

LEONARD HARPER

SCRUTINY COMMITTEE – WRITTEN SUBMISSION

1. I have been asked to submit a written response in respect of the BDO report into the use of financial resources during the Historical Abuse Investigation. This is to be a pre-cursor to my evidence to the Sub Committee at a later stage.
2. In its letter to me of 23rd June 2011, the Sub Committee lays out the three concerns which have instigated the Scrutiny Review. These are,
 - “The fact that as Senior Investigating Officer you were not interviewed by BDO Alto nor given the opportunity to respond to the findings in the report despite the fact that you were subject of significant criticism in the report;
 - The BDO Alto report refers to confidential statements made by yourself to the Wiltshire enquiry;
 - Critical sections of a ‘leaked report by financial auditors’ were quoted by a report of the Mail on Sunday (4th October 2009) only a few days after the BDO Alto report states that they were engaged to undertake the review (reference to their engagement letter dated 29 September 2009). It appears that a Senior Police Officer was responsible for this leak.”
3. The Sub Committee quite understandably comments that it is not the intention to “stray into broader issues relating to the Haut de la Garenne enquiry nor to the substance of the findings in the BDO report.” However, it does state that it intends to “undertake a review of the issues arising from these (above) concerns.” In order for me to illustrate the issues that I see as arising from the concerns outlined at paragraph 2, it will be necessary for me show the effect on the report, of BDO failing to even contact me. I will do this by addressing each of the three concerns of the Sub Committee in the order they appear at paragraph 2. Consequently it will be necessary to show the effect, on the report and its accuracy, of the failure to seek the knowledge of the person responsible for most of the decision making in respect of the use of financial resources. I would emphasise that, in the light of the Sub Committee not wanting to re-assess the conclusions of the BDO report, I am not seeking in any way to have them do that. I am illustrating that there was a substantial body of evidence easily available, and verifiable, from the person who actually took the decisions that BDO were commissioned to review. The failure to even seek this evidence out, never mind to evaluate it, fatally damages the claims of BDO to have presented a report which was in any shape or fashion fair, objective, or independent.
4. There are a number of issues which arise from the failure of BDO to even attempt to interview me as part of their review, nor to give me the opportunity to respond to criticisms contained within the report. Firstly, it is a well established point of lawful procedure that in certain types of investigations and inquiries certain points of procedure must be followed to ensure fairness and accuracy. These points were further emphasised in the case of Maxwell v. DTI 1974 and the following excerpts

from an article in 'Practical Law Company' in December 2008 explain these procedures.

- **Investigations and inquiries in context**
- Investigations and inquiries are an increasing feature of public life. They come in a variety of forms. Some have formal powers while others are carried out on an ad hoc, informal basis. Some are triggered by government policy while others are commissioned at the discretion of the government and/or public bodies.
- Certain procedural and legal issues arise in all investigations and inquiries. It is important to get these right so that the investigative process runs smoothly, individuals are treated fairly & lawfully and the budget/timetable is maintained.
- This note sets out what these issues are. Organisations intending to commission an investigation or inquiry should seek professional advice and assistance at the outset.

An aspect of principle 2 above was that following the Salmon Report, letters were commonly issued to those who were participants in an inquiry where there was potential criticism that might be made of their conduct. These letters came to be known as "Salmon letters".

In his subsequent report in to matters arising from the Matrix-Churchill affair, Lord Scott criticised aspects of the Salmon Principles as being more relevant to adversarial processes than an inquisitorial procedure. However, he took the process of warning those concerned of possible criticism (so they would have an opportunity to comment) further than the Salmon letter; rather, he copied adverse passages from his draft report to those concerned, so they had an opportunity to respond and seek to change his mind. This process is known as "Maxwellisation" and derives from practice in investigations under the Companies Act.

Both processes represent aspects of fairness and may be necessary, depending on the circumstances, for an inquiry conducted today.

For inquiries conducted under the Inquiries Act 2005, the Salmon letter procedure has been codified in to a process of "warning letters" (see section 13 of the Act). This provides that the chairman may not include any explicit or significant criticism of a person in a report unless he has sent a warning letter to a person who:

- (a) He considers may be, or who has been, subject to criticism in the inquiry proceedings; or
- (b) About whom criticism may be inferred from evidence that has been given during the inquiry proceedings; or
- (c) Who may be subject to criticism in any report or interim report.

Section 14 of the Act creates a statutory duty of confidence between the recipient of such a letter, the inquiry team and the recipient's legal representative. The duty persists until such time as the inquiry's report is published or the chairman waives the duty.

The contents of warning letters under the Act are set out in section 15. They must:

- (a) state what the criticism or proposed criticism is
- (b) contain a statement of the facts that the chairman considers substantiate the criticism or proposed criticism
- (c) refer to any evidence which supports those facts.

It has yet to be seen whether the statutory process of warning letters will help speed up inquiries that would previously have followed a Maxwellisation process by dispensing with it, or whether a chairman will consider that fairness requires a "Maxwell" process as well as warning letters under section 13 of the Act

Maxwell v DTI [1974] QB 523

5. This is what I see as the first issue arising from the concerns and in particular the first concern. The completion of a review of my decisions relating to the use of financial resources without even seeking an explanation from me as to why I made those decisions, makes it inevitable that the review will be unfair, slanted, un-objective, and lacking in credibility. Such a review is unlikely to provide a true picture of the situation, and indeed, I would argue that there are so many factual inaccuracies and wrongful assumptions included in the report, that this is exactly what happened. If I had been spoken to it is unlikely that the report would have come to the same conclusions as it did. Whilst I fully appreciate the reluctance of the Sub Committee to re-examine the conclusions of the report, it is necessary for me to show how those conclusions would have been affected by the simple process of asking me why I took the decisions I did. What I will submit is that there are so many of these conclusions which I can contradict with solid evidence, that I cannot possibly include them all. Accordingly I will simply illustrate my point with a selected few of them, but I would emphasise there are many, many, more.
6. Firstly, I would have pointed to the close links between Mr Kellett and Mr Gradwell, which BDO seem to have conveniently overlooked. Both officers worked in the same region of the North West of England and know each other well. This use of Mr Kellet can hardly be said to be an independent appointment.
7. One fundamental effect of the failure to even interview me appears at the very outset of the report and is crucial in the BDO conclusion that much of the spending was unnecessary. This is in relation to the search operation at HDLG. BDO quote a Met interim report as saying that the entry into HDLG was "unjustified" and the report makes light of the process which led to the search of HDLG. However, BDO make no mention of the fact that a later report by Wiltshire Police endorsed the entry into HDLG and the important fact that it was the National Policing Improvement Agency

who actually recommended the operation and who formulated the Search Strategy. (A copy of their Strategy is attached.) BDO have completely missed this but would not have been allowed to if they had spoken to me.

8. The report rightly states that there was no initial intention to excavate the building, but then states "for some reason this changed." The reasons have been well documented, although again, BDO have ignored them and seem to infer that they could not see any reason. I would have pointed them towards the reasons. The BDO report states that where the dog barked, we dug. It deliberately ignores the evidence of the Operation Rectangle Summary Report, (available on the SOJP website before Mr Warcup removed it and attached to this document) which describes all the technical and scientific aids and methods which were used to corroborate the reactions of the dogs. Again, I would have insisted they read this document. The report also ignores the evidence available to us from builders who found bones they believed to be human and who were told to "let bygones be bygones." It follows also, that BDO make no mention of the inconsistencies in the handling of the bones by the local Pathologist. All in all, BDO seem to deliberately play down or ignore the evidence for the operation, something which I would have rectified if I had been spoken to. Whilst not inviting the Sub Committee to rule on the merits of my arguments, the BDO conclusion that considerable elements of the investigation costs were therefore questionable seems highly debatable to say the least, and would have had to be at least re-assessed if they had been forced to rely on evidence other than a Met interim report which at best was one page of e mail and contained false dates.
9. In talking about the initial fragment, JAR/6, BDO state that the item had not been lab tested or subjected to peer review. This ignores the fact that the identification was made by a renowned and respected anthropologist. It goes on to peddle the myth that a scientist from the Carbon Dating Lab in Oxford identified the item as wood or coconut. This, as we know, is rubbish. Firstly nobody at that lab was qualified to say what it was - their expertise is in dating, and they made a hash of that, and secondly, no one ever said what it was. I have e mail evidence which shows them saying clearly that to be sure as to what it was, it would need to be examined by experts. I also have e mail evidence which shows that collagen was found by them in the fragment. We all know that this substance is found only in mammals and not in wood or coconut. It is likely then, that if I had been given the opportunity to present such evidence to BDO, that their conclusions could not have been the same. One has to ask how BDO missed such important evidence. Could it be because they never spoke to me and no one else was interested in giving them the information? Again, the Sub Committee does not have to reach a conclusion on which version is the truth. It is surely obvious that the report could not have been fair, objective, or independent without the availability of the alternative explanations.
10. The BDO report totally misunderstands and misrepresents the situation of the SOJP as it was then in relation to the management of its budget. The report compares the management of the police budget unfavourably with UK forces and rather misleadingly equates (supposed) operational independence with the financial decision making ability of UK forces. In reality, unlike UK forces, we did not have the ability to track our budgets as they do in the UK. Where the UK forces had in house finance departments which reported to the Chief Officer, we had an ever diminishing number of Treasury personnel who nominally worked with us but reported to the Treasury. We had to rely on them for monthly bulletins as to how we were doing. These bulletins became a joke, so inaccurate were they, and we came to realise eventually

that the inaccuracies were deliberate. We monitored our own expenditure and towards the end of one year we knew we were well under-spent, with a surplus that we had been promised we could carry over to the next year. However, the Treasury insisted we were slightly overspent. We later found that we had been correct but our surplus had been passed on to other States departments which were heavily over-spent. Wiser the following years we ignored the Centre's protestations that we were over spent and indeed they were wrong and we came within budget. This was the context that we found ourselves in at the beginning of the Abuse enquiry. Graham Power continually pleaded for us to be given a budget to work to but was refused. The instruction by [the Chief Minister] to use whatever resources we needed was not misunderstood. It was a clear direction. BDO seem to infer that it was not really an instruction to use whatever we needed. However, they have ignored the fact that when I did speak publicly about the need to be mindful of the costs of the enquiry, I received a stinging rebuke from [the Chief Executive] on behalf of [the Chief Minister] in which he said "costs are irrelevant. I have a copy of that e mail and if BDO had bothered to try to contact me I would have let them have it. Far from being reckless with finance as BDO have reported, I was rebuked by [the Chief Executive] for even considering the need to be careful with money. I have a copy of his e mail which I will happily supply to the Sub Committee which shows him admonishing me and telling me that "cost is irrelevant."

11. The report criticises the use of Mr Grimes and his dogs. It claims that there were other dog handlers who could have carried out the work. This is not so. At that time these were the only dogs trained in this particular line of work available to us, and they were recommended to us by the National Policing Improvement Agency. The NPIA were also comfortable with, and approved of, my decision to retain Mr Grimes as the link between ourselves and them to advise us on search matters when they could not be there. It is interesting to note, that whilst employed with us, Mr Grimes was also given time to go and assist two other UK forces. I should also point out that he is now employed full time by the FBI and that previous to coming to Jersey he had been used frequently by them. BDO claim they were unable to discover who had recommended Mr Grime. If they had tried hard enough they would have found that the NPIA brought him to that first meeting in Oxford where the strategy was discussed and approved by all there.
12. BDO are also critical of the fact that the L'Horizon hotel was used for Mr Grimes and the archaeologists and anthropologists whilst they were in Jersey. What BDO do not mention was that the cost of the rooms was the equivalent of a B&B establishment because of the favourable rates. These were professional people who were being asked to work long hours away from home. My PA who did most of the hunting for accommodation did a superb job in obtaining these rooms at the rate she did. Staff could not have been accommodated any less expensively. Indeed, although I can find no mention of it in any comment by politicians, Gradwell, Warcup, or SAV, the report does say that the use of all other hotels and accommodation was appropriate. What it seems to miss is the fact that L'Horizon cost no more than the other hotels mentioned.
13. The BDO report criticises visits to London by me and staff, and the use of hospitality whilst on these visits. It states it can find no good reason for the visits, and goes on to criticise the restaurants which were used, and the way bills were split between officers which it claims, were an attempt to hide the cost. Here again, BDO would have

benefited from even a conversation with me over the telephone. Instead it saw fit to criticise my actions without even the first idea of why we did what we did. In the following paragraphs I lay out the details which I would have given them if they had bothered to ask. As before, it is not necessary for the Sub Committee to comment on the veracity of the evidence, although I emphasise it is all verifiable, but merely to note that alternative evidence was available but not even sought by BDO.

14. Firstly, not only myself, but ACPO were worried about the security of our offices at the Police HQ. ACPO were also concerned about the security of our electronic systems. It was decided that we would seek the advice of the team dealing with such matters at New Scotland Yard. We made our first visit there and discussed the arrangements which we had in place and which we should be thinking of enhancing. Much useful information was obtained, and indeed, several members of that unit visited Jersey and carried out an inspection of our offices and made useful recommendations, all at NO COST to the Jersey taxpayer. There are a number of other points to be made which BDO failed to recognise but which I would have enlightened them on if they had bothered to contact me. It is true, as they claim, that these meetings rarely lasted longer than an hour or ninety minutes. However, I was not usually in London for these meetings alone. I combined them with other meetings and tasks to be carried out, some of them directly connected to Rectangle and some either indirectly or not connected. Furthermore, even in the short duration of the meetings valuable information was gleaned and later acted on. From this meeting also arose the possibility of us borrowing a brand new sifting machine for use at HDLG which considerably speeded up and made more effective the process of searching for evidence in the debris from the home. We had this machine for several months and paid nothing for it but the cost of transporting it. Using it saved many tens of thousands of pounds in manpower hours. BDO do get it correct when they say that my preference would have been to alternate the meetings between London and Jersey but as the Met would have had to charge for their services if they went to Jersey, it was decided to hold the meetings in London to reduce our costs.
15. BDO seek in this report to infer some wrongdoing in respect of the hospitality afforded to UK officers. It should be pointed out right away, that in a written communication, [the Chief Officer Home Affairs] laid out the amount of money allocated to this investigation **for hospitality**. I was not using money diverted from operational costs, this was money allocated by the States for the use in supplying hospitality. BDO seem to infer that it was unusual. This is not so. Every States department has hospitality budgets and in many restaurants and bars in Jersey this facility is used regularly. One local taxi driver commented to me that if it wasn't for the hospitality budgets of politicians and their departments several restaurants would have long closed. It is necessary when operating in an isolated environment like Jersey that networking and hospitality facilities are used. I am quite happy to have my hospitality expenses measured against the services and other benefits that I brought in compared with a similar exercise for any other states department. As a result of contacts made I was able to save the SOJP many thousands of pounds. This included but did not stop at secondments, such as the months long secondment to the Met Homicide Teams for a senior detective, a lengthy secondment to a busy West End of London Division for a senior uniform officer during which he gained valuable experience, short notice training for a number of Tactical Firearms Officers when due to accidents we had none, from another UK force, training in Northern Ireland, free of

charge, for our probationer officers, as well as validation for our own training procedures, as well as many, many more initiatives.

16. BDO criticise the restaurants which we used and name two of them. One of them, the “Bombay Brassiere”, is I think, a restaurant in Kensington which was near to a hotel we used. I think we went there once. I am not sure what they were trying to infer. The second restaurant they name is “Shepherds” in London. The report goes to great lengths to mention that it was owned by Sir Michael Caine. I think it is correct that it was at one time part owned by him. This is obviously an attempt to give the impression of five star luxury. However, as the Scotland Yard team pointed out, this is a restaurant used mainly by journalists, MPs, and senior police officers, (including members of HMIC) many of whom are on business dinners. Scotland Yard provided a menu to Wiltshire Police, although it never seems to have got a mention in that report and I notice that BDO did not mention it either. The menu shows good reasonably priced meals at the cost, when we used it, of £32 for three courses and coffee. Hardly Hollywood style living. Frequently when using it we would encounter other police officers from various forces and HMIC. This is a far cry from the movie star lifestyle painted by BDO and the JEP. When the truth was available one has to ask why they chose to go down this road, and why no attempt was made to speak to me, nor indeed, to even use the evidence that Scotland Yard had given them.
17. BDO also sought to infer some form of malpractice in the way in which bills were split. Bills were split to begin with, because invariably officers who were being met with, paid for some drinks for those present, themselves. As for why the bill was sometimes split between two Jersey officers, the truth is rather less exciting and easily verifiable. Indeed, once again, if BDO had bothered to check with me I would have enlightened them.
18. On a number of occasions myself and other colleagues had the embarrassment of having our Jersey Purchase cards refused because the States had been, for whatever reason, late in paying the account, leaving cards near their limit. I remember one occasion in London having to use my own card on arrival at a hotel and then having to ring Jersey to sort the matter out. Subsequently, when three or four of us where meeting with a number of other UK officers and having to pay the resulting bill, we split the cost to try and avoid the situation as described happening again. BDO didn't bother to ask for a reason. They have simply tried to paint a black picture. The report quotes a £4,860 bill on my purchase card for eight months of the investigation. This works out at about £608 per month, well below what my hospitality budget actually was. BDO compare my cost with a small force in Yorkshire and seem to suggest that the approx. £2,000 difference is sinister. What the basis for comparing an island force off France having to obtain services and assistance in the middle of a huge investigation with a small force in rural England is, I have absolutely no idea. However, according to BDO even the Deputy chief constable there spent over £3,000 and he had no Operation Rectangle and presumably did not need to leave GB or cross the Channel to meet with contacts.
19. There are of course, two other concerns of the Sub Committee. The first of these is the matter of my confidential witness statement made to Wiltshire Police. This statement was made as part of the discipline investigation into Graham Power QPM. It was made under condition that it was used for no other purpose. It contained sensitive details as well as names of victims and suspects. I was assured by Wiltshire

Police that no one would be given a copy of it, and indeed, that it was even exempt from Freedom of Information Laws in the UK. It formed part of a report by Wiltshire Police that was in itself so confidential that Wiltshire issued the following warning.

20. 1. Paragraph 1.2 of the discipline code (for Chief Officers of the States of Jersey Police) requires that all parties involved in the operation of this code will maintain confidentiality while proceedings are being progressed. The outcome of any particular case arising under the code will not, as a general rule, be publicised, but it is accepted that following the outcome of a particular case, the Home Affairs Minister and/or the States Employment Board and /or the Chief Officer, might decide that public disclosure is appropriate.

2. This Report contains personal data within the meaning of the Data Protection Act 1998, and Wiltshire Police would breach the first data protection principle if it were to disclose that information. Hence, the information is exempt under s.40(2) Freedom of Information Act 2000

3. This Report contains information that has been, and continues to be, held by Wiltshire Police for the purposes of an investigation which it has a duty to conduct and which ought not to be disclosed (under s.30 Freedom of Information Act 2000).

4. An obligation of confidence upon Wiltshire Police arises from the duty outlined at 1. Above, and disclosure of information would be likely to prejudice relations between the United Kingdom and Jersey. Information, therefore, ought not to be disclosed (under s.27 Freedom of Information Act

21. There is absolutely no condition under which my statement should have been made available to a firm of accountants who are not security vetted in any fashion in relation to such documents, and who had no connection with the discipline investigation for which it was provided. I gave no such authority for it to be used, and Wiltshire Police have denied ever providing the statement to BDO. If BDO had bothered to interview me I would have pointed all of this out to them.

22. The final concern was the leaking of the BDO report shortly after it was commissioned. There is not much I can add to what is known. [] is a journalist with a public track record of supporting convicted paedophiles and trashing police investigations of historical child abuse. He is the author and co-author of several books and documents in which it is claimed that allegations of historic abuse are either as a result of conspiracies between greedy victims fabricating stories and police willingly acquiescing, or as a result of 'false recall syndrome.' He has given evidence to Parliamentary Select Committees on behalf of [], the Leicestershire Care Home Rapist, and the North Wales Care Home abusers, all of whom he claims were victims of miscarriages of justice. This is despite a three year public inquiry in North Wales

which cost millions and totally vindicated police and victims. This was not the first time of course that [] featured in the Jersey investigation. He was leaked material previously, and in a tape recorded conversation told Graham Power that he had been leaked confidential material by Senator []. [] denied the conversation despite the recording, and [the Senator] denied leaking to him. It seems to me, to reflect rather badly on the so called objective and independent nature of this report that a journalist with a publicly proven record of supporting convicted child abusers should have more access to the report and through his police contacts, to be able to influence it more than the people making the decisions which were being reviewed.

23. In making this submission I have had to contradict a number of the findings of the report. I do this in the full recognition that it is not the Sub Committee's task to in any way re-assess the findings of the report. I do it in order to show that a substantial body of alternative evidence was easily and readily available which may have given a totally different perspective on events. This evidence was ignored and not even sought, despite the fact that much of it came from the person making the decisions which were being reviewed and subsequently criticised. Such criticism without even an attempt to seek an alternative view cannot be seen as being fair, objective or independent.

Leonard Harper

25th June 2011