WRITTEN QUESTION TO THE MINISTER FOR HOME AFFAIRS
BY THE DEPUTY OF ST. MARTIN
ANSWER TO BE TABLED ON TUESDAY 23rd MARCH 2010

Question

(1) Is the Minister satisfied that a Metropolitan Police Interim Report existed on 10th November 2008 and, if so, why?
(2) Why was a Metropolitan Police Interim Report requested?
(3) Who asked the States of Jersey Police to request it and who was it made to?
(4) When was that request made?
(5) Who requested the Metropolitan Police to provide an Interim Report?
(6) Who at the Metropolitan Police was asked?
(7) Will the Minister provide Members with a copy of the written request?
(8) When was a copy of the Interim Report received?
(9) Although neither the former nor current Home Affairs Ministers have seen the Interim Report, is the Minister aware of anyone apart from the Acting Chief Officer of Police seeing the Interim Report?
(10) Was the Interim Report withdrawn and, if so, why and when?
(11) Who requested it to be withdrawn and to whom was the request made?
(12) When was the Interim Report returned?

Answer

Before I answer the detailed question, I want to give some general background to the production of the Interim Report by the Metropolitan Police.

The ACPO Homicide Working Party recommended that a full review be conducted by an outside police force of the Historical Abuse Enquiry. Accordingly, on 6th August 2008, the now Acting Chief Officer of Police wrote to the Metropolitan Police Force requesting the production of such a report. Subsequently, detailed terms of reference were agreed for the production of the report and work commenced. The main purposes of the report were to advise on the management of the Historical Abuse Enquiry and to provide advice and guidance in relation to the conduct of individual investigations. It soon became apparent that serious issues were arising as to the previous management of the Historical Abuse Enquiry. Details of these concerns were passed on to the now Acting Chief Officer of Police who began to raise these with the Chief Officer of Police from September 2008 onwards. The now Acting Chief Officer of Police also began to share these concerns with other senior officials and with Deputy Andrew Lewis who became the Minister for Home Affairs. By early November 2008 the report was nearly completed except for the interviewing of the former Deputy Chief Officer of Police. By that stage it had become apparent that some of the issues were so serious that they could prejudice the fair trial of certain individuals. The concern was that serious cases might be stopped by the Royal Court because of the previous actions of the former Deputy Chief Officer of Police. For that reason the now Acting Chief Officer of Police asked the Metropolitan Police Force to produce a report on what they had found up to that point so that a press conference could be held correcting issues relating to information which had previously been given to the press. The Metropolitan Police then produced the Interim Report which they sent initially on 10th November 2008, to the now Acting Chief Officer of Police as an attachment to an email. The concerns of the now Acting Chief Officer of Police were fully vindicated by the judgment of the Royal Court in the matter of The Attorney General v. Aubin and others [2009] J.R.C. 035A.

I am now going to quote from section 14 to 19 of that judgment:-

"14. We need to be clear what it is that is complained of. The investigation into allegations of historic child

sex abuse in Haut de la Garenne was an important story in Jersey and one in which the press have an absolutely proper and legitimate interest. Equally it is perfectly normal for the Police to keep the press informed of the progress of important inquiries. Sometimes that may be in the form of on the record press conferences, broadcast or published as the case may be, sometimes it may involve off the record briefings the content of which cannot be used until after any trial. From time to time the Police may make use of press publicity for operational reasons, for example in a case like this, to appeal for witnesses and to reassure those potential witnesses that they will be treated sympathetically and in confidence should they come forward. All that is completely usual.

15. What is extraordinary in this case is the way in which the senior investigating officer, Mr Harper, by constant and dramatic press conferences and informal briefings, whipped up a frenzied interest in the inquiry, not in respect of the solid police work that was being done to investigate the serious allegations of child sex abuse, but in respect of what had turned out to be completely unfounded suggestions of multiple murder and torture in secret cellars under the building. It is not any part of my task to decide whether the huge excavation that took place under Haut de la Garenne was justified or not, I am only concerned with the publicity that followed it. Not surprisingly the press ran with the story with enthusiasm. I have five volumes of press cuttings full of lurid headlines. I pick one completely at random from among dozens of a similar kind "Shackles are found in torture dungeon". They were not shackles, it was not a dungeon and there is not evidence of torture there. Unsurprisingly of particular interest to the press was exhibit JAR6. This was a small object found in a place under the building which probably pre-dated the investigation. At first sight the anthropologist who was present thought this might well be part of a child's skull. Having received that information, it was right for the Police to investigate further to see whether it was indeed a child's skull or part of it. What was not right was for Mr Harper immediately to call a press conference to announce that the remains of a child had been discovered. In fact JAR6 proved, on careful scientific examination, not to be part of a skull at all, but by then the idea that children had been tortured and murdered in the cellars was firmly lodged in the public consciousness.

16. It is very important to be clear why Mr Harper's conduct has been criticised in Court and elsewhere. He is to be commended and not criticised for taking the allegations of child sex abuse seriously, for investigating them vigorously, and for making clear that anybody coming forward to give evidence would be treated sympathetically and professionally. No proper criticism of him could be advanced for any of that. The legitimate criticisms of him and the potential damage that he did to any inquiry or Court proceedings are best expressed not by me setting out my opinion but by the professional judgment of an outside expert who reviewed this aspect of the case in November 2008. That report has been disclosed to the defence in the course of these proceedings and I quote from its conclusion:-

"*From the outset statements released to the media suggested with the language of certainty that crimes had been committed and that there were many victims. For legal reasons, and in order to manage media coverage and public expectation, more temperate and non-judgmental language would have been more appropriate. Statements made in relation to the item recovered on February 23rd [JAR6] were not accurate and incited an enormous media coverage which at times was hysterical and sensational and was in turn equally inaccurate and misleading. The description of cellars, the voids under the flooring, was inaccurate and allowed the media to create a false impression in the public mindset. The description of an item recovered from Haut de la Garenne as "shackles" was not accurate. The language used to describe the bath could have been more accurate. The decision to display to the media a tooth recovered from Haut de la Garenne was highly unusual. The approach taken by the States of Jersey Police to releasing information about the teeth found was unusual, not consistent with normal working practice in the UK and encouraged further media reporting and speculation. Given the lack of evidence collated to prove that a child's remains had been found at Haut de la Garenne, the statements made by States of Jersey Police could have been more accurately phrased and could have generated more measured and less prominent media coverage. The statement made by the States of Jersey Police regarding the two pits excavated at Haut de la Garenne was inappropriate. The nature and quantity of much of the media coverage was generated and sustained by the Police's*

deliberate decision to provide a regular diet of information to the media. Some, but by no means all, the inaccurate media coverage published was challenged by the Force on a number of occasions the Deputy Chief Officer placed information and allegations into the public domain or responded to issues and allegations in the media which distracted attention from the child abuse investigation and this may have tarnished the reputation of the Force and weakened public confidence in the investigation and its professionalism."

17. The potential damage to the Court process is illustrated by the fact that it has provided material for the powerfully advanced argument of Advocate Preston that the idea of long term, widespread torture and murder is so entrenched in the consciousness of potential jurors that it cannot be eradicated by any direction from the trial judge. He argues that jurors will either be convinced already that anyone charged must be guilty or they will feel that after this long and expensive inquiry "someone must pay". This problem is heightened, he argues, because of the size of this jurisdiction. Before setting out my reasons for ultimately not finding his argument persuasive, I should make a preliminary comment. This is not a public inquiry into the conduct of the Police in general or Mr Harper in particular, I comment on his and their conduct only to the extent that it is relevant to the legal issues I have to determine.

18. I now turn to the factors that lead me to reject this part of the application.

(i) First in November 2008 the new senior investigation officer held a press conference in which he put the record straight about the findings under the building. That press conference received wide publicity and the tone of press reporting has changed, indeed the prosecution might now argue that they risk encountering jurors who believe that the Police have said that everything that had gone before was wrong. In my judgment this press conference went a long way to repair the damage that had been done by earlier press publicity.

(ii) Second there was a clear divide between the reporting of the torture dungeon and the general part of the inquiry which was into historic child sex abuse. That part of the inquiry did not receive the same lurid treatment. It will be immediately apparent to any juror hearing this case opened that there is no allegation against any of these men of anything which might be linked to the supposed torture dungeon.

(iii) Thirdly none of the lurid stories connected any named individuals to what was being described, indeed Mr Donnelly and Mr Aubin do not even fall into the category of staff at the home who were, in general terms, being accused of criminal offences. Mr Donnelly is indeed nothing to do with the inquiry into the home at all.

(iv) I approach this case in the same way as the Court of Appeal did in the case of Abu Hamza [2006] EWCA Crim 2918, than whom no-one could have had worse personal publicity. It is said that everyone in Jersey will have read of this inquiry and no doubt that is true. Everybody in the United Kingdom would have come across the adverse publicity for Abu Hamza before he faced his trial. When the question of pre-trial publicity was considered by the Court of Appeal Criminal Division in that case the Lord Chief Justice giving the judgment of the Court said this:-

"93. Prejudicial publicity renders more difficult the task of the Court, that is of the judge and jury together, in trying the case fairly. Our laws of contempt of Court are designed to prevent the media from interfering with the due process of justice by making it more difficult to conduct a fair trial. The fact however that adverse publicity may have risked prejudicing a fair trial is no reason for not proceeding with the trial if the judge concludes that with his assistance it would be possible to have a fair trial. In considering this question it is right for the judge to have regard to his own experience and that of his fellow judges as to the manner in which juries normally perform their duties."

And then the Lord Chief Justice quoted with approval the words of the trial judge, Mr Justice Hughes, as he then was:-

"97. After considering at length the relevant authorities, to most of which we have already referred, the judge comments on his own considerable experience of jury trial:-

"For what it is worth, this judge's experience leads him to endorse the conclusion that lawyers are occasionally unwisely dismissive of juries. Almost universally, they approach their task and their oath with conspicuous conscientiousness. They are often unavoidably faced with inadmissible evidence which they must discount, especially in the case of several defendants, and experience strongly suggests that, whilst desirable, it is not necessary for them to be kept wholly ignorant of such evidence in order to be able to reach a careful decision which takes no account of it. Extensive publicity and campaigns against potential defendants are by no means unknown in cases of notoriety. Whilst the law of contempt operates to minimise it, it is not always avoidable, especially where intense public concern arises about a particular crime and a particular defendant before any charge is brought. Jurors are in such cases capable of understanding that comment in the media might or might not be justified and that it is to find out whether it is that is one of their tasks. They are capable of understanding that allegations which have been made may be true or may not be and that they, the jury, are to have the opportunity and responsibility of hearing all the evidence which commentators in the media have not and of deciding whether in fact the allegations are true or not. They are not surprised to be warned not to take at face value what appears in the media, nor are they these days so deferential to politicians as to be incapable of understanding that they should make no assumptions about whether any statements made by such people are justified or not. They are also capable of understanding and habitually apply the direcion that they are given about the standard of proof.""

(v) And finally this: we should trust the jury. The principle that they will have to apply here is that general allegations involving other people do not form part of the evidence against a specific defendant, and he is only to be convicted if the evidence that is relevant to him convinces them of his guilt. It is not an abstruse legal concept, nor does its application require any kind of mental gymnastics. It is a simple principle of fairness, readily explained and easily understood and applied by the ordinary juror.

19. For all those reasons I do not find that the publicity in this case was such as to prevent any of these defendants receiving a fair trial."

It can be seen from that quotation that not only are the actions of the former Deputy Chief Officer of Police heavily criticised but that the actions of the now Acting Chief Officer of Police are vindicated in paragraph 18(i) of the judgment.

The quotation above which is attributed to an outside expert is a quotation from the report of an independent media expert who was called in to advise the States of Jersey Police on media related matters.

The now Acting Chief Officer of Police was aware of the relevant issues and had started to prepare a draft press release in late October 2008. A copy of an early draft of this was seen and commented on by the Chief Officer of Police. The Version which was given to the press was the 11th version of the Press Release. The Chief Officer of Police was asked by the now Acting Chief Officer of Police as to whether he wished to have any involvement in the press conference and declined so to do.

The effect of the Interim Report was to confirm the concern of the now Acting Chief Officer of Police prior to the making of the Press Release.

I now turn to the detailed questions.

(1) Yes, I have been assured that that is so by the Acting Chief Officer of Police and the Acting Deputy Chief Officer of Police. Furthermore, some months ago and recently I saw the covering email to which it was attached.
(2) That is explained above.
(3) That is explained above. The Acting Chief Officer of Police was not asked to do what he did by

anyone. The answer to the second question is a Detective Superintendent, the name of whom has been supplied to the questioner.

(4) In late October or early November 2008, for the reasons set out above.

(5) That is explained above.

(6) The same answer as the second part of Question (3).

(7) There was not a written request for an Interim Report. The matter was dealt with as stated above, on an informal basis

(8) 10th November 2008, in electronic form, as an attachment to an email.

(9) The report was produced for purposes which are described above and not for disciplinary purposes. Accordingly, it was seen by a number of police officers who were then involved in various investigations and by a number of lawyers who were advising in relation to investigations. It has also been seen by the Acting Deputy Chief Officer of Police.

(10) The Interim Report was not withdrawn. It was followed by a full report the Metropolitan Police produced the report for the reasons set out above and it was used for those purposes. It was not drafted for the purposes of a formal disciplinary hearing and therefore it was not appropriate that it should be used in that way.

(11) It was not withdrawn, as stated above.

(12) It was not returned. It was used for the purposes for which it was originally intended.