

This document has been redacted for Public Interest Immunity claims made by Victoria Police.
These claims are not yet resolved.

ROYAL COMMISSION INTO THE MANAGEMENT
OF POLICE INFORMANTS

Held in Melbourne, Victoria

On Wednesday, 13 May 2020

Led by Commissioner: The Honourable Margaret McMurdo AC

Also Present

Counsel Assisting: Mr A. Woods

Counsel for Victoria Police Mr S. Holt QC

Counsel for DPP/SPP Mr P. Doyle

Counsel for State of Victoria Mr T. Kyriakou

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14:49:32 1 COMMISSIONER: Good afternoon, I'll take appearances first.
15:16:15 2 Mr Woods, you're appearing as counsel assisting.
15:16:20 3
15:16:20 4 MR WOODS: That's correct, Commissioner.
15:16:21 5
15:16:21 6 COMMISSIONER: Mr Holt for Victoria Police.
15:16:23 7
15:16:24 8 MR HOLT: Yes, Commissioner.
15:16:26 9
15:16:26 10 COMMISSIONER: Mr Doyle for the DPP and the solicitor for
15:16:31 11 Public Prosecutions.
15:16:33 12
15:16:33 13 MR DOYLE: Yes, Commissioner.
15:16:34 14
15:16:34 15 COMMISSIONER: Mr Kyriakou for the State of Victoria.
15:16:38 16
15:16:38 17 MR KYRIAKOU: Yes, Commissioner.
15:16:40 18
15:16:40 19 COMMISSIONER: Thank you. This preliminary part of this
15:16:45 20 afternoon's hearings is to deal with some directions,
15:16:50 21 matters mostly flowing over from the last directions
15:16:54 22 hearing.
15:16:56 23
15:16:56 24 MR WOODS: Yes.
15:16:57 25
15:16:57 26 COMMISSIONER: Mr Woods, yes.
15:16:58 27
15:16:58 28 MR WOODS: Yes, thank you Commissioner. Before we get to
15:17:00 29 those matters there are two statements that have been
15:17:04 30 received that I'll just quickly tender if that's
15:17:07 31 convenient. The first of them is Elena Pucar of 7 May 2020
15:17:12 32 and the exhibit number we are up to is 1538.
15:17:17 33
15:17:18 34 COMMISSIONER: Yes.
15:17:18 35
15:17:20 36 MR WOODS: There's a claim of confidentiality on that
15:17:24 37 statement which I don't seek to make submissions against
15:17:28 38 but I would ask, though, that it be provided to the Office
15:17:33 39 of Public Prosecutions by Victoria Police on whatever
15:17:36 40 undertakings are required.
15:17:39 41
15:17:39 42 COMMISSIONER: All right then. Are you content with that,
15:17:41 43 Mr Holt?
15:17:42 44
15:17:44 45 MR HOLT: My learned friend Mr Woods raised that with me
15:17:46 46 just as we were starting. I'll just take instructions,
15:17:52 47 Commissioner. I don't envisage a difficulty but I'll just

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15:17:54 1 confirm those instructions as shortly as I can.
15:17:54 2
15:17:54 3 COMMISSIONER: Yes. Did you want to be heard on that,
15:17:56 4 Mr Doyle?
15:17:57 5
15:17:57 6 MR DOYLE: No, Commissioner, only other than to note,
15:17:59 7 because I don't know what is in the statement, if there's
15:18:02 8 anything in the material which could be relevant to any of
15:18:07 9 the submissions the OPP has made either on questions of
15:18:11 10 disclosure or any other matters of policy, we would seek to
15:18:14 11 look at the material and are happy to provide the usual
15:18:17 12 undertakings.
15:18:19 13
15:18:19 14 COMMISSIONER: Mr Woods, can you tell us whether that's so?
15:18:22 15
15:18:23 16 MR WOODS: The reason that I suggested it be provided is
15:18:26 17 that there are elements of the statement which do go
15:18:30 18 towards disclosure. I need to be cautious about what they
15:18:35 19 are but essentially there's processes, the internal
15:18:40 20 Victoria Police processes that might lead to there being
15:18:43 21 disclosure and considerations about disclosure when it
15:18:46 22 comes to telephone intercept material and the fruits of
15:18:50 23 particular warrants. On my assessment that might well be
15:18:54 24 of interest to the Office of Public Prosecutions.
15:18:57 25
15:18:57 26 COMMISSIONER: Yes, all right. When do you expect to know
15:19:00 27 your position, Mr Holt?
15:19:02 28
15:19:02 29 MR HOLT: I would expect to have an answer to that by the
15:19:05 30 end of today or early tomorrow morning, Commissioner, but
15:19:08 31 I'd just like to read that statement again and just confirm
15:19:11 32 the position. I understand what my friend says, it makes
15:19:14 33 perfect sense. We'll try and have an answer to the
15:19:17 34 Commissioner tomorrow if we may.
15:19:19 35
15:19:19 36 COMMISSIONER: All right. It will probably be particularly
15:19:21 37 good if there could be one today, so can you try for today
15:19:24 38 but if not, there's always tomorrow.
15:19:26 39
15:19:26 40 MR HOLT: Yes, thank you Commissioner. I'll ask those
15:19:30 41 inquiries be made and as soon as I receive notice I'll let
15:19:33 42 you and our learned friends know.
43
15:19:35 44 COMMISSIONER: Thanks Mr Holt.
15:19:35 45
15:19:36 46 MR WOODS: I confirm, Commissioner, unlike the other issues
15:19:38 47 we're going through that is one that I haven't raised with

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15:19:42 1 Mr Holt in advance of today so it's just something that's
2 come on my reading of the most recent - - -
3

15:19:47 4 COMMISSIONER: Sure.
15:19:47 5
15:19:47 6 #EXHIBIT RC1538 - (Confidential) Statement of Elena Pucar
15:19:51 7 7/5/20.
15:19:51 8

15:19:52 9 MR HOLT: Thank you Commissioner.
15:19:53 10

15:19:54 11 MR WOODS: The second and last to tender is the statement
15:19:56 12 of Mr Boris Buick, a supplementary statement that is, of 13
15:20:01 13 May 2020. I think that only needs an A because I
15:20:05 14 understand there aren't any claims made in relation to that
15:20:08 15 statement.
15:20:08 16

15:20:08 17 MR HOLT: That is the position, Commissioner.
15:20:10 18

15:20:11 19 #EXHIBIT RC1539 - Statement of Boris Buick 13/5/20.
15:20:16 20

15:20:16 21 COMMISSIONER: That can go up on the website straight away,
15:20:20 22 which is a pleasant change.
15:20:22 23

15:20:22 24 MR WOODS: Yes. Otherwise, Commissioner, there's an issue
15:20:24 25 that was discussed at some length last week regarding the
15:20:29 26 identification and then provision of certain telephone
15:20:33 27 intercept material, some of it relevant to conversations
15:20:37 28 between Ms Gobbo and a particular person of significant
15:20:41 29 interest, a former client of hers who she provided
15:20:45 30 information about.
15:20:46 31

15:20:46 32 COMMISSIONER: Yes, Mr Woods, this is the material that the
15:20:49 33 Commission only received in late April?
15:20:51 34

15:20:51 35 MR WOODS: Yes, that's correct.
15:20:52 36

15:20:52 37 COMMISSIONER: Thank you.
15:20:53 38

15:20:54 39 MR WOODS: And there was to be an update given. Mr Holt
15:20:57 40 and I have discussed that and he's in a position to be able
15:21:02 41 to update you now, Commissioner.
42

15:21:03 43 COMMISSIONER: Yes, thanks Mr Holt.
15:21:03 44

15:21:04 45 MR HOLT: Yes, I am in a position to do that, Commissioner.
15:21:07 46 I can confirm that all of the material relating to that
15:21:10 47 client, which amounts to 142 records, bar one transcript,

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15:21:14 1 has been produced to the Royal Commission. That transcript
15:21:18 2 will be produced by the end of the week, so that is within
15:21:22 3 the next two days. As I indicated, Commissioner, last week
15:21:26 4 we have also, Victoria Police is also examining records in
15:21:30 5 relation to other persons who might fall into the same
15:21:35 6 category. That has been an extensive operation in the
15:21:41 7 sense that it's involved using a database, a relatively
15:21:46 8 elderly database for the purposes of searching more than
15:21:49 9 2 million records. I can, though, indicate this: Victoria
15:21:53 10 Police's assessment of those records and the searching that
15:21:56 11 has been done is that there will be something in the order
15:21:58 12 of 1700 records in total to be produced. Of those, and
15:22:04 13 that includes, I should say, those which relate to the
15:22:07 14 client we have just been referring to, of those 1304 have
15:22:11 15 now already been produced, so the vast bulk of those have
15:22:15 16 already been provided. Numbers of those are duplicates, so
15:22:18 17 that's simply an indication of the total records. A large
15:22:23 18 number are text messages, so of relatively obviously short
15:22:27 19 compass, but that's the total. So the difference between
15:22:32 20 1700 and 1304, which my maths is incapable of doing at
15:22:37 21 present, will be provided, I'm instructed, at the latest by
15:22:41 22 the end of next week.

23

15:22:42 24 There are two additional lines of inquiry which
15:22:46 25 Victoria Police has proactively identified which need to be
15:22:49 26 done in order to properly acquit our obligations and they
15:22:55 27 are being done at present but I should give the Commission
15:22:58 28 an indication of what they are. That is, there is a
15:23:01 29 separate database for telephone intercept material, that is
15:23:05 30 separate from the one that's already been searched and
15:23:08 31 where records have been obtained, held by the Professional
15:23:14 32 Standards Command, and the reason for a separate database
15:23:16 33 in that regard will be obvious given that that investigates
15:23:20 34 police officers. A search of that with relevant search
15:23:24 35 terms is presently underway and the results will be
15:23:27 36 notified as soon as they are available. In addition, in
15:23:29 37 respect of one of the persons of interest who for reasons
15:23:33 38 of suppression orders I can't name at present, an internal
15:23:38 39 checking and audit process of that material has revealed
15:23:41 40 some inconsistencies in the results that have been produced
15:23:44 41 so a second and separate review of that is being conducted
15:23:47 42 at present which may or may not result in a different
15:23:51 43 outcome, but that's as a result of internal audit and
15:23:54 44 checking process so we can give the Commission such
15:23:59 45 assurances as are possible that the material has been
15:24:01 46 properly considered. I think that's the extent of the
15:24:03 47 update I'm able to give at present, Commissioner.

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15:24:03 1
15:24:03 2 COMMISSIONER: Thanks Mr Holt, that's comforting, that
15:24:08 3 these efforts are being made to make sure that all relevant
15:24:11 4 material is provided to the Commission, thank you. Yes,
15:24:15 5 Mr Woods.
15:24:16 6
15:24:17 7 MR WOODS: Commissioner, the other, the next item was
15:24:20 8 something discussed last week as well which was an audit
15:24:23 9 being conducted of the statements of witnesses before the
15:24:27 10 Commission. Mr Buick's statement that has just been
15:24:30 11 tendered was relevant to that, that can be marked off the
15:24:33 12 list. There's a separate statement addressing how informer
15:24:37 13 registration documents were located and then a potential of
15:24:40 14 two or other, three statements again. I understand Mr Holt
15:24:43 15 is in a position to update you in relation to those.
15:24:45 16
15:24:45 17 COMMISSIONER: Thank you.
15:24:46 18
15:24:47 19 MR HOLT: Yes, that is the position, Commissioner. The
15:24:50 20 statement in respect of the finding of and storage of
15:24:54 21 former registration documents has been completed and is in
15:24:57 22 the process of being signed. We expect to request a Notice
15:25:02 23 to Produce from those assisting you today. Subject to the
15:25:05 24 fact that people are obviously involved in this hearing,
15:25:08 25 production will either occur today or first thing tomorrow
15:25:12 26 morning. We can now, we think, reasonably confidently say
15:25:14 27 that there will only be a maximum of two additional
15:25:17 28 supplementary statements and I'm instructed that they
15:25:20 29 should be able to be provided by Friday of next week. One
15:25:24 30 certainly, the other, every effort will be made to provide
15:25:27 31 by Friday next week, and we expect that to have exhausted
15:25:31 32 that activity, Commissioner.
15:25:33 33
15:25:33 34 COMMISSIONER: Thanks Mr Holt. Yes, Mr Woods, next one.
15:25:36 35
15:25:36 36 MR WOODS: Commissioner, the next item was outstanding
15:25:40 37 exhibits and we went through in some detail last week the
15:25:43 38 numbers of each, which I won't seek to go through now,
15:25:45 39 suffice to say some of those are caught up by the outcome
15:25:49 40 of an application the Commission has made to the Supreme
15:25:54 41 Court regarding suppression orders, but there's an update
15:25:58 42 which Mr Holt is able to give us, as I understand, in
15:26:01 43 relation to some remaining exhibits.
15:26:03 44
15:26:04 45 COMMISSIONER: Yes. Yes Mr Holt.
15:26:04 46
15:26:06 47 MR HOLT: Yes, thank you, Commissioner. The update is, as

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15:26:09 1 our learned friend Mr Woods says, a number of those are
15:26:11 2 awaiting the outcome of some who'll claim resolution which
15:26:16 3 may involve the suppression orders in the Supreme Court, so
15:26:18 4 they don't appear to be able to be advanced. There was, as
15:26:22 5 I'm instructed, a fruitful meeting between my instructors
15:26:24 6 and I think counsel for Victoria Police and those assisting
15:26:28 7 you this week to audit that material to ensure that the
15:26:33 8 list effectively held by both organisations are the same.
15:26:36 9 There remain a category of exhibits on which we're waiting
15:26:43 10 for some information from the Royal Commission, though we
15:26:45 11 understand why that's been delayed this week for reasons
15:26:49 12 that are no one's fault. The remaining relatively small
15:26:53 13 number of exhibits continue to be progressed. That
15:26:57 14 progress is getting gradually slower because the remaining
15:27:00 15 exhibits to be progressed are those which are more
15:27:03 16 difficult, in particular those which are requiring some
15:27:05 17 liaison with external agencies and also those which require
15:27:09 18 re-scanning of police diaries which in a Covid world is
15:27:14 19 difficult. So I think an additional five have been
15:27:16 20 recently provided, and of those then which can be advanced
15:27:18 21 because they don't fall into those other categories, we
15:27:22 22 expect to be able to provide those within two weeks of
15:27:25 23 today's date, Commissioner.

15:27:27 24
15:27:27 25 COMMISSIONER: The ones that are awaiting the outcome of
15:27:31 26 the Commission's application to the Supreme Court, once
15:27:36 27 that application is decided how quickly will they be able
15:27:39 28 to be provided?

15:27:40 29
15:27:41 30 MR HOLT: Commissioner, the hope is that they'll be
15:27:42 31 provided within one week but I'm instructed conservatively
15:27:46 32 we should say one to two weeks from the point at which that
15:27:50 33 is clear. Preparations are being made to allow that to be
15:27:54 34 done as quickly as possible once those rulings are in
15:27:58 35 place. Efforts are being made to make sure that that task
15:27:58 36 can be done quickly but that is the time frame as I've been
15:28:00 37 instructed.

15:28:01 38
15:28:01 39 COMMISSIONER: Thanks Mr Holt. Yes Mr Woods.

15:28:03 40
15:28:05 41 MR WOODS: The IBAC 12 files, Commissioner, which we
15:28:09 42 discussed last week, there's been a resolution of that
15:28:13 43 issue and there's two Commission officers who will be
15:28:16 44 attending the Police Complex in relation to those to view
15:28:20 45 what you've asked to be viewed. So that's resolved.

15:28:23 46
15:28:23 47 COMMISSIONER: Hopefully they'll have access to everything

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15:28:25 1 that they consider necessary to satisfy themselves of those
15:28:28 2 matters. Okay, thank you. And then finally?
15:28:31 3
15:28:31 4 MR WOODS: The interim orders that again we discussed last
15:28:34 5 week. These were orders that were made in the course of
15:28:37 6 evidence on an interim basis to be supported in due course.
15:28:41 7 There's been some email correspondence about that and
15:28:45 8 there's going to be a further confidential affidavit and I
15:28:49 9 understand that we're going to be updated about when that
15:28:52 10 affidavit will be received.
15:28:53 11
15:28:53 12 COMMISSIONER: Yes Mr Holt.
15:28:54 13
15:28:55 14 MR HOLT: That affidavit has been, in fact a confidential
15:28:57 15 statement has been finalised, Commissioner, and as with the
15:29:00 16 other statement I referred to we expect to be in a position
15:29:04 17 to request a Notice to Produce today, which means the
15:29:06 18 statement will be provided today or at some point early
15:29:09 19 tomorrow. I apologise for the delay on that, Commissioner,
15:29:12 20 it was entirely as a result of a miscommunication at my end
15:29:16 21 in terms of advancing matters in discussion with those
15:29:19 22 assisting you. That statement will be provided by
15:29:22 23 tomorrow.
15:29:23 24
15:29:23 25 COMMISSIONER: All right then. Hopefully we'll then be
15:29:24 26 able to get those orders sorted out very quickly. Is that
15:29:28 27 all we need to discuss by way of directions hearing?
15:29:33 28
15:29:34 29 MR WOODS: It is, Commissioner, and just for those who are
15:29:36 30 following the webcast of the proceeding, what's proposed is
15:29:39 31 that Sir Jonathan Michael Murphy, who is a witness being
15:29:43 32 called to give some guidance to the Commission about the
15:29:46 33 system that the UK has for human source management, will be
15:29:51 34 commencing at 4.30 Melbourne time, so in about an hour, on
15:29:56 35 a 20 minute delay, so for those watching it will be about
15:30:02 36 10 to 5, and that we'll, I understand, adjourn in the
15:30:07 37 meantime.
15:30:07 38
15:30:07 39 COMMISSIONER: Yes, we will. I think it is very important
15:30:09 40 that we started on time, at 4.30, to meet Sir Jon's
15:30:15 41 convenience. He's made himself available at a pretty
15:30:19 42 unearthly hour to be giving evidence before a Commission in
15:30:25 43 the UK. It's going to be 7.30 am there and it's 4.30 pm
15:30:32 44 here, so we didn't want to have him delayed, having
15:30:35 45 prepared himself for that early start, so we erred on the
15:30:38 46 side of caution to ensure that we finished these directions
15:30:41 47 hearings in time. In fact we probably have been a little

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15:30:45 1 over-cautious, but if we hadn't been you can be sure it
15:30:50 2 would have run over. We will adjourn now until 4.30 when
15:30:55 3 we will resume with Sir Jon.
15:30:56 4
15:30:57 5 MR WOODS: Thank you, Commissioner.
15:30:59 6
15:31:00 7 (Short adjournment.)
15:48:15 8
15:52:48 9 COMMISSIONER: In Melbourne and Brisbane and good evening
16:30:54 10 to Sir Jon Jonathan Murphy who's going to be giving
16:31:02 11 evidence from the United Kingdom. The appearances are as
16:31:06 12 they were earlier this afternoon in the directions hearing.
16:31:08 13 Mr Woods is appearing as assisting, Mr Holt QC is appearing
16:31:12 14 for Victoria Police, Mr Doyle is appearing for the Director
16:31:15 15 of Public Prosecutions and the Solicitor for Public
16:31:17 16 Prosecutions in Victoria, and Mr Kyriakou is appearing for
16:31:22 17 the State of Victoria.
16:31:23 18
16:31:26 19 Sir Jonathan, I understand that you will take the
16:31:31 20 oath?---Do you wish me to do that now?
21
16:31:34 22 No, I just wanted you to confirm that you will take the
16:31:37 23 oath rather than affirmation, yes?---Yes, please.
24
16:31:40 25 Yes, all right. If you could hold the Bible in your right
16:31:44 26 hand and I'll have the oath administered to you. Thank
16:31:47 27 you.
16:31:48 28
16:31:48 29 <JONATHAN MICHAEL MURPHY, sworn and examined:
30
16:32:11 31 COMMISSIONER: In a moment Mr Woods will ask you some
16:32:14 32 questions. I understand, just in terms of timing and how
16:32:19 33 we'll proceed today, Mr Woods, you expect to be an hour or
16:32:24 34 so, is that right?
16:32:26 35
16:32:26 36 MR WOODS: Yes, an hour, up to an hour and a half, I think,
16:32:29 37 and if I look like being longer than that I'm sure I can
16:32:33 38 truncate it to the most important points.
39
16:32:37 40 COMMISSIONER: All right. I'm just contemplating breaks
16:32:39 41 for the witness. Mr Holt, you'll be about half an hour
16:32:43 42 perhaps? Mr Holt, I couldn't hear you, you're muted.
16:32:55 43
16:32:55 44 MR HOLT: I'm sorry, Commissioner. Yes, I'll be about half
16:32:58 45 an hour. I would not expect to be longer than that.
46
16:33:00 47 COMMISSIONER: Yes. I think, Mr Doyle, you also expect to

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16:33:04 1 have a few questions?
16:33:06 2
16:33:07 3 MR DOYLE: A few questions, Commissioner. I don't think
16:33:09 4 I'll be more than about ten minutes.
5
16:33:11 6 COMMISSIONER: Right. I don't think Mr Kyriakou expects to
16:33:15 7 have any questions, is that right?
16:33:17 8
16:33:19 9 MR KYRIAKOU: Yes, Commissioner, that is correct.
10
16:33:22 11 COMMISSIONER: All right then. Sir Jon, I think round
16:33:29 12 about 6 o'clock our time would be 9 o'clock your time, 9 am
16:33:35 13 your time, I'll see how we're going. If we're going to be
16:33:41 14 a little while longer we'll take a 15 minute break so you
16:33:45 15 can have a comfort break. If we're not too far off
16:33:48 16 finishing by then and you're happy to continue we'll simply
16:33:55 17 continue. But we'll inquire about 9 am your time, 6 pm
16:34:03 18 Australian time, how you're feeling at that stage. In the
16:34:08 19 meantime if you need a break at any time just let me know,
16:34:12 20 all right?---Yes, thank you.
21
16:34:15 22 Yes, Mr Woods.
16:34:18 23
16:34:19 24 MR WOODS: Yes, thank you, Commissioner. Sir Jon, your
16:34:23 25 full name is Jonathan Michael Murphy?---Correct.
26
16:34:28 27 Your address would be care of Liverpool John Moores
16:34:33 28 University?---Yes, it would be.
16:34:33 29
16:34:33 30 And what's your occupation?---I'm a professor at the
16:34:35 31 university.
32
16:34:36 33 All right. You've produced a statement to the Royal
16:34:39 34 Commission dated 28 April 2020; is that correct?---Yes, it
16:34:44 35 is.
36
16:34:45 37 Before we tender that there's just one item of
16:34:48 38 clarification you wish to make and that's to paragraph 60
16:34:54 39 and it's inasmuch as it says in the middle of that
16:34:58 40 paragraph, "They will also have a deep and nuanced
16:35:03 41 understanding of the relevant legislative policy and
16:35:05 42 guidance frameworks they are working in and be able to
16:35:08 43 apply those with discretion to relevant circumstances".
16:35:13 44 You want to clarify that the discretion that you're talking
16:35:17 45 about there is not using their own discretion regarding the
16:35:20 46 use of the powers and application of the policies but,
16:35:23 47 rather, being able to act in a discrete manner as comes

.13/05/20

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MURPHY XN

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16:35:29 1 with the role?---Yes, that's correct, thank you.
2
16:35:31 3 Commissioner, Sir Jon doesn't seek to amend the statement,
16:35:36 4 rather I think that's sufficient on the record.
5
16:35:40 6 COMMISSIONER: If that's clarified, it's not an amendment,
16:35:43 7 it's rather a clarification of the use of the word
16:35:47 8 discretion.
16:35:48 9
16:35:49 10 MR WOODS: That's correct. Otherwise you've had a chance
16:35:51 11 to read the statement recently I take it, Sir Jon?---I
16:35:55 12 have, yes.
13
16:35:55 14 And its contents are true and correct?---They are.
15
16:35:59 16 Thank you. Commissioner, I tender that statement and just
16:36:02 17 for the record it's number is COM.0110.0001.0001.
18
16:36:11 19 COMMISSIONER: That will be Exhibit 1540. Is there any
16:36:15 20 reason for an A and a B?
16:36:19 21
16:36:19 22 MR WOODS: No.
23
16:36:20 24 COMMISSIONER: Or can it go on the website as is?
16:36:23 25
16:36:23 26 MR WOODS: No, there's no claims made in relation to it as
16:36:25 27 I understand it and I can't see that there would be. So
16:36:28 28 it's able to go on as it is.
16:36:32 29
16:36:33 30 MR HOLT: That's correct, Commissioner.
31
16:36:34 32 COMMISSIONER: Thanks, Mr Holt. That can be tendered and
16:36:36 33 published forthwith, Exhibit 1540. Yes, Mr Woods.
16:36:41 34
16:36:41 35 #EXHIBIT RC1540 - Statement of Sir Jonathan Murphy.
16:36:43 36
16:36:44 37 MR WOODS: Sir Jon, just to orientate why the Commission
16:36:47 38 has asked you to provide some evidence to it, you
16:36:50 39 understand you're being to asked to provide your
16:36:54 40 independent views and experience about the UK system of
16:36:58 41 human source management and particular aspects of it, is
16:37:01 42 that your understanding?---It is.
43
16:37:03 44 And you've had significant experience in the realm of human
16:37:12 45 source management and regulation of that area in your
16:37:15 46 career?---I have up to the point of my retirement four
16:37:19 47 years ago.

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1
16:37:20 2 Yes, I understand. You have at least some understanding, I
16:37:24 3 take it, of the circumstances that led to the inception of
16:37:30 4 this particular Royal Commission, being the use of a
16:37:33 5 criminal defence barrister as a human source, do you
16:37:39 6 understand that's the genesis of this?---I do.
7
16:37:41 8 And you understand, perhaps, and if not I'll explain it to
16:37:49 9 you, that a couple of the Terms of Reference require the
16:37:53 10 Commissioner to inquire into and report on the
16:37:56 11 appropriateness of current practices and safeguards in
16:38:00 12 relation to human source management and so the experience
16:38:05 13 in the United Kingdom is of some assistance in those
16:38:08 14 inquiries, do you understand that?---I do, thank you.
15
16:38:11 16 All right. In fact your particular experience in a system,
16:38:16 17 being the UK model that's quite different in some respects
16:38:21 18 to the Australian model, is what will be the focus of what
16:38:26 19 I'll be talking to you about. You currently hold the
16:38:29 20 position of Professor of Advanced Policing Studies at
16:38:33 21 Liverpool John Moores University; is that right?---Yes.
22
16:38:39 23 And that role is part of a specialist unit that works in
16:38:45 24 partnership with the UK police to develop strategies and
16:38:48 25 tactics to support forces and detect and prevent a number
16:38:52 26 of serious criminal activities; is that right?---Yes.
27
16:38:55 28 You've held that position since your retirement from the
16:38:58 29 Force in July 2016?---Yes.
30
16:39:04 31 I want to - your experience and qualifications are set out
16:39:09 32 in some detail in your statement which, as we say, is going
16:39:11 33 to be tendered and publicly available, so I won't go
16:39:15 34 through them in a lot of detail, suffice it to say you were
16:39:19 35 in uniform when you started with the police as a cadet from
16:39:25 36 1975 for about eight years until 1982; is that
16:39:29 37 right?---Yes, as a cadet I wasn't a sworn police officer.
16:39:33 38 In those days you join as a young person. I became a sworn
16:39:39 39 police officer in late 76.
40
16:39:41 41 Yes, I see. Then you went from uniform to the Criminal
16:39:45 42 Investigation Division in March 1982?---Yes.
43
16:39:48 44 And you were involved for the next 18 years or so in
16:39:52 45 investigations, including covert operations and corruption.
16:39:57 46 Did they include investigation of police corruption?---Yes,
16:40:00 47 it was. I ran a two year covert investigation into corrupt

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16:40:04 1 police officers.
2
16:40:05 3 Then late 99 you returned to uniform as a Force operations
16:40:11 4 manager, was that still at Merseyside?---It was still at
16:40:15 5 Merseyside and that was preparation to go to the National
16:40:17 6 Strategic Command Course.
7
16:40:18 8 You did that in 2001 and in that role you held the position
16:40:23 9 of authorising officer, which we'll talk about in some
16:40:27 10 detail under the Regulation of Investigatory Powers Act
16:40:30 11 2000?---I held the role of authorising officer as an
16:40:36 12 assistant, an authorising officer is at the rank of
16:40:39 13 Superintendent - - -
16:40:39 14
16:40:40 15 Yes?--- - - - for certain activities such as participating
16:40:45 16 informants and undercover officers, the authority level is
16:40:49 17 higher at Assistant Chief Constable and that was my
16:40:57 18 responsibility.
19
16:40:58 20 Yes, I understand. Then a few other senior roles and
16:41:00 21 eventually you were, in February 2010, you became the Chief
16:41:04 22 Constable of Merseyside police and the analogous position
16:41:09 23 in Victoria would be the Chief Commissioner of
16:41:13 24 Police?---Yes, that's correct.
25
16:41:14 26 You were in that role for six years and it held
16:41:18 27 responsibility for seven policing areas and 6,500 police
16:41:24 28 and support staff; is that correct?---That's correct.
29
16:41:26 30 And since then you've been in various chairing and advisory
16:41:32 31 roles, including your current professorship. You've
16:41:37 32 authored academic work in the area of the use of human
16:41:43 33 sources as well; is that correct?---I did. That was in
16:41:46 34 1995.
35
16:41:49 36 All right. Then your statement sets them out, so I won't
16:41:52 37 go through it in detail, but you list your significant
16:41:56 38 qualifications, including law degree, Fulbright fellowship,
16:42:03 39 commendations and culminating in a Knight's Bachelor in
16:42:09 40 2014 for services to policing; is that correct?---That's
16:42:11 41 correct.
42
16:42:11 43 Your current professorship wasn't awarded for academic work
16:42:16 44 rather than experience; is that correct?---That's correct,
16:42:19 45 I'm an ambassadorial professor, I bring people to the
16:42:23 46 university, I do give some lectures.
47

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16:42:26 1 All right, yes, thank you. I just want to establish for
16:42:29 2 those - you'll understand that it's a delayed but otherwise
16:42:36 3 live web cast and those following may not understand that
16:42:41 4 there's a different framework for human source use,
16:42:46 5 registration and management in the UK but it's a situation
16:42:50 6 that the UK has a statutory scheme; is that right?---That
16:42:53 7 is correct.

8

16:42:53 9 And how is it that the statutory scheme came about rather
16:42:57 10 than internal police policy regulating these
16:43:01 11 issues?---Primarily as a consequence of the UK becoming
16:43:06 12 compliant with the European Convention of Human Rights,
16:43:12 13 passing the Human Rights Act in 1988, and then passing the
16:43:16 14 Regulation and Investigatory Powers Act in 2000 and all the
16:43:21 15 investigatory practices and intrusive surveillance would be
16:43:26 16 compliant with the Act.

17

16:43:26 18 As I understand it the situation is that it came to light
16:43:30 19 that because of the potential and sometimes the reality of
16:43:36 20 interference with an individual's human rights, it was
16:43:39 21 required, this area of covert operations and human source
16:43:43 22 management was required to be part of a legislative regime
16:43:46 23 because of that potential for interference, is that
16:43:49 24 generally correct?---Yes, it is. Primarily interference
16:43:54 25 under Article 8 of the European Convention, the right to a
16:44:00 26 private life, and Article 6, the right to a fair trial.

27

16:44:03 28 Since the inception of that Act we have - this area is
16:44:09 29 regulated by the Act and various orders and a Code of
16:44:12 30 Practice that are also established under the Act; is that
16:44:16 31 right?---Yes, that's correct.

32

16:44:17 33 Commissioner, there's a few documents I'll be referring to
16:44:20 34 and it might be most efficient if I just go through them
16:44:23 35 now and either tender them or identify where they've
16:44:26 36 already been tendered. The first is the Act itself, the
16:44:30 37 Regulation of Investigatory Powers Act, and it's the
16:44:32 38 current version of that Act which is at
16:44:40 39 RCMPI.0054.0004.0001.

40

16:44:42 41 COMMISSIONER: Yes. Has that already been tendered, do we
16:44:45 42 know?

16:44:46 43

16:44:46 44 MR WOODS: No, that hasn't been tendered.

16:44:48 45

16:44:48 46 #EXHIBIT RC1541 - Regulation of Investigatory Powers Act.

47

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16:44:50 1 COMMISSIONER: That's a public document?
16:44:52 2
16:44:52 3 MR WOODS: Yes, it is. The next documents are also public
16:44:55 4 documents. The Regulation of Investigatory Powers
16:44:59 5 (Directed Surveillance and Covert Human Intelligence
16:45:05 6 Sources) Order 2010, and that's at RCMP.I.0054.0003.0001.
16:45:16 7
8
16:45:16 9 #EXHIBIT RC1542 - Regulation of Investigatory Powers
16:44:58 10 (Directed Surveillance and Covert Human
16:45:04 11 Intelligence Sources) Order 2010.
16:45:20 12
16:45:20 13 The next is another order, and this'll be the last that I
16:45:24 14 need to tender, which is the Regulation of Investigatory
16:45:27 15 Powers (Covert Human Intelligence Sources: Relevant
16:45:32 16 Sources) Order 2013 at RCMP.I.0054.0003.0002.
16:45:43 17
16:45:44 18 #EXHIBIT RC1543 - Regulation of Investigatory Powers
16:45:28 19 (Covert Human Intelligence Sources:
16:45:31 20 Relevant Sources) Order 2013.
21
16:45:48 22 Thank you. Sir Jon, we'll also be referring to two other
16:45:52 23 documents that I'll just identify because they are already
16:45:56 24 tendered. An important one of those is the Regulation of
16:45:58 25 Investigatory Powers (Covert Human Intelligence Sources:
16:46:04 26 Matter Subject to Legal Privilege) Order 2010. That's part
16:46:08 27 of Exhibit RC008, which is the statement of an Assistant
16:46:13 28 Commissioner of Police that's been tendered previously.
16:46:15 29 The other is the Code of Practice which is also an
16:46:21 30 annexure, Annexure 64 to that same statement. Mostly we'll
16:46:26 31 be touching on issues in those last two documents. Thank
16:46:31 32 you for that formality.
16:46:34 33
16:46:35 34 To move on. The situation appears to be that under
16:46:38 35 the UK Act the Secretary of State can make orders and the
16:46:45 36 UK Home Office can publish codes of practice relating to
16:46:50 37 the authorisation, use and management of human sources by
16:46:54 38 police and those documents supplement or - they don't
16:47:00 39 necessarily expand on, but they might explain some of the
16:47:02 40 requirements that are set out in the legislation, is that
16:47:05 41 your understanding of the situation?---That's correct. The
16:47:07 42 Code of Practice are not law but they do contain quite
16:47:11 43 extensive guidance on the management of informants.
44
16:47:15 45 Right?---(Indistinct words).
46
16:47:18 47 Yes. And whereas the orders themselves are law?---Yes.

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1
16:47:24 2 The Code of Practice is a 64 or so page document. That's a
16:47:30 3 publicly available document?---It is.
4
16:47:33 5 All right. The legislation, being the Act, requires there
16:47:41 6 being public consultation on a draft of that Code occurring
16:47:48 7 prior to it being tabled in parliament, is that
16:47:50 8 right?---Yes, that's correct, and if the Code is refreshed,
16:47:53 9 which I believe it has been.
10
16:47:55 11 Yes. Now at paragraph 23 of your statement you point out
16:47:59 12 that the Act establishes a rights based approach to
16:48:04 13 decision-making for covert policing and you identify
16:48:08 14 necessity and proportionality as being relevant
16:48:12 15 considerations. Can you expand on that a bit for the
16:48:15 16 Commissioner?---Yes. The assessment of proportionality
16:48:22 17 involves the balancing of the seriousness of the criminal
16:48:24 18 activity that the individual who is the suspect of the
16:48:27 19 investigation is involved in against the level of intrusion
16:48:30 20 into that individual's private life and the Act seeks to
16:48:33 21 ensure that that intrusion is no more than is necessary for
16:48:38 22 the purpose that the investigators have.
23
16:48:40 24 All right. It's the situation that no matter how serious
16:48:44 25 the criminal activity, the effect on human rights of the
16:48:48 26 police's approach needs to be considered; is that
16:48:50 27 right?---Yes, that's correct. The level of seriousness on
16:48:54 28 its own is not sufficient to justify intrusion. It has to
16:48:58 29 be proportionate and it has to be fully considered in terms
16:49:04 30 of all the implications on the circumstances.
31
16:49:08 32 I'm going to go through some aspects of the Act but I won't
33 - - -
34
16:49:11 35 COMMISSIONER: Just before we leave that could I just ask
16:49:14 36 this: so I take it from what you've said there, it's
16:49:21 37 probably implied but let's spell it out, if, for example,
16:49:27 38 what was proposed to be done by way of informing and the
16:49:34 39 use of the information was to amount to corrupting the
16:49:39 40 criminal justice system, that wouldn't be proportionate; is
16:49:43 41 that correct?---Yes, that is correct.
42
16:49:44 43 Thank you. Yes Mr Woods.
16:49:45 44
16:49:47 45 MR WOODS: Now I assure you, Sir Jon, it's not a law exam
16:49:53 46 and I don't expect you to know the particular details of
16:49:57 47 the Act off by heart. So s.29 of the Act though

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16:50:00 1 establishes that certain people have the power to grant
16:50:05 2 authorisations for the conduct or use of human sources. I
16:50:11 3 think that's to be understood, that it simply can't be
16:50:14 4 lawfully done, someone can't be engaged or authorised as a
16:50:19 5 human source without that being done under the legislative
16:50:24 6 regime; is that right?---That is correct.
7
16:50:26 8 The situation that persisted prior to the Act was that it
16:50:31 9 was regulated by simply an internal police policy; is that
16:50:37 10 right?---There were national guidelines that were written I
16:50:40 11 think around 1994 but they didn't have the force of law and
16:50:44 12 they were an Association of Chief Police Officer
16:50:50 13 guidelines.
14
16:50:50 15 You have experience in the area running sources yourself
16:50:52 16 under that previous system; is that correct?---Yes, I do.
17
16:50:57 18 And being able to compare the pre-legislative regime to the
16:51:06 19 post legislative regime, what do you say about the efficacy
16:51:10 20 and whether or not it's a good system or it's made things
16:51:13 21 more difficult, what's your position?---The primary
16:51:17 22 difference is the level of scrutiny, the levels of
16:51:20 23 authority for authorising activity, the levels of intrusive
16:51:28 24 supervision, the requirement for authorising officers, the
16:51:31 25 training for the individuals at every level in the
16:51:33 26 informant system. It is a world apart from where it was.
16:51:37 27 Whilst there were some national guidelines, I couldn't say
16:51:40 28 they were always followed to the letter, and each
16:51:45 29 individual force at that time would have had their own
16:51:49 30 interpretation of those guidelines. Where with RIPA and
16:51:52 31 the codes of practice, there's far less. Whilst there's
16:51:55 32 some flexibility, there's far less latitude.
33
16:51:59 34 We'll talk about IPCO in some detail in a moment but it's
16:52:04 35 also the situation that post the inception of the
16:52:06 36 legislative regime there's an external set of eyes who are
16:52:11 37 there essentially to provide independent and external
16:52:14 38 oversight in relation to issues of human source use and
16:52:18 39 management; is that right?---Yes, that's correct.
16:52:21 40 Initially the office of the surveillance Commissioners and
16:52:25 41 more latterly the IPCO.
42
16:52:30 43 You talk about at paragraph 25 of your statement about the
16:52:33 44 judgment regarding necessity and proportionality being
16:52:37 45 subjective, and I think you've touched on this a moment
16:52:39 46 ago, and that the legislative basis in the Act provides
16:52:44 47 solid guidance for that determination. Do you have

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16:52:47 1 experience of making decisions under the national policy as
16:52:52 2 it stood prior to the legislation and then under the
16:52:55 3 legislation in any determinative role in human source
16:53:04 4 management?---I was a more junior officer under the old
16:53:06 5 system. I wasn't an authorising officer pre-RIPA, but I
16:53:13 6 was a handler and controller, so my decision-making was
16:53:16 7 limited to tactical decisions pre-RIPA.

8
16:53:24 9 Section 29(3), again, I'm not going to take you through the
16:53:29 10 particular, the actual wording of the provisions, but it
16:53:29 11 sets out what the legislature defines as necessary for the
16:53:33 12 authorisation of a source, and this picks up on what you
16:53:35 13 were saying a moment ago about these factors being now
16:53:38 14 found in legislation rather than simply policy, and it's
16:53:44 15 the fact that a decision maker has to go through that
16:53:47 16 statutory scheme to determine whether or not the engagement
16:53:50 17 of a particular source is necessary?---That is correct and
16:53:54 18 national guidelines requires them to have gone through
16:53:57 19 training in order to make those decisions

20
16:54:02 21 Yes, and we'll talk about training in due course too.
16:54:05 22 Later on in your statement, somewhere in the 50s I think it
16:54:08 23 is, you say that the authorising officer is often a
16:54:16 24 dedicated role, perhaps less so in some of the less
16:54:19 25 centralised areas, and in some other Forces in the world
16:54:25 26 there are those who are engaged in making these decisions
16:54:31 27 and providing authorisations are doing it as part of many
16:54:35 28 other roles that they have and many other focuses of their
16:54:38 29 roles. What do you say about the importance or otherwise
16:54:42 30 of it being a dedicated role where it is able to be so?---I
16:54:49 31 think it's really important because officers at that rank,
16:54:52 32 if they do have more than one role they're generally all
16:54:56 33 relatively onerous responsibilities. In my view the
16:55:00 34 authorisation of human intelligence sources is something
16:55:03 35 that requires people to be on the ball, on top of their
16:55:08 36 game, and any distraction doing other roles I think is to
16:55:15 37 the detriment of doing the job.

38
16:55:16 39 It seems to be part of that is picked up by s.45 of the Act
16:55:21 40 that requires an authorising officer to cancel
16:55:24 41 authorisation if any of the matters that went to their
16:55:27 42 consideration under 29 to authorise the use of the source
16:55:32 43 change. Do you think it's important that authorising
16:55:36 44 officers are required to continue to critically engage with
16:55:40 45 the continued use of sources throughout their use?---Yes, I
16:55:45 46 do. Whilst clearly the authorisation process itself and
16:55:50 47 the reports that are involved in that and the initial

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16:55:55 1 consideration is important, things do change and if
16:55:58 2 somebody is distracted doing other roles then they're
16:56:02 3 perhaps not on top of the job in the way that somebody who
16:56:05 4 is dedicated to the role would be.
5
16:56:07 6 In fact when I look at s.45 and s.29 together, it appears
16:56:12 7 that the authorising officer is required regularly to
16:56:15 8 determine or to think critically about necessity and
16:56:17 9 proportionality throughout the life of the source; is that
16:56:21 10 right?---Yes, it is an ongoing requirement.
11
16:56:24 12 Okay. Do you have any observations about the fact that
16:56:32 13 responsibility of authorisation and then continued
16:56:35 14 authorisation sits with a particular human being, rather
16:56:40 15 than a group of human beings in a committee?---Yeah, I
16:56:45 16 think we train people for roles and we promote them on the
16:56:49 17 basis of their experience, their skills and their judgment
16:56:52 18 and then we hold people accountable for the decisions they
16:56:55 19 make. I am personally not a fan of decisions by committee.
16:57:00 20 I think the role of committees is to hold people
16:57:03 21 accountable for the decisions that they've made. But my
16:57:05 22 view is you use your experience, your knowledge, your
16:57:08 23 judgment. You make a decision, you record your decision
16:57:10 24 with the rationale for why you've done it, and then if
16:57:14 25 necessary you justify and defend that decision and stand on
16:57:17 26 it. I'm not a fan of committee decision-making
16:57:22 27 (indistinct words).
28
16:57:23 29 I want to understand - yes, go ahead?---That is my personal
16:57:27 30 view. I'm sure not everybody would share my view but
16:57:32 31 that's my view.
32
16:57:33 33 All right.
34
16:57:35 35 COMMISSIONER: Just before we leave that could I ask you,
16:57:39 36 in making the decision, the individual person making the
16:57:43 37 decision, should there be room for him to consult others,
16:57:47 38 for example, get legal advice if needed or get advice from
16:57:52 39 a more senior officer if it's a concerning decision before
16:57:55 40 making that decision?---Yes, of course. There would always
16:57:59 41 be both wise heads in terms of other experienced
16:58:05 42 individuals that people can bounce things around with and
16:58:08 43 it is often the case in the UK that decision-making around
16:58:11 44 informants will involve some kind of discussion with both
16:58:14 45 in-house lawyers and from time to time the Crown
16:58:16 46 Prosecution Service. But I think ultimately somebody's
16:58:19 47 got, an individual has to make that decision and be made

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16:58:22 1 accountable for it, having taken that advice.
2
16:58:25 3 Thank you. Yes, Mr Woods.
16:58:28 4
16:58:28 5 MR WOODS: In relation to advice, do you think that there
16:58:32 6 should be any restrictions when it comes to this particular
16:58:39 7 sensitive area of human source use and management, should
16:58:43 8 there be any restrictions on where the advice is obtained
16:58:47 9 from, whether it be internal advice or external advice from
16:58:52 10 counsel or somewhere like that? There's obviously a
16:58:56 11 tension in that you want to make sure that not too many
16:59:00 12 people know about the identity of a potential or actual
16:59:05 13 source. Have you ever, without giving particular examples,
16:59:08 14 have you ever had experience of external advice being
16:59:11 15 obtained about the registration or use of a human
16:59:15 16 source?---I haven't personally but I wouldn't discount it.
16:59:19 17 I don't think internal advice - well internal - I've never
16:59:25 18 been involved in a set of circumstances such have given
16:59:29 19 rise to the Commission. But what I would say is if I felt
16:59:32 20 the need to go for internal legal advice then I would do it
16:59:35 21 in relation to the registration of a source. And
16:59:39 22 similarly, if I felt there was a reason to speak to the
16:59:41 23 Crown Prosecution Service I would. I should say, the Crown
16:59:46 24 Prosecution Service have dedicated special case workers who
16:59:49 25 deal with the more serious end of criminal investigations.
16:59:53 26 They're small in number, it's a discrete group, and they're
16:59:56 27 accustomed to dealing with information that is very
17:00:00 28 sensitive, as of course is the Force lawyer. Of course,
17:00:03 29 you don't want the circle of knowledge to be too wide, but
17:00:06 30 at the same time you need to have proper advice and you
17:00:11 31 have to make effective decisions.
32
17:00:12 33 In your experience is that group able to be, within the
17:00:16 34 Crown Prosecution Service, able to be approached where
17:00:19 35 there is no prosecution on foot, there haven't been charges
17:00:22 36 laid or anything like that, are they there simply to assist
17:00:25 37 with investigation and advice about investigation when
17:00:28 38 required?---Yes, they are. They are available to do that.
39
17:00:33 40 All right. Is that something that you saw occur from time
17:00:38 41 to time in practice, that the prosecution service would be
17:00:41 42 approached where there were not charges but there was some
17:00:44 43 advice needed in relation to particular aspects of an
17:00:47 44 investigation?---When I was authorising officer for - I
17:00:52 45 didn't authorise day-to-day informants' activity but I did
17:00:58 46 organise participating activity and undercover activity.
17:01:02 47 Whenever I was faced with an application for such an

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17:01:05 1 authority, which was generally at the start of what would
17:01:09 2 probably be a long running covert investigation, my first
17:01:13 3 question will always be, "Have you discussed", to the
17:01:14 4 senior investigating officer, "Have you discussed this with
17:01:18 5 the Crown Prosecution Service? What is their view?" And
17:01:23 6 if they hadn't, I ensured they did.
7

17:01:24 8 Yes, and you talk about that later on in your statement and
17:01:24 9 we might talk about that in a bit more detail in due
17:01:28 10 course. You identify risk assessments as being a creature
17:01:34 11 of the Code of Practice. Can you firstly explain - we
17:01:40 12 obviously have risk assessments, an analogous system in
17:01:45 13 Victoria. What's your understanding of the risk assessment
17:01:47 14 process and what it's there to identify?---The risk
17:01:54 15 assessment process in the UK is done through a standardised
17:01:56 16 model which is known as - a rather short title PPPLEMH,
17:02:05 17 which stands for police and community Risks, political
17:02:08 18 risks, psychological risks, legal economic model, and then
17:02:12 19 the H was tagged on later for human rights. But that is
17:02:15 20 used as a framework to look at risks to the source of
17:02:20 21 potential compromise, risks to the handler, risks to the
17:02:24 22 investigation, the risks of being given false information,
17:02:29 23 whether the individual had been registered before and what
17:02:33 24 their history was as a source, risks related to the
17:02:36 25 motivation of the individual. That is not an exhaustive
17:02:40 26 list. There is also a national database for sources in the
17:02:45 27 UK and parts of the risk assessment check would be whether
17:02:49 28 the individual is registered elsewhere and whether they
17:02:53 29 have a history of being a dangerous source. The risks are
17:02:56 30 many and informants come with different risks.
31

17:03:00 32 Yes. Indeed, the situation is that the obligation to
17:03:06 33 continue - the authorising officer's obligation to continue
17:03:12 34 to consider necessity and proportionality, part of their
17:03:16 35 consideration of that, I assume, is found in the risk
17:03:20 36 assessments that are conducted so that they're able to keep
17:03:25 37 up-to-date with whether or not the source's use is
17:03:28 38 necessary or proportionate?---Correct.
39

17:03:32 40 There's an obligation to deregister the source if that no
17:03:37 41 longer, if they no longer meet that test?---Yes, if the use
17:03:44 42 of the source is no longer - the risks being that the use
17:03:49 43 of the source is no longer proportionate to what is being
17:03:53 44 investigated or if for some reason the source is perceived
17:03:56 45 to be dangerous, the source will be deregistered.
46

17:04:00 47 At paragraph 32 of your statement you say, "Each Force is

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17:04:04 1 also required to appoint a senior responsible officer,
17:04:10 2 Assistant Chief Constable or higher, to hold responsibility
17:04:12 3 for the integrity of processes in place for the management
17:04:12 4 of human sources, compliance with the Act and the Code of
17:04:16 5 Practice, ensuring all authorising officers are of an
17:04:19 6 appropriate standard and addressing the recommendations and
17:04:22 7 issues identified in inspections by IPCO, the external
17:04:27 8 oversight body". That means, as I understand it, there's a
17:04:33 9 particular very senior officer whose role it is to
17:04:37 10 continually consider process generally, rather than just
17:04:42 11 specific human sources; is that right?---Yes, that's
17:04:45 12 correct. For example, after an inspection by IPCO, if -
17:04:51 13 well they always will, there's very rarely an inspection
17:04:56 14 that doesn't have some kind of recommendations on the end
17:04:58 15 of it. When I was the Chief Constable I expected that
17:05:01 16 individual who worked in my Force to come to me with an
17:05:05 17 action plan as to what his intentions were in relation to
17:05:08 18 addressing the recommendations of IPCO. That
17:05:12 19 responsibility is not just to respond to IPCO, which is a
17:05:15 20 once a year process, but on an ongoing basis to monitor the
17:05:21 21 efficacy of the system.

22
17:05:23 23 That, I assume, is not a dedicated role, the person who's
17:05:28 24 required to carry out that role is presumably undertaking
17:05:31 25 other roles as well within the Force?---Yes, the Assistant
17:05:37 26 Chief Constable is responsible for specialist operations.

27
17:05:39 28 Are you able to assist us to understand how onerous that
17:05:45 29 particular role would be for a person in that position? I
17:05:47 30 suppose it would vary depending on the location, but this
17:05:51 31 is a person who is carrying out other roles at the same
17:05:53 32 time. Do you know how much time is dedicated towards
17:05:55 33 carrying out that oversight function?---I couldn't give you
17:05:59 34 a percentage of time in a Police Force such as the one I
17:06:04 35 was responsible for, Merseyside police covers the City of
17:06:08 36 Liverpool and surrounding area. In UK terms it's a high
17:06:13 37 crime area, it's the centre for organised crime, and that
17:06:17 38 is a relatively onerous role. And the key to somebody -
17:06:20 39 clearly the higher up you go in the organisation, the
17:06:24 40 broader your responsibilities are. Not everybody can
17:06:27 41 operate in a dedicated way in this area, but the key is
17:06:30 42 that individual, to put the right people in place
17:06:32 43 (indistinct) with the relative experience, the necessary
17:06:34 44 experience to do the job and keep him briefed and bring to
17:06:38 45 his attention issues that need addressing, but also for the
17:06:43 46 individuals to be intrusive and ask questions.

47

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17:06:46 1 We've talked about IPCO a couple of times. You may or may
17:06:51 2 not know that the situation in Victoria, we have a new
17:06:58 3 police policy in this area that began last Monday which is
17:07:03 4 a further iteration of a previous policy, but essentially
17:07:08 5 other than those who might consider it necessary to get
17:07:13 6 external advice, which isn't required anywhere within the
17:07:17 7 policy, there isn't a similar role for someone like IPCO.
17:07:23 8 So it's important for us to understand a bit more about
17:07:27 9 what IPCO is and what its role is in relation to human
17:07:33 10 sources. At paragraph 33 you say that it's a key feature -
17:07:38 11 I should say the acronym is the Investigatory Powers
17:07:43 12 Commissioner's Office. Did it come about at the same as
17:07:48 13 the Act or is it something that pre-existed?---IPCO was a
17:07:53 14 relatively recent iteration of the external governance
17:07:57 15 around the same time that came and it may, I can't remember
17:07:59 16 it may even have been simultaneous with the Act, the Office
17:08:03 17 of Surveillance Commissioners was put in place. They have
17:08:06 18 recently broadened their responsibility and consequently
17:08:11 19 they have a new name, but by and large they have the same
17:08:15 20 function. The head of IPCO is the former head of the
17:08:20 21 Queen's Bench and the most, I think the most senior
17:08:23 22 criminal judge in the UK. He was certainly a very
17:08:25 23 experienced individual because I knew him when he was a QC
17:08:30 24 in Liverpool and a judge after that. He has a number of
17:08:34 25 other High Court judges working for him and they perform
17:08:40 26 the external governance role with the assistance of four
17:08:44 27 senior investigators who do the legwork when they inspect
17:08:44 28 forces.
29
17:08:45 30 Are they carrying out other roles as well or is this the
17:08:48 31 sole focus of their position?---This is the sole focus of
17:08:52 32 their position.
33
17:08:53 34 Okay. It has specific functions relating to human sources,
17:08:59 35 IPCO I'm talking about. It oversees their registration at
17:09:05 36 times, depending on the identity of the source, is that
17:09:10 37 right, or is it only their use?---Only their use. They
17:09:14 38 don't oversee registrations but there are some instances,
17:09:18 39 legal privilege being one, where their authority is
17:09:21 40 required before an informant can be deployed.
41
17:09:24 42 Yes. And that's under the particular privilege order that
17:09:27 43 we touched on a little while ago. Essentially their role
17:09:32 44 is to ensure that the use of these individuals complies
17:09:36 45 with relevant laws, is that a correct statement?---Yes, the
17:09:42 46 laws but they also do, when they perform that inspection
17:09:47 47 role, they do use the codes of practice as well. They

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17:09:50 1 don't just look at compliance with the law, they look at
17:09:53 2 compliance with the codes of practice and follow an
17:09:57 3 inspection as well as making recommendations to the Force,
17:09:59 4 they use the knowledge they glean to spread best practice
17:10:02 5 across the UK.
17:10:04 6
17:10:05 7 MR WOODS: Given this - - -
8
17:10:06 9 COMMISSIONER: Sorry, could I clarify one thing. The
17:10:08 10 membership of IPCO, as I understand it these are retired
17:10:12 11 judges, not serving judges; is that correct?---Yes, that's
17:10:15 12 correct.
13
17:10:16 14 Thank you. Yes Mr Woods.
17:10:18 15
17:10:18 16 MR WOODS: Given the external set of eyes that IPCO
17:10:24 17 provides, if there were some kind of internal corruption,
17:10:31 18 perhaps noble cause corruption, some serious criminal
17:10:35 19 activity and there was desperation to shut down that
17:10:38 20 criminal activity by means that might not be lawful, would
17:10:44 21 you expect that IPCO, given its position, would be able to
17:10:50 22 detect that generally? I mean of course there'll be times
17:10:54 23 when they can't if someone's being run off the books, et
17:10:59 24 cetera, but do they have the powers to be able to look
17:11:01 25 closely and determine whether or not those sorts of things
17:11:03 26 are happening in relation to human sources?---They do have
17:11:08 27 extensive powers to have access to all documentation. They
17:11:11 28 also interview people at every level in the system,
17:11:15 29 including myself as Chief Constable. I was always
17:11:18 30 interviewed by the Commissioners when they came and did an
17:11:21 31 inspection. In terms of their ability to investigate
17:11:25 32 corruption, that often would not be possible simply through
17:11:28 33 an examination of the paperwork or those interviews. So
17:11:32 34 the potential is there for them to do that but you couldn't
17:11:35 35 say that's a complete solution to that kind of problem.
36
17:11:39 37 But if those who were running or using the sources were
17:11:42 38 recording everything that was said by the source and that
17:11:47 39 in itself identified this issue of potential corruption,
17:11:51 40 those documents would be documents they would be able to
17:11:54 41 view when they're conducting audits I assume, if they were
17:11:59 42 formal official internal documents of the police?---Yes,
17:12:04 43 that's correct. They'd tip sample files and go through
17:12:06 44 files, and that would include contact sheets as well as the
17:12:09 45 risk assessments, the registration forms.
46
17:12:12 47 Does it assist in - does IPCO's role in this area in your

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17:12:17 1 view assist with preventing or minimising the potential for
17:12:23 2 corruption or is it about the same as it was beforehand?
17:12:26 3 I'm specifically talking about in relation to human
17:12:29 4 sources?---I think it does assist. It is not a panacea.
17:12:34 5 There needs to be effective on the ground supervision at
17:12:38 6 every level but definitely their ability to look at what is
17:12:43 7 going on, look at all the paperwork, certainly has the
17:12:47 8 potential to assist in that regard.
9
17:12:48 10 All right. I assume that's one of the reasons why you talk
17:12:52 11 about the establishment of IPCO and its role being a
17:12:57 12 welcome development in this area?---Yes. I mean I trust I
17:13:04 13 make myself clear here, IPCO can dip sample a file and the
17:13:14 14 file can look perfect, but what the paperwork records as
17:13:15 15 happening is not always or may not be what is actually
17:13:17 16 happening on the ground.
17
17:13:18 18 Of course. And we had a Deputy Commissioner of Victoria
17:13:21 19 Police before the Commission last week and the proposition
17:13:26 20 was put to that witness that a rogue officer who didn't
17:13:32 21 want to comply with all of the requirements of the Victoria
17:13:34 22 Police policy might well still run someone off the books
17:13:39 23 and that's a risk anywhere I take it?---Yes, it is, and
17:13:42 24 that's why I always come back to the same point about the
17:13:45 25 importance of supervision, the role of the controller, the
17:13:49 26 role of the authorising officer, and the role of the
17:13:53 27 supervisors of the individual.
28
17:13:57 29 There are some issues of culture as well that I assume come
17:14:01 30 into the equation. You talk later on in your statement
17:14:05 31 about the concept that a source is owned by the agency and
17:14:10 32 not the handler is a crucial concept. Is that a question
17:14:16 33 of culture or how would you describe that?---I would say
17:14:20 34 the UK has gone through a cultural change in that regard.
17:14:24 35 Certainly if I go back to my own time as an informant
17:14:28 36 handler and a controller back in the early, late 80s, early
17:14:32 37 90s, I probably held a little bit of that kind of view
17:14:39 38 myself and there was resistance as things were more
17:14:42 39 formalised in the UK by detectives, you know, "The
17:14:44 40 individual only talked to me, this is my source", where
17:14:48 41 over time that culture has very much changed. The advent
17:14:51 42 of dedicated source units and individuals, you know, in
17:14:55 43 days gone by a detective would arrest an individual, he
17:14:59 44 would interview them and he would see the opportunity to
17:15:02 45 recruit that individual as a source and just go ahead and
17:15:05 46 do it in the interview room. That can no longer happen.
17:15:09 47 The individual would have to be referred through to the

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17:15:11 1 Dedicated Source Unit and a decision would be made by a
17:15:15 2 supervising officer as to whether that individual was
17:15:17 3 recruited or not.
4

17:15:19 5 And they would be applying legislation rather than simply
17:15:21 6 internal policy?---Yes. The Dedicated Source Unit and its
17:15:27 7 role is not part of legislation. It's a requirement of
17:15:30 8 national guidance and there is a minimum for a Dedicated
17:15:35 9 Source Unit but they're not all the same.
10

17:15:37 11 No, I understand. What I was trying to identify is the
17:15:40 12 fact that when they make the decision about registration
17:15:44 13 they're doing so pursuant to legislative guidelines rather
17:15:49 14 than just internal police guidelines?---Yes.
15

17:15:54 16 The Code of Practice, as you say, is not technically law.
17:16:00 17 It provides guidance, unlike the Act and the Codes, the
17:16:04 18 orders, sorry. But it does go into some significant detail
17:16:09 19 about issues of privilege and confidentiality in its 65
17:16:14 20 pages, you agree?---Yes, it does.
21

17:16:17 22 And it calls up and identifies the Regulation of
17:16:23 23 Investigatory Powers Covert Human Intelligence Sources
17:16:27 24 Matters Subject to Legal Privilege Order of 2010, and
17:16:31 25 that's quite a short five page document or so. You're
17:16:35 26 aware of that document?---I am.
27

17:16:37 28 All right. What that document appears to do at first
17:16:46 29 instance is to identify the situation where it's proposed
17:16:53 30 that a person will be, or that information of a particular
17:16:57 31 nature will be targeted and at s.3 it says, "This order
17:17:01 32 applies where any conduct that is or is to be authorised in
17:17:07 33 an authorisation under s.29 of the Act consists in any
17:17:14 34 activities involving conduct of a source or the use of a
17:17:18 35 source to (a) obtain matters subject to legal privilege;
17:17:22 36 (b) provide access to any matters subject to legal
17:17:25 37 privilege to another person; or (c) disclose matters
17:17:28 38 subject to legal privilege". The reason I read that out,
17:17:35 39 it's a document that appears to be focused on the situation
17:17:38 40 where it is privileged matters themselves that are sought
17:17:43 41 or are going to be used and I'm asking that in the context
17:17:49 42 of rather than the situation where it's a category of
17:17:53 43 person that is being approached who might be subject to
17:17:56 44 those obligations of confidentiality or privilege, this
17:17:59 45 document is the former, do you agree with that? It
17:18:02 46 approaches it in relation to the privileged material
17:18:05 47 itself?---Yes, yes. I hesitate there because my own

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17:18:13 1 experience of legal privilege relates to where the lawyer
17:18:16 2 themselves was the subject of an investigation as opposed
17:18:19 3 to an informant and consequently the investigation was
17:18:25 4 likely to obtain legally privileged material. I don't know
17:18:28 5 for certain but I suspect that's why there is so much
17:18:31 6 detail in here because that is not an uncommon scenario.
7
17:18:35 8 The Commission's heard evidence - sorry, go ahead?---But it
17:18:39 9 does seem to anticipate in the way that it's worded that it
17:18:41 10 would also cover the scenario where the lawyer was to be a
17:18:45 11 an informant and provide legally privileged material but
17:18:49 12 it's not in relation to that as I read it.
13
17:18:53 14 No, I see. In fact the Code of Practice separately, I
17:18:57 15 won't take you to the provisions but at 8.66, 8.36 and a
17:19:01 16 few other places, it really appears to identify the fact
17:19:05 17 that if it's someone in those occupations who's being dealt
17:19:08 18 with, the assumption has to be made that that information
17:19:12 19 is being targeted so arguably it seems to pick up that risk
17:19:17 20 in any event, that whilst it's not privileged information
17:19:20 21 that's being targeted, the individual who has that role may
17:19:25 22 well have privileged information and so one would assume
17:19:28 23 that that order applies. It's not so much a question as my
17:19:35 24 understanding of the documents. It limits in time, as
17:19:38 25 opposed to other types of sources, this is the order I'm
17:19:42 26 talking about, the time - the period in which they can be
17:19:47 27 authorised as sources; is that right?---Yeah, that's
17:19:50 28 correct. It's shorter and in the case of the police
17:19:53 29 service it's for three months as opposed to 12 months.
30
17:19:57 31 All right. It's the Secretary of State themselves who has
17:20:01 32 the power to approve and renew authorisation, as I read it,
17:20:06 33 under clause 7 of the order, is that your
17:20:09 34 understanding?---No, that's not correct. It's the
17:20:11 35 Secretary of State for the security service and others.
17:20:15 36 For the police service the approving officer is one of the
17:20:18 37 Judicial Commissioners which illustrates that their role is
17:20:23 38 not just about inspection and audit, in certain
17:20:27 39 circumstances they actually authorise activity and this is
17:20:30 40 one of them.
41
17:20:31 42 They're an external agency but they are able to authorise
17:20:35 43 in these you might say extreme situations?---Yes.
44
17:20:40 45 Given the focus of the privilege order, as I'll call it, on
17:20:47 46 privileged information, I think you might identify this
17:20:51 47 somewhere in your statement, it does accord in your

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17:20:58 1 understanding with the exception to the law of privilege in
17:21:01 2 any event but in particular serious ongoing criminal
17:21:06 3 activity privilege may well not apply to particular
17:21:10 4 communications between a client and their lawyer, you agree
17:21:14 5 with that?---Yes, that's correct.

6
17:21:15 7 Consistent with that exception, it might be said, you say
17:21:19 8 at paragraph 47 of your statement that the use of a
17:21:24 9 barrister as a human source is undesirable but you
17:21:29 10 certainly can't dismiss the prospect all together, and I
17:21:33 11 assume that's because of the potential for uncovering
17:21:38 12 serious ongoing criminal activity without perverting the
17:21:42 13 justice system?---Yes, and the necessity, justification and
17:21:48 14 proportionality considerations would help in coming to that
17:21:51 15 conclusion as to whether it was desirable or otherwise.

16
17:21:54 17 All right. You go on in that part of that paragraph of
17:21:59 18 your statement to say that having said that, it's something
17:22:02 19 you've never heard of before, the approach to a criminal
17:22:07 20 barrister, and those you've spoken to anecdotally say that
17:22:12 21 nor have they, including a senior judicial figure?---Yes.
17:22:17 22 I should say that these individuals I spoke to are
17:22:19 23 acquaintances of mine and this was an informal question, as
17:22:24 24 opposed to the in detail research I've done. Just because
17:22:27 25 I've not come across it doesn't mean it hasn't happened. I
17:22:32 26 have no knowledge.

27
17:22:34 28 All right. At paragraph 37 you go through some dot points
17:22:38 29 about the benefits as you see them of the UK's legislative
17:22:43 30 framework. You talk about there being clear and consistent
17:22:48 31 process for what are difficult ethical decisions, do you
17:22:53 32 think that gives the decision maker some guidance given the
17:22:57 33 considerations that are set out in s.29?---Yes, I do.

34
17:23:02 35 You talk about the fact that this protects forces and
17:23:06 36 officers. How does that protection come about?---Because
17:23:10 37 when - I'm talking protection in terms of when they get
17:23:15 38 into a court environment, under the old system everything
17:23:18 39 was very loose, there was no formal framework, RIPA didn't
17:23:23 40 exist and officers were often challenged very robustly in
17:23:29 41 terms of how things had occurred. Because there's such a
17:23:34 42 formal framework now and the legal profession were that
17:23:39 43 framework, the fact that the Commissioners inspect forces,
17:23:44 44 that in some occasions the inspectors can authorise
17:23:48 45 activity there's far more confidence in the process and
17:23:55 46 consequently there has been far less challenge in the
17:23:58 47 court. For example, in 20 years of authorities, and I have

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17:24:01 1 done hundreds and hundreds of them, I've only ever been
17:24:04 2 called to give evidence once.
17:24:05 3
17:24:05 4 I see. In that answer you again identified the role of the
17:24:13 5 Judicial Commissioners and the comfort that it brings
17:24:15 6 knowing that there's, paraphrasing what you were saying, a
17:24:20 7 set of external eyes watching over the situation. You go
17:24:25 8 on to say at paragraph 38 that you appreciate the
17:24:28 9 apprehension that some forces, some police forces might
17:24:33 10 feel towards a legislative framework and you say that you
17:24:39 11 understand that because of the covert environment in which
17:24:42 12 they work. Your ultimate view appears though to be that
17:24:48 13 despite that apprehension IPCO's role is fundamental. Why
17:24:53 14 does that - why is that your conclusion on these matters
17:24:58 15 when as you say many might think external people knowing
17:25:02 16 about these sorts of areas is a problem?---Because of the
17:25:05 17 existence of IPCO and RIPA and the codes of practice and
17:25:10 18 the frameworks, when officers go to court they're on far
17:25:16 19 firmer footing in relation to the decisions that have been
17:25:18 20 made.
21
17:25:19 22 What about the risk that it adds, I mean I understand these
17:25:21 23 are senior judicial figures, but what about the risk that
17:25:25 24 it adds a number of people to the list of people who might
17:25:29 25 know the identity of a human source?---I'm not sure that's
17:25:33 26 necessarily true from my experience of the way the system
17:25:36 27 was previously. I can see why that would be an
17:25:40 28 apprehension but the individuals we're talking about are
17:25:42 29 Senior Crown Prosecutors who are vetted, they are former
17:25:46 30 High Court judges and I can only speak for my own
17:25:53 31 experience that it has not been a problem, and there is
17:25:56 32 been a formal framework within this, within the risk
17:26:00 33 assessment process to protect sources and their identity on
17:26:08 34 an ongoing basis.
35
17:26:11 36 Indeed, it's the situation that when things go wrong with
17:26:12 37 the registration and management of human sources, they can
17:26:14 38 go very wrong for the administration of justice, is that a
17:26:17 39 correct statement?---A correct statement, yes. On occasion
17:26:21 40 they do.
41
17:26:24 42 The incorrect registration or use of human sources risks
17:26:30 43 the derailing of the administration of justice at
17:26:34 44 times?---Yes, it does. If one looks at instances such as
17:26:38 45 you describe where things have gone badly wrong and
17:26:41 46 organisational reputations have been tarnished, they are
17:26:46 47 very rarely because of the process that's put in place.

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17:26:48 1 It's because of individuals and their behaviour working
17:26:51 2 outside of whatever process happens to exist.
3
17:26:55 4 That can be tackled to some degree by tackling culture, but
17:27:02 5 all the policy in the world - all the regulation in the
17:27:04 6 world might not matter when it comes to individuals like
17:27:07 7 that if the culture isn't right, would you agree?---That's
17:27:10 8 correct.
9
17:27:10 10 One of the risks about the failure to detect problems with
17:27:15 11 the registration and use of human sources is that the
17:27:19 12 corrupt or unlawful use of those human sources may in fact
17:27:26 13 never be uncovered if it's kept internal to the police
17:27:30 14 force. That's a risk when you don't have external people
17:27:33 15 reviewing what's occurring, do you agree?---It is a risk
17:27:38 16 and it's still a risk with external people reviewing but I
17:27:42 17 think it's less of a risk. I repeat though the points I
17:27:46 18 made earlier, the paperwork can look terrific but if it's
17:27:48 19 not what's actually happening on the ground then all the
17:27:52 20 external and internal audit processes is not going to turn
17:27:56 21 that up. It's supervision and people, the behaviour of the
17:28:01 22 officers.
23
17:28:03 24 What about the position from the human source's own point
17:28:06 25 of view, might it be said that a régime such as this,
17:28:11 26 especially with the ability for IPCO Commissioners to learn
17:28:18 27 about the identity of human sources, that that deters
17:28:21 28 people from agreeing to act as human sources?---That is not
17:28:25 29 my experience and I don't think we sit down, whilst we do
17:28:31 30 sign, for want of a better word, contracts with them, I
17:28:33 31 think you use the term Acknowledgement of Responsibilities,
17:28:37 32 we don't sit down and give them a list of people who's
17:28:42 33 going to know who they are. I think, you know, that's
17:28:45 34 something that is a matter for the service how it manages
17:28:48 35 them. We give them the takings as to how we will protect
17:28:52 36 them, but we don't give them a list of people who will know
17:28:57 37 who they are.
38
17:28:59 39 We touched on earlier a concept that can exist within
17:29:02 40 forces that a source is owned by the handler rather than
17:29:05 41 the agency and why that is a problematic view. You talk at
17:29:10 42 paragraph 54 of, "The mind-set that supervisors of handlers
17:29:14 43 don't need to know has existed in UK law enforcement
17:29:19 44 historically. That said, in my own case my supervisors
17:29:21 45 always knew the identity of my sources. I regarded that as
17:29:25 46 protection for me". What do you say about the situation
17:29:30 47 where source handlers, controllers and those supervising

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17:29:36 1 them are able to or in fact do keep information about the
17:29:41 2 use and management of those sources from those above
17:29:44 3 them?---I think that's unhealthy and I think in doing that
17:29:48 4 the individuals are making themselves incredibly
17:29:53 5 vulnerable. There is a saying that says what you don't
17:29:56 6 know can't hurt you and those who are in the loop, as it
17:29:59 7 were, are the people who are vulnerable if things go wrong.
17:30:03 8 If I was a middle ranking officer or a junior officer
17:30:06 9 performing one of those roles, I would want my supervisor
17:30:10 10 to know if something does go wrong, and it does, then I
17:30:14 11 want the top cover of knowing that these individuals know
17:30:18 12 what I'm doing and they have authorised it and agreed it.

13
17:30:21 14 You talk elsewhere in the statement about the benefits of
17:30:25 15 dedicated source units. You should know we've spent quite
17:30:30 16 some considerable time throughout the last year and a half
17:30:34 17 talking about a particular Dedicated Source Unit but also
17:30:40 18 last week we were talking about whether or not all sources
17:30:43 19 being run within dedicated source units or there being some
17:30:48 20 sources that are run outside units, lower risk sources.
17:30:53 21 You talk about the benefits of there being dedicated source
17:30:57 22 units. You see one of the benefits as being the dedicated
17:31:05 23 source units have a broad view of which sources are being
17:31:08 24 used, what information is being targeted, for what sort of
17:31:12 25 criminal activity, and then also managing how the
17:31:15 26 information is held and disseminated. Is that a correct
17:31:20 27 summary of your view?---Yes, it is.

28
17:31:24 29 Is it the situation that when you're talking about
17:31:30 30 dedicated source units, is it your view that all sources,
17:31:33 31 whether they be high risk, medium risk, low risk, should be
17:31:37 32 run through dedicated source units or should there be two
17:31:42 33 categories of source, those higher risk or perhaps medium
17:31:45 34 risk being run through a DSU and others being able to be
17:31:50 35 run by an officer in a particular division?---I think they
17:31:55 36 should all be run through a Dedicated Source Unit and I
17:31:58 37 think the key is quality, not quantity, and directed
17:32:03 38 intelligence gathering.

39
17:32:04 40 In relation to training, so at paragraph 60 onwards in your
17:32:10 41 statement you discuss training. One of the issues that the
17:32:15 42 Commission has observed in respect to a particular example
17:32:21 43 is that those supervising those who are running sources,
17:32:29 44 those sitting above them and those who have management of
17:32:32 45 those running sources might not have as much training as
17:32:36 46 the people who are actually on the job running the source,
17:32:41 47 you might have more training than those supervising them.

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17:32:45 1 This is an element of the policies, it doesn't necessarily
17:32:51 2 indicate how much training the person supervising in fact
17:32:55 3 will have because they might be very, very well experienced
17:32:59 4 people to get their supervisory role, but what's your view
17:33:03 5 about levels of training? Is it something that you should
17:33:06 6 expect the senior officers within this statutory hierarchy
17:33:12 7 and the hierarchy established under the orders should have
17:33:15 8 significant training or at least be on par with those who
17:33:17 9 are running the sources?---I think everybody involved in
17:33:21 10 the system, from the most junior officer who's handling an
17:33:27 11 informant, whether it be in a Dedicated Source Unit or in
17:33:30 12 another model, right up to the most senior people in the
17:33:32 13 organisation, require training. The training might not
17:33:35 14 necessarily be the same, it needs to be appropriate to
17:33:38 15 their role, and the higher you go up the organisation
17:33:41 16 sometimes the more difficult it is to get people with the
17:33:43 17 necessary background and experience so the training becomes
17:33:46 18 more important. But it's a requirement of the national
17:33:49 19 guidance in the UK. I don't think it's a requirement of
17:33:55 20 the Code of Practice but it is the College of Policing
17:34:00 21 Guidance that everybody involved in the process is trained
17:34:00 22 right up to the most senior officers in the service.

23

17:34:04 24 In relation to source development units, is there a risk
17:34:16 25 that if you have too long time in position within one of
17:34:18 26 those that that causes risks or causes cultural problems,
17:34:26 27 or is it the sort of role that because such specialisation
17:34:29 28 is needed that people should be expected to be in them for
17:34:32 29 a long time?---There's no straightforward answer to that.
17:34:35 30 It's tricky stuff because this is a discipline we've
17:34:38 31 already discussed requires sound judgment and sound
17:34:42 32 judgment is often borne of experience. So to have a tenure
17:34:46 33 policy that throws the baby out with the bath water and
17:34:50 34 turns people over too frequently is counterproductive, but
17:34:55 35 at the same time if people are in place too long
17:34:57 36 familiarity breeds contempt. I think the key again comes
17:35:01 37 back to the ability of supervisors to be able to make
17:35:07 38 judgments about behaviour, the conduct and the performance
17:35:09 39 of individuals who are handling sources and make judgments
17:35:13 40 appropriate to those individuals. I do support a tenure
17:35:16 41 policy but it does need to be balanced.

42

17:35:18 43 Yes, I understand. Now you talked a little bit earlier
17:35:22 44 about your practice being to ensure that there had been
17:35:26 45 engagement with the Crown Prosecution Service when that was
17:35:31 46 appropriate in your view. Is part of the reason why that
17:35:38 47 you wanted to make sure that the fruits of the

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17:35:40 1 investigation were able to be utilised and simply weren't
17:35:44 2 wasted because it turned out that the investigation had
17:35:47 3 derailed for some reason?---That is one very obvious reason
17:35:55 4 why you would do it. You don't want a prosecutor saying 18
17:36:00 5 months down the line after a very expensive and difficult
17:36:04 6 covert investigation, "Well you've wasted your time because
17:36:05 7 you didn't do it right in the first place". That's the
17:36:07 8 obvious reason why you would seek the advice of a
17:36:09 9 prosecuting lawyer. But these are experienced people, they
17:36:12 10 are accustomed to handling sensitive information and they
17:36:15 11 often have valuable words of wisdom that can be taken
17:36:19 12 account of in the initial stages of an investigation.

13
17:36:22 14 You talk about also the role of disclosure officers who are
17:36:30 15 employees of the Force whose job it is to ensure that
17:36:35 16 proper disclosure takes place. I should say in Victoria
17:36:38 17 there are two people in that role, that role is being
17:36:43 18 trialled at present. Is that's something that's existed
17:36:47 19 for some considerable time in the UK to your knowledge?---I
17:36:51 20 think there's a nuance I need to explain here. Dedicated
17:36:56 21 disclosure officers have but it's not their full-time job.
17:36:59 22 So what I mean by that is there are individuals who are
17:37:02 23 trained in disclosure, in fact almost everybody is trained
17:37:06 24 in disclosure, but there are individuals who become
17:37:08 25 particularly adept at it and particularly experienced. So
17:37:10 26 when a covert operation, an organised crime operation
17:37:14 27 starts, an individual will be the appointed disclosure
17:37:18 28 officer for the duration of that investigation. In the
17:37:20 29 early stages when there isn't much documentation to
17:37:25 30 schedule, and scheduling is something you start with at day
17:37:27 31 one of the investigation and not dealt with as an
17:37:31 32 afterthought, it may not be necessary for that to be a
17:37:34 33 full-time role. But as the investigation progresses it
17:37:37 34 becomes complex as there's more documentation, then that
17:37:42 35 may well become a full-time role, and certainly approaching
17:37:44 36 trial and during the trial.

37
17:37:45 38 One of the difficulties in this particular area and the
17:37:48 39 covert nature of human source activity is that we have, I
17:37:54 40 assume the term sterile corridor is one that's used in the
17:37:58 41 United Kingdom as it is in Australia?---It is.

42
17:38:01 43 We have the receivers of the information from the sources
17:38:06 44 at one end of that corridor and the investigators who
17:38:10 45 utilise the information sitting at the other end of the
17:38:14 46 corridor and obviously it being those investigators who are
17:38:18 47 generally the people who put a brief of evidence together,

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17:38:21 1 it might well occur that those at the first end of the
17:38:28 2 corridor, being those who receive the information and know
17:38:30 3 the identity of the source, that information is never
17:38:35 4 passed on to those who are making determinations about what
17:38:39 5 goes into a brief of evidence, do you understand the
17:38:41 6 difficulty there?---I do and I wouldn't say never.
17:38:45 7 Generally the senior investigating officer would not know
17:38:49 8 the identity of the source. There may be occasions where
17:38:53 9 it becomes necessary that the individual does but that
17:38:57 10 would be the exception rather than the rule. And so, I
11 don't know whether you know the answer to this, but is it
17:39:20 12 the case that the disclosure officers within the UK Force
17:39:20 13 are able to access either end of that sterile corridor, or
17:39:20 14 both ends, sorry, of the sterile corridor?---The disclosure
17:39:20 15 officer wouldn't necessarily know who the source is, no.
17:39:23 16
17:39:27 17 All right. At paragraph 73 onwards you provide some
17:39:33 18 closing comments and one of them is that you, words to the
17:39:37 19 effect that it's your view that leadership must welcome
17:39:41 20 transparency and accountability and an openness to external
17:39:46 21 governance and that will ultimately strengthen and not
17:39:49 22 weaken the Force. Are you able to explain the reasons for
17:39:52 23 that view?---Yes, I say that because, and I take myself
17:39:57 24 back to when change is about to take place, and change was
17:40:02 25 imposed in the UK because legislation was passed to become
17:40:08 26 compliant with the Human Rights Act. People don't like
17:40:12 27 change and people are concerned about change and we were
17:40:15 28 concerned at the time that this was going to be the end of
17:40:18 29 our ability to run sources effectively, but actually we
17:40:21 30 very quickly realised that the framework assisted us in our
17:40:26 31 decision making and when we made our decisions and we were
17:40:30 32 challenged about them we had a far better way of defending
33 the decisions that we'd made and ensuring that the evidence
17:40:36 34 that we'd obtained actually went into a trial.
17:40:38 35
17:40:38 36 When it comes down to the individual making particular
17:40:42 37 decisions in this regard, and presumably this applies more
17:40:46 38 broadly in your view, at paragraph 77 you say that,
17:40:49 39 "Individuals who are making, considering a particular
17:40:53 40 course of action should ask themselves, 'If all of this
17:40:58 41 unravels how comfortable am I with the thought of
17:41:00 42 explaining and defending what I'm authorising before the
17:41:04 43 courts, a parliamentary committee or public inquiry or the
17:41:07 44 public at large?'" And I take it your view is that that's
17:41:11 45 a good question to ask oneself before they make any
17:41:15 46 decisions in this regard?---That question was a question I
17:41:19 47 posed to all 6,500 employees of my organisation in respect

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17:41:23 1 of every decision they made every time they opened their
17:41:28 2 mouths. It's, "Am I comfortable with the decision I'm
3 making? Am I prepared to defend it and stand on that
17:41:32 4 decision?" And if it's an uncomfortable proposition, then
17:41:35 5 it's probably best you don't do it.
17:41:37 6
17:41:37 7 They're the questions that I have, Sir Jon and
17:41:41 8 Commissioner.
17:41:41 9
17:41:41 10 COMMISSIONER: Thank you, Mr Woods. Just a couple of
17:41:46 11 questions before we go over to Mr Holt, please. Going back
17:41:50 12 to the training issue, you said how important it was that
17:41:58 13 those supervising the handlers and controllers have
17:42:01 14 adequate training right up - from the handlers, controllers
17:42:05 15 up to the top of the organisation. That is you mean
17:42:08 16 training in the use of human sources and the proper
17:42:12 17 procedures and safeguards and guidelines, is that
17:42:16 18 correct?---Yes, it's actually broader than human sources
17:42:22 19 and regulation in relation to all of the powers around
17:42:25 20 intrusive surveillance, directive surveillance, but, yes,
17:42:29 21 it would include human sources.
17:42:32 22
17:42:32 23 You appreciate this Commission of Inquiry is interested in
17:42:36 24 human sources specifically?---I do.
17:42:38 25
17:42:38 26 Yes. But I seem to glean from what you've said that it may
17:42:44 27 not necessarily be the same type of training as the
17:42:47 28 handlers and controllers had, is that right?---Yes, I mean
17:42:52 29 that in the context of a handler is the person that goes
17:42:54 30 out and has face-to-face meetings with informants, they
17:42:59 31 will look at things like body language, all sorts of things
17:43:04 32 that are specific to the dynamic of a meeting with an
17:43:07 33 informant, the discipline of making notes, all of those
17:43:11 34 things are really, really important. When you get to a
17:43:14 35 more senior officer it's more about the considerations that
17:43:16 36 they would have to go through in order to decide whether or
17:43:20 37 not they're going to authorise a particular use or conduct
17:43:23 38 of an informant.
17:43:24 39
17:43:24 40 So there should be training then for the more senior
17:43:27 41 officers specifically for the role that they're doing, is
17:43:31 42 that what you're saying?---Yes, experience and - experience
17:43:35 43 is helpful but not always available. Context is important,
17:43:40 44 and I would expect that to be part of the training, so
17:43:42 45 they'd need to have an understanding of the dynamic of
17:43:46 46 informant handling but the focus of senior officer training
17:43:50 47 would be around authorisation.

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17:43:51 1
17:43:52 2 Yes, thank you. Now the other thing I wanted to ask you
17:43:56 3 about was maximum time in position. You were talking about
17:44:00 4 a ten year maximum time in position and you said that
17:44:04 5 generally speaking that was a good rule of thumb but it
17:44:07 6 needs to be balanced with other things. Some of the
17:44:11 7 information I have read or heard talks about a five year
17:44:17 8 maximum time in position. Do you have any views as to what
17:44:21 9 the, where you draw the line for maximum time in
17:44:24 10 position?---I'm sorry, I'm going to have to apologise for
17:44:29 11 my Liverpool accent, I said tenure, not ten years.
17:44:33 12
17:44:34 13 Tenure, I'm sorry. I see, tenure, okay. Do you have any
17:44:38 14 views - I'm glad I asked, I thought ten years sounded
17:44:42 15 rather a long time. Do you have any views as to what the
17:44:45 16 tenure should be as to the rule of thumb tenure? Whilst I
17:44:50 17 appreciate you say it needs to be balanced and it may not
17:44:53 18 necessarily need be fixed as a true maximum time in
17:44:58 19 position but a time when you start to think about whether
17:45:01 20 that's long enough, what would you say?---I think five
17:45:04 21 years does sound reasonable but I would emphasise that the
17:45:08 22 judgment of supervising officers should override any rigid
17:45:13 23 adherence to tenure.
17:45:15 24
17:45:16 25 Yes, okay. Thanks very much. Anything arising out of
17:45:20 26 that, Mr Woods?
17:45:21 27
17:45:21 28 MR WOODS: No Commissioner.
17:45:22 29
17:45:23 30 COMMISSIONER: All right, Mr Holt, I'll hand over to you
17:45:25 31 now.
17:45:25 32
33 <CROSS-EXAMINED BY MR HOLT:
34
17:45:26 35 Thank you, Commissioner. Good morning to you, Sir Jon.
17:45:31 36 Can you hear and see me okay?---Yes I can, thank you. Good
17:45:33 37 morning.
17:45:33 38
17:45:34 39 Thank you. My name is Saul Holt, I'm senior counsel for
17:45:36 40 Victoria Police. Just on that last issue, the maximum time
17:45:39 41 in position question, you talked about the critical
17:45:42 42 importance of trusting in effect the judgment of
17:45:48 43 supervisors. Is one of the issues you would expect to be
17:45:50 44 considered in that regard the make up of the team that
17:45:53 45 you're dealing with otherwise, or how new or how
17:45:55 46 experienced the particular group of officers in the unit
17:45:58 47 you were dealing with was?---Yes, it would be. And, of

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17:46:00 1 course, one of the issues with that, I mentioned, I think I
17:46:05 2 used the expression don't throw the baby out with the bath
17:46:08 3 water, one of the benefits of tenure is you get, if you
17:46:13 4 don't move people around nobody else gets the skill and
17:46:17 5 then suddenly you've got nobody with any skill. So that's
17:46:17 6 why there has to be a human element making judgments rather
17:46:21 7 than just a strict adherence to a policy that says five
17:46:24 8 years and you're out.

17:46:25 9
17:46:25 10 You'd understand from your own role in senior policing, as
17:46:28 11 a very senior police officer, that critical importance of
17:46:31 12 both macro and micro workforce planning around these kind
17:46:36 13 of units in particular?---Yes, importance.

17:46:39 14
17:46:39 15 And your expectation would be that a modern Police Force
17:46:42 16 would engage in precisely that kind of conduct?---Yes, I'm
17:46:46 17 saying that with experience that workforce planning is not
17:46:49 18 an easy thing to do, succession planning isn't easy because
17:46:53 19 every day another priority comes along, another problem
17:46:57 20 comes along and that tends to get in the way, but by and
17:47:01 21 large I agree with the point.

17:47:03 22
17:47:03 23 Thank you. I just want to rewind a little bit if we can.
17:47:06 24 The questions I'm going to ask you, recognising the time
17:47:10 25 limits that we have tonight, are going to relate primarily
17:47:13 26 to the governance and management of human sources with
17:47:16 27 obligations of confidentiality and privilege, do you
28 understand that, given the focus of the Royal
29 Commission?---Yes.

30
17:47:21 31 But let's step out of that more broadly for a moment. You
17:47:24 32 talked about, with respect, no doubt entirely correctly,
17:47:27 33 that the world of human source management and governance
17:47:31 34 that you might see now, or at least you saw four years ago
17:47:35 35 had (indistinct)?---I'm sorry, I'm having - - -

17:47:40 36
17:47:40 37 COMMISSIONER: You're breaking up, Mr Holt, I'm afraid.
17:47:43 38 Would you just repeat the question please. I'm not sure
17:47:46 39 why you're breaking up.

17:47:46 40
17:47:47 41 MR HOLT: I think someone else may have some other device
17:47:51 42 on which is echoing me. That sounds better now. Am I
17:47:55 43 being heard now okay?---Yes, thank you.

17:47:57 44
17:47:58 45 Thank you. You describe a situation some time ago, say 15,
17:48:02 46 20 years ago, and the situation now in terms of human
17:48:05 47 source management and governance and so on as being worlds

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17:48:09 1 apart, do you recall that phrase?---I may well have done.
17:48:11 2 I don't remember it but I may well have done.
17:48:14 3
17:48:15 4 It's true, right, that the development of the way in which
17:48:17 5 human sources are managed and the thought that has gone
17:48:20 6 into the development of the way that policing in terms of
17:48:22 7 human sources has gone has been a dramatic change in the
17:48:28 8 last 10 or 20 years?---I would say RIPA, which is now 20
9 years.
10
17:48:35 11 Yes?---RIPA was a game changer.
17:48:36 12
17:48:37 13 Sure. You've obviously been in a jurisdiction that had
17:48:38 14 RIPA. It wouldn't surprise you though, indeed I imagine
17:48:39 15 you'd expect, that other jurisdictions, like the Australian
17:48:42 16 jurisdictions that haven't had RIPA have nonetheless not
17:48:47 17 stood still but they have also seen a pretty dramatic
17:48:49 18 change and development in all sorts of aspects of human
17:48:53 19 source management and governance, without deprecating the
17:48:55 20 importance of RIPA at all but simply to say you would not
17:48:56 21 expect to see the same world now that we might have seen 15
17:49:01 22 years ago, indeed as this Royal Commission has
17:49:04 23 demonstrated?---Sure, of course.
17:49:04 24
17:49:04 25 You would expect to see, for example, much more
17:49:07 26 sophisticated governance, practices, information technology
17:49:12 27 use, training and all of those sorts of aspects, trade
17:49:17 28 craft, all of those sort of aspects of human source
17:49:20 29 governance and handling, you would have expected to have
17:49:23 30 developed as good modern police forces do?---I would have
17:49:28 31 and in fact I know that's happened in many places. I'm not
17:49:29 32 here to say the UK is good, everybody else is bad, I've
17:49:34 33 been asked to speak about my own personal experience in the
17:49:38 34 UK which is what I've done, so I don't dispute what you say
17:49:38 35 in any way at all.
17:49:38 36
17:49:39 37 Can I say nothing I'm saying is intended to do anything
17:49:42 38 other than try and take advantage of your experience in a
17:49:44 39 different jurisdiction, but to ensure that we're making
17:49:48 40 appropriate comparisons if we can. All right, thank you.
17:49:50 41 Now, in particular one of the areas that you'd know from
17:49:54 42 your own academic work in policing methodology that has
17:49:58 43 developed, not just in policing of course but across the
17:50:00 44 board over the last 10, 20 years, has been the risk
17:50:04 45 assessment and the approaches to risk assessment?---Yes.
17:50:07 46
17:50:08 47 And while you describe the UK approach to risk assessment,

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17:50:11 1 again it wouldn't surprise you to know that there is a risk
17:50:14 2 assessment standard used by Australian and New Zealand
17:50:17 3 Police Forces?---I would expect there to be.

17:50:19 4
17:50:19 5 And your expectation would be that whilst it might be a bit
17:50:23 6 different or a bit the same, that it would also represent
17:50:26 7 the kind of sophistication of thought and development of
17:50:27 8 policy that has gone into the risk assessment processes
17:50:31 9 that now exist in the United Kingdom?---I would expect
17:50:36 10 that, yes.

17:50:37 11
17:50:37 12 Thank you. Can we drill in, as I said we would, to systems
17:50:39 13 and processes to manage issues of human sources with
17:50:41 14 obligations of confidentiality and privilege. Plainly
17:50:44 15 enough we don't have and haven't had to date in Australia,
17:50:47 16 certainly in Victoria, any legislative regime governing
17:50:52 17 human sources, you understand that of course?---Yes.

17:50:54 18
17:50:55 19 We haven't had the advantage that you might say of the RIPA
17:50:59 20 legislation but nonetheless can I suggest that good human
17:51:03 21 source management, particularly when thinking about human
17:51:06 22 sources with obligations of confidentiality and privilege,
17:51:08 23 good human source management and governance will have a
17:51:11 24 number of key components to it. Let me just walk you
17:51:14 25 through them and see whether you agree. Firstly, ensuring
17:51:15 26 that you've got good systems to identify where difficult
17:51:19 27 issues like legal privilege and confidentiality might be
17:51:23 28 raised?---Yes.

17:51:23 29
17:51:25 30 Ensuring that there are good processes for appropriately
17:51:28 31 escalating those matters into your decision-making
17:51:33 32 authorisation processes?---Yes.

17:51:33 33
17:51:33 34 The decision making itself is transparent and reviewable
17:51:37 35 critically, that is there's a record of it that's
17:51:40 36 transparent and reviewable?---Yes.

17:51:42 37
17:51:42 38 That it would take into account precisely those kinds of
17:51:46 39 human rights issues that you're talking about and you'd
17:51:48 40 expect that to be embedded, in the absence of a legislative
17:51:51 41 regime, you'd expect that to be embedded into policy?---I
17:51:55 42 would.

17:51:55 43
17:51:55 44 You would expect those making those tricky decisions to
17:51:59 45 have access to legal advice?---Yes.

17:52:01 46
17:52:02 47 Indeed, I think we can just perch on this for a moment.

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17:52:04 1 Mr Woods was pressing you on external legal advice by which
17:52:08 2 I think he meant by going to barristers like me to give
17:52:13 3 advice - maybe not like me but otherwise - but you were I
17:52:16 4 think placing a premium on good advice from the Police
17:52:20 5 Force's own legal department or legal officers and also
17:52:23 6 from prosecutors?---Primarily prosecutors.
17:52:28 7
17:52:28 8 Yes, thank you. And we'll come back to that sort of
17:52:32 9 different relationship in the United Kingdom between the
17:52:36 10 Police Force and the public prosecutions area a bit later.
17:52:40 11 In any event, coming back to that list of things that would
17:52:42 12 make good human source management, as we've already
17:52:45 13 discussed a sophisticated and constantly reviewed and
17:52:50 14 improving risk assessment process?---Yes.
17:52:52 15
17:52:52 16 That's at the heart of all of this, right, identifying what
17:52:54 17 the risks are and where the balance of risk lies and what
17:52:57 18 the mitigation might be for any particular risk?---Yes.
17:53:02 19
17:53:03 20 Thank you. You may or may not know that Victoria Police is
17:53:05 21 presently in the process of trialling and indeed
17:53:08 22 implementing in dedicated source units a dynamic rather
17:53:16 23 than a static risk assessment process. I imagine that's a
17:53:18 24 debate and a process you'd be familiar with in terms of the
17:53:19 25 kind of policing work that you're still involved in?---I'm
17:53:23 26 not sure what context - I used, I'm familiar with the
17:53:25 27 expression dynamic risk assessment, when an urgent need
17:53:30 28 requires somebody who wouldn't necessarily otherwise do it
17:53:32 29 to make a judgment because that's the nature of policing.
17:53:34 30 I'm not sure the context in which you're using the
17:53:38 31 expression dynamic risk assessment.
17:53:38 32
17:53:39 33 A dynamic risk assessment as a style of risk assessment, a
17:53:42 34 development from what was traditionally called a static
17:53:45 35 risk assessment model. If this is not something you're
17:53:47 36 familiar with there's no need for us to go there?---I'm
17:53:48 37 sorry, that's not a context in which I've used the
17:53:52 38 expression.
17:53:52 39
17:53:54 40 Not at all. And as you've already identified, critical to
17:53:55 41 decision making, especially in these tricky cases involving
17:53:58 42 human sources who may have obligations of confidentiality
17:54:01 43 and privilege, you would want to be at the forefront of
17:54:05 44 decision making, proportionality, necessity and the
17:54:07 45 availability of other means that might be less invasive or
17:54:10 46 intrusive or carry less risk?---Yes.
17:54:12 47

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17:54:13 1 In answer to the legislative regime, your expectation of a
17:54:17 2 modern Police Force which was responding to the kind of
17:54:20 3 things that Victoria Police is responding to historically,
17:54:22 4 would have a system which contained all of these key
17:54:26 5 features that we've gone through?---That's what I would
17:54:27 6 expect, yes.
17:54:27 7
17:54:28 8 Thank you. Again, you would expect there to be good use of
17:54:32 9 information technology to support governance arrangements
17:54:35 10 and to ensure that your policies are actually being
17:54:38 11 followed by the good folk on the ground who are having to
17:54:43 12 implement them?---Yes.
17:54:44 13
17:54:44 14 One of the issues that has been raised is the question of
17:54:48 15 dedicated source units or not. You may or may not know but
17:54:52 16 can I indicate to you, as was given in evidence last week,
17:54:55 17 that Victoria Police at executive command level has given
17:54:58 18 approval in principle to a move to an entirely dedicated
17:55:02 19 source approach. Now you'd endorse that, I expect?---Yes.
17:55:07 20
17:55:08 21 I'm sorry, please?---I was going to say there is a
17:55:13 22 requirement of a dedicated source unit in the UK but they
17:55:17 23 don't all look the same because different Forces have
17:55:19 24 different problems and geography is an issue, but it's a
17:55:23 25 much bigger issue for Australia. I wouldn't necessarily
17:55:27 26 look, expect a Dedicated Source Unit to look the same there
17:55:31 27 as it does here.
17:55:32 28
17:55:33 29 What's described presently here is a hybrid unit, a hybrid
17:55:35 30 approach where there's a Dedicated Source Unit but then
17:55:39 31 local handling but with centralised governance. You could
17:55:43 32 well understand how that system could perfectly reasonably
17:55:46 33 be developed given the tyranny of distance that exists in
17:55:50 34 the Australian States and Territories?---I can. It's not
17:55:54 35 up to me to make a judgment. I've never been to Australia,
36 let alone policed in Australia. It's not up to me to make
17:55:59 37 a judgment as to what's best for Victoria Police. I can
17:56:00 38 simply say what works here in the UK and what we think is
17:56:04 39 effective and what isn't.
17:56:05 40
17:56:05 41 I understand. Of course, just to put it into context, and
17:56:07 42 again without in any sense deprecating, it's simply a
17:56:13 43 different policing environment. The Merseyside policing
17:56:15 44 environment I think covers less than a thousand square
17:56:18 45 kilometres?---Yes.
46
17:56:19 47 Whereas Victoria covers about 244,000 square

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17:56:21 1 kilometres?---Yes, which is much bigger than the biggest
17:56:26 2 police force in the UK. I get the geography. It's very
17:56:29 3 dense in terms of its criminality and its deprivation and
17:56:29 4 urban environment but Merseyside is geographically a very
17:56:33 5 small place.
17:56:34 6
17:56:34 7 I should say that none of that is to say that Victoria
17:56:36 8 Police is in any sense opposed to dedicated source units
17:56:40 9 for the very reasons you've given in your statement and
17:56:43 10 which you've given in oral evidence, but simply to say you
17:56:45 11 can well understand why different arrangements with
17:56:48 12 different kinds of protections might be necessary in
17:56:53 13 different policing environments?---Indeed, which is the
17:56:56 14 same in the UK.
17:56:57 15
17:57:02 16 I'm grateful, thank you. Can we just then turn to - again,
17:57:03 17 I'm going to try not to turn this into a legal test as well
17:57:03 18 because I'll probably lose given your CV - can I just try
17:57:03 19 and perch on a couple of key issues around the way in which
17:57:09 20 human sources who either do or may have obligations of
17:57:17 21 legal privilege or confidentiality are dealt with under the
17:57:18 22 UK regime. As I understand it, and I think this was your
17:57:18 23 evidence before, we're talking in effect about two
17:57:20 24 categories. The first is a person who has obligations of
17:57:23 25 privilege and confidentiality where it is intended to
17:57:27 26 target that information. You'll understand that category
17:57:30 27 of case?---Yes, and that's the category that requires the
17:57:34 28 approval of the Judicial Commissioner.
17:57:36 29
17:57:37 30 Absolutely. So what it requires is two stages of
17:57:39 31 authorisation under the UK regime. The first is an
17:57:44 32 approval by, in Merseyside's case the Chief Constable, but
17:57:49 33 then in a sort of almost, to use the modern language, a
17:57:52 34 double lock mechanism where it then required the Judicial
17:57:58 35 Commissioner as well?---Yes.
17:58:00 36
17:58:00 37 Although it was a Chief Commissioner in Merseyside, you'd
17:58:04 38 accept, given the size of the Met, for example, the
17:58:05 39 Metropolitan Police Force, that that senior role within the
17:58:08 40 Police Force is delegated down I think in that context to
17:58:11 41 the Deputy Commissioner?---I would expect that. In the UK
17:58:16 42 structures, Assistant Commissioners, of which there are
17:58:19 43 four, hold the equivalent rank of Chief Constable, so
17:58:23 44 that's where I would have expected it to land, but if you
17:58:26 45 tell me it's Deputy Commissioner then you'll be right.
17:58:28 46
17:58:28 47 Thank you. There's another role that comes before

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17:58:31 1 Assistant Commissioner we'll talk about in a moment. In
17:58:33 2 any event, where it's absolutely targeted we've got Deputy
17:58:37 3 Commissioner level and then a Judicial Commissioner, but
17:58:41 4 your expectation, I imagine, would be that those situations
17:58:43 5 would be, as Deputy Commissioner Steendam of the Victoria
17:58:45 6 Police said last week, extraordinarily rare?---Yes.
17:58:48 7
17:58:49 8 The next category then, which we'll spend just a moment
17:58:51 9 longer on, is the case where there is a person who has
17:58:54 10 those obligations or may have those obligations and there
17:58:57 11 is a risk to confidential or privileged material, sorry,
17:59:03 12 privileged or confidential material might be
17:59:06 13 obtained?---Yes.
17:59:06 14
17:59:07 15 And in that category, as I understand it, in terms of where
17:59:11 16 there's no intention to get the material but a risk that it
17:59:15 17 might occur, what happens is that if it's likely that it
17:59:19 18 will occur then there needs to be an authorisation at
17:59:23 19 either Chief Constable or, in the Met, Assistant
17:59:26 20 Commissioner level?---No, it's, I think I'm correct in
17:59:30 21 saying it's Assistant Chief Constable level.
17:59:33 22
17:59:33 23 Right. In any event, that authorisation where it's likely
17:59:36 24 to obtain privileged or confidential information doesn't
17:59:42 25 require the approval of the Judicial Commissioner under the
17:59:48 26 United Kingdom system?---No, it doesn't.
17:59:49 27
17:59:50 28 So it compares at a senior level within a Police
29 Force?---Yes.
30
17:59:51 31 Appropriately targeted depending on the size and nature of
17:59:54 32 that Police Force?---Yes.
17:59:56 33
17:59:56 34 And those matters, in terms of who the authorising officer
17:59:59 35 is, they are scheduled I think in this case in the Code of
18:00:03 36 Practice?---That's correct. There are safeguards that go
18:00:06 37 on to say that if legally privileged material is obtained
18:00:09 38 then that must be brought to the attention of the Judicial
18:00:13 39 Commissioner.
18:00:13 40
18:00:13 41 Absolutely, that must go to IPCO as part of those reporting
18:00:18 42 obligations?---Yes, via the Force lawyer.
18:00:20 43
18:00:21 44 Yes, and in fact I think in terms of last year's IPCO
18:00:25 45 report there was one instance of that occurring where
18:00:27 46 material had been obtained where it hadn't been intended or
18:00:31 47 anticipated that it might have been in the

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18:00:33 1 application?---That I don't know.
18:00:34 2
18:00:35 3 Thank you. In any event that's where it's likely. Where
18:00:39 4 it's less than likely, where there's just a risk of it
18:00:42 5 occurring, is it the position then that the approval of
18:00:46 6 that human source will occur in the ordinary course, that
18:00:49 7 is by an authorising officer within the Police Force at
18:00:53 8 probably a slightly lower rank?---Yes, if you're not
18:00:57 9 anticipating getting legally privileged material at all you
18:01:02 10 don't know, you're not anticipating the problem or dealing
18:01:05 11 with it, it will be a normal authorisation. But I would
18:01:09 12 expect if that happened then there will be a
18:01:11 13 reconsideration of the authorisation process.
18:01:14 14
18:01:14 15 Absolutely. What I'm trying to identify is this: in terms
18:01:17 16 of the UK system and this tiered approach to authorising
18:01:21 17 officers, unless it's assessed - let's say you've got a
18:01:25 18 lawyer who's been assessed to be a human source. If it's
18:01:28 19 assessed that it's not likely that that person will provide
18:01:32 20 privileged or confidential information, then at least on
18:01:34 21 the face of it that can be authorised through ordinary
18:01:37 22 processes, obviously with good risk assessment and
18:01:40 23 everything, but it can be authorised through normal
18:01:44 24 process?---Yes, as I understand it, yes.
18:01:45 25
18:01:46 26 Again, without saying one's better than the other, but just
18:01:49 27 so we can identify that different systems have different
18:01:52 28 features and emphasise different things, you may or may not
18:01:54 29 know that under Victoria Police's internal system at
18:01:57 30 present, so without legislation but just at present,
18:02:00 31 anybody who is a lawyer, priest, journalist, et cetera,
18:02:06 32 must, regardless of whether it's likely or unlikely, must
18:02:09 33 be assessed by the Human Source Ethics Committee which is
18:02:13 34 chaired by an Assistant Commissioner, you're aware of
18:02:16 35 that?---I am not. I don't know the process in Victoria in
18:02:19 36 detail.
18:02:20 37
18:02:21 38 I'll just deal with this quickly then just so it's clear on
18:02:25 39 the record. What the process we went through last week
18:02:28 40 also requires is that where a person who was formally in
18:02:32 41 any one of those occupations or where a person is
18:02:35 42 associated with someone who is in those occupations, it
18:02:38 43 doesn't matter, they all go into this process, the full
18:02:41 44 assessment, legal advice and approval by the Human Source
18:02:46 45 Ethics Committee. If you accept that from me, that seems
18:02:48 46 like they're essentially up - if you like, the doorway in
18:02:53 47 is wider to assess those matters here than it would appear

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18:02:57 1 to be under the United Kingdom system. Which is better or
18:03:00 2 not, who cares, but the doorway seems to be wider here at
18:03:04 3 present?---Okay.
18:03:05 4
18:03:05 5 Can we talk about that committee just for a moment, because
18:03:08 6 you made the statement which I guess generally speaking is
18:03:12 7 difficult to disagree with, which is that you sort of had
18:03:15 8 at least a negative reaction to the idea of decision making
18:03:18 9 by committee?---Yes.
18:03:21 10
18:03:21 11 Can I just, again it might just be giving you the benefit
18:03:25 12 of some knowledge about how this particular committee
18:03:28 13 functions. So this particular committee, the Human Source
18:03:32 14 Ethics Committee which considers lawyers and the like, is
18:03:36 15 chaired by the Assistant Commissioner of Covert and
18:03:38 16 Intelligence Support (indistinct) and I'll just tell you
18:03:43 17 these facts as well. It can only approve the registration
18:03:46 18 of a human source in these categories unanimously and that
18:03:50 19 decision is then owned and is considered to be (indistinct)
18:03:52 20 the Assistant Commissioner. Given those things that I've
18:03:55 21 now told you, does that give you a greater level of
18:03:59 22 confidence in the committee as a process for assessment for
18:04:02 23 these things?---I did say it's a personal matter. I
18:04:06 24 personally am not comfortable with decisions by committee.
18:04:10 25 My own experience of an ethics committee is sitting on an
18:04:14 26 ex committee for a homicide investigation on behalf of the
18:04:17 27 Metropolitan Police some years ago, but we were not a
18:04:18 28 decision making committee. We raised issues of a moral and
18:04:22 29 ethical nature for them to consider had they not done that,
18:04:26 30 but we didn't make decisions. But I'm not here to say that
18:04:28 31 what Victoria Police are doing is right or wrong, I'm
18:04:31 32 simply giving a personal view on what I think about
18:04:35 33 committees and the ultimate accountability once a decision
18:04:40 34 is made if things go badly wrong.
18:04:41 35
18:04:42 36 I understand. What I'm really saying is if there is a
18:04:43 37 process in place in respect of this very committee which
18:04:47 38 ensures that the decision is owned by the Assistant
18:04:50 39 Commissioner of Intel and Covert Support Services who
18:04:53 40 chairs that committee, and the decision must be unanimous,
41 necessarily that undoes some of your concerns at least
42 about decision making by committee and the way in which it
18:05:03 43 can lead to the avoidance of personal
18:05:03 44 responsibility?---It's a matter for Victoria Police how
18:05:08 45 they see fit to run their informant system. It's not for
18:05:12 46 me to make a decision whether it's right or wrong.
18:05:14 47

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1 I understand, thank you. Now dealing with your - you
18:05:14 2 mentioned, and again you very fairly indicated that it was
18:05:17 3 based on informal conversation, that you hadn't come across
18:05:20 4 or known of a situation where, Mr Woods put it as a defence
18:05:24 5 barrister, but in fact I think your statement says as a
18:05:28 6 lawyer at all becoming a human source, is that
18:05:30 7 right?---That's correct.

18:05:30 8
18:05:30 9 Can I just paint some scenarios for you. Obviously enough
18:05:33 10 if a lawyer was, or a legal secretary, for example, but
18:05:37 11 let's say a lawyer, becomes a human source in respect of
18:05:42 12 something that has absolutely nothing to do with their job
18:05:46 13 as a lawyer, it might be about some associates of a friend
18:05:48 14 or something who are dealing drugs, something along those
18:05:50 15 lines, never make it to the authorisation process for the
18:05:53 16 reasons we've discussed, there would be absolutely no
18:05:56 17 reason for you to know about that necessarily, would
18:05:59 18 there?---No.

18:06:00 19
18:06:00 20 Thank you. You were asked by Mr Woods about whether or not
18:06:03 21 it would ever be appropriate to keep the identity of a
18:06:07 22 human source from the people who sit above the hierarchy of
18:06:10 23 the handler and the controller, do you recall those
18:06:13 24 questions?---I do.

18:06:14 25
18:06:14 26 In case it assists can I [REDACTED] that Victoria
18:06:17 27 Police's processes as they have been set out before this
18:06:20 28 Royal Commission [REDACTED], that is
18:06:25 29 [REDACTED] the
18:06:29 30 [REDACTED] the
18:06:30 31 if needed [REDACTED], [REDACTED]
18:06:32 32 [REDACTED], there is [REDACTED] to
18:06:35 33 [REDACTED] Would that give you just some
18:06:37 34 comfort in that regard because I imagine I must have been
18:06:39 35 mildly terrifying for a moment?---Again, I'm not sitting in
18:06:41 36 judgment.

18:06:42 37
18:06:42 38 Thank you. Now, again, we've noted that you are a fan
18:06:49 39 dedicated authorising officers, that is to use the language
18:06:51 40 in your statement which was really helpful, of people not
18:06:56 41 double hatting in that role of authorising officer?---Yes.

18:06:59 42
18:06:59 43 And, again, just to assist, can I simply confirm with you,
18:07:04 44 that under the processes which Victoria Police operate at
18:07:07 45 present, all human sources must be approved by dedicated
18:07:14 46 human source officers, that is either officers at an
18:07:17 47 appropriate seniority in the Human Source Management Unit

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18:07:20 1 for lower and medium risk sources or by the Central Source
18:07:25 2 Registrar for high risk human sources. Again, you would
18:07:28 3 see that as being entirely appropriate?---It's what I would
18:07:29 4 have expected, yes.

18:07:31 5
18:07:31 6 Thank you very much. In terms then just briefly of
18:07:34 7 oversight, you've correctly described, with respect, the
18:07:40 8 way in which IPCO has developed, which is that it came from
18:07:43 9 at least one other predecessor agency and in fact at times
18:07:49 10 there have been various oversight agencies of various
18:07:51 11 investigative and covert powers in the United
18:07:54 12 Kingdom?---Yes.

18:07:54 13
18:07:55 14 And they were sort of brought together just to try and
18:07:58 15 consolidate them into a central, no doubt very effective
18:08:00 16 body?---Yes.

18:08:01 17
18:08:02 18 If I can again just assure you that in Victoria, as you may
18:08:05 19 or may not know, there are a number of oversight bodies who
18:08:09 20 have intrusive powers in relation to the supervision of
18:08:12 21 covert work, for example, the Victorian Inspectorate who
18:08:16 22 reviews and reports on warrants, Public Interest Monitor
18:08:20 23 who has to provide advice in relation to applications for
18:08:24 24 certain intrusive State powers, you'd recognise that kind
18:08:29 25 of patchwork of external oversight as being similar to that
18:08:31 26 which you might historically have experienced in the United
18:08:34 27 Kingdom?---I would.

18:08:35 28
18:08:35 29 Your expectation would be, and indeed Deputy Commissioner
18:08:38 30 Steenham made clear, Victoria Police works regularly and
18:08:41 31 cooperatively with those oversight bodies in a range of
18:08:45 32 areas, which is again, I imagine, exactly what you would
18:08:48 33 expect?---It is.

18:08:50 34
18:08:50 35 In terms of the way that IPCO functions, can we just deal
18:08:54 36 with this very briefly, as I understand it IPCO inspects
18:08:59 37 all policing and a range of intelligence agencies and
18:09:02 38 prosecuting agencies, including local councils, for
18:09:06 39 example, in the UK, it has a very broad remit?---It has.
18:09:10 40 IPCO came into being after I retired so I've had no
18:09:14 41 personal contact with it, IPCO, and the detail of their
18:09:19 42 day-to-day work I couldn't give you.

18:09:21 43
18:09:21 44 No, I understand. All right. I think you did reference
18:09:25 45 this, though, so I might just ask this question. Its
18:09:29 46 inspections involve the full gamut, when it inspects an
18:09:33 47 agency it can involve the full gamut of investigative and

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18:09:38 1 coercive powers, warrant powers, for example, not just
18:09:39 2 obviously human source management?---Yes, that's correct.
18:09:42 3 That's exactly the same as it was under the Surveillance
18:09:45 4 Commissioners when I was the Chief Constable.
18:09:47 5
18:09:48 6 And they focus on obviously a high risk, or knowing high
18:09:54 7 risk areas, so in human sources you'd expect that to be
18:09:55 8 focused on these kinds of tricky issues like the ones we're
18:09:58 9 dealing with?---I would.
18:09:59 10
18:10:00 11 And as we understand it there's sort of three to five days
18:10:02 12 inspection on each occasion and a primary review into the
18:10:05 13 authorisation documentation, what we in Victoria would call
18:10:07 14 the source management log, that is the log of the way in
18:10:12 15 which a person has been handled?---Yes.
18:10:15 16
17 All right, thank you. Now - - -
18
18:10:16 19 COMMISSIONER: Mr Holt, I'll just interrupt you for a
18:10:18 20 moment. It's hard to get a word in there, you're moving so
18:10:23 21 quickly. I did say at six o'clock I'd review the
18:10:27 22 situation. It's about ten past 6 now. I'm not trying to
18:10:33 23 pressure you at all, I'm just wanting to know whether we'll
18:10:36 24 have a break now or not. How much longer will you be,
18:10:40 25 Mr Holt?
18:10:41 26
18:10:41 27 MR HOLT: Commissioner, my expectation is that I will be no
18:10:44 28 more than ten minutes, five or ten minutes.
18:10:45 29
18:10:45 30 COMMISSIONER: And Mr Doyle?
18:10:47 31
18:10:50 32 MR DOYLE: Ten or 15 minutes, Commissioner.
18:10:51 33
18:10:51 34 COMMISSIONER: Right. And Mr Kyriakou, you still don't
18:10:56 35 have any questions at this stage?
18:10:58 36
18:10:59 37 MR KYRIAKOU: Yes, Commissioner, that's still the position.
18:11:01 38
18:11:02 39 COMMISSIONER: So probably about another half an hour.
18:11:04 40 Would you like - what would you prefer, Sir Jon, to sit
18:11:08 41 through or to have a ten minute break now?---I don't mind
18:11:13 42 either way, ma'am.
18:11:14 43
18:11:15 44 You have been giving evidence pretty intensely for a while
18:11:21 45 so perhaps we'll just have a ten minute break at this point
18:11:25 46 for everyone's comfort. Thank you, we'll have a ten minute
18:11:29 47 break now?---Thank you.

.13/05/20

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18:11:30 1
2 MR HOLT: Thank you, Commissioner.
3
18:11:31 4 (Short adjournment.)
18:41:09 5
18:41:09 6 COMMISSIONER: This hearing of the Royal Commission is now
18:41:09 7 in session again. Yes, Mr Holt.
18:41:09 8
18:41:09 9 MR HOLT: Yes. Thank you, Commissioner. Thank you,
18:41:09 10 Sir Jon. I only have a few more questions for you but the
18:41:09 11 joy of a break is I get to realise something I missed, so I
18:41:09 12 just need to go back to that if I may.
13
18:41:09 14 I was asking you questions about the sorts of cases
18:41:09 15 that might involve legal professional privilege or
18:41:09 16 obligations of privilege or confidentiality and how they
18:41:09 17 get into the authorisation regime in the United Kingdom.
18:41:09 18 Do you recall those sorts of questions that I was
18:41:09 19 asking?---I do.
18:41:09 20
18:41:09 21 Do you have the Code of Practice there immediately to
18:41:09 22 hand?---I do.
18:41:09 23
18:41:09 24 Thank you. Would you mind turning, and this is the section
18:41:09 25 that Mr Woods referred to, to p.51 under the heading
18:41:09 26 "Lawyer's material" at 8.66?---I'm there now.
18:41:09 27
18:41:09 28 Thank you. And you'll see there in the third bottom line a
18:41:09 29 reference to that distinction I was talking about, that is
18:41:09 30 whether it's likely the privilege or confidentiality,
18:41:09 31 material that's privileged or confidential will be received
18:41:09 32 or intended. If we can just take those two words for a
18:41:09 33 moment. If it's intended then that has to be approved by
18:41:09 34 the Judicial Commissioner, we agreed on that before?---Yes.
18:41:09 35
18:41:09 36 And if it's likely, then you were right and I was wrong,
18:41:09 37 I've just double checked, and that had to be approved, if
18:41:09 38 it were the Met at Assistant Commissioner level, that is
18:41:09 39 two tiers down from the Chief Commissioner?---Okay.
18:41:09 40
18:41:09 41 That's not the reason I took you to this. Mr Woods made I
18:41:09 42 think very brief reference to this when he said that what
18:41:09 43 this paragraph seemed to do was to, mean that, as it says,
18:41:09 44 that the person is known to be a lawyer, then the
18:41:09 45 application should be made on the basis that it is likely
18:41:09 46 or intended to acquire communications and on that basis
18:41:09 47 paragraphs 8.54 and 8.60 would apply. So it's very

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18:41:09 1 sensibly saying if someone's a lawyer then you should treat
18:41:09 2 it as either being intended or likely to receive
18:41:09 3 confidential or privileged information and put it into the
18:41:09 4 regime?---That would make sense.
18:41:09 5
18:41:09 6 But I just want to note something here and then move to a
18:41:09 7 different topic. It says here, "Is known to be a lawyer
18:41:09 8 acting in that professional capacity", so what it seems to
18:41:09 9 be doing is - - -?---(Indistinct).
10
18:41:09 11 I'm sorry, please?---I just make the point, I think what
18:41:09 12 this, whether it makes any difference I know not, but I
18:41:09 13 think this is saying that the lawyer is the subject of the
18:41:09 14 operation and the suspect, as opposed to the informant
18:41:09 15 themselves, that's why I'm saying - whether that makes any
18:41:09 16 difference, I don't know.
18:41:09 17
18:41:09 18 Look, it probably does. The other - but in any event,
18:41:09 19 those are the two thresholds we're talking about here for
18:41:09 20 the different kinds of authorisation under the United
18:41:09 21 Kingdom regime. That's probably the critical point, it
18:41:09 22 seems. Can we then go, and I should have done this
18:41:09 23 earlier, again you'll understand that the whole regime
18:41:09 24 under RIPA and the orders and the Code of Practice are
18:41:09 25 based around authorisations for what are called covert
18:41:09 26 human intelligence sources, CHISes?---Yes. I'm not sure of
18:41:09 27 the technical name but that's an informant.
18:41:09 28
18:41:09 29 Accept that - and so to get into this authorisation regime
18:41:09 30 which we've been talking about, and which is understandably
18:41:09 31 under act of consideration, a person needs to meet the
18:41:09 32 definition of being a CHIS, yes?---Yes.
18:41:09 33
18:41:09 34 Again, just so that we all understand the differences
18:41:09 35 between the regime there and here, could I get you to look
18:41:09 36 at 2.17, please, which is on p.12. Just to make a point
18:41:09 37 that will probably be obvious to you in terms of your
18:41:09 38 experience of the United Kingdom regime, but may not be
18:41:09 39 apparent to us because it seems a bit different from the
18:41:09 40 way in which at least the Victoria Police regime works,
18:41:09 41 that is at 2.17, "Not all human source activity will meet
18:41:09 42 the definition of a CHIS". So you can have things that
18:41:09 43 will look like human sources as we understand them, but
18:41:09 44 they don't necessarily meet the threshold for the
18:41:09 45 authorisation regime under the legislation?---Which
18:41:09 46 explains the change to CHIS from informants I think.
18:41:09 47

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18:41:09 1 Exactly. Just a couple of examples here, just to flesh
18:41:09 2 that out. 2.18, "In many cases involving human sources a
18:41:09 3 relationship might have been established or maintained for
18:41:09 4 a covert purpose"---Yes.
18:41:09 5
18:41:09 6 And so "been established or maintained for that purpose"
18:41:09 7 were not in this authorisation regime at all?---No, that's
18:41:09 8 correct.
18:41:09 9
18:41:09 10 Some might say that might be an advantage of the Victorian
18:41:09 11 regime even though it's based on police policy in the
18:41:09 12 absence of legislation, in that it has a lower threshold
18:41:09 13 for identifying activity as human source activity and
18:41:09 14 therefore putting it through this special authorisation
18:41:09 15 process?---I think I know what you - are you suggesting
18:41:09 16 that because they not subject to the Codes of Practice
18:41:09 17 they're not subject to any process in the UK, because that
18:41:09 18 wouldn't be right?
18:41:09 19
18:41:09 20 No, I'm not suggesting that at all. They're just not
18:41:09 21 subject to this authorisation process under this
18:41:09 22 regime?---That is correct.
18:41:09 23
18:41:09 24 You would expect them to be managed entirely professionally
18:41:09 25 and appropriately but under regimes developed outside of
18:41:09 26 this legislative code?---That's correct.
18:41:09 27
18:41:09 28 I understand. And just to finish that off, if we look at
18:41:09 29 2.23, in fact it's clear that you can even task a person,
18:41:09 30 paying information covertly, and then there will be some
18:41:09 31 circumstances in which that person isn't a CHIS and
18:41:09 32 therefore won't be subject to this regime but a different
18:41:09 33 kind of a regime?---Yes.
18:41:09 34
18:41:09 35 Thank you, all right. I'm sorry, that was what I needed to
18:41:09 36 return to. Can I just deal with two topics finally. The
18:41:09 37 first is training, which you were asked some questions
18:41:09 38 about by Mr Woods and by the Commissioner. Tell me, I
18:41:09 39 don't want to verbal you, but tell me if I'm wrong in
18:41:09 40 putting it this way: your view is anyone who is involved
18:41:09 41 with human source management or approval needs to have
18:41:09 42 training appropriate to the role which they are
18:41:09 43 performing?---Yes.
18:41:09 44
18:41:09 45 And it doesn't necessarily mean one size fits all, you
18:41:09 46 don't need to train an authorising officer in all the trade
18:41:09 47 craft necessary to handle a high risk human source?---You

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18:41:09 1 described it better than I did. Yes, they need to
18:41:09 2 understand what a human source is, what a human source does
18:41:09 3 and the dynamics, but the trade craft perhaps, it would not
18:41:09 4 be the focus.
18:41:09 5
18:41:09 6 The critical thing though is that anyone who is authorising
18:41:09 7 a human source has what I'll describe, for reasons others
18:41:09 8 will understand, as a level of training which we've been
18:41:09 9 describing as a basic level of training which includes the
18:41:09 10 regime, the principles, the kind of things that you've been
18:41:09 11 discussing, rather than the trade craft
18:41:09 12 specifically?---Sorry, could you repeat that question.
18:41:09 13
18:41:09 14 Sure. It was a poor one. I'm sorry, it reflects the fact
18:41:09 15 that it's 6.28. What you would expect is that the
18:41:09 16 authorising people would have had access to training which
18:41:09 17 ensures that they understand the basics of human source
18:41:09 18 management, human source handling and, in particular, that
18:41:09 19 they understand the framework for decision making around
18:41:09 20 authorisation?---Yes. I think what they need to understand
18:41:09 21 specifically are the risks and I think I used in my
18:41:09 22 statement, which I've not referred to, scenario based
18:41:09 23 training. They need to understand how things go wrong and
18:41:09 24 when they go wrong in order to (indistinct).
18:41:09 25
18:41:09 26 I understand that. And one of the things again that might
18:41:09 27 just give you some confidence in this regard is that the
18:41:09 28 members of the Human Source Management Unit who are the
18:41:09 29 people who can authorise the registration of low and medium
18:41:09 30 risk sources, as a matter of a requirement of their
18:41:09 31 position descriptions in the organisation, must have a
18:41:09 32 level of training [REDACTED] and
18:41:09 33 you'd think that to be completely appropriate, wouldn't
18:41:09 34 you?---Are you talking about the Australian (indistinct)
18:41:09 35 now?
18:41:09 36
18:41:09 37 The Victorian system, yes?---I'm uncomfortable saying what
18:41:09 38 I think is appropriate for Australia when I don't
18:41:09 39 understand the working environments and I'm unfamiliar with
18:41:09 40 different levels of sources having different levels of
18:41:09 41 registration, that's something I'm not familiar with.
18:41:09 42
18:41:09 43 All right, well let me just put it this way then. You
18:41:09 44 would want to be ensured that people who are authorising
18:41:09 45 the use of a human source had an appropriate level of
18:41:09 46 training for that activity?---Yes.
18:41:09 47

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18:41:09 1 And you wouldn't mind if that requirement came in a
18:41:09 2 guideline or if it came in a position description, your
18:41:09 3 expectation simply would be that if you're fulfilling that
18:41:09 4 role then you should have that level of training?---Yes.
18:41:09 5
18:41:09 6 Thank you. And then in terms of the - so in Victoria when
18:41:09 7 we're dealing with high risk sources it's the Central
18:41:09 8 Source Registrar who is a dedicated position who is making
18:41:09 9 those decisions. Again, your expectation would be, as I
18:41:09 10 can assure you is the case, that that person would have in
18:41:09 11 fact a much greater level of training than those people who
18:41:09 12 are sitting below as a matter of the requirements of the
18:41:09 13 role?---Yes.
18:41:09 14
18:41:09 15 Now, we have a role called a Local Source Registrar which
18:41:09 16 sets, in a diverse geographically spread system, a Local
18:41:09 17 Source Registrar who is part of the process of approval but
18:41:09 18 that approval ultimately happens in those other central
18:41:09 19 places. Does that kind of make sense?---It does, and my
18:41:09 20 assumption would be that relates to the geography.
18:41:09 21
18:41:09 22 Exactly so. Again, that's not an authorising role, but it
18:41:09 23 is a role that you would expect, and indeed does,
18:41:09 24 intrusively supervise controllers and handlers handling
18:41:09 25 sources in local areas?---I would expect that, yes.
18:41:09 26
18:41:09 27 And that person's rank must be of Superintendent, were you
18:41:09 28 aware of that?---I wasn't. I'm not familiar with this
18:41:09 29 system.
18:41:09 30
18:41:09 31 In Victoria at the moment I'm instructed that person would
18:41:09 32 need to have something, almost certainly have something in
18:41:09 33 the order of 20 years of policing experience and be
18:41:09 34 required to have undergone ██████████ human source
18:41:09 35 training. Again, assuming those things to be true, you'd
18:41:09 36 accept that to be appropriate?---Yes.
18:41:09 37
18:41:09 38 Finally, just disclosure, if I can deal with that pretty
18:41:09 39 briefly. It seems, with respect, plain from your statement
18:41:09 40 and your evidence that the relationship between a Police
18:41:09 41 Force and the Public Prosecution Service in the United
18:41:09 42 Kingdom as being essential to good decisions being made
18:41:09 43 about disclosure?---Yes.
18:41:09 44
18:41:09 45 And good disclosure processes involve a very close
18:41:09 46 relationship interplay, working, advice and so on between
18:41:09 47 those two organisations?---As I understand it also the

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18:41:09 1 responsibility for disclosure is the prosecutor's.
18:41:09 2
18:41:09 3 Yes. But the material has to come from a Police Force, as
18:41:09 4 we know, so that relationship is crucial and has to be
18:41:09 5 managed?---Absolutely.
18:41:09 6
18:41:09 7 And again in the United Kingdom disclosure has been a focus
18:41:09 8 of more reports than I've had time to read in the last
18:41:09 9 couple of weeks, over the course of the last few years to
18:41:09 10 improve the disclosure processes following high profile
18:41:09 11 failures of that process?---That's true.
18:41:09 12
18:41:09 13 Can I suggest this to you so we don't take up too much
18:41:09 14 time. Almost all of those reports don't have a difficulty
18:41:09 15 with the legal structure, that is the statutory framework
18:41:09 16 for disclosure in the United Kingdom, what they emphasise
18:41:09 17 is the critical importance of culture, process and
18:41:09 18 relationship between police services and prosecution
18:41:09 19 services?---Yes.
18:41:09 20
18:41:09 21 You would be aware, I'm sure, that there is in fact a piece
18:41:09 22 of work that flows from the existence of those multiple
18:41:09 23 reviews, it started in January of 2018, called the National
18:41:09 24 Disclosure Improvements Plan or project, I'm not sure of
18:41:09 25 the last letter of the acronym?---Yes.
18:41:09 26
18:41:09 27 And that's a joint exercise between the college of, the
18:41:09 28 police college, the organisation of police chiefs and the
18:41:09 29 Crown Prosecution Service?---Yes.
18:41:09 30
18:41:09 31 Again, you'd see that as being focused on those kind of
18:41:09 32 intensely practical issues, how do you educate, how do you
18:41:09 33 train, how do you have champions for disclosure within both
18:41:09 34 of those organisations?---Yes. I think a point that is
18:41:09 35 worth mentioning here is the way technology can overtake
18:41:09 36 legislation and the enormous challenge that I'm sure all
18:41:09 37 police forces around the world are facing in terms of
18:41:09 38 disclosure of difficult material.
18:41:09 39
18:41:09 40 The sheer volume and the need to review it?---Yes.
18:41:09 41
18:41:09 42 Just dealing then with disclosure officers, I just want to
18:41:09 43 clarify a couple of the things that you said about
18:41:09 44 disclosure officers. As I understand it in the United
18:41:09 45 Kingdom disclosure officers can be a role fulfilled by a
18:41:09 46 person who also wears other hats, to use your language, or
18:41:09 47 they might be an investigator and they might have other

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18:41:09 1 roles?---Forgive my pausing, and I have to say there have
18:41:09 2 been a lot of recent change that I'm not familiar with as a
18:41:09 3 consequence of what you've just described. I've been
18:41:09 4 describing the system from my own experience. Some of the
18:41:09 5 disclosure officers working in dedicated criminal justice
18:41:09 6 units, and they're responsible for putting prosecution
18:41:09 7 files together and for disclosure and making material
18:41:09 8 available to the CPS and doing the scheduling, in the case
18:41:09 9 of the more long running covert operations that take time,
18:41:09 10 if you like, a dedicated detective who is experienced in
18:41:09 11 disclosure would take on that role, as opposed to it being
18:41:09 12 passed to an administration of justice unit.

18:41:09 13
18:41:09 14 Thank you. It's important obviously to understand the
18:41:09 15 different ways in which phrases and language are used. One
18:41:09 16 of the key criticisms in one of the big cases in the United
18:41:09 17 Kingdom that was the subject of a disclosure report, the
18:41:09 18 name of which now escapes me, one of the criticisms was
18:41:09 19 that in one long running investigation 100 different people
18:41:09 20 occupied the role of disclosure officer at various times
18:41:09 21 and obviously - - - ?---And I have seen examples, perhaps
18:41:09 22 not 100, but I have seen examples of multiple operations to
18:41:09 23 a degree. If you've got a long running covert operation
18:41:09 24 that sometimes can last longer than two or three years,
18:41:09 25 then it's a challenge to keep the same person so it's poor
18:41:09 26 practice where it's desirable that it is a dedicated, and
18:41:09 27 even if the person is replaced, he's replaced by somebody
18:41:09 28 who then performs the role in a dedicated fashion, even
18:41:09 29 though it's not continuing with the same person.

18:41:09 30
18:41:09 31 Can I then just see if I can just take advantage of your
18:41:09 32 policing knowledge and experience in this respect.
18:41:09 33 Mr Woods asked you what was, with respect to him, a really
18:41:09 34 important question which identified the wicked problem that
18:41:09 35 exists by virtue of the existence of sterile corridors.
18:41:09 36 Obviously you've described an understanding of what a
18:41:09 37 sterile corridor is and the use of that language?---Yes.

18:41:09 38
18:41:09 39 What Mr Woods was identifying was the difficulty which
18:41:09 40 occurs when you have information at one end of the sterile
18:41:09 41 corridor and the people who disclose that information, that
18:41:09 42 is the investigators, at the other end of the sterile
18:41:09 43 corridor?---Yes.

18:41:09 44
18:41:09 45 And one of the things that you and he, I think, were
18:41:09 46 discussing was this idea that sometimes the investigator at
18:41:09 47 least will know that there is a human source or there is a

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18:41:09 1 covert capability being used in the case because that human
18:41:09 2 source or covert capability will have been deliberately
18:41:09 3 used to advance that particular investigation?---That is
18:41:09 4 correct because the person who makes the application on the
18:41:09 5 RIPA is the investigator officer.

18:41:09 6
18:41:09 7 But the even more wicked problem emerges when you're
18:41:09 8 dealing with information that might exist in a human
18:41:09 9 source, in a human source database or on the other end of
18:41:09 10 the sterile corridor which is relevant to an investigation
18:41:09 11 but where the human source might in fact not have been
18:41:09 12 directly recruited for that purpose, but information
18:41:09 13 nonetheless exists. Do you see what I mean?---Yes, and
18:41:09 14 generally, I would say generally they wouldn't be recruited
18:41:09 15 for that purpose. They may be tasked, having been an
18:41:09 16 existing source, but not necessarily recruited specifically
18:41:09 17 for the purpose of that operation. They may have been, but
18:41:09 18 I would say more often than not.

18:41:09 19
18:41:09 20 I understand. So one of the things Mr Woods I think asked
18:41:09 21 you was whether or not you were aware of any innovations or
18:41:09 22 anything in the United Kingdom to try and ensure that that
18:41:09 23 kind of material could be identified and properly
18:41:09 24 disclosed, and I think your indication was no, not
18:41:09 25 specifically?---I think I would have to answer - the honest
18:41:09 26 answer to that question is in my four years since I've
18:41:09 27 gone and what's been happening as you've described
18:41:09 28 resulting in the reviews, I couldn't give you a
18:41:09 29 contemporary position on that.

18:41:09 30
18:41:09 31 I understand. One of the things that Deputy Commissioner
18:41:09 32 Steenham gave evidence about last week was the piloting of
18:41:09 33 a couple of roles in Victoria Police called disclosure
18:41:09 34 officers, but one at either end of the sterile corridor
18:41:09 35 with separate chain of command so that they had the
18:41:09 36 capacity, to use my language, of bashing down doors if they
18:41:09 37 need to to ensure that issues are properly ventilated at
18:41:09 38 disclosure. Again, just with the benefit of your policing
18:41:09 39 experience, does that sound like a sort of sensible thing
18:41:09 40 to trial given the nature of the problem we're dealing
18:41:09 41 with?---I'm not sure. I'd have to have it explained in
18:41:09 42 more detail and I'm not in a position to answer that
18:41:09 43 question, I don't think, without knowing more.

18:41:09 44
18:41:09 45 I understand, thank you. Just a very final, very brief
18:41:09 46 topic. You were asked and you've confirmed in your
18:41:09 47 statement that culture in a policing organisation is

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18:41:09 1 critical?---Yes.
18:41:09 2
18:41:09 3 That's one of those things that's just true and easy to say
18:41:09 4 but I'm sure your experience managing a police organisation
18:41:09 5 is that change in culture and engaging with cultural issues
18:41:09 6 is something which is a constant task, a constant struggle
18:41:09 7 and happens over a very long period of time?---That's true.
18:41:09 8
18:41:09 9 And new issues, cultural issues, are raised at various
18:41:09 10 stages because of both internal and external events?---Yes,
18:41:09 11 I agree with that.
18:41:09 12
18:41:09 13 What you really need, and in fact all you can really hope
18:41:09 14 for, is to have Command of a Police Force which places
18:41:09 15 primary emphasise on ethical and culturally appropriate,
18:41:09 16 but ethical behaviour by both itself, its leaders and its
18:41:09 17 staff and sworn members?---That's absolutely critical in
18:41:09 18 Command and it's absolutely critical that that mindset is
18:41:09 19 inculcated in supervisors at every level of the
18:41:09 20 organisation, people (indistinct words) - - -
18:41:09 21
18:41:09 22 I'm sorry, Sir Jon, you go?---I was simply going to say
18:41:09 23 people accept the responsibility of rank and not just the
18:41:09 24 wages and the badge.
18:41:10 25
18:41:10 26 And one of the pieces of evidence that Deputy Commissioner
18:41:10 27 Steenham gave last week was indicating that certainly under
18:41:10 28 the present Commissionership and in her time in Executive
18:41:10 29 Command as a Deputy Commissioner, that idea of ethical
18:41:10 30 leadership has been at the forefront of the organisational
18:41:10 31 imperatives that they both publicly stated and sought to
18:41:10 32 implement internally, and I imagine you, without knowing
18:41:10 33 the detail of it I imagine you'd support that as a
18:41:10 34 focus?---I wouldn't expect anything less.
18:41:10 35
18:41:10 36 And she described, it was just interesting language, and
18:41:10 37 you may or may not have a comment on it, Deputy
18:41:10 38 Commissioner Steenham described a policy that was intended
18:41:10 39 to ensure that all police at all levels exhibited a culture
18:41:10 40 of what she described as confident humility?---Nice
18:41:10 41 expression.
18:41:10 42
18:41:10 43 I take it you'd agree with the sentiment?---I would.
18:41:10 44
18:41:10 45 That's the questioning. Thank you, Commissioner. Thank
18:41:10 46 you, Sir Jon.
18:41:10 47

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18:41:10 1 COMMISSIONER: Thanks Mr Holt. Yes Mr Doyle.
18:41:10 2
3 <CROSS-EXAMINED BY MR DOYLE:
4
18:41:10 5 Sir Jon, I've got a couple of questions for you initially
18:41:10 6 about the legislative framework for the management of human
18:41:13 7 sources and information derived from them. You say in your
18:41:18 8 statement at paragraph 42 that it is the legislative
18:41:25 9 framework that gives the prosecution the opportunity to
18:41:29 10 present its best case?---Yes.
18:41:34 11
18:41:34 12 What did you mean, Sir Jon, in that statement?---What I
18:41:38 13 meant was the robustness of the guidance, the Codes of
18:41:43 14 Practice and RIPA, in how evidence is gathered gives the
18:41:48 15 best opportunity of defending challenges to its
18:41:52 16 admissibility before trial, before and at trial.
18:41:54 17
18:41:54 18 And so that emphasises the importance of the fact that the
18:41:59 19 framework makes clear that evidence obtained in accordance
18:42:06 20 with RIPA was obtained legally?---Sorry, can you just -
18:42:13 21 it's an important question can you just repeat it, please?
18:42:17 22
18:42:18 23 Is it an aspect of what you mean that evidence obtained in
18:42:23 24 accordance with RIPA was obtained legally sorry, can you
25 just - it's an important question, could you just repeat it
26 please?
27
28 Is it an aspect of what you mean that evidence obtained in
18:42:25 29 accordance with RIPA is, by definition, obtained
18:42:30 30 legally?---Yes, that's correct.
18:42:31 31
18:42:32 32 And you earlier referred in your evidence to the robust
18:42:37 33 challenges that occurred in courts before RIPA came
18:42:42 34 in?---Yes. Challenges, of course, do still occur but the
18:42:47 35 ability to defend those challenges is much, is strengthened
18:42:52 36 by RIPA and the codes of practice.
18:42:53 37
18:42:54 38 And that in turn effects the nature of the prosecution's
18:43:00 39 disclosure obligation, doesn't it, in this way, that if
18:43:04 40 there were a real question over the legality of the
18:43:10 41 material obtained by police, that would be a reason why the
18:43:16 42 prosecution may need to disclose the source of the
18:43:20 43 material?---There is a duty on the prosecution to disclose
18:43:23 44 that material if it's undermines the prosecution case or
18:43:26 45 assists the defence and what you describe would fall into
18:43:29 46 that category.
18:43:30 47

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18:43:30 1 Whereas if material was obtained from a human source and
18:43:36 2 the obtaining of that material was plainly legal, there may
18:43:42 3 be no such duty if it were not relevant in any other
18:43:48 4 way?---No, there would be no duty to disclose because it
18:43:51 5 doesn't undermine or assist.
18:43:53 6
18:43:53 7 And earlier you mentioned that a disclosure officer in the
18:43:59 8 UK police may not be aware of the identity of the source
18:44:03 9 and that would be a situation, that is where the source was
18:44:07 10 used perfectly legally and it's otherwise not relevant,
18:44:11 11 where the disclosure officer wouldn't need to know?---Yes,
18:44:15 12 correct.
18:44:15 13
18:44:16 14 And in that kind of case there's a general principle that
18:44:18 15 would also apply to the effect that the disclosure officer
18:44:25 16 shouldn't be told, that is if their duties don't require
18:44:30 17 them to learn of the identity of the source?---That's
18:44:34 18 correct.
18:44:34 19
18:44:35 20 And that same principle would apply to limit dissemination
18:44:39 21 of the source's identity to prosecutors?---That's correct.
18:44:46 22
18:44:46 23 And that principle protects, firstly, the rights of the
18:44:51 24 person who is the subject of the intelligence?---Yes.
18:44:56 25
18:44:56 26 And also the safety of the source?---Yes.
18:45:01 27
18:45:03 28 Can I ask you some questions about disclosure and an
18:45:07 29 engagement with the Crown on the questions of disclosure.
18:45:13 30 There are at least some circumstances described in the
18:45:19 31 Code, and that is the Code of Practice for covert human
18:45:24 32 intelligence sources, where disclosure to prosecutors of
18:45:30 33 material obtained from sources should be avoided?---Could
18:45:38 34 you draw - can you tell me where that is, please?
18:45:41 35
18:45:41 36 I can take you to paragraphs 8.77 and 8.78 of the Code,
18:45:47 37 pp.53-54?---Yes.
18:45:54 38
18:46:01 39 If you look, Sir Jon, at paragraph 8.77, halfway down the
18:46:06 40 paragraph, it's dealing with a situation where legally
18:46:11 41 privileged material has been obtained?---Yes.
18:46:14 42
18:46:14 43 And says, "Neither the Crown Prosecution Service lawyer,
18:46:18 44 nor any other prosecuting authority lawyer with conduct of
18:46:21 45 a prosecution, should have any sight of any legally
18:46:26 46 privileged material held by the relevant public authority
18:46:30 47 with any possible connection to the proceedings". Do you

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18:46:33 1 see that?---I do.
18:46:35 2
18:46:35 3 Now, the underlying concern there is expressed, isn't it,
18:46:40 4 in the final sentence where it refers to a litigation
18:46:46 5 advantage which would be or could be gained over the other
18:46:51 6 party in the proceedings by the prosecutor seeing that
18:46:54 7 material?---Yes.
18:46:55 8
18:46:55 9 And that's really referring, isn't it, to a litigation
18:46:59 10 advantage which shouldn't have been gained or has been
18:47:02 11 unfairly gained or potentially gained in breach of a law or
18:47:08 12 legal principle?---Yes.
18:47:09 13
18:47:10 14 Now, it follows, doesn't it, that if that sort of material
18:47:14 15 is in the possession of police and there's a question about
18:47:17 16 whether it should be disclosed, it would be advisable for
18:47:23 17 police to obtain advice about that question from a lawyer,
18:47:27 18 perhaps a Government lawyer or in-house lawyer, independent
18:47:30 19 of the prosecution service who will ultimately be running
18:47:32 20 the case against the accused?---Yes, it would, and in some
18:47:37 21 circumstances it's a requirement of the Codes of Practice
18:47:41 22 that that advice is given by an in-house lawyer.
18:47:44 23
18:47:45 24 And do those circumstances relate to situations where
18:47:50 25 disclosure of the material to the prosecutor might
18:47:53 26 ultimately be seen during the course of the litigation to
18:47:56 27 have been unfair, that the prosecutor's armed with
18:48:01 28 information that he or she shouldn't have seen?---You'll
18:48:09 29 get into very nuanced legal territory here that I'm
18:48:13 30 struggling with a little bit if I'm perfectly honest. I
18:48:16 31 have a law degree but I did it 30 years ago and I've never
18:48:21 32 practised law.
18:48:21 33
18:48:22 34 If I could take you to the provisions of the Code you may
18:48:26 35 be referring to, Sir Jon, where you talk about the other
18:48:29 36 examples where in-house advice might need to be
18:48:32 37 given?---That is where the authorisation is expressly
18:48:36 38 intended to obtain legal (indistinct). I think the
18:48:40 39 provision is that that is the requirement, that that's seen
18:48:44 40 by a lawyer.
18:48:45 41
18:48:45 42 Yes. And as a matter of principle would you agree that if
18:48:52 43 the concern is that the prosecutor might be seen to have
18:48:57 44 information which has been obtained unfairly or improperly
18:49:02 45 and they shouldn't be armed it, there might be other
18:49:05 46 situations where a similar concern arises where
18:49:08 47 confidential information has been obtained through other

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18:49:11 1 sources?---Yes, I agree.

18:49:14 2

18:49:14 3 And, again, in those cases it may be better to have

18:49:18 4 Government lawyers who aren't prosecutors dealing with

18:49:21 5 questions of public interest immunity?---Are you talking

18:49:25 6 about independent counsel?

18:49:26 7

18:49:26 8 Yes?---There are occasions when the UK with independent

18:49:31 9 counsel are used but only if a specific set of

18:49:35 10 circumstances arise that made it necessary, which I think

18:49:38 11 is exceptional circumstances, but you're in territory that

18:49:41 12 I am not an expert on.

18:49:43 13

18:49:44 14 I see. You're not in a position to comment on the

18:49:47 15 practices in Australia and the circumstances in which

18:49:50 16 Government lawyers at Federal and State level, who aren't

18:49:54 17 themselves prosecutors, become involved with claims of

18:49:57 18 public interest immunity?---I am aware that prosecutors are

18:50:00 19 not involved in the process at all in Australia, it's done

18:50:03 20 by, I think that's correct, done by independent counsel,

18:50:08 21 which is clearly different from the UK system, which works

18:50:11 22 for us.

18:50:13 23

18:50:13 24 Now, a question about the engagement with the CPS during an

18:50:20 25 investigation. You gave some evidence earlier in answer to

18:50:22 26 Mr Woods' questions and you referred to what you described

18:50:26 27 I think as a dedicated team of CPS lawyers who give advice,

18:50:33 28 I think you said at the serious end, or with respect to

18:50:36 29 serious criminal investigations. Can you describe the role

18:50:39 30 of that team?---The CPS are special casework lawyers who

18:50:44 31 deal with the likes of homicide prosecutions, serious and

18:50:48 32 organised crime prosecutions, prosecutions involving RIPA

18:50:52 33 type material. They are - it's a small group of

18:50:56 34 individuals in the prosecution service and they are

18:51:00 35 available to give advice in ongoing operations as well.

18:51:03 36

18:51:03 37 That's a particular resource that's been made available to

18:51:07 38 UK police as part of the prosecution service?---I'm not

18:51:11 39 even sure it's a formal arrangement in terms of made

18:51:15 40 available. Lawyers are there within the CPS and we talk to

18:51:19 41 them when we feel we need their advice.

18:51:21 42

18:51:21 43 And that's during the investigation stage but before any

18:51:24 44 charge is laid?---It can be, yes.

18:51:27 45

18:51:29 46 There is a feature of the UK system that actually

18:51:33 47 necessitates engagement with prosecutors prior to laying a

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18:51:37 1 charge, isn't there, and that is that without authorisation
18:51:41 2 from the Crown Prosecution Service the police aren't
18:51:44 3 empowered to lay a charge?---I think the police are now
18:51:48 4 empowered to lay charges in some minor matters. Previously
18:51:52 5 the decision was to charge. It was taken away, given to
18:51:55 6 the CPS. Some minor matters have been given back.
18:51:58 7
18:51:58 8 But not for indictable crime, is that your
18:52:02 9 understanding?---Yeah, that's my understanding.
18:52:04 10
18:52:08 11 And you're not in a position, I take it, to compare the
18:52:11 12 practice in the UK on engagement with prosecutors during an
18:52:17 13 investigation with the position in Victoria, that is the
18:52:19 14 frequency with which that type of interaction takes place
18:52:22 15 and the resourcing requirements - - -?---I'm not in a
18:52:26 16 position to make that comparison.
18:52:28 17
18:52:30 18 A couple of other brief questions if I might, Sir Jon,
18:52:33 19 about disclosure more generally. I think you agreed with
18:52:39 20 questions from Mr Holt about some of the underlying issues
18:52:44 21 with disclosure identified by the various inquiries that
18:52:47 22 have taken place in the UK?---Yes.
18:52:50 23
18:52:51 24 And two in particular are the degree to which police and
18:52:55 25 prosecutors understand the obligation?---Yes.
18:52:59 26
18:53:00 27 And, secondly, the degree to which police and prosecutors
18:53:04 28 are part of an organisational culture which promotes
18:53:08 29 compliance with it?---I'm aware that's what the reviews
18:53:13 30 have said, yes.
18:53:14 31
18:53:14 32 Would you agree that where most material that does need to
18:53:19 33 be disclosed starts in the hands of police, the underlying
18:53:28 34 cultural attitude to the police towards disclosure is
18:53:31 35 really critical to whether the obligation's ultimately
18:53:35 36 fulfilled at the other end?---Yes, that's true.
18:53:38 37
18:53:38 38 That is no system or procedure or set of requirements in
18:53:42 39 the world will result in compliance if the culture isn't
18:53:49 40 right?---That is correct. In exactly the same way it
18:53:55 41 applies to informer management.
18:53:57 42
18:53:57 43 Would you agree with this, that you could identify at least
18:54:00 44 two aspects to culture, the first is not to treat
18:54:04 45 disclosure as a tedious administrative task to be performed
18:54:08 46 at the very end of an investigation with little attention
18:54:13 47 to the rigour and detail required?---Yes.

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18:54:20 1
18:54:21 2 And, secondly, to grapple with what might be a tendency on
18:54:26 3 behalf of investigators to avoid pursuing lines of inquiry
18:54:31 4 which may in fact assist the defence?---That, I mean that
18:54:38 5 is bordering on being corrupt, deliberately not following,
18:54:43 6 but the Criminal Procedures Investigation Act requires
18:54:46 7 investigators to follow all reasonable lines of inquiry.
18:54:49 8 Now I know some prosecutions fail because that hasn't
18:54:52 9 happened. I'm not sure you were, it sounded to me you were
18:54:57 10 suggesting that happens deliberately.
18:54:59 11
18:54:59 12 No, I'm suggesting that there's literature which talks
18:55:02 13 about almost an unconscious phenomenon on behalf of
18:55:09 14 investigators who have spent all their time focussing on
18:55:13 15 the gathering of inculpatory material to switch that focus
18:55:16 16 to gathering and revealing exculpatory material?---That can
18:55:19 17 and has been a problem and clearly those reviews have
18:55:22 18 surfaced that. I would suggest that the bigger problem
18:55:25 19 with disclosure at the moment, the bigger problems are,
18:55:28 20 one, a lack of proper understanding, which you've already
18:55:31 21 referred to and, secondly, the point I made earlier in
18:55:36 22 terms of the sheer volume of material that the police are
18:55:39 23 expected to, digital material, and I think there have been
18:55:41 24 high profile prosecutions failed in the UK, one recently I
18:55:45 25 think for rape, as a consequence of digital material not
18:55:49 26 being properly examined by the police, but obtained by the
18:55:53 27 defence, and they found exculpatory material. So I think
18:55:56 28 what you're describing is a problem, but it's not all
18:56:01 29 culture. It's partly culture but it's not all culture.
18:56:03 30
18:56:03 31 Yes. Now going to the understanding the obligation limb.
18:56:08 32 Do you agree that it might be helpful in, for certain
18:56:13 33 categories of disclosure which often come up to specify
18:56:16 34 clearly that they are categories required to be disclosed,
18:56:21 35 such as prior convictions of prosecution witnesses?---I'm
18:56:30 36 still not sure what you're asking me there, I'm afraid.
18:56:33 37
18:56:34 38 For individual officers needing to know what their
18:56:37 39 obligations are?---Yes.
18:56:39 40
18:56:39 41 They'd be helped by more than a statement of the relevance
18:56:43 42 test?
18:56:47 43
18:56:47 44 COMMISSIONER: They should be told they need to disclose
18:56:49 45 things like prior convictions of witnesses.
18:56:53 46
18:56:53 47 MR DOYLE: Yes, specific examples are helpful?---My

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18:56:55 1 understanding is they are told that. There is extensive
18:57:00 2 training on disclosure in the UK, that will intensify as a
18:57:04 3 consequence of the reviews, that is clearly, despite that
18:57:09 4 still a lack of understanding, but I don't think - to be
18:57:12 5 honest, you're asking me questions I don't know the answer
18:57:15 6 to, frankly. I do not know the detail of the training. I
18:57:19 7 know training is given. I don't know what it looks like, I
18:57:21 8 don't know what they're told to look for and what they're
18:57:24 9 not. I have never performed the role of disclosure
18:57:27 10 officer.

18:57:28 11
18:57:28 12 If I could ask you about one feature of the system and that
18:57:31 13 is disclosure certificates. You understand that they're
18:57:33 14 required for indictable cases?---I don't.

18:57:37 15
18:57:39 16 Are you familiar with the use of disclosure certificates in
18:57:41 17 the UK at all?---No. I know we do schedules. As I said,
18:57:47 18 I've never been a disclosure officer. I understand the
18:57:49 19 principles when the Criminal Procedures Investigations Act
18:57:53 20 came in in 1996, I was already a senior officer, I was no
18:57:57 21 longer investigating and I was no longer responsible for
18:58:01 22 disclosure, so I know the mechanics, like I know the
18:58:04 23 mechanics of lots of things you have to do as a chief
18:58:08 24 officer, the intimate detail I'm not aware of. I'm
18:58:11 25 assuming a certificate is a certification for the
18:58:14 26 prosecution that disclosure has been properly made, but I'm
18:58:17 27 not aware of any provision or the specific provisions that
18:58:19 28 require that, or is that not correct?

18:58:21 29
18:58:21 30 No, that's right. If I could ask you generally, in your
18:58:26 31 experience in policing and supervising an investigative
18:58:31 32 team prior to a prosecution being launched requiring the
18:58:36 33 individual officer to certify that they have complied with
18:58:41 34 a disclosure requirement, is that the sort of thing which
18:58:45 35 would assist in creating an understanding and promoting the
18:58:50 36 right kind of culture?---Yes, it would.

18:58:52 37
18:58:52 38 And you're aware, I think in answer to Mr Holt's questions
18:58:56 39 you've indicated you're aware of some external reviews
18:58:59 40 conducted of the efficacy of disclosure in the UK?---I am.

18:59:04 41
18:59:05 42 And they were the function of some external oversight by
18:59:11 43 the Inspectorate of the Crown Prosecution Service and the
18:59:14 44 Inspectorate of the Constabulary?---I'm aware of that, yes.

18:59:21 45
18:59:21 46 The method was to exam around 146 de-identified prosecution
18:59:27 47 files to see whether there were any systemic problems with

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18:59:31 1 disclosure?---The methodology I'm not familiar with. I
18:59:35 2 would expect that's what they would do but I'm not familiar
18:59:38 3 with it. I've not read the reports.
18:59:39 4
18:59:39 5 You mention in your statement, Sir Jon, again at paragraph
18:59:42 6 42, that a police culture which welcomed external oversight
18:59:47 7 is something to be encouraged. My question is: would that
19:00:01 8 kind of external oversight of compliance with disclosure
19:00:06 9 also be something that is, you would regard as welcome?---I
19:00:13 10 would regard it as welcome and it's something that happens
19:00:18 11 to (indistinct) Inspectorate of Constabulary in any event.
19:00:21 12 That may raise a question mark as to how effective that
19:00:25 13 oversight has been, but the Inspectorate of Constabulary
19:00:30 14 are responsible for inspecting Forces in relation to all
19:00:33 15 aspects of policing. They do thematic inspections and they
19:00:33 16 do full course inspections but they would look at things
19:00:35 17 such as disclosure.
19:00:36 18
19:00:36 19 And is it your view that that kind of external oversight
19:00:43 20 helps promote both understanding of the obligation of
19:00:45 21 disclosure and a culture which requires compliance with
19:00:50 22 it?---Yes, it does. I think I explained earlier when the
19:00:56 23 Judicial Commissioner's inspection takes place and the
19:00:59 24 Force is given their recommendations, the expectation is
19:01:02 25 that the Chief Constable would then appoint somebody to be
19:01:07 26 responsible for collating an action plan and then give
19:01:12 27 individuals responsibility for correcting whatever needs
19:01:14 28 correcting.
19:01:15 29
19:01:15 30 Thanks, Sir Jon. I have no further questions of Sir Jon,
19:01:18 31 Commissioner.
19:01:18 32
19:01:18 33 COMMISSIONER: Thank you. Mr Kyriakou, do you have any
19:01:22 34 questions?
19:01:23 35
19:01:23 36 MR KYRIAKOU: No questions from the State, Commissioner,
19:01:26 37 thank you.
19:01:27 38
19:01:27 39 COMMISSIONER: Thank you. Then Mr Woods, some
19:01:30 40 re-examination? Mr Woods, we lost you.
19:01:42 41
19:01:42 42 MR WOODS: I think we're back on now. No re-examination,
19:01:46 43 thank you, Commissioner.
19:01:47 44
19:01:47 45 COMMISSIONER: No re-examination. Thank you very much,
19:01:50 46 Sir Jon. The Commission greatly appreciates you making
19:01:55 47 yourself available to provide a statement and give evidence

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19:01:58 1 and to get up so early this morning and have such a long
19:02:04 2 and detailed grilling at this early hour for you. Thank
19:02:08 3 you very much?---Thank you Commissioner.
19:02:12 4
19:02:13 5 <(THE WITNESS WITHDREW)
19:02:13 6
19:02:13 7 That concludes the evidence of the last scheduled witness
19:02:17 8 to give evidence before this Royal Commission. That's not
19:02:20 9 to say that there will not be other hearings if
19:02:25 10 unanticipated circumstances or new evidence arises.
11
19:02:29 12 Hearings have been a substantial part of the work of
19:02:32 13 this Commission but by no means the only part of the
19:02:36 14 Commission's work. The Commission has completed 129
19:02:40 15 hearing days, which have been a valuable avenue for
19:02:44 16 gathering evidence. We've also received 1543 exhibits so
19:02:50 17 far. The hearings and the tendered exhibits will support
19:02:57 18 the investigation and reporting on the complex matters
19:03:00 19 relevant to the Commission's Terms of Reference.
20
19:03:04 21 The important work already done outside hearings will
19:03:07 22 now continue as we work to produce the Commission's final
19:03:13 23 report. The schedule of key dates relating to the
19:03:17 24 circulation of counsel assisting's submissions and the
19:03:20 25 process for submissions in reply is available on the
19:03:24 26 Commission's website.
27
19:03:25 28 I thank all involved in the work of the Commission,
19:03:29 29 including again Sir Jon, and I thank all legal teams
19:03:35 30 involved and especially the lawyers and support staff
19:03:39 31 assisting the Commission, including the hard working
19:03:43 32 transcribers and IT experts for their assistance throughout
19:03:48 33 these hearings.
34
19:03:50 35 Adjourn the hearing of the Royal Commission, please.
19:03:54 36
37 ADJOURNED.
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