur. Mr Miller made the rather surprising observation at this point that people sometimes have "covert lives". I should have thought this would be an easy point to check. One surely did not need to be Sherlock Holmes to discover that Mr Lehaney was *not* the Hamiltons' chauffeur.

180. Point 38 relates to video footage that was shown in the course of the trial from a Tesco branch, showing that Milroy-Sloan had gone off, apparently quite happily, with Lehaney on a shopping trip within an hour or two of the alleged rape and assault. The footage was timed at just before 7.30 p.m.

181. This leads to point 39. We also saw photographs taken by Lehaney on the day of the alleged rape. She appeared quite happy and, in one of them, enjoying a glass of wine (as Mr Warby put it, "laughing her head off"). There appeared to be no dispute as to the timing of that photograph. It was after the alleged rape and thus was obviously a factor supportive of Lehaney's account and inconsistent with hers.

182. Point 40 related to some video evidence taken at the scene of the alleged crime. It is a small point, but Milroy-Sloan claimed that there were two small rugs in the room when she was raped. The video recording shows one large rug. Her case was that they must have been removed after the event.

183. Point 41 was that the evidence of Milroy-Sloan was inconsistent with that of her uncle and aunt as to the clothing she had worn at the time of the offence. Again a small point.

184. Point 42 related to the CCTV footage from the Esso service station to which Milroy-Sloan accompanied Lehaney on Sunday 6th May. This was also shown during the course of the trial. There was nothing untoward, and Mr Warby makes the point that, had she wished to, she had every opportunity to escape.

185. Points 43 and 44 relate to two statements made by some half-brothers, Mr Yates and Mr Cowley. They had seen Milroy-Sloan on the Sunday and noticed no signs of distress. Mr Miller sought to make something of the point that Mr Cowley observed that the woman's head was bowed. The points that matter are the absence of any distress and that no attempt was made to escape.

186. Point 45 was that checks made on Mr Lehaney's telephone and telephone bills demonstrated no connection with Mr and Mrs Hamilton.

187. Mr Warby then turned to the contemporaneous evidence which appeared to show that police officers did not believe Milroy-Sloan's account. The relevance of this is that suspicion is a pre-requisite of lawful arrest: See e.g. Clayton & Tomlinson, *Civil Actions against the Police* (3rd edn.) at 5-060.

188. Point 46 (and here the numbering seems to go a little awry, although it matters not) concerned the first police officer, in point of time, to disbelieve what Milroy-Sloan was saying about the Hamiltons. DI Catriona Cribb at Peckham police station was disbelieving of what she said as early as 6th May. It will be remembered that at this stage she was not accusing the Hamiltons of being involved in any assault. What she was apparently alleging was a far-fetched story about her being engaged herself at Mr Lehaney's flat in Ilford as part of a "sting" operation for Max Clifford, aimed at exposing the Hamiltons' involvement in a pornography racket. That is what DI Cribb found incredible. Of course, later the story changed in various respects, but this would surely detract from rather than support her credibility. What DI Cribb noted was:

> "We no longer believe that Neil Hamilton is involved. The 'sting' target appears to be a man in the porn/prostitution trade who uses an alias of Hamilton".

She referred to the fact that Clifford had "set her up to meet Neil Hamilton's driver after a 'virtual chat' on the internet". She also recounted Milroy-Sloan's version of events:

> "She claims to have met Hamilton's driver Barry Lehaney in Oxford Circus yesterday.
>
> She was then taken to a flat in London where she claims she was raped by three men including Lehaney and another woman.
>
> They then bathed her and gave her new clothes (presumably to erase all forensic evidence).
>
> … Further inquiries seem to suggest that Neil Hamilton is not involved however the 'sting' target appears to be a man in the porn/prostitution trade who uses an alias of Hamilton".

189. Points 47 and 48 both related to another officer, DC Rees, who was also disbelieving. They seem now to have merged into one. In the second interview with Lehaney on 22nd May Mr Rees commented that he believed that Milroy-Sloan might be confused. He explained to Mr Lehaney on that occasion:

> "… I believe that the victim of the allegation may be under the impression that she was speaking to a female over the internet and that pictures sent to her under the name of Lady Joan, that this picture was sent to her purporting to be like a self portrait, i.e. that this is Lady Joan depicted in the picture and thereby she would be fooled into thinking she was receiving e-mails from Lady Joan, i.e. Mrs Hamilton, that is why I am asking the question".

This certainly discloses a picture of confusion on someone's part – not least because Mrs Christine Hamilton was not "Lady Joan".

190. Point 49 is that DI Summers himself was doubtful as to the truthfulness of Milroy-Sloan's allegations (although that was not the impression was given in his 30th May report). I have already referred to Mr Summers' note of 9th May about Milroy-Sloan being "evasive". That very note records "the D/I is dubious about the whole allegation". Mr Croll was certainly not told of Mr Summers' doubts and could hardly know about it from the Summers report of 30th May, which suggested that the evidence justified arrest. It referred to Milroy-Sloan being "adamant" and "positive" about the identification of the Hamiltons as assailants. Mr Croll was also told that "officers" found her credible, but it was not revealed to him that other officers did *not* find her credible.

191. Points 50 and 51. On 17th May Mr Summers confirmed the decision "not to arrest Mr and Mrs Hamilton". He added that although Milroy-Sloan was asserting that they *were* part of the assault, "her evidence is not sound, in relation to arrests". Not surprisingly, when the allegation was first made against the Hamiltons by Milroy-Sloan on 14th May Mr Summers had noted, "I do not propose to arrest or contact them unless other urgent information arises".

192. It seems from the evidence of Mr Summers that, despite all the factors casting doubt on Milroy-Sloan's account, he was basing his conclusion that an arrest was appropriate on 30th May purely on the fact that she had now signed a statement – as though the reduction into writing somehow gave her allegations a new authority, such as to overcome his (and others') earlier doubts.

193. Point 52 is a similar point, but in relation to Mr Miller himself. Like Mr Summers, he apparently disbelieved her allegations and did not suspect that the Hamiltons were guilty of rape or indecent assault. Curiously, when he came to contribute his views on 29th June, Mr Croll was not informed of these doubts on the part of the investigating officer and the crime manager. As I have already noted, actual suspicion is required on the arresting officer's part – quite apart from the need to demonstrate objectively that there was "reasonable cause" for that suspicion.

Was Commander Croll adequately briefed?

194. The Defendant's case is that all or most of these matters should have been recorded in writing and drawn to Mr Croll's attention so that he could be fully briefed and able to make a recommendation or judgment in the light of the facts as they stood. The cumulative effect is, of course, very powerful indeed. This was acknowledged, in general terms by Mr Croll in the course of his evidence. The following two passages in his answers to Mr Suttle are of some interest in this context:

> "Mr Suttle: [Mr Miller] made the point that making an arrest solely to comply with the policy would be or might be unlawful?"
>
> Mr Croll: I do not recall that.
>
> Mr Suttle: That was why he was concerned about the public relations aspect, because if the police made an arrest and it turned out to be unlawful, that would expose them to criticism?
>
> Mr Croll: If he was aware at that time of the information I have subsequently found out, that I was not briefed to, then he had every right to express that opinion. If he had raised those issues with me, I can assure you that the decision would have been very different".

A little later he added:

> "… I now know that I was not given the information I needed to be given in June to reach that decision. If that information had been available to me, I can assure you that there would have been a very different decision [on the arrest of the Hamiltons]".

195. It is necessary to consider in a little further detail the role that Mr Croll did (and did not) fulfil in connection with the decision to arrest the Hamiltons. There is no doubt that Mr Todd was irritated when he received the memorandum from Mr Kynnersley with the attached report from Mr Summers. As I have already made clear, he was

frustrated at the apparent inability or unwillingness on the part of the crime manager, and the senior management team generally, to take a decision which fell squarely within their jurisdiction. Mr Summers had ended his report of 30th May with the query "May I have directions in relation to the arrest of Mr and Mrs Hamilton?" When he received it, Mr Todd said he could not interpret that as anything other than a request that he (Mr Todd) make the decision for him. He invited Mr Croll to go down to Redbridge and find out exactly what was going on.

196. Mr Croll saw himself as a "Gold" co-ordinator. His role was described in his evidence:

> "It is not to lead the direct investigation. It is not to be involved in the actual undertaking of the task to gather the evidence. It is an oversight. My role is to look at the consequences of the investigation as a critical incident. I did not make all of the management decisions by any means. I would be briefed on these if there was a wider significance to them, I would intervene and direct a contrary course of action. It was unusual for me to be involved in the decision to arrest or potentially arrest the Hamiltons".

He described his role as being "to act and advise and counsel". He continued:

> "… I called advisers to a meeting at Redbridge police station, to assist me in managing the consequences of decisions that might be made at the meeting. It was not to take personal command of the incident. I could not. I had too many other responsibilities. And frankly there were at that time some more serious issues on my agenda than this one.
>
> … [Mr Miller's] job was actually to manage the day-to-day investigation, to make the operational tactical decisions that needed to be made to bring the matter to a speedy conclusion. My role was to advise him, to listen to what he was going to do, to assess the consequences of what he was considering doing and to offer advice and counsel. If I thought it was going wrong, clearly I would intervene and direct an alternative course".

197. When the meeting took place on 29th June, Mr Miller did not chair it or do the talking. Nor did he plan the briefing to be given to Commander Croll. He left part way through, in order to attend a pre-arranged appointment with his solicitors to discuss one of his (then pending) disciplinary hearings. Mr Croll obviously did not think his contribution particularly useful. He left the talking to Mr Summers. He described the meeting as follows:

> "As I read through Terry Summers' memo of 30th May 2001 [towards the end of June] I recall thinking that it was surprising that the decision as to whether or not to arrest the Hamiltons had not been made by that stage as the allegation had been

made at the start of May … almost two months ago. I was concerned as to the lack of reported progress outlined in the memo.

I have been asked whether or not I would have expected DCI Miller as the Borough Crime Manager to be involved in the preparation of Terry Summers' note. The truth is that, in my opinion, that note should have been DCI Miller's note, he having taken over the inquiry due its nature. If the case was important enough for the Borough to refer it to the Assistant Commissioner [Mr Todd], then it was important enough for the Borough Crime Manager to prepare the briefing note himself. If he did not prepare the note himself then he should at the very least have been involved in its preparation and assessed it against the evidence to ensure it was fair, accurate and complete before it was sent. If for some reason he was not available when the note was being prepared to check it before it was sent, then I would have expected him to review it as soon as possible on his return. If he materially disagreed with the note or decided when he assessed it against the evidence that it was unfair, inaccurate or incomplete then he had a responsibility to make this known. …

My view now is that I should have insisted that [Mr Miller] stay to the end. He was the Crime Manger and it should have been him who was running the briefing and ensuring that the evidence was presented to me fairly and accurately and without any omissions. One of the reasons I did not insist on Miller staying was that he was adding so little value to the discussion that I did not see any point in him remaining. …

DCI Miller did express the view that we should not arrest the Hamiltons. However he was not able to justify this view by reference to the evidence. He just kept repeating that Milroy-Sloan and her family had been to see Max Clifford before the alleged incident had occurred which he said affected her credibility in his mid. He also talked a lot about the fact that, if the Hamiltons were arrested, it would have public relations implications. Whilst the fact that Milroy-Sloan had visited Max Clifford before the alleged incident was one point to bear in mind when assessing her credibility, this did not necessarily mean that the rape had not happened. … As to the fact that there would be public relations implications for the Met if the Hamiltons were arrested and found out to be innocent, this was not something which would ever been a factor in my decision. The possible public relations implications were a reason to implement any next step with careful consideration and sensitivity. They were not a factor in deciding whether to arrest the Hamiltons at all if the evidence so justified. …

> In the course of this litigation I have discovered that Summers' note and the briefing given top me on 29th June were inadequate. At the time it was clear to me that there were a number of lines on inquiry which had not been properly managed. Nevertheless, I felt that we had grappled with the points made in Terry Summers' note at the meeting and had identified clearly what was outstanding and the current state of the evidence. Now that I know the information I was not told at the meeting I have to accept that a thorough review of the evidence did not take place at the meeting. With hindsight, my failing was not to go back to first principles with Summers and DCI Miller. It was their investigation and I was entirely reliant on the briefing which they gave me. I assumed that anything I needed to know they would tell me. Subsequently I have been made aware of information, in police knowledge and possession at the time of the briefing which I was not told of and would have affected my decision."

198. Mr Croll then went through in detail those matters which he had subsequently discovered but was not informed about at the time. If a reasonable decision-maker had all of that information, he seemed to be saying that the issue of whether to arrest Mr and Mrs Hamilton would be far from a "close judgment call". There should not have been an arrest. What is clear is that the vast majority of Mr Warby's 52 points, identified above, were *not* drawn to his attention. As far as I can judge, the particular matters of which he was not informed were those which I have numbered 4, 5, 8, 9, 10, 11, 12, 13, 14, 17, 18, 20, 22, 24, 25, 26, 27, 28, 35, 36, 37, 39, 41, 42, 43, 44, 45, 46, 47/48, 49, 50/51, 52.

199. Had he known the full picture, as he confirmed positively in evidence, the decision would have been different. In the light of his evidence, and that of Mr Todd, it is very difficult to resist the conclusion that it was Mr Miller's responsibility to brief him (assuming that he should have been brought in to the decision-making process at all) and that he did not do so adequately. I appreciate that Mr Croll (as opposed to Mr Todd) might be thought to have a motive for seeking to distance himself from the decision to arrest, but for the reasons I have summarised above I believe he was fairly entitled to do so.

200. In all the circumstances, one may surely question Mr Miller's assertion that Mr Summers was "master of the facts". We know from the decision log of 29th June that Mr Croll did not actually decide that there should be an arrest. He recorded in his own hand that the Hamiltons should be interviewed but that officers should proceed with care. Mr Summers was not, however, alive to these shades of grey. He seems to have treated the decision as an instruction to arrest the Hamiltons (albeit at some indefinite point in the future). For example, he told Det. Sgt Norman in an e-mail of 19th July:

> "Ray…have the OK from Cmdr Croll.
>
> I intend to try the solicitors first, but in any event it means negotiating a date and police station.

> I will be over later to discuss, but in the meantime we need dates to avoid for us. TS".

Did Mr and Mrs Hamilton have a chance to avoid arrest?

201. Subsequently, Mr Summers had telephone conversations with representatives of Messrs Harkavys, the solicitors then acting for Mr and Mrs Hamilton. I heard evidence from the two gentlemen concerned, who were Mr Jeremy Summers (no relation) and Mr Michael Coleman (who gave evidence by means of video link from Australia). It is now Mr Miller's case that the Hamiltons and their advisers could have avoided the embarrassing circumstances of the arrest on 10th August 2001. If they had provided details of their alibi earlier, the arrest would not have been necessary at all. I cannot accept this. In the light of the evidence of Mr Coleman and Mr Jeremy Summers, I am quite satisfied that Mr Terry Summers gave two alternatives only – to be arrested by appointment or to be arrested without notice. The former option was the less unattractive. If the police simply turned up one day for a dawn raid, there was the possibility of a re-run of the notorious media scrum which happened when Kevin Maxwell was arrested at his house over 10 years ago. Mr Summers proffered arrest by appointment as more "discreet".

202. There was no possible room for these two solicitors to misunderstand the position. Indeed, Mr Terry Summers' own witness statement, to my mind, makes this clear. He described his conversation with Mr Jeremy Summers on 19th July 2001:

> "I explained to Mr Jeremy Summers that I had received an allegation [against] both Mr and Mrs Hamilton of a serious sexual assault. I did not use the word 'rape' (which I believe was used for the first time at Barkingside on 10th August), since the allegation against the Hamiltons was one of sexual assault. He said that he would need more information; and I said that all I was prepared to tell him at that time was the date that this incident was alleged to have happened, 5th May 2001 and that the alleged assault was against a young lady. He asked what time and I said that I did not think that it was appropriate to give him the time as I have given the day. According to Mr Summers' note I said that I had sufficient evidence to arrest Mr and Mrs Hamilton and interview them … and twice explained that I wanted to deal with the matter in a discreet manner. I proposed that they should attend at an agreed time at Barkingside, since it was quiet, since the custody suite there was not operational and could be opened up especially for that purpose, and since it would be discrete (*sic*). (Very few people within the Borough knew what was going on with the arrest of the Hamiltons, and only the people who needed to know were informed.) I explained that they would have to be formally arrested. I also explained that I would invite the Hamiltons to account for their activities on 5th May, and thereby gave them an unmistakable opportunity to avoid having to be arrested and

> interviewed. I did not use the word 'alibi' but the implication was obvious, especially to a lawyer."

Two things emerge with clarity from the passage. First, "they would have to be formally arrested". Secondly, any opportunity to avoid being arrested was left to "implication". Although Mr Terry Summers now says the implication was "obvious", I am bound to say that it was not obvious to me; nor was it apparent to Mr Jeremy Summers or to Mr Michael Coleman.

203. In practical terms, unless he had given the details of time and place where the offences were supposed to have happened, it is difficult to see how the Hamiltons or their advisers could possibly provide an alibi. They were not unnaturally concerned that, since they already knew Milroy-Sloan to be a liar, her story might shift and adjust according to whatever tentative or incomplete alibi they could provide. Against this background, I find it quite extraordinary that Mr Terry Summers went on to make this claim in his witness statement:

> "The Hamiltons could have avoided all of that had they simply taken the opportunity between 19th July and 10th August to inform me of their whereabouts on 5th May so that I could have checked that information and eliminated them from the inquiry. I cannot resist the conclusion that they did not do so because in reality they welcomed the publicity".

I have no difficulty in rejecting that proposition.

204. There are no contemporaneous documents, prior to the arrest on 10th August, which support the case of Mr Miller and Mr Terry Summers that an opportunity was given to the Hamiltons to avoid the arrest. It is true that subsequently memoranda came into existence, after the balloon had gone up, in which Mr Terry Summers was purporting to record that such an offer had been made to the Hamiltons' solicitors, but I do not find his recollection accurate in this respect.

My conclusions on the Milroy-Sloan inquiry

205. I have come to the following conclusions in relation to this aspect of the case. While it was appropriate to refer outside the Redbridge Borough to warn senior officers of the possible public relations implications, given the involvement of the Hamiltons and potentially Max Clifford, I do not accept that it was necessary to involve either Mr Todd or Mr Croll in the decision-making process, save possibly to seek advice. It seems to me clear, therefore, that Mr Miller should not have sanctioned Mr Summers' note of 30th May asking the Assistant Commissioner for "directions" on the arrest decision. The reference to ACPO level officers was a matter on which Mr Miller "took a strong lead". Moreover, a proper analysis of the information within the knowledge and possession of the police, whether before 29th June or 10th August 2001, would have led to the decision that it was inappropriate to arrest the Hamiltons – without in any way infringing the then current MPS policy on serious sexual offences. I accept the thrust of Mr Todd's evidence as quoted in [136] and [137] above and that of Mr Croll at [197].

206. Once Mr Croll had become involved (rightly or wrongly) in the decision-making process, it was Mr Miller's responsibility either to brief him directly, or ensure that he was fully briefed, on the state of the evidence as it then stood. His own view (i.e. that the Hamiltons should *not* be arrested) should have been fully and cogently presented. It was hardly reasonable to expect Mr Croll to rummage around among the documents available at Redbridge in order to make his own decision from scratch. He simply did not have the time available and was fully entitled to depend upon the investigating officer and/or the crime manager to give him an up to date and accurate briefing. In the light of the content of Mr Warby's "52 points", it is quite apparent (as Mr Croll emphatically confirmed in evidence) that he was not properly briefed.

207. Since it is Mr Miller's case now that the Hamiltons could have avoided the embarrassment of the arrest, he can hardly contend, consistently, that they needed to be "formally arrested". In those circumstances, steps should surely have been taken, as early as possible, to establish what the Hamiltons had to say about Milroy-Sloan's allegations, to consider any alibi which they might be able to put forward, and to eliminate them from the inquiries – as belatedly happened on 28th August 2001. The inactivity up to 19th July seems to have been justified (inconsistently with Mr Miller's present case) by reasoning that the Hamiltons could not be approached without the sanction of arrest and/or search warrants. Otherwise, they might have set about covering their tracks.

208. There was in evidence a statement from Mrs Hamilton. The decision was made that its contents would not be challenged on Mr Miller's behalf. She confirmed that they had no opportunity to avoid arrest and also that they did not bring publicity upon themselves. It contained the following passage:

> "I have been informed by [the Defendant's solicitor] that the Claimant's amended reply also alleges that the publicity surrounding our arrest was largely caused by us and could have been avoided had we so chosen and we had therefore only ourselves to blame for any distress and humiliation that this caused.
>
> This is nonsense on stilts".

She also described the distress and humiliation of what took place at the police station during two and a half hours of interviews. Her account did not indicate that the allegations were put with the "care, discretion and sensitivity" Mr Todd thought appropriate. There was the understandable distress also caused to them over the search of their premises both in Cheshire and in Hammersmith. They happened to be attending a funeral on the morning of 10th August and she described what was happening meanwhile:

> "I know now that, even as we arrived at the funeral, six Ilford policemen, including a computer expert, were charging up the motorway in a hired minibus, with a warrant to crawl over everything and everywhere in our home. Another six were dispatched to the flat and another six searched our car, parked in the underground car park near Michael Coleman's house.

> His wife kindly supervised that and confirmed how many descended opening every nook and cranny, grabbing the laptop in the boot. The search of the [Cheshire home] took three and a half hours, plus travelling time. Adding to this the time spent by the twelve police in London [our flat and our car] I estimate that more then one hundred hours must have gone in to the searches. It beggars belief that this was allowed to happen".

It is to be remembered that none of this evidence was challenged and, what is more, that the considerable expenditure of time and police effort took place on 10th August when the information set out in Mr Warby's "52 points" had been known to the police for some time.

209. It is quite untrue that Mr and Mrs Hamilton sought or welcomed the publicity, as Mr Terry Summers and Mr Miller have suggested. It will be recalled also that everything was blamed on the "publicity seeking Hamiltons" in the Carter-Ruck letter of 28th June 2004. That is an extraordinary proposition. To have made such an allegation was an error of judgment. By the time of the trial counsel, rightly, decided that the allegation should not be pursued. To be accused of involvement in gang rape and indecent assault can have no conceivable "upside". It is a suggestion rendered even more unattractive in the light of the evidence introduced in this case, and wholly unchallenged, that the huge build-up of photographers and journalists while the Hamiltons were inside the police station on 10th August was due to a tip-off by an anonymous police officer! Whoever it was contacted Ms Sandringham of the Ferrari Press Agency, on her mobile, at about mid-day – obviously well in advance of the Hamiltons' appointment at 3pm. So much for Mr Summers' promise of a "discreet" arrest. (There is no suggestion that the tip-off came from Mr Summers, and it is right to record that Mrs Hamilton made no criticism of his conduct towards her.)

210. It would not be a fair summary of the position to suggest, as Mr Miller's recently amended meaning puts it, that he "had the Hamiltons arrested", but it is certainly true that he did not strive to avoid this distressing experience. On the other hand, it does seem to me that the situation is fairly reflected in the *Lucas-Box* meaning; that is to say, he had a leading role and responsibility for the inquiry, and was amongst those responsible for important failures which included delays, management failures and poor decision making, and led to the Hamiltons being arrested when this should never have happened. That hits the nail on the head.

211. I emphasise again, of course, that Mr Miller had an enormous range of responsibilities and that he acted in good faith throughout. He was by no means solely to blame, but especially having regard to the evidence of Mr Todd and Mr Croll he cannot avoid accepting a share of responsibility.

6. Conclusion

212. For these reasons, I have concluded that in the end the Defendant has succeeded in proving that the defamatory allegations against Mr Miller were substantially true. It was certainly not a model of investigative journalism, but it was a legitimate story for the press to cover. The articles were based on leaked information which was partial and inaccurate, and thus they may have got it right more by luck than judgment, but

that makes no difference to the outcome. The claim is dismissed and there will be judgment for the Defendant.