



House of Commons  
Home Affairs Committee

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# **Police investigations and the role of the Crown Prosecution Service**

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**Third Report of Session 2015–16**





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**Third Report of Session 2015–16**

*Report, together with formal minutes  
relating to the report*

*Ordered by the House of Commons to be printed  
17 November 2015*

**HC 534**

Published on 20 November 2015  
by authority of the House of Commons  
London: The Stationery Office Limited

## Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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Committee reports are published on the Committee's website at [www.parliament.uk/homeaffairscom](http://www.parliament.uk/homeaffairscom) and by The Stationery Office by Order of the House.

Evidence relating to this report is published on the [inquiry page](#) of the Committee's website.

### Committee staff

The current staff of the Committee are Carol Oxborough (Clerk), John-Paul Flaherty (Second Clerk), Duma Langton (Committee Specialist), Dr Ruth Martin (Committee Specialist), Kunal Mundul (Committee Specialist), Andy Boyd (Senior Committee Assistant), Iwona Hankin (Committee Assistant) and Jessica Bridges-Palmer (Select Committee Media Officer).

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# 1 Background: the investigation into Lord Brittan

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1. On 16 October 2015, the Metropolitan Police Service (MPS) published the key findings from a report ordered by the Metropolitan Police Commissioner, Sir Bernard Hogan-Howe, on the circumstances leading to the issuing of an apology to the family of the late Lord Brittan of Spennithorne, following an investigation into a rape allegation against him.<sup>1</sup> The MPS had written to the solicitors acting for the Brittan family on 6 October 2015, following the broadcast of a BBC *Panorama* programme about sexual abuse allegations against high-profile figures, including Lord Brittan.<sup>2</sup>

2. In the letter, the officer leading the investigation, Deputy Assistant Commissioner Steve Rodhouse, apologised to Lady Brittan for the MPS's failure to clarify the position regarding the investigation to her "at an earlier stage". In the key findings document, the MPS accepts that "Lord Brittan's solicitors should have been informed at the same time as the complainant was informed", in April 2015, that there would not have been a prosecution had Lord Brittan been alive, and that the matter was now closed.<sup>3</sup>

## The police investigation

3. An allegation of rape was made against Lord Brittan to South Yorkshire Police in November 2012. The incident was alleged to have occurred in 1967 in London. The case was therefore passed to the Metropolitan Police. A police investigation then took place, involving a process of advice being sought at relevant points from the Crown Prosecution Service (CPS) and a file of evidence first being submitted to the CPS in June 2014.<sup>4</sup> Lord Brittan was interviewed under caution in May 2014. He was named in the media in July 2014 as being under investigation for a rape allegation.

4. Lord Brittan was suffering from cancer at the time of the investigation. He died in January 2015 without being informed he had been cleared of any wrongdoing in regard to this case. Although the MPS had concluded that "there was not a strong case" against Lord Brittan, it had requested that the CPS review its decision in November 2014 that the file submitted by the MPS did not meet the appropriate evidential criteria. The Metropolitan Police stated that the purpose of the request was to secure "independent scrutiny in order to reassure the public that a thorough investigation had been conducted and had resulted in insufficient evidence to bring charges".<sup>5</sup> At that point, the MPS says that it remained open to the CPS to conclude that the case did not meet the threshold for charging and no further action should be taken; or that further inquiries were needed; or that there was sufficient evidence for a charge.<sup>6</sup>

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1 [Metropolitan Police report](#) on the investigation into Lord Brittan: key findings, 16 October 2015

2 [Letter from DAC Steve Rodhouse to Anthony Julius](#), Mishcon de Reya Solicitors, 6 October 2015; BBC *Panorama*, 6 October 2015, "[The VIP paedophile ring: what's the truth](#)"

3 [Metropolitan Police report](#) on the investigation into Lord Brittan: key findings, 16 October 2015

4 The MPS submitted an evidence file to the CPS on 5 June 2014. However, the CPS said that, before it was able to review the file, there were other inquiries the MPS should complete, including a formal identification of Lord Brittan by the complainant. The MPS submitted the evidence file to the CPS formally in November 2014. See [Metropolitan Police report](#) on the investigation into Lord Brittan: key findings, 16 October 2015

5 [Letter from DAC Rodhouse to the Chair](#), 16 October 2015

6 [Metropolitan Police report](#) on the investigation into Lord Brittan: key findings, 16 October 2015

5. The case has received considerable media attention. It arose in the context of police investigations into alleged historic sexual offences by high-profile public figures, including: Operation Midland, investigating allegations of murder by a Westminster paedophile ring in the 1970s and 1980s; Operation Fairbank, investigating allegations of sexual abuse amongst senior politicians; and Operation Yewtree, investigating child sexual exploitation by Jimmy Savile and others. The complainant in the Lord Brittan case, “Jane”, gave a media interview in May 2014 which set out details of her allegation against an unnamed ex-Cabinet Minister, which inevitably led to speculation about the identity of the alleged perpetrator. The Metropolitan Police itself notes that the context included “significant reporting of allegations that the MPS had failed to investigate allegations against politicians properly in the past”.<sup>7</sup>

### The Committee’s inquiry and report

6. An unusual element of this case has been the involvement of Tom Watson MP. Mr Watson wrote to the Director of Public Prosecutions (DPP) pressing for a review of the Lord Brittan case in April 2014.<sup>8</sup> We discuss the implications of this involvement in Chapter 3.

7. A further motivation for our inquiry was the fact that some elements of the Metropolitan Police Commissioner’s action points arising from the report on the Lord Brittan case echoed recommendations which our predecessor Committee had made on related issues in the previous Parliament. The Commissioner’s action points were:

- A request that another police force review the investigation to ensure it was “thorough, properly conducted and to identify good practice”. The Commissioner subsequently informed us that Dorset Police is carrying out the review and that he expected it to be completed by the end of November 2015.<sup>9</sup>
- A continued call for the CPS to amend its Director’s Guidance so that independent advice can be provided when there is significant public concern about an investigation, but where the charging threshold has not been met due to insufficient evidence.
- The need to address the “imbalance” in current legislation which allows suspects to be publicly named before charge whilst those bringing allegations remain anonymous.
- An invitation to legislators to consider pre-charge publicity of suspects, including whether there should be a ban on identifying suspects and whether additional legal safeguards are required.<sup>10</sup>

**8. The Metropolitan Police Commissioner has requested that another police force review its investigation into the Lord Brittan case to ensure that it was “thorough, properly conducted and to identify good practice”. We welcome the Commissioner’s**

7 [Metropolitan Police report](#) on the investigation into Lord Brittan: key findings, 16 October 2015

8 [Correspondence between Tom Watson MP and the Director of Public Prosecutions](#), 28 April 2014 and 13 June 2014 (redacted)

9 Oral evidence taken from the Metropolitan Police Commissioner, Sir Bernard Hogan-Howe, on [10 November 2015](#), HC 476, Qs248-249

10 Fifth Report from the Home Affairs Committee of Session 2014-15, [Police, the media and high-profile criminal investigations](#), HC 629, paras 14-18; Seventeenth Report of Session 2014-15, [Police Bail](#), HC 962, Chapter 2. The Commissioner’s action points are set out in the [Metropolitan Police report](#) on the investigation into Lord Brittan: key findings, October 2015

**action in this respect as sensible, routine police practice. We would be grateful to be informed about the review's findings, when it is concluded at the end of November 2015.** We explore the implications of the Commissioner's other action points in detail in the remainder of this report.

9. We took oral evidence on 21 October 2015 from: Mr Tom Watson MP; representatives of the Metropolitan Police, including DCI Paul Settle, who led the initial investigation in the Lord Brittan case; and Alison Saunders, Director of Public Prosecutions. We are grateful to all the witnesses for their evidence.

## 2 The Crown Prosecution Service's role in investigations

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10. The Director of Public Prosecutions (DPP) explained in her evidence to us the CPS's role in the investigative process: "The [Director's] guidance is clear that cases that come to us for charging decisions should only do so when the police consider that it satisfies a code test, which is a realistic prospect of conviction." In relation to the Lord Brittan case, she said "At no time did this meet that test". She was also of the view that "It was not a case that was particularly complex".<sup>11</sup>

11. The DPP was equally clear about the proper process to be followed by the CPS in making decisions about prosecution of cases: "We make our decisions in accordance with the code for Crown Prosecutors, and that is the only thing that we make our decisions on: whether there is a realistic prospect of conviction, looking at the evidence, and it has to be reliable and admissible in court". The issue of "public interest" in a case would only be considered if and when the threshold of "realistic prospect of conviction" had been met.<sup>12</sup> The Full Code Test as set out in the Code for Crown Prosecutors, states:

4.1 The Full Code Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage.

4.2 In most cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed. However there will be cases where it is clear, prior to the collection and consideration of all the likely evidence, that the public interest does not require a prosecution. In these instances, prosecutors may decide that the case should not proceed further.

4.3 Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken later in accordance with the Full Code Test set out in this section.

### *The Evidential Stage*

4.4 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be. [...]

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11 [Q280-281](#). The "Director's Guidance" is [The Director's Guidance on Charging 2013](#) - fifth edition, May 2013 (revised arrangements) - which is the guidance to Police Officers and Crown Prosecutors Issued by the Director of Public Prosecution under S37A of the Police and Criminal Evidence Act 1984. It is available on the CPS website at [www.cps.gov.uk/publications](http://www.cps.gov.uk/publications)

12 [Q284](#)

*The Public Interest Stage*

4.7 In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.

4.8 It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour.<sup>13</sup>

12. The DPP was also very clear about the appropriate way to treat correspondence from MPs or others to her or the CPS about police investigations: “It is not a matter for us. I can’t answer for the police, so we always pass it straight to the relevant force for them to answer.”<sup>14</sup> The DPP made clear in her reply in June 2014 to Mr Watson’s letter to her of 28 April 2014 about the Lord Brittan case that his letter would be forwarded to the relevant police officer.<sup>15</sup>

13. We asked the DPP about her response to the Metropolitan Police’s request that the CPS consider changing its policy to enable police files to be considered where there was “significant public interest”. She said it would be possible to make this change without amending legislation because the policy emanated from the Director’s guidance, which she could amend if she believed it to be appropriate. However, the DPP argued that she did not want the CPS to become responsible “for decisions which are rightly the police’s territory”; although the CPS could advise, “we are not investigators” and “we do not make operational decisions in relation to investigations”. She said that she was currently discussing the issue of potential changes to the Guidance with the MPS.<sup>16</sup>

14. Later in her evidence she was more emphatic that “If you don’t have the evidence, you can’t go ahead with it”; the CPS would not wish to “open the floodgates” and create a situation where more cases were coming in to them “where there is no realistic prospect of conviction”. She emphasised that “there is a role for the police, where they make decisions in these cases now” and she saw “no reason for that to be changed”.<sup>17</sup>

**15. The Metropolitan Police has asked the DPP to consider changing the Director’s Guidance to allow “significant public interest” to be taken into account when coming to decisions about whether a case should be referred to the CPS, where the evidential threshold is not satisfied or the case is borderline. In evidence to us, the DPP expressed reluctance to consider making any change to the current criteria, because she believed that the requirement to meet the evidence threshold had to remain the first criterion for coming to a decision.**

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<sup>13</sup> Crown Prosecution Service, [Code for Crown Prosecutors \(extract\)](#)

<sup>14</sup> [Q282](#)

<sup>15</sup> [Correspondence between Tom Watson MP and the Director of Public Prosecutions](#), 28 April 2014 and 13 June 2014 (redacted)

<sup>16</sup> [Q285-6](#)

<sup>17</sup> [Q311](#)

16. **The DPP could not have been clearer in her evidence to us about the primacy of the evidential threshold in making decisions on whether a case should be taken further. She told us that:**

- **“At no time did [the Lord Brittan case] meet [the evidential] test”. “If you don’t have the evidence, you can’t go ahead with it”;**
- **The CPS makes its decisions solely on the basis of “whether there is a realistic prospect of conviction”. The public interest issue can only be considered once the test of a realistic prospect of conviction has been met;**
- **The CPS cannot become responsible “for decisions which are rightly the police’s territory”; “we are not investigators”; and “we do not make operational decisions in relation to investigations”.**

**This is as emphatic as it is possible to be. We agree with the DPP that the evidential threshold required to prosecute a case must be met first, before the public interest is taken into account.**

### **Police and CPS handling of the case of Mr Paul Gambaccini**

17. Our predecessors in the last Parliament reported on the case of Mr Paul Gambaccini, which has some similarities to that of the investigation into Lord Brittan, in relation to the delays in informing him of progress with the investigation. The Committee took oral evidence from Mr Gambaccini and his solicitor in March 2015 (as part of an inquiry into Police Bail).<sup>18</sup>

18. As our predecessors’ report notes, the investigation into Paul Gambaccini started in April 2013, following an allegation made by a single complainant, but was dropped by the police on 5 September 2013 because of insufficient evidence. Mr Gambaccini was arrested on 29 October 2013 by officers from Operation Yewtree, after a second complainant came forward. He was released and initially bailed until 8 January 2014. His file was passed to the CPS on 10 February 2014. Between January and October 2014, when he was eventually told that no further action would be taken, he had been re-bailed six times. At one point he found out he was being re-bailed only via the media and neither he nor his solicitor was notified directly.

19. Our predecessors believed that it was unfair to let the complainant know that a case is not to be proceeded with, but not the person who had been complained against. They recommended that, where a person has been on bail for longer than six months, and where the final decision is to take no further action, the CPS should write to the individual explaining the decision.

20. In response, the Home Secretary said she welcomed this conclusion and stated: “I have been clear for some time that it is simply not acceptable for individuals to have spent months and in some cases years on pre-charge bail, with no prospect of review, only for no charges to be ultimately brought against them”. She noted the Government’s response to its consultation on pre-charge bail and said that legislative changes would be brought forward, which would include “setting an expectation that pre-charge bail will not last longer than 28 days, with extensions permissible only under specific circumstances”.

18 Seventeenth Report of Session 2014-15, [Police Bail](#), HC 962, Chapter 4

Regarding responsibility for informing those against whom a complaint had been made, she said: “it is for the police to inform suspects and explain the charging decisions made, although the decision will often have been taken by the CPS”.<sup>19</sup>

21. We raised this issue again in oral evidence, with both the DPP and the Metropolitan Police Assistant Commissioner Patricia Gallan, with specific reference to Mr Gambaccini.<sup>20</sup> The DPP told us that the CPS did eventually write to Mr Gambaccini to explain the delay in him being advised that no further action would be taken in his case but, “due to an administrative error”, this was not done until October 2015, and not until after the Chair of this Committee had written to her.<sup>21</sup> The Assistant Commissioner set out the sequence of events from the Metropolitan Police’s perspective in correspondence.<sup>22</sup>

22. Assistant Commissioner Gallan told us that the MPS case file relating to Mr Gambaccini “was passed to the CPS on 10th February 2014”. The DPP has confirmed that “initial papers were provided by the police to the CPS in February 2014”. However, the DPP is very clear that “it was not until September 2014 that a full advice file was submitted by the police” so it would not have been possible for the CPS to come to a decision before this point. Once the full file had been received by the CPS, it advised the police “one month later, in October 2014, that no further action should be taken”. Mr Gambaccini was therefore made to wait six months for a decision to be made because the full file was not submitted by the MPS within a reasonable time. We regard this as unacceptable.

23. Our predecessor Committee recommended in March 2015 that the CPS issue a formal apology to Mr Paul Gambaccini, with an explanation of why his case took so long to deal with. The CPS has now sent an explanation to Mr Gambaccini but, due to an “administrative error”, it was not sent until October 2015, following the Chair of this Committee’s letter to the DPP. The delays in both dealing with the case, and then in sending an explanation of the reasons for this, are most regrettable. We welcome the apology from the DPP to Mr Gambaccini for the distress this caused him.

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19 Government response to the Seventeenth Report from the Home Affairs Committee, 2014-15 on Police Bail: [letter to the Chair from the Home Secretary](#), 24 March 2015

20 [Qs 175-177 and 287-290](#)

21 [Letter to the Chair of the Committee from the DPP](#), 16 October 2015.

22 [Letter to the Chair of the Committee from Assistant Commissioner Patricia Gallan](#), 2 November 2015

### 3 Involvement of Members of Parliament in investigations

24. Tom Watson MP's involvement in investigations into alleged sexual offences, including those against children, came to public prominence in October 2012 when he called on the Prime Minister, in the House of Commons, to investigate "clear intelligence suggesting a powerful paedophile network linked to Parliament and No 10".<sup>23</sup> Mr Watson then became closely involved with members of the general public who approached him about reporting such offences. He also then worked with the police in connection with some of their investigations, including the allegation against Lord Brittan, as he explained to us.<sup>24</sup>

25. We heard from the DPP that there are "lots of cases where we get letters from other MPs, or indeed members of the public, that relate to investigations", and these are passed onto the police.<sup>25</sup> DAC Rodhouse explained that the Met "commonly receive letters from MPs, campaigners, around individual allegations, particularly where the victim in that case, the complainant, does not believe there to be a thorough investigation. We listen to them all, we address them, and absolutely we would undertake a review." He went on to explain that since April of this year "there has been a victim's right to review where no further action has been taken in respect of rape allegations. What that means is if the victim in the case is unhappy with the police investigation, it will be reviewed by a different officer".<sup>26</sup> So although there is nothing unusual about the Metropolitan Police undertaking reviews, the key issue is that all decisions taken during a review should be taken independently, based on the evidence, and not influenced by the identity of the person making representations.

26. Mr Watson's actions in relation to the Lord Brittan case culminated in him writing to the DPP, on 28 April 2014, pressing for "an immediate review" of the case by the CPS. The DPP replied on 13 June 2014, saying that "any decision whether or not to investigate a case, or how to investigate a case, is a matter for the police" and that she was therefore forwarding Mr Watson's letter to the police superintendent in charge of the case.<sup>27</sup>

27. Following Lord Brittan's death, on 24 January 2015 *The Mirror* newspaper carried an article by Mr Watson in which he repeated quotes from a person who had made allegations against Lord Brittan, including that he was "as close to evil as any human could get".<sup>28</sup>

**28. *It was not appropriate for Tom Watson MP to have made the comments he did about Lord Brittan in the press. Even though Lord Brittan had died, and it could not therefore have impacted on a prosecution, it could have impacted on the Goddard Inquiry, which may consider the cases involving Lord Brittan. Despite the police not naming Lord Brittan, Mr Watson took it upon himself to do so in the press. He did not first contact the police to find out why they had not named Lord Brittan nor did he contact the Goddard***

23 HC Deb 24 October 2012, col 923; see also [Letter from Tom Watson MP to the Prime Minister](#)

24 See in particular [Qs 183-188](#); [Qs 211-212](#); [Qs 230-236](#) and [Qs 246-248](#). See also oral evidence from DCI Paul Settle, [Qs 18-21](#); [Qs 40-48](#)

25 [Q282](#)

26 [Q173](#)

27 [Correspondence between Tom Watson MP and the DPP](#), 28 April 2014 and 13 June 2014 (redacted)

28 *The Mirror*, [24 January 2015](#) "Tom Watson: Leon Brittan child rape investigation must continue despite his death"

*inquiry. We recommend that MPs refrain from using parliamentary privilege or their position to name suspects that the police has decided not to name and that they should, at the very least, contact the police before doing so.*

29. Mr Watson's involvement in the case was extensively covered in the media following the broadcast of the BCC *Panorama* programme, and the subsequent MPS apology to Lady Brittan, in early October 2015 (as discussed in Chapter 1). It was also raised in the House of Commons.<sup>29</sup> Following our evidence session, there were press reports that Mr Watson had also written to the former DPP, Sir Keir Starmer (now a Member of Parliament) about other sexual offence cases.<sup>30</sup> We asked Mr Watson and Sir Keir for their response to these news stories. Mr Watson informed us that none of that correspondence related to the Lord Brittan case.<sup>31</sup> Sir Keir Starmer told us that he was on leave when Mr Watson's letter was received and it was dealt with by the CPS Chief Executive.<sup>32</sup> The current DPP provided further details about how the correspondence was dealt with by the CPS.<sup>33</sup>

30. In oral evidence we asked Mr Watson whether he had considered the risks in his close involvement in investigations of cases such as that involving Lord Brittan. In particular, he was asked whether he perceived a risk arising from having meetings with complainants, where no transcript or video or audio recording was made, in that he might then be open to a defence counsel accusing him of coaching the complainant, if the case came to trial. Mr Watson's view was that, in meeting the complainant in the Lord Brittan case, he "was trying to do his very best" on her behalf and "you can only try to get people into the system and refer their allegations and information to the police and then it is down to the police to do their job". He acknowledged that he would "worry" about the potential trial of an alleged sex offender being jeopardised.<sup>34</sup>

**31. It is an inevitable part of a Member of Parliament's role that he or she will be approached by constituents, and others, in relation to allegations of offences, including historic sexual offences. This is particularly the case where an MP has taken a robust public position on an issue. Previously Mr Watson had campaigned over phone-hacking and wrote a book about the matter. It is entirely proper for an MP to try to assist people who bring such cases to their attention. However, in matters relating to the criminal justice system, this can create difficulties in determining where the line should be drawn. We believe that, to avoid being drawn into improper involvement, the safest course of action for an MP is to pass the information on to the responsible agencies, without comment, including in the media. In fact, Mr Watson did do this by sending his letter to the DPP of 28 April 2014. The agencies should then be left to pursue the case, in accordance with established practices; in effect, MPs should not seek to substitute their views for those of the investigating officers. This will help to ensure that Members of Parliament do not later find themselves facing potential accusations from a defence counsel of having coached a complainant, or of having impeded the achieving of "best evidence", if a case comes to trial. It will also avoid the risk of adversely affecting future investigations and prosecutions. In relation to MPs**

29 HC Deb 12 October 2015, cols 47-48

30 See, for example, [Daily Telegraph, 22 October 2015](#), "Tom Watson pressured CPS to reopen second sex abuse case"

31 [Letter to the Chair of the Committee from Mr Tom Watson MP](#), 3 November 2015

32 [Letter to the Chair of the Committee from Sir Keir Starmer MP](#), 3 November 2015

33 [Letter to the Chair of the Committee from Alison Saunders, DPP](#), 3 November 2015

34 [Q242 and Qs252-258](#)

communicating with the CPS about a case under investigation by the police, the DPP made clear that the CPS has no power over a case until it has been referred by the police for a decision by the CPS.

32. *Mr Watson gave a qualified apology to the Brittan family during his evidence to us, saying that he was “sincerely sorry for the hurt caused to Lady Brittan” and for the distress to the wider family. He stated openly that “he was trying to do his very best” on behalf of the complainant in the case and we accept Mr Watson’s motivation in bringing the “Jane” case to the police’s attention. However, it is unfortunate that, in writing the article in The Mirror, he could not have hoped to achieve anything other than to further impugn the name of the (by then deceased) Lord Brittan. We consider that it would have been more appropriate for Mr Watson to have written to Lady Brittan to apologise, and we recommend that he now does so.*

33. We became aware of reports in the media in which it was suggested that Tom Watson MP had raised other cases with the DPP. It should be noted that the DPP, in her evidence to us, stated that she had met Mr Watson for the first time that day, at the evidence session. We wrote to Mr Watson and the previous DPP to establish the facts and are grateful for their responses. However, it is clear that this is not a matter for this Committee to deal with. This inquiry has focused solely on the Lord Brittan case.

34. The Independent Inquiry into Child Sexual Abuse (IICSA) has been established, with Justice Lowell Goddard as its Chair, specifically to deal with the complex matters arising from allegations of historic child sexual abuse. It has a specific remit to listen to victims and to encourage them to tell the Inquiry about their experiences, and the process for this public engagement has now begun. We have full confidence in the processes being undertaken by the Inquiry and believe that Justice Goddard, whose appointment was endorsed unanimously by our predecessor Committee, should be given the space, time and support she needs to deal with these complex, difficult and important issues.

## 4 The Metropolitan Police's handling of the investigation process

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35. We were keen to establish why the Metropolitan Police was so focused on trying to persuade the CPS to review the evidence file relating to the Lord Brittan case after the CPS had made clear in November 2014 that the file did not meet the evidential criteria set out in the Director's Guidance.<sup>35</sup> DAC Steve Rodhouse stated in correspondence that:

It was felt that these were highly unusual circumstances where the previous independence of the police to tackle sexual offending by VIPs had been publicly called into question. A decision to take no further action in respect of this allegation would undoubtedly have resulted in media criticism and public cynicism and there was clearly a very strong public interest in ensuring that the correct decision had been made.<sup>36</sup>

36. We challenged DAC Rodhouse in oral evidence as to whether it was appropriate for the police to be influenced in this way "by media criticism and public cynicism". He told us that he felt that "this was absolutely a case where public confidence was best served for a full and independent review of the circumstances". It was not a question of the MPS wishing to avoid "difficult headlines", but rather that "what I did not want is for people to be put off because they had fears that allegations against prominent people would not properly be considered".<sup>37</sup>

37. DAC Rodhouse confirmed that an internal MPS review "by an experienced investigator" led to the investigation being reopened in April 2014, which involved the interview under caution of Lord Brittan. DAC Rodhouse told us that "it wasn't until 12 November [2014] that we were in a position to say, 'The investigation, from our perspective, is complete' and submit that to the CPS". He acknowledged that "clearly there was consideration as to whether the full code test had been met, that being: was there sufficient evidence to warrant a charge in the matter in our opinion."<sup>38</sup>

38. In his letter of apology to the late Lord Brittan's solicitors of 6 October 2015, DAC Rodhouse acknowledges that the CPS had concluded in July 2013, when it provided early investigative advice to the MPS on the case, that "there was insufficient evidence at that time". He went on to say that the MPS's own assessment was that its subsequent further inquiries in 2014 "had not strengthened the available evidence".<sup>39</sup> The MPS nevertheless submitted the evidence file to the CPS in November 2014. Then, after the CPS had decided that the file did not meet the criteria for further action, the MPS went ahead and appealed that decision.<sup>40</sup>

**39. We do not agree with the Metropolitan Police's argument that Lord Brittan could not have been informed about the status of the investigation by the time he died in January 2015. The only reason for the delay was the MPS's determination, in contradiction of the agreed Guidelines, to appeal the CPS decision that the evidence file**

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35 See [CPS written evidence: timeline for the Lord Brittan case](#)

36 [Letter from DAC Rodhouse to the Chair](#), 16 October 2015

37 [Qs 112-115](#)

38 [Qs 117-119](#)

39 [Letter from DAC Steve Rodhouse to Anthony Julius](#), Mishcon de Reya Solicitors, 6 October 2015

40 [Metropolitan Police report](#) on the investigation into Lord Brittan: key findings, 16 October 2015

did not meet the necessary threshold. Although the MPS has subsequently apologised to Lady Brittan, we do not regard this as sufficient. She has had the anguish of seeing her husband die without him knowing that he had been cleared.

40. *DAC Steve Rodhouse's letter of apology, sent to the late Lord Brittan's solicitors, makes clear that the MPS had itself concluded (by November 2014) that its further inquiries "had not strengthened the available evidence" in the case. Yet, despite this, the MPS still pressed the CPS to review its decision that the evidential criteria in the Lord Brittan case had not been met. The MPS told us that it took this step because it feared "media criticism and public cynicism". This is not a proper basis for police decisions on whether to proceed with an investigation, which should be considered in a wholly objective manner, based solely on the evidence. We commend the CPS for taking the proper objective approach, based entirely on the evidential requirements. We consider that errors of judgement were made in this case and that the MPS should take steps to ensure that its future decision-making is not influenced improperly by its perceptions of potential public criticism. The MPS has a strong international reputation and in our system of policing by consent the police must command public confidence. This is not the same as reacting to criticism by members of the public and by the media. For it to be seen to be influenced by "media criticism and public cynicism" risks undermining the whole basis of its investigations and public confidence in the police. The MPS must avoid this risk and ensure that it acts in every case as a robust and rigorous police force.*

## Conduct and treatment of the investigating officer

41. DCI Paul Settle led the investigation into the Lord Brittan case from December 2012 until he was removed by his superior officers, in May 2014, from all involvement in Operation Fairbank (the investigation into allegations of sexual abuse amongst senior politicians). DCI Settle said that he had been informed about this by his line manager, a detective superintendent, but he believed that the decision had been taken at "commander level" within Gold Group (the Strategic Overview Group in the MPS).<sup>41</sup> DCI Settle told us that he believed that he had been removed from the investigation because he stood by his view that no further actions should be taken in the case. In reply to our question about what he was doing at the moment, he told us "not a great deal".<sup>42</sup> The Metropolitan Police Commissioner later informed us that DCI Settle had now been redeployed.<sup>43</sup>

42. It was reported in the press after the MPS apology to Lady Brittan was made public that DCI Settle had felt that "he was being deliberately undermined" by Mr Watson.<sup>44</sup> Despite some resistance from senior officers in the MPS, DCI Settle gave oral evidence to us, which we found enormously helpful.<sup>45</sup> He reiterated then that he had felt undermined by Mr Watson writing to the DPP about the case, but also went further, saying that he had

41 [Qs 36, 55-57 and Q105](#)

42 [Q105](#)

43 Oral evidence taken from the Metropolitan Police Commissioner, Sir Bernard Hogan-Howe, on [10 November 2015](#), HC 476, Q250

44 See, for example, [Daily Telegraph, 10 October 2015](#), "Tom Watson 'forced out' head of VIP sex abuse case as he admits Leon Brittan slur caused 'distress'"

45 [Letter to the Chair from Deputy Metropolitan Police Commissioner Craig Mackey](#), 12 October 2015

been “extremely disappointed” and “shocked” by Mr Watson writing to the DPP without discussing the matter with him first. He regarded this as a “betrayal” given that DCI Settle believed that he had established a good relationship with Mr Watson and had been “frank and honest with him and transparent from the outset”.<sup>46</sup>

43. In our view, based on the evidence we received, the conduct in the Lord Brittan case of the lead investigating officer, DCI Paul Settle, was exemplary. He is clearly a very professional and experienced investigator. The MPS itself concluded that the further investigations it conducted after DCI Settle’s removal from the case “had not strengthened the available evidence”. We were not given an appropriate explanation by senior officers of the reasons for DCI Settle’s removal from the case, which leads to the perception that pressure was put on them to do this. It is regrettable and unacceptable that, after his removal from the case in May 2014, DCI Settle was on extended leave. This is a waste of police resources, particularly at a time when cuts in police funding are being made (on which we are currently conducting a separate inquiry). We welcome the assurance we received from the Metropolitan Police Commissioner that DCI Settle has now been redeployed.

### Dealing with high-profile cases

44. *Proper account needs to be taken of the considerable publicity which high-profile cases attract, and the enormous impact which this has on the individuals against whom allegations have been made. These cases need to be dealt with sensitively, ensuring that exactly the same standards of fairness are exercised as in any other case. The similarities between the Paul Gambaccini and Lord Brittan cases, in terms of the delays in progressing the cases and informing the individuals concerned about progress, are striking and point to a lack of co-ordination and unity of purpose between the CPS and MPS. We request that, in response to this report, the MPS and the CPS set out the steps they plan to take to improve their handling of such cases, particularly in relation to avoiding delays in the investigation process, and in informing the suspect about progress with, and the outcome of, the investigation.*

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46 [Qs 12-14; Q55](#)

## Conclusions and recommendations

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1. The Metropolitan Police Commissioner has requested that another police force review its investigation into the Lord Brittan case to ensure that it was “thorough, properly conducted and to identify good practice”. We welcome the Commissioner’s action in this respect as sensible, routine police practice. We would be grateful to be informed about the review’s findings, when it is concluded at the end of November 2015. (Paragraph 8)

### The Crown Prosecution Service’s role in investigations

2. The Metropolitan Police has asked the DPP to consider changing the Director’s Guidance to allow “significant public interest” to be taken into account when coming to decisions about whether a case should be referred to the CPS, where the evidential threshold is not satisfied or the case is borderline. In evidence to us, the DPP expressed reluctance to consider making any change to the current criteria, because she believed that the requirement to meet the evidence threshold had to remain the first criterion for coming to a decision. (Paragraph 15)
3. The DPP could not have been clearer in her evidence to us about the primacy of the evidential threshold in making decisions on whether a case should be taken further. She told us that:
  - “At no time did [the Lord Brittan case] meet [the evidential] test”. “If you don’t have the evidence, you can’t go ahead with it”;
  - The CPS makes its decisions solely on the basis of “whether there is a realistic prospect of conviction”. The public interest issue can only be considered once the test of a realistic prospect of conviction has been met;
  - The CPS cannot become responsible “for decisions which are rightly the police’s territory”; “we are not investigators”; and “we do not make operational decisions in relation to investigations”.

This is as emphatic as it is possible to be. We agree with the DPP that the evidential threshold required to prosecute a case must be met first, before the public interest is taken into account. (Paragraph 16)

### Police and CPS handling of the case of Mr Paul Gambaccini

4. Assistant Commissioner Gallan told us that the MPS case file relating to Mr Gambaccini “was passed to the CPS on 10th February 2014”. The DPP has confirmed that “initial papers were provided by the police to the CPS in February 2014”. However, the DPP is very clear that “it was not until September 2014 that a full advice file was submitted by the police” so it would not have been possible for the CPS to come to a decision before this point. Once the full file had been received by the CPS, it advised the police “one month later, in October 2014, that no further action should be taken”. Mr Gambaccini was therefore made to wait six months for a decision to be made because the full file was not submitted by the MPS within a reasonable time. We regard this as unacceptable (Paragraph 22)

5. Our predecessor Committee recommended in March 2015 that the CPS issue a formal apology to Mr Paul Gambaccini, with an explanation of why his case took so long to deal with. The CPS has now sent an explanation to Mr Gambaccini but, due to an “administrative error”, it was not sent until October 2015, following the Chair of this Committee’s letter to the DPP. The delays in both dealing with the case, and then in sending an explanation of the reasons for this, are most regrettable. We welcome the apology from the DPP to Mr Gambaccini for the distress this caused him. (Paragraph 23)

### Involvement of Members of Parliament in investigations

6. It was not appropriate for Tom Watson MP to have made the comments he did about Lord Brittan in the press. Even though Lord Brittan had died, and it could not therefore have impacted on a prosecution, it could have impacted on the Goddard Inquiry, which may consider the cases involving Lord Brittan. Despite the police not naming Lord Brittan, Mr Watson took it upon himself to do so in the press. He did not first contact the police to find out why they had not named Lord Brittan nor did he contact the Goddard inquiry. We recommend that MPs refrain from using parliamentary privilege or their position to name suspects that the police has decided not to name and that they should, at the very least, contact the police before doing so. (Paragraph 28)
7. It is an inevitable part of a Member of Parliament’s role that he or she will be approached by constituents, and others, in relation to allegations of offences, including historic sexual offences. This is particularly the case where an MP has taken a robust public position on an issue. Previously Mr Watson had campaigned over phone-hacking and wrote a book about the matter. It is entirely proper for an MP to try to assist people who bring such cases to their attention. However, in matters relating to the criminal justice system, this can create difficulties in determining where the line should be drawn. We believe that, to avoid being drawn into improper involvement, the safest course of action for an MP is to pass the information on to the responsible agencies, without comment, including in the media. In fact, Mr Watson did do this by sending his letter to the DPP of 28 April 2014. The agencies should then be left to pursue the case, in accordance with established practices; in effect, MPs should not seek to substitute their views for those of the investigating officers. This will help to ensure that Members of Parliament do not later find themselves facing potential accusations from a defence counsel of having coached a complainant, or of having impeded the achieving of “best evidence”, if a case comes to trial. It will also avoid the risk of adversely affecting future investigations and prosecutions. In relation to MPs communicating with the CPS about a case under investigation by the police, the DPP made clear that the CPS has no power over a case until it has been referred by the police for a decision by the CPS. (Paragraph 31)

8. Mr Watson gave a qualified apology to the Brittan family during his evidence to us, saying that he was “sincerely sorry for the hurt caused to Lady Brittan” and for the distress to the wider family. He stated openly that “he was trying to do his very best” on behalf of the complainant in the case and we accept Mr Watson’s motivation in bringing the “Jane” case to the police’s attention. However, it is unfortunate that, in writing the article in *The Mirror*, he could not have hoped to achieve anything other than to further impugn the name of the (by then deceased) Lord Brittan. We consider that it would have been more appropriate for Mr Watson to have written to Lady Brittan to apologise, and we recommend that he now does so. (Paragraph 32)
9. We became aware of reports in the media in which it was suggested that Tom Watson MP had raised other cases with the DPP. It should be noted that the DPP, in her evidence to us, stated that she had met Mr Watson for the first time that day, at the evidence session. We wrote to Mr Watson and the previous DPP to establish the facts and are grateful for their responses. However, it is clear that this is not a matter for this Committee to deal with. This inquiry has focused solely on the Lord Brittan case. (Paragraph 33)
10. The Independent Inquiry into Child Sexual Abuse (IICSA) has been established, with Justice Lowell Goddard as its Chair, specifically to deal with the complex matters arising from allegations of historic child sexual abuse. It has a specific remit to listen to victims and to encourage them to tell the Inquiry about their experiences, and the process for this public engagement has now begun. We have full confidence in the processes being undertaken by the Inquiry and believe that Justice Goddard, whose appointment was endorsed unanimously by our predecessor Committee, should be given the space, time and support she needs to deal with these complex, difficult and important issues. (Paragraph 34)

### The Metropolitan Police’s handling of the investigation process

11. We do not agree with the Metropolitan Police’s argument that Lord Brittan could not have been informed about the status of the investigation by the time he died in January 2015. The only reason for the delay was the MPS’s determination, in contradiction of the agreed Guidelines, to appeal the CPS decision that the evidence file did not meet the necessary threshold. Although the MPS has subsequently apologised to Lady Brittan, we do not regard this as sufficient. She has had the anguish of seeing her husband die without him knowing that he had been cleared. (Paragraph 39)
12. DAC Steve Rodhouse’s letter of apology, sent to the late Lord Brittan’s solicitors, makes clear that the MPS had itself concluded (by November 2014) that its further inquiries “had not strengthened the available evidence” in the case. Yet, despite this, the MPS still pressed the CPS to review its decision that the evidential criteria in the Lord Brittan case had not been met. The MPS told us that it took this step because it feared “media criticism and public cynicism”. This is not a proper basis for police decisions on whether to proceed with an investigation, which should be considered in a wholly objective manner, based solely on the evidence. We commend the CPS for taking the proper objective approach, based entirely on the evidential requirements. We consider that errors of judgement were made in this case and that the MPS should

take steps to ensure that its future decision-making is not influenced improperly by its perceptions of potential public criticism. The MPS has a strong international reputation and in our system of policing by consent the police must command public confidence. This is not the same as reacting to criticism by members of the public and by the media. For it to be seen to be influenced by “media criticism and public cynicism” risks undermining the whole basis of its investigations and public confidence in the police. The MPS must avoid this risk and ensure that it acts in every case as a robust and rigorous police force. (Paragraph 40)

### Conduct and treatment of the investigating officer

13. In our view, based on the evidence we received, the conduct in the Lord Brittan case of the lead investigating officer, DCI Paul Settle, was exemplary. He is clearly a very professional and experienced investigator. The MPS itself concluded that the further investigations it conducted after DCI Settle’s removal from the case “had not strengthened the available evidence”. We were not given an appropriate explanation by senior officers of the reasons for DCI Settle’s removal from the case, which leads to the perception that pressure was put on them to do this. It is regrettable and unacceptable that, after his removal from the case in May 2014, DCI Settle was on extended leave. This is a waste of police resources, particularly at a time when cuts in police funding are being made (on which we are currently conducting a separate inquiry). We welcome the assurance we received from the Metropolitan Police Commissioner that DCI Settle has now been redeployed. (Paragraph 43)

### Dealing with high-profile cases

14. Proper account needs to be taken of the considerable publicity which high-profile cases attract, and the enormous impact which this has on the individuals against whom allegations have been made. These cases need to be dealt with sensitively, ensuring that exactly the same standards of fairness are exercised as in any other case. The similarities between the Paul Gambaccini and Lord Brittan cases, in terms of the delays in progressing the cases and informing the individuals concerned about progress, are striking and point to a lack of co-ordination and unity of purpose between the CPS and MPS. We request that, in response to this report, the MPS and the CPS set out the steps they plan to take to improve their handling of such cases, particularly in relation to avoiding delays in the investigation process, and in informing the suspect about progress with, and the outcome of, the investigation. (Paragraph 44)

## Formal Minutes

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**Tuesday 17 November 2015**

Members present:

Keith Vaz, in the Chair

Victoria Atkins

Tim Loughton

James Berry

Stuart C. McDonald

Mr David Burrowes

Naz Shah

Nusrat Ghani

Mr David Winnick

Draft Report (*Police investigations and the role of the Crown Prosecution Service*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 44 read and agreed to.

*Resolved*, That the Report be the Third Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 24 November at 2.00 pm

# Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at [www.parliament.uk/homeaffairscom](http://www.parliament.uk/homeaffairscom).

## Wednesday 21 October 2015

### *Question number*

Detective Chief Inspector Paul Settle	<a href="#">Q1–105</a>
Assistant Commissioner Patricia Gallan and Deputy Assistant Commissioner Steve Rodhouse, Metropolitan Police	<a href="#">Q106–179</a>
Tom Watson MP	<a href="#">Q180–279</a>
Alison Saunders, Director of Public Prosecutions	<a href="#">Q280–317</a>

## List of published written evidence

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The following written evidence was received and can be viewed on the Committee's inquiry web page at [www.parliament.uk/homeaffairscom](http://www.parliament.uk/homeaffairscom). BRI numbers are generated by the evidence processing system and so may not be complete.

- 1 Correspondence between Tom Watson MP and the Director of Public Prosecutions, 28 April 2014 and 13 June 2014 (Redacted) ([BRI0007](#))
- 2 Letter to Anthony Julius, Mishcon De Reya LLP, from Deputy Assistant Commissioner Steve Rodhouse, Metropolitan Police, 6 October 2015 ([BRI0011](#))
- 3 Correspondence between Deputy Commissioner Craig Mackey, Metropolitan Police, and the Committee Chair, 14 and 15 October 2015 ([BRI0001](#))
- 4 Letter to the Chair from Deputy Assistant Commissioner Steve Rodhouse, Metropolitan Police, 16 October 2015 ([BRI0002](#))
- 5 Letter to the Chair from Alison Saunders, Director of Public Prosecutions, 16 October 2015 ([BRI0005](#))
- 6 Crown Prosecution Service – Timeline for the Lord Brittan case ([BRI0003](#))
- 7 Letter to the Chair from Anthony Julius, Mishcon de Reya LLP, 20 October 2015 ([BRI0004](#))
- 8 Statement submitted by DCI Paul Settle, 21 October 2015 (Redacted) ([BRI0012](#))
- 9 Letter to the Chair from Assistant Commissioner Patricia Gallan, Metropolitan Police, 2 November 2015 ([BRI0006](#))
- 10 Letter to the Chair from Tom Watson MP, 3 November 2015 ([BRI0008](#))
- 11 Letter to the Chair from Sir Keir Starmer MP, 3 November 2015 ([BRI0009](#))
- 12 Letter to the Chair from Alison Saunders, Director of Public Prosecutions, 3 November 2015 ([BRI0010](#))

# List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the Committee's website at [www.parliament.uk/homeaffairscom](http://www.parliament.uk/homeaffairscom).

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2015–16

First Report	Psychoactive substances	HC 361
Second Report	The work of the Immigration Directorates (Q2 2015)	HC 512