

JPC.

The Queen v Jonathan Rees and others

INTRODUCTION

1. Friday, 8th March 2011 marked the end of long-running criminal proceedings arising out of the murder of Daniel Morgan during the evening of 10/3/87. Five defendants were originally charged in the indictment. Jonathan Rees, Glenn Vian, Garry Vian and James Cook were charged with the murder, and Sidney Fillery was charged with a related offence of doing an act tending and intended to pervert the course of justice between 10/3/87 and 31/10/87. All of them had been arrested on 21/4/08, in circumstances which I will explain in more detail later.
2. I will refer to the former defendants by their first and sur-names, to distinguish the former defendant Jonathan Rees from a member of the prosecuting team, Mr Jonathan Rees QC, to whom I will refer as "Mr Rees QC"; to distinguish Glenn Vian and Garry Vian from each other; and to distinguish James (sometimes 'Jimmy') Cook from Detective Chief Superintendent David Cook, the Senior Investigating Officer, to whom I will refer as "DCS Cook".
3. During 2010 I stayed the proceedings against Sidney Fillery on the grounds that it would be an abuse of the process of the court to continue against him, and the prosecution offered no evidence against James Cook. On 8/3/11 the prosecution offered no evidence against the defendants Jonathan Rees and Glenn and Garry Vian.
4. The prosecution offered no evidence for many reasons. Two of the main ones were the apparently insuperable difficulties that had been encountered in relation to the disclosure of unused material. Another was that four of their intended principal witnesses had fallen by the wayside for various different reasons.
5. The proceedings having concluded in this way, it would not normally be necessary for me to deliver any judgment at all. I therefore begin by explaining why the need for this judgment arises.
6. The proceedings began with highly complex legal submissions on behalf of all the defendants that the proceedings should be stayed as an abuse of the process of the court, alternatively that many different parts of the evidence on which the prosecution sought to rely should be excluded pursuant to s.78 of the Police and Criminal Evidence Act, 1984. All parties accepted, as did I, that should the abuse of process arguments fail, the evidential arguments needed to be resolved before the trial began.
7. In support of some of their abuse of process and/or evidential arguments the defendants made allegations of serious misconduct against many different

officers of the Metropolitan Police, some of them of very senior rank. By way of example, it was alleged that police officers had approached and coached witnesses improperly, and had conspired to cover up what they had done. More recently, it was alleged that police officers had misinformed prosecuting counsel about the officers' dealings with 18 crates of potentially disclosable unused material, so that I too would be misinformed when deciding whether or not the prosecution had acted with all due diligence and expedition, and thus whether or not custody time limits should be extended.

8. I took the view, shared by counsel, that it would be impossible to rule on such allegations "on paper". I had to hear evidence from the officers accused of misconduct. The result was two lengthy *voire dire*s. The first of these was concerned mainly, though not entirely, with alleged police misconduct in relation to the proposed prosecution witness Gary Eaton. Certain aspects of the evidence also touched on Gary Eaton's character, psychiatric history, personality and general reliability. I will refer to this as the "Eaton *voire dire*". After the Eaton *voire dire* had concluded, I announced that if there were to be a trial I would exclude Mr Eaton's evidence. I expressed it in that way, and without giving a judgment, because a number of abuse of process and evidential arguments remained outstanding; and because I wished to give a single composite judgment after they were all complete.
9. In view of the eventual outcome, no such composite judgment will be given. However, Mr Eaton is a prosecution witness in the trial of another serious criminal case due to be tried beginning in or about September, 2011 ("the September case"). I have been asked to deliver a judgment on my findings in relation to Mr Eaton in the case before me for the information of the judge, the prosecution and the defence in the September case. What follows is based on oral evidence given and documentary evidence presented during the Eaton *voire dire*.
10. In the case before me, it was not disputed that Mr Morgan was murdered. An axe was embedded in his head in the car park of the Golden Lion public house in Sydenham. The prosecution alleged that Jonathan Rees, a partner of Mr Morgan in the business "Southern Investigations" organised the murder and lured Mr Morgan to the public house on false pretences, knowing the fate he was about to meet; that Glenn Vian wielded the axe; that Garry Vian was present in a supporting capacity; and that James Cook was the getaway driver.
11. The murder of Mr Morgan had been investigated by the police on four occasions between 1987 and 2002. Each of the four defendants most recently indicted with the murder had previously been arrested for that offence, and Jonathan Rees had once been charged; but on no occasion had anyone been brought to trial.
12. These matters might have rested had a career criminal called James Ward not indicated his willingness, early in 2006, to give evidence for the prosecution arising out of what he claimed to have been told about the murder by Glenn and Garry Vian. Mr Ward entered into an agreement pursuant to s.73 of the

Serious Organised Crime and Police Act, 2005 (“a SOCPA agreement”) and was de-briefed between May and December, 2006.

13. A number of other potentially important witnesses then came forward to provide further evidence not previously available. Mr Eaton was the first of these. He came forward in July, 2006. He too entered into a SOCPA agreement. His very lengthy de-briefing began in August 2006 and was completed in December 2007. In a nutshell he eventually stated that some months before the murder James Cook tried to recruit him to murder Mr Morgan, in return for £50,000, but that he, Mr Eaton, declined. Mr Eaton also stated that he was at the Golden Lion at the time of the murder. He did not witness the offence, but he saw Jonathan Rees, brothers named ‘Glenn’ and ‘Scott’ (the prosecution would say Glenn and Garry Vian) and James Cook in the pub and/or its car park at the time when or shortly before Mr Morgan was killed. In that sense, he was the prosecution’s only eye witness.

POLICE DEALINGS WITH MR EATON – THE ‘STERILE CORRIDOR’

14. No less than four different police teams came to have dealings with Mr Eaton. The first was the investigation team, led by DCS Cook. He retired from the police in December, 2007 and became employed as a civilian by the Serious Organised Crime Agency; but the Agency and the Metropolitan Police agreed that he should retain his role as SIO in the Morgan murder case. The make-up of the investigation team would vary as officers joined and left. During the period to be discussed in this judgment the investigation team included the following:

Detective Chief Inspector Noel Beswick. He became the deputy SIO in March or April, 2006.

Detective Inspector Doug Clarke. He was the investigation team’s nominated single point of contact with the de-briefing team, to which I will refer in the following paragraph.

Detective Sergeant Gary Dalby. He was the officer in charge of the case. His duties mainly involved co-ordinating the enquiry and collating information and documentation, rather than active involvement in the investigation of the case.

Detective Sergeant Jo Brunt.

Detective Sergeant Danny Dwyer

Detective Constable Caroline Linfoot.

All these officers gave evidence during the voir dire, and frequent references will be made to them in the paragraphs that follow.

15. The process of de-briefing was carried out by a different team of officers. The senior de-briefing officer was Detective Superintendent Barry Phillips. The other de-briefing officers were Detective Sergeant Moore, the de-briefing manager, who was taking part in his first de-briefing, and later became promoted to Detective Inspector; Detective Constable Cox; and Detective Constable Colin Phillips who retired from the police during the course of the de-briefing process, but stayed on as a civilian de-briefer.

16. Of the de-briefing officers, only DI Moore gave evidence. It will be convenient at this stage to jump ahead and point out that on 2/10/08 DI Moore

prepared a report in which he expressed concerns that Mr Eaton had been contaminated by material communicated to him from outside the de-briefing process. I will return to this document in much more detail later. From now on I will refer to it simply as "the Moore Report".

17. On 11/8/06 another team, the Criminal Justice Protection Unit ("CJPU") of the Metropolitan Police, took over responsibility from the investigation team for Mr Eaton's safety and welfare. The CJPU officer who had the most regular contact with Mr Eaton was known for the purposes of these proceedings as "David Meadows". His superior officer was known as "Inspector Dick/Richard Lloyd," and above him was a Chief Inspector referred to only as "Dave". David Meadows and Dick Lloyd gave evidence. Dave did not.
18. In circumstances to which I will refer later, on 24/10/06 another unit of the Metropolitan Police, the Directorate of Professional Standards Witness Protection Unit ("DPSWPU"), took over responsibility for Mr Eaton's safety and welfare from the CJPU. Mr Eaton's main DPSWPU handler was referred to as "Nick". Disclosed weekly records of the DPSWPU indicate that until about August, 2007 Nick was often assisted by another officer referred to as "Bob". Thereafter, Nick appears to have been Mr Eaton's sole handler for a time until, at the beginning of 2008 another officer referred to as "Anita" transferred to the DPSWPU and became Mr Eaton's second handler. Nick, however, was more experienced than Anita and took the lead. I should add that throughout Mr Eaton's association with the DPSWPU the Sergeant supervising Nick, Bob and Anita was "John", and reference was made in the evidence to two Inspectors, "Simon" and "Keith". Of these officers, Nick, Anita and John gave evidence. Bob, Simon and Keith did not.
19. It will again be convenient at this stage to jump ahead and to point out that on 6/10/08 Nick completed a briefing note dealing with certain contacts between the DPSWPU and Eaton during the Unit's association with him. I will return to this briefing note in much more detail later. From now on I will refer to it simply as "Nick's Briefing Note" or "the Briefing Note" as the context requires.
20. To avoid any risk of Mr Eaton being given information, coaching or prompting in relation to his evidence or his credibility as a witness (including any tip-off that he had been caught out lying) the Metropolitan Police had in place what was referred to during the evidence as a "sterile corridor" procedure, by which, once his de-briefing began, Mr Eaton should not have direct contact with the investigation team, any communication being passed through the CJPU or, later, the DPSWPU. The same applied to contact between Eaton and the de-briefing team, outside the de-briefing interviews themselves. Practically all the police officers who gave evidence before me testified to the existence and purpose of this procedure. However, it has never had any statutory basis. The only relevant written guidance that I have been shown is published by the Crown Prosecution Service. This deals with "Resident Sources", in other words "supergrasses" similar to Mr Eaton. It says that "The Metropolitan Police Force has a guidance booklet, which has

formed the basis for the preparation of an ACPO document that is awaited." I have not seen the booklet, or the ACPO document if it yet exists. The CPS guidance itself says that "it is important that the officers involved in the de-briefing process are distinct from the investigating officers. Similarly, any contact between the de-briefers and the investigating officer should be minuted". That is a less rigorous system than the one described by the police witnesses. However, the system they described makes good practical sense to me, and in the circumstances the fact that it is not based on any written guidance that I have seen matters little.

MR EATON'S HISTORY

21. Mr Eaton was born on 23rd March 1960. Before he came forward in July 2006, he had made 13 previous court appearances and had been convicted of 30 offences, most of them offences of dishonesty or road traffic offences, though he had one conviction for assault occasioning actual bodily harm. He had served comparatively short 3 prison sentences. These convictions, however, did not begin to convey the true extent of his criminal career. Later in this judgment I will be summarizing an account he was later to give to the police about his criminal activities, and referring to 20 serious criminal offences to which he pleaded guilty on 4/4/08.
22. Mr Eaton had often been in contact with the psychiatric services during his life. What follows is intended only as a summary of his psychiatric history.
23. Mr Eaton's general practitioner records contain an entry dated 22/4/70, when he was only 10 years old. The entry refers to "acute behaviour" on his part. Further entries dated 21/8/78 and 4/10/78 read respectively "...Emotional crack up..." and "...depressed...".
24. From 28/4/82 until 7/5/82, when he was 22 years of age, Mr Eaton was admitted to the Chiltern Wing of Sutton Hospital, after taking an overdose. In the medical bundle is a report by Dr Graham Kidd dealing with this admission. Eaton presented as feeling unsettled since leaving the Royal Naval Auxiliary where he said he had been a cook for four years. He had left 18 months ago (which would have been in about October 1980 when he was 20). He had had no permanent employment since, was losing interest in life, and was withdrawn, worrying, and irritable. His parents described him as intelligent but unmotivated and observed that he lied pointlessly. The "Personal History" section of Dr Kidd's report states that Eaton had twice been charged with minor disciplinary offences in the Navy. He had been sacked from his last job as a result of being charged with theft. His mood was mildly depressed and irritable at first, but after being given an anti-depressant drug his mood lifted rapidly. A final diagnosis was made of Personality Disorder of a kind not stated, and he was therefore referred to the Henderson Hospital, which specialises in patients with a personality disorder.
25. He was in the Henderson Hospital from 1/6/82 until 14/7/82. He said he felt lost and miserable and had no interest in anything. He was on very bad terms with both parents. He had had difficulties in his final year at school, having lost interest. Whilst in the hospital he adopted an ostensibly caring but in fact

- a controlling attitude towards another inmate, and moody, threatening behaviour. He was seen as unreliable, untruthful and immature. The case summary dealing with Mr Eaton's time at Henderson Hospital does not refer to a diagnosis, but it is apparent that the copy of the summary now available is incomplete.
26. According to a report dated 5/10/05 by Dr Louise Guest, to which I will return, Mr Eaton "...then represented to psychiatric services in 1998 when he presented with mood swings, alcohol and substance misuse and various attempts at self-harm."
 27. From 30/9/99 to 24/11/99, when he was 39 years of age, Mr Eaton was again admitted to the Chiltern Wing of Sutton Hospital. He had lost his job on London Underground seven to eight months previously. He had started drinking and split up with his wife. He was accused of assaulting her, and a court case was pending. He felt that he had lost everything and had no future. He had strong suicidal ideas, and his mood was low. Whilst in the hospital, he attempted suicide several times. He was given anti-depressant medication. The relevant case summary states that the diagnosis was: "Severe depressive episode without psychotic symptoms...Personality problems."
 28. On 6/1/00 Mr Eaton was convicted of assaulting his wife occasioning her actual bodily harm on 10/8/99 and was placed on probation for 12 months. However, there were also proceedings in Croydon County Court in which his wife had obtained an injunction; and by 22/2/00 he was in custody, having allegedly breached that injunction.
 29. On 22/2/00 he was seen at Highdown Prison by the psychiatrist Dr. S.K. Rabee. He presented with a feeling of hopelessness, a depressive mood and occasional suicidal thoughts. He was given anti-depressant and tranquilising medication.
 30. On either 24/2/00 or 28/2/00 (the records vary) Mr Eaton was transferred from Highdown Prison to the Ascot Ward of Sutton Hospital. He was seen again by Dr Rabee. Dr Rabee reported that Mr Eaton spoke of excessive drinking; of voices telling him that he was no good and that his partner was with someone else; and of feelings of distress and anger. He also expressed feelings of guilt about what he had done to his partner. The voices had disappeared after the first week of his treatment in hospital. The diagnosis was of mental illness in the form of depression. The recommendation was for a Hospital Order under s37 of the Mental Health Act, 1983, the treatment to be carried out initially at the Ascot Ward where Mr Eaton was still a patient.
 31. An addendum to Dr Rabee's report of 29/3/00 says, with reference to 3/4/00: "Section 37 completed." I assume that this was the date on which the Hospital Order was made.
 32. On 9/5/00 Mr Eaton was still on the Ascot Ward. Dr Rabee referred his case to Dr Devonshire, a Consultant Clinical Forensic Psychologist. This, said the referral letter, was because Mr Eaton had attacked a man he believed had been

selling drugs to his son; on 4/5/00 had tried to hang himself, saying that he had had enough because he thought that his former partner was having an affair; on 8/5/00 had slashed his wrists; had made threats of violence to his ex-partner's brother and any one else who had had a relationship with his ex-partner; and had no intention of following the injunction which was still in place.

33. Dr Devonshire assessed Mr Eaton on 11/5/00 and prepared a psychological report on 30/5/00. There were no overt signs of anxiety or depression, thought disorder, delusional thinking or auditory hallucinations. Mr Eaton had told Dr Devonshire that he had hit his partner five times during the 25 years they had been together. He said he liked violence and the consequent adulation. He seemed to think himself entitled to use violence. There was a paranoid element in his thinking, in that he was over-sensitive to threat. A psychometric personality test administered by Dr Devonshire suggested Negativistic and Borderline Personality Disorder with traits associated with Antisocial Personality Disorder and (on the cusp) Sadistic Personality Disorder. He scored highly in relation to alcohol dependence, anxiety and major depressions. Dr Devonshire concluded: "Formal psychometric assessment would strongly suggest the presence of a complex personality disorder with traits of various (and particularly problematic) personality disorders."
34. In June, 2000 when Mr Eaton was still on the Ascot Ward, Dr Rabee referred him to Dr Ceri Evans a Lecturer in Forensic Psychiatry, who examined Mr Eaton on 12/6/00 and prepared a report dated 13/6/00. This is generally recognised as the most thorough of all the reports available. Dr Evans reported that: "There is general evidence that Mr Eaton has been able to maintain elements of stability in his personal, social and work lives...however...the details of the quality of these relationships are not fully known to me." Mr Eaton told Dr Evans that he was disgusted with himself for assaulting his partner, and that he had assaulted her about once every six weeks – perhaps 50 or 60 times in all – by slapping her. He enjoyed fist fighting, and had caused many injuries as a doorman by punching or kicking. He had once obtained a shotgun and gone looking for a man intending to kill him. He said that he would kill any one who became his wife's future partner or went near his children. He still experienced depression, irritability and hopelessness, and thought that he had been drinking too much alcohol. In her conclusion, Dr Evans supported the recent diagnosis of clinical depression. The depression had partly resolved but this had "uncovered clinical features indicative of a personal disorder." Dr Evans considered that BPD was not the primary personality dysfunction. The particularly relevant features included: a rigid view of the world; an inability to see the views of others; suspiciousness; impulsiveness; and poor self-control. Dr Evans added: "In addition there is a sense of strong antisocial traits including lack of remorse for violent behaviour and lack of empathy for others...". She also commented on Mr Eaton's poorly developed coping skills, and his tendency to resort to self-harm or attempted suicide and heavy alcohol use at times of stress. She also observed that his self-esteem was largely based on his perceived persona as a violent hard man.

Dr. Evans saw him as presenting a risk of violence to partners, family members, staff and patients at institutions, not to mention the public generally.

35. On 10/8/00, a report was prepared by Dr Andy Rogers, a Chartered Clinical Psychologist. Mr Eaton was still on the Ascot Ward, but a transfer was being considered to Hulme Ward, where psychology input was available. Mr Eaton said that he harboured a strong impulse to be violent towards members of his ex-partner Christine's family. He believed violence had been his life. He told Dr Rogers that he had a very good relationship with his father, who was easy-going and had only hit him twice. He had had many friends at school and had got on well with the teachers. He had spent 12 years in the Navy. (It will be evident that this account was entirely inconsistent with other accounts given by or about Mr Eaton.) Mr Eaton referred to his fame as a fighter and his needs to control organisation. He said that he had the reputation of a hard man in the London Underworld, and had come to know Charlie Kray and other gangsters. He had access to guns. He had once gone out looking for an individual who had supposedly molested a friend's child, armed with a loaded shot gun. He held murderous grudges against certain individuals. Yet he hoped that Christine and her family would not see him as a threat. He did not want people to be frightened of him. He remained very sorry for what had happened to Christine. By way of another u-turn, he then said that he would kill or have killed any future partner of Christine. He could not abide the idea of any other man being around his children. Dr Rogers commented that Mr Eaton was unaware of the contradictions in his attitudes. Mr Eaton "...exhibits a constellation of personality disorders highlighting 'negativistic' and 'borderline' characteristics as well as antisocial and sadistic traits. He would require long term therapeutic care designed for individuals with problematic personality disorders."
36. On 11/9/00 a report was written by Dr Martin Lee, a Consultant Psychiatrist. Mr Eaton was still on the Ascot Ward. This report was written for the Court due to sentence him for driving offences. The report contained the following passage: "Since his depressive symptoms have lifted the underlying features of a severe personality disorder have become more evident...the personality disorder is of a psychopathic/sociopathic type...Additionally he has problems with intermittent alcohol abuse often precipitated by stress, especially difficulties in relationships."
37. At the request of Dr Lee, Mr Eaton was then examined on 18/9/00 by Adam Jukes, a Psychotherapist. He reported that Mr Eaton "...projected silent menace...he became animated only when articulating his homicidal fantasies and intentions towards his ex-partner's family...He is in total denial about his attacks on his ex-partner...whether he has been mendacious or is really in denial about these acts remains to be seen...He told me that he has always had a problem with his temper...His teachers were reporting concern about him from the age of seven and telling him that he had to learn to control himself." Mr Jukes commented that feelings of remorse and guilt were kept at bay by Eaton's self-inflation, sense of injustice and righteous anger. Mr Jukes also referred to Mr Eaton's "obsessive controlling and occasional violence." He added that "Gary's self esteem has derived from his role as provider...and his

aggressive hyper-masculinity...His thinking is rigid and concrete.” Mr Jukes recommended that Mr Eaton be assessed for HMP Grendon, a prison which treats psychopaths.

38. The reports and records available to me do not indicate when Mr Eaton left the Ascot Ward, though it would appear that he was still there on 12/10/00.
39. I now move to 5/10/05. This is the date of a report by Dr Louise Guest, a Consultant Psychiatrist. It was written in relation to Mr Eaton’s forthcoming Court appearance on the request of his probation officer. Having been made the subject of a community rehabilitation order in July 2005 for offences of driving with excess alcohol and whilst disqualified and uninsured, Mr Eaton was now facing further similar charges. He told Dr. Guest that he was living in a car at his place of work. He had recently been bereaved of his mother. (This was entirely untrue). This had precipitated further low mood and suicidal ideation. Dr Guest reported as follows:

“In my opinion, Mr Eaton continues to suffer from anti-social personality disorder...This abnormal behaviour pattern has endured since adolescence to the current time...He was tearful throughout the interview particularly when talking about his recent bereavement...He is currently presenting in crisis with depressive symptoms following adverse social circumstances and the bereavement of his mother. His personality disorder renders him less able to cope with these traumas with the resulting low mood and suicidal ideation...The risk of self-harm...is ongoing and related to both personality and low mood.”

40. Mr Eaton was again admitted to Sutton Hospital from 21/10/05 to 31/10/05. He had been due to attend Court for his driving offences on 24/10/05, but on 21/10/05 took or claims to have taken an overdose of anti-depressants. He appeared to be depressed and actively suicidal on admission. The hospital notes described him as being well known to local services with anti-social personality disorder. He was tearful and despondent. He expressed an intention to throw himself under a train. He continued to say that his mother was dead.

THE CHRONOLOGY OF MR EATON’S INVOLVEMENT IN OPERATION ABELARD II

41. I now propose to set out in chronological order how Mr Eaton made contact with the police, and his subsequent dealings with them. This is based on a draft judgment I had prepared in anticipation of the need to deliver the composite judgment to which I referred earlier, and which events have now rendered unnecessary. I appreciate that what follows may contain more detail than the judge, prosecution and defence in the September case really require, and leave it to them to decide what is helpful and what is not.
42. Telephone records relating to Mr Eaton indicate that from 22/7/06 to 24/7/06 he was in contact with a journalist. The identity of the journalist is now known. In a witness statement made on 24/5/07, Mr Eaton said that in July 2006, he contacted the Sun newspaper. He had previously read an article in that paper about a re-investigation of the Daniel Morgan murder case. He

met a Sun reporter called Mike Sullivan at a railway station in Devon. He explained to Mr Sullivan that he had previously worked for Southern Investigations and gave Mr Sullivan the names of Jimmy Cook, "Villery", Rees and Morgan. There was no reference to the Vian brothers at this stage.

43. Mr Sullivan was contacted for his version of events but only on 8/2/09, during the Eaton voire dire. The contact was made by DCI Beswick at the request of Counsel. Mr Sullivan did not give evidence but provided information that was accepted as accurate for the purposes of the Eaton voire dire. He said that he had only met Mr Eaton once. Mr Eaton had told him that he had been asked to kill Mr Morgan and that he had lots of information about the Morgan murder. He wanted to wipe the slate clean after being threatened by James Cook and associates. Mr Eaton added that James Cook may have shopped his (Mr Eaton's) son to Customs in relation to drugs. Mr Eaton was worried about police corruption and did not know who in the police to contact or how. He specifically said that he was not looking for money from the newspaper, and he was not offered any. He never signed a waiver, and was not requested to do so. Mr Sullivan made no notes of this meeting.
44. Mr Sullivan then contacted DCS Cook. On the evening of 24/7/06 DCS Cook telephoned Mr Eaton twice. At that stage it was proposed that police officers should travel to see Mr Eaton in Devon, but on 25/7/06 DCS Cook phoned Mr Eaton again and the arrangements were changed. Mr Eaton would now travel to London and meet police officers there. Mr Eaton wished to speak only to DCS Cook. He was concerned about police corruption, but appeared to trust DCS Cook because he had been involved in the prosecution of a police officer, namely the former defendant Sidney Fillery, on child pornography charges.
45. The developments so far were summarised by DCS Cook in a police station log entry dated 25/7/06. The entry also recorded that Mr Eaton was known to the police and had convictions for theft, fraud and drugs; and that given the antecedents of the investigation and the individual, the possibility had to be considered that Mr Eaton's wish to speak with DCS Cook was for reasons other than the provision of information. The report continued: "Steps shall be taken to ensure both the safety of the officer and the integrity of what is said through the conversation being recorded." The meeting with Mr Eaton would take place in a Central London hotel room.
46. On 26/7/06 Commander Shaun Sawyer made the following decision log entry: "...I must accept through operational necessity for DCS Cook to make the initial meeting. However, once credibility etc has been established, responsibility for any further meeting should be handed over to other officers employed on the investigation and DCS Cook revert back to his role of SIO... I fully agree that for integrity and officer safety purposes the meeting must be made subject of covert recording."
47. On the same day (26/7/06) calls and texts were exchanged between DCS Cook and Mr Eaton. In evidence, DCS Cook said that he did not know whether Mr Eaton had got his telephone number from Mr Sullivan, from DCS Cook

himself or from another officer. When Mr Eaton had arrived in London, he had his first meeting with DCS Cook and DS Dalby at the chosen hotel. As planned, the meeting was covertly recorded. As will be seen, at this stage Mr Eaton implicated Jonathan Rees, James Cook and Sidney Fillery. He did not refer to the Vian brothers. He did not suggest that he had been at the scene of the murder.

48. At an early stage of the meeting, DCS Cook said: "Give me the name of the brothers" twice in quick succession. This in context must have been a reference to the Vian brothers. In fact, however, Mr Eaton appears to have known nothing about the brothers, or to have misunderstood the question, because he gave replies relating to the defendant James Cook. DCS Cook then said: "Yeah, the other one that was there though I know who it is but I want you to tell me." Mr Eaton replied: "I don't know the other. All's I know was Jimmy." A little later, Mr Eaton said that he was really frightened of the corruption side of it, to which DCS Cook replied: "Do you think I would put Sid [Fillery] away... if I was corrupt, then I nicked Jonathan Rees last time, and I nicked Jimmy Cook and I nicked the two brothers...". Shortly afterwards, Mr Eaton said: "I can give you Sid and I can give you Jimmy." Asked directly what Rees's involvement was he replied: "...I don't think he had any involvement in the actual murder myself.. He was well aware of it. He did have involvement in that side of it. I'm 90% sure he did."
49. A little later during the same interview, DCS Cook was discussing James Cook's involvement in drugs. Mr Eaton said that James Cook had been involved in drugs with someone called "Irish Tom". DCS Cook then said: "Was [Irish Tom] anything to do with a cemetery... I am telling you there is a cemetery involved... I am giving you a starter for ten saying that I know about a cemetery and I don't know if it has any connection to all this." It is suggested on behalf of the defendants that this line of questioning by DCS Cook was based on what he had learned during an interview conducted with another potential witness James Ward on 6/6/06. I will return to this aspect of the case later. In fact, Mr Eaton did not know what DCS Cook was talking about, and the matter went no further. It will be apparent that these opening replies by Mr Eaton bore little relation to the account which he eventually gave, and which I summarised briefly in paragraph 13 above.
50. Later on, Mr Eaton said that he had only been sleeping two hours a night, had lost seven stones in nine months, and had "just spent nearly a month in hospital because of it. My health is suffering and everything." DS Dalby asked what was making him worry, and he replied "They don't know, they want me to go back in again." Later on again, Mr Eaton referred to having nearly had a nervous break down and being in a psychiatric unit at the time his marriage broke up. This matter was not followed up during the discussion.
51. As stated above, in August, 2006 Mr Eaton embarked on a lengthy de-briefing process. DS Dalby told Mr Christie Q.C. during his cross-examination that he did not think that he passed on to the de-briefing team what Mr Eaton had said about nearly having had a nervous breakdown and having been in a psychiatric unit. This, said DS Dalby, had been said by Eaton during the

course of a lengthy interview, and at the time what Eaton had said "didn't jump out at me". DCS Cook told Mr Christie that he could not recall telling the de-briefing team about this either, and did not know if anyone else had done so.

52. On 27/7/06, there was a meeting between DS Dalby and Mr Eaton, again at a Central London hotel. Again the meeting was covertly recorded. DS Dalby asked Mr Eaton what information he was able to give the police relating to the death of Daniel Morgan. Mr Eaton said that he used to work for Southern Investigations, mostly off the books doing collecting. He worked with Jimmy Cook. He was given most of his work by Sid Fillery, who played a major part in Southern Investigations, and he (Mr Eaton) did not meet Mr Morgan very much. Shortly before the murder Mr Eaton was approached by Jimmy Cook and asked to murder Mr Morgan for £50,000. Mr Eaton refused. The job was then offered to a man called either Steve or Tony Crabbe, who was now serving a life sentence having shot and killed a man called Davidson. The murder of Mr Morgan, said Mr Eaton, was arranged by Sidney Fillery, Jonathan Rees and James Cook and the man called Irish Tommy. The motive concerned a conspiracy by them to import drugs from Ireland. Mr Morgan had found out about it and was murdered for his knowledge. It will be noted that there was still no reference to any brothers. Neither was there any reference to Mr Eaton's having been at the murder scene. DCS Cook did not meet Mr Eaton on this day (27/7/06) but did telephone him twice.
53. At 11am on 28/7/06 there was another meeting between DS Dalby and Mr Eaton in a Central London hotel. On this occasion, the covert recording device failed. Mr Eaton was extremely nervous but still willing to assist the police despite his solicitors attempting to dissuade him. He wished to be moved to another hotel. This appears to have been done because at 1:30pm DS Dalby and DC Samuels met him and took him to "a new location". There they were later joined by DCS Cook who, according to DS Dalby's note, explained the de-briefing process in general terms. Mr Eaton said he wished to assist the police with their investigation into Mr Morgan's death. The covert recording equipment was still not working. DS Dalby's notes of the meeting state that no offers or promises were made, and that it was agreed that they would return to collect Mr Eaton on 31/7/06.
54. On 29/7/06 and 30/7/06 DCS Cook was again in contact with Mr Eaton by telephone. On 31/7/06 DS Dalby and DS Dwyer met Mr Eaton and accompanied him to a hotel in Surrey. On 1/8/06 he was seen again by DS Dalby and DS Dwyer, and by DC Cammidge of the Serious Crime Directorate, who told him how the de-briefing system would operate should he choose to participate. On 2/8/06 DS Dalby and DS Dwyer met Mr Eaton again at the Surrey hotel. At 22.00 Mr Eaton sent a text to DCS Cook, who phoned him back at 22:01, the conversation lasting over 15 minutes. There were further texts and telephone calls between DCS Cook and Mr Eaton in both directions on 3, 4, 5 and 6/8/06 recorded by the police as having concerned domestic and welfare issues, and not the investigation.

55. On 7/8/06 between 13:00 and 13:50 DCS Cook made four entries in a police decision log. The first was to the effect that a recruitment de-brief of Mr Eaton should begin. The entry continued: "If this potential witness comes up to proof then he could provide evidence in relation to the commission of the murder by Jimmy Cook at the instigation of Sid Fillery... the decision is therefore to conduct the recruitment de-brief which will be done under the supervision of Barry Phillips who is not in any way connected to the current investigative team. This will reduce any contamination of the potential witness adding integrity to what is said... Whilst this decision is made and recorded by myself, discussion has taken place with DAC Yates." Cross-examined by Mr Whitehouse Q.C., DCS Cook agreed that these arrangements were to implement the sterile corridor system. In the second log entry for 7/8/06 DCS Cook recorded *inter alia*, that "...the potential evidence he may provide would/could be critical to the success of the investigation in terms of Jimmy Cook and perhaps others with whom the evidence is not strong." The third entry included the following passage: "Should criminal offences be disclosed by this new potential witness during the course of the initial recruitment de-brief then he shall be cautioned but not placed under arrest. Instead he shall be informed that the admission of the criminality shall be submitted to the C.P.S. for consideration of a prosecution... this decision will however be subject of constant review... Should the offences... identified be regarded as serious... I must be informed immediately." The fourth and final log entry included the following: "...If his solicitor is in agreement and the motive behind his willingness to assist is properly given on a tape-recorded interview then the de-brief shall commence on 8/8/06."
56. During the afternoon of 7/8/06 and on 8/8/06 Mr Eaton had meetings with a number of different police officers including DCS Cook, DS Dalby and DSupt Phillips.
57. At 08:19 on 9/8/06 DCS Cook telephoned Mr Eaton. The conversation was recorded as relating to Eaton's accommodation. Later that day, Mr Eaton's de-briefing began. All four de-briefing officers were present at this first de-briefing session, as was Mr Carpenter, a solicitor.
58. On 10/8/06 there was a de-briefing session during which Mr Eaton said that he had learned of the circumstances of the murder through the news. That afternoon, DCS Cook recorded in a decision log that "the recruitment de-brief relating to [Mr Eaton] has been concluded during which he has identified criminality that he has been engaged in. Now this is known, my decision not to arrest still stands." At 18:43 on the same day DCS Cook made a short telephone call to Mr Eaton. The police records state that Mr Eaton was complaining about his solicitor and girlfriend.
59. On 11/8/06 Mr Eaton was introduced to officers from the CJPU. They were to take over responsibility from the investigation team for his safety and welfare. Anne O'Connell, Mr Eaton's partner, was also present. It was explained to them both by DCS Cook and the CJPU officers that the CJPU was completely separate from DCS Cook and his investigation team, and that they (Mr Eaton and Anne O'Connell) should not discuss the matters that they

were involved in with the CJPU except to answer questions relevant to their ongoing assessment. They said they understood. DCS Cook was instructed that neither he nor any of his team should have any direct contact with Mr Eaton or Anne O'Connell while they were in the care of the CJPU. DCS Cook agreed. Asked about this in evidence, DCS Cook accepted, albeit after a little prevarication, that he did at the time intend to keep to this agreement. He did, however, make two comparatively short telephone calls to Mr Eaton on this day, both recorded as having concerned domestic issues.

60. Also on 11/8/06, Mr Eaton provided details for an assessment proforma. He was asked for the names of family members living with or having close contact with him. He did not mention his father in either category. Asked for his medical history he did not mention any psychiatric issues.
61. On 15/8/06 Mr Eaton was allowed by CJPU officers to speak to DCS Cook at Mr Eaton's request. On the following day there was a further de-briefing session, and Mr Eaton said that he wanted to change solicitors because his present solicitors were known to those who might want to harm him. Mr Eaton was also assessed by a Force Medical Officer. He referred to heart problems and having lost up to seven stones in the past year or so. Otherwise, the FMO said that he appeared to be healthy.
62. On 17/8/06 there was another telephone call between DCS Cook and Mr Eaton. It is not entirely clear from the limited records available who phoned whom. The police record of this call states: "General conversation re the change of his solicitor and Anne going back down to Devon. No details about the case discussed."
63. On 18/8/06 Mr Eaton spoke to DCS Cook by telephone, with the consent of the CJPU officers, over matters that were troubling him.
64. On 23/8/06 Mr Eaton asked the CJPU if he could speak to DCS Cook, because he felt that this was the only person he had faith in. Later, Mr Eaton told the CJPU that he had spoken to DCS Cook as he had his telephone number. He was told that this was contrary to his instructions and agreement. Asked about this in evidence, DCS Cook accepted that Mr Eaton would have called him. He said that the general pattern was that Mr Eaton would make un-invited and un-welcome contact with him. He accepted, however, that he had sometimes phoned Mr Eaton following a missed call or a text from Mr Eaton to him. He had not kept notes of his conversations with Mr Eaton. Most of them had been about Mr Eaton's domestic and general situation, or Mr Eaton complaining about the CJPU. Finally with regard to 23/8/06 Anne O'Connell contacted the CJPU to say that Mr Eaton was a bully and very aggressive. She did not want him to be told of her new location.
65. It appears that the de-briefing team were aware of the fact that Mr Eaton and DCS Cook were in regular contact. A note by DSupt Barry Phillips recorded that the fact that Mr Eaton was on bail added extra difficulties in managing him and his use of his mobile telephone to make almost daily contact. The note continued: "He has been told of the need for sterile corridors, and not

to deal with DCS Cook, and any welfare issues should be notified to the CJPU to manage. I have explained to him my role, i.e. to manage de-brief however, taking into account duty of care issues I have been tolerant to the telephone calls." This note appears to have been written during August, 2006 but the exact date is difficult to decipher.

66. On 24/8/06 a CJPU officer told Mr Eaton and Anne O'Connell that it was inappropriate for them to be calling him at 2am in a drunken state and to expect him to act as an intermediary in their domestic arguments. On the same day, DCS Cook made a telephone call to Mr Eaton of fairly short duration.
67. On 28/8/06 DCS Cook telephoned Mr Eaton again. The conversation lasted 9 minutes 22 seconds.
68. On 29/8/06 Mr Eaton had a further de-briefing session from 15:05 to 15:23. He now had a new solicitor. He terminated the session by saying that he did not feel well. At 22:53 and 22:56 DCS Cook telephoned Mr Eaton again, the second call lasting 21 minutes 14 seconds.
69. On 30/8/06 Mr Eaton had a further de-brief session, while CJPU officers met Anne O'Connell. She said that she did not wish to see Mr Eaton again and was worried about her safety and that of her family. She said that he was a bully and very possessive. As if to illustrate the point, during the meeting Mr Eaton sent her at least 20 abusive texts. She said that she was afraid of him and what he might do to her if she tried to leave him. She had at that time been relocated to an area not known to Mr Eaton. That evening a CJPU officer spoke to Mr Eaton who was clearly drinking heavily. He had decided to withdraw from witness protection, move in to the premises at which he was being de-briefed, and go it alone.
70. A report prepared by David Meadows on 30/8/06 recorded that the CJPU were having the following difficulties:
 - “1. We have not been provided with a full threat assessment for any of the parties.
 2. Both clients repeatedly contact friends/associates without permission.
 3. [Mr Eaton] repeatedly makes direct contact with the SIO.
 4. The sterile corridor has not been maintained between us, the clients and the [investigation] team.
 5. Many decisions we make are overruled by the [investigation] team.
 6. We have no control over the client's actions.
 7. We are unable to enforce the conditions of the [memorandum of understanding].
 8. The client's repeated breaches of the [memorandum of understanding] conditions compromise the system and CJPU officers and the client's safety.”

In evidence, DCS Cook said that he had been informed by the CJPU of the general nature of the problems they had been having with Mr Eaton. DCS Cook accepted that Mr Eaton contacting him was a breach of the sterile

corridor system, but said that he had been in very difficult circumstances, in effect being contacted uninvited by a man as difficult as Mr Eaton.

71. There was another de-briefing session on 31/8/06, and again on 1/9/06. On the latter date, the interviewing officers were DS Moore and Colin Phillips. Mr Eaton's new solicitor, Keima Payton, was also present. During an interview from 09:56 to 10:30 Mr Eaton said that Jimmy Cook had told him that he (Cook) was driving on the occasion of the murder. Mr Eaton then had a private consultation with Keima Payton. There followed a second very short interview from 11:30-11:34, when Mr Eaton indicated for the first time that he knew Jimmy Cook was the driver of the getaway car not because Cook had told him but because he had seen it for himself. Mr Eaton had never previously indicated that he had been at the Golden Lion on the occasion of the murder. When Colin Phillips pointed out the change of account, Mr Eaton said: "Yeah. No one consulted me about what I said." In context, I find it impossible to say to which account this comment related. It was then decided to resume the de-briefing process on the following Monday, which would have been 4/9/06, though in the event the next de-briefing session did not take place until 12/9/06.
72. Also on 1/9/06 Mr Eaton had contact with the CJPU. He was told that his phone was to be used only to contact his handler and his mother. He said that he intended to keep in touch with his friends, contrary to CJPU advice. He said that if he did not use the phone he had, he would only go out and buy another one. During that same evening, DCS Cook phoned Mr Eaton twice. The first call, at 19:01 lasted 59 seconds. The second, at 19:36 lasted 33 minutes and 20 seconds.
73. On 2/9/06 DCS Cook was in further contact with Mr Eaton. At 08:41 he called him for 20 seconds, at 08:47 he sent him a text and at 09:14 he called him again, this time for 12 minutes 42 seconds.
74. A CJPU record dated 3/9/06 stated: "These clients are becoming unmanageable. They believe that if they are unhappy with our replies or instructions they can go directly to the de-brief or [investigation] teams to have any unfavourable decision overruled." Asked about this in evidence, DCS Cook accepted that he would have over-ruled some CJPU decisions, but could not recall specific instances.
75. At 10:40 on 4/9/06 DCS Cook made a short telephone call to Mr Eaton. An internal CJPU briefing paper of the same date recorded that Mr Eaton had memorised the mobile telephone number of the SIO and was in direct contact without going through his CJPU handlers. DCS Cook agreed in evidence that this was so. He said that it was he who told the CJPU what was happening, and that he wanted Mr Eaton to stop contacting him. The report continued that this clearly breached the sterile corridor between the enquiry team and the witness, and made Mr Eaton unmanageable. The report referred also to Mr Eaton's refusal to live in the accommodation provided for him and his saying that he would not continue with the de-brief unless he was allowed to live in the premises at which he was being de-briefed, as a result of which his

solicitor and the de-brief team knew where he lived. He was receiving preferential treatment and service to keep the de-brief on track. All of this might lead to allegations of inducement at Court. Moreover, the resources being used on Mr Eaton's case were severely impacting on other CJPU cases. The current level of commitment would be unsustainable in the long term. To make matters worse, Anne O'Connell was an alcohol-fuelled loose cannon who had informed her mother and her drinking friends of Mr Eaton's situation.

76. At 6pm on the same day (4/9/06) there was a meeting of the Operation Abelard II Gold Group, chaired by Deputy Assistant Commissioner Yates and attended amongst others by Commanders Shaun Sawyer and Dave Johnson and by DCS Cook. The minutes recorded that Mr Eaton's address had been compromised because it was known to his girlfriend. He had also been telephoning DCS Cook regularly. DAC Yates and Commanders Sawyer and Johnson were concerned about the calls made to DCS Cook. Commander Sawyer said that the CJPU should be divorced from the investigation team and manage the risks. Cross-examined about this by Mr Whitehouse Q.C., DCS Cook said that he shared the concerns expressed about the calls made to him. He was unsure whether or not reference had been made at this meeting to the fact that he, DCS Cook, had also been phoning Mr Eaton. Cross-examined by Miss Humphryes he said that he doubted if he mentioned it. However, there had been no attempt on his part to cover this up.
77. I move on to 5/9/06. For reasons I will explain later, I am very concerned about the events of this day. For the moment I will simply state what happened.
78. According to a note prepared by DS Moore as he then was, reproduced in a schedule of contact with Mr Eaton which was disclosed to the defence, Mr Eaton was taken to a covert location by DCS Cook for what was described as a "welfare visit". Also present were DS Moore and Keima Payton, Mr Eaton's solicitor. Mr Eaton then had a consultation with his solicitor. At 10:15 he was left alone in a bedroom (presumably in a hotel). At 10:55 DC Moore returned and provided coffee and cigarettes for Mr Eaton. It was noted that Mr Eaton, still alone in the bedroom, had broken down. He was given time to compose himself.
79. At 11:25am, when Mr Eaton must still have been alone in the bedroom composing himself, DCS Cook sent him a text. DCS Cook made no note of the text, and did not retain it on his mobile phone. It is therefore impossible to know exactly what was said. Asked about this in evidence, DCS Cook said that it was just bad luck on his part that he happened to send Mr Eaton a text at this particular stage of events. He told Mr Christie that he could not now say what the text was about.
80. At 11:50 Mr Eaton had a consultation with his solicitor, and at 11:57, still alone with his solicitor, he began making a hand written "prepared statement". The material passage stated:

"With regards to the murder enquiry I wish to disclose that "the brothers" are involved. I do not wish today to go into any more details as I feel very unwell and traumatised. I will need further reassurance with regards to the safety of my family and those I love. I understand that my solicitor, Keima Payton, will hand this signed statement which is the truth, to Tony Moore. I do not feel fit enough to be interviewed on tape about this today."

This was the first time that Mr Eaton had ever suggested that "the brothers" were involved. At 12:20 Keima Payton produced the prepared statement to DS Moore who signed it at 12:23. There is a second signature on the statement, also timed at 12:23. The surname appears to be "Phillips". Whether it was Barry or Colin Phillips is unclear from the signature, though in my inexpert view it is more likely to be Colin.

81. DS Moore's record of this episode scarcely does it justice. It does not record the presence of Colin (or possibly Barry) Phillips at all. It refers to the prepared statement simply as a "note".
82. Exactly ten minutes after the statement had been countersigned by the two officers, DCS Cook called DSupt Barry Phillips.
83. At some stage during 5/9/06 and presumably because of Mr Eaton's presentation on that day the police arranged for him to be seen by a psychotherapist on the next day.
84. At 18:30 on 5/9/06 there was another meeting between Mr Eaton and DCS Cook. DCS Cook told Mr Christie Q.C. that he had not seen the brief statement that Mr Eaton had made earlier that day. Keima Payton was also present, as was DS Moore, who took notes. These notes state that the meeting was "at the request of DCS Cook via DSu Phillips." It is unclear whether or not DSupt Phillips was also there. The purpose of the meeting is recorded as having been to reassure Mr Eaton that everything was being done to provide security for him and his family. DCS Cook is recorded as having told Mr Eaton that while the police did not always get everything right it was difficult to arrange the questions until the police knew what the subject matter was. Mr Eaton is recorded as saying that he did not want to let anyone down and confuse issues by forgetting important facts. His mind was preoccupied with his partner and family, but he was keen to continue the process after counselling the next day. He was told that it was not intended to arrest him at the moment but that this was under constant review and it was not any inducement for continuing with the process. DCS Cook himself made no notes. In fact he told Miss Humphryes Q.C. that he made no notes of any of his meetings with Mr Eaton.
85. On 6/9/06 Mr Eaton was seen by a consultant psychotherapist named for the purposes of these proceedings as "Dr Oscar". Anne O'Connell was also present. She had made it clear that she now wished to continue her relationship with Mr Eaton. Mr Eaton was extremely tearful, with a high anxiety and arousal level and a low mood state. Dr Oscar administered a Beck's Depression Inventory. Mr Eaton's score was 36, indicative of a

significant depressive illness. Dr Oscar's recommendations included de-stressing techniques; to start on anti-depressant medication; and to be seen as and when required for "psychological first aid". He also recommended more exercise and playing board games at home. The available documents do not indicate whether this last advice was well received. Mr Eaton was then medically examined by Dr Swami, a forensic medical examiner. He told Dr Swami that he had never seen a psychiatrist and did not suffer from a mental illness. However, he "had seen a doctor, a counsellor this morning" who had told him he had depression and had advised him to take the medication Citilopram daily. This must have been a reference to Dr Oscar. Mr Eaton also told Dr Swami that he had thought about self harm lately but had dismissed the idea. He also referred to having "post traumatic disorder" but the nature of this seems not to have been explored. Dr Swami's opinion was that Mr Eaton was fit for interview but "needed an appropriate adult because of his history of post traumatic stress disorder, a kind of depression and a counsellor suggesting medication for depression."

86. Mr Eaton was then informed of the recommendation for an appropriate adult, and the reasons why. He became very angry and said that he would not be interviewed with anybody else there. Too many people knew about this already. If any one else turned up he would not speak at all because it would increase the threat against him. DI Moore said in evidence that until this time the de-brief team were unaware of any mental health issues for Mr Eaton. Now, however, it was widely discussed between the de-brief and investigation teams and with Mr Eaton's solicitor Keima Payton.
87. This is a convenient time at which to make a few comments about Dr Oscar, and his course of therapy sessions with Mr Eaton. Dr Oscar's qualifications are not stated in the papers before the Court, neither is the extent of his experience in mental health issues known. In addition, he was given a limited brief. Mr Eaton's past, personal and family history were never discussed. Dr Oscar was given specific instructions only to provide what the notes describe as "psychological first aid", and to help and support Mr Eaton and Anne O'Connell through their settling down process under the protection scheme. Dr Oscar records that Mr Eaton was initially low in mood state, but recovered well. He was always rational and never displayed any psychotic features.
88. CJPU records indicate that on 10/9/06 Mr Eaton and Anne O'Connell were continuing to contact friends, relatives and associates regularly, although the risks had been explained to them.
89. On 12/9/06 there was a further de-briefing session with Mr Eaton. It ran from 14:24 to 15:09. The same people were present as on 1/9/06. DS Moore referred to what had happened on 6/9/06; reminded Mr Eaton on tape that there had been a recommendation that an appropriate adult be present; and informed him of the role that an appropriate adult would play, namely assisting and advising him, checking that the police were conducting things fairly and properly, facilitating communication, and ensuring that the police were not using terms or phrases that Mr Eaton might not understand.

However, it was clear that Mr Eaton had already discussed the matter with his solicitor, and both of them had taken the view, which they repeated on tape during the interview, that there was no need for an appropriate adult. DS Moore then told him that if he did not understand any question asked he must say so; that he would not be interviewed without his solicitor present; and that his solicitor could ask for the tape to be stopped at any time so she could confer with him. Mr Eaton said he was happy with that. Moreover, said DS Moore, Mr Eaton's medical condition would be kept under review. Mr Eaton said he felt able to continue with the interview. At the beginning of every subsequent interview he was asked if he wanted an appropriate adult to be present and every time he declined.

90. Returning to 12/9/06, Mr Eaton's de-briefing interview then proceeded, and he expanded on the account that he had previously given. He said that he and "Tony" (a reference to a man called Tony Airey) had been drinking vodka and coke in the Golden Lion. Jimmy Cook had been in the pub, but must have left at some stage. Then someone else came in and wanted a quick chat with Mr Eaton in the toilet. "I am trying to remember his fucking name." In the toilets this man asked if Mr Eaton could pop out to the car park and have a quick chat with Jimmy. The man then went into the car park with Mr Eaton, and Mr Eaton saw Jimmy and someone else sitting in a car. Mr Eaton knew that something wasn't right. He saw Mr Morgan with an axe in his head. Then the man who had spoken to him in the toilets got into the car. Jimmy winked at Mr Eaton. Mr Eaton did not know why. Then they drove off. Mr Eaton went to get Tony from the pub.
91. At 16:20 on 12/9/06 there was another call from DCS Cook to Mr Eaton, this one lasting 7 minutes 21 seconds. Cross-examined by Miss Humphryes Q.C., DCS Cook accepted that he was acting contrary to instructions in doing this, but he said that he did not know what Mr Eaton had said when de-briefed earlier that day, and that they did not discuss the case.
92. On 13/9/06 there was a further de-briefing session. The man with whom Mr Eaton had gone into the toilets was now referred to by him as "brother one".
93. Further de-briefing sessions followed on 14 and 15/9/06. On 15/9/06 at 17:43 there was another call from DCS Cook to Mr Eaton, this one lasting 6 minutes 55 seconds.
94. On 16/9/06 DCS Cook called Mr Eaton no less than four times. Three of these calls, at 17:09, 20:48 and 20:51 were short but one, at 18:50 lasted 23 minutes 21 seconds. CJPU records for the same day disclose that Mr Eaton had become aggressive, shouting and swearing and threatening the police and beginning to advance towards one officer shouting "Right, I am going to do you". Eaton had later apologised. He had been drinking heavily. Then at 00:34 on 17/9/06 Anne O'Connell said that she had left the property where she and Mr Eaton had been living as he was out of control.

95. On 19/9/06 Mr Eaton was unwell and unfit to be interviewed. He felt that this had been brought about by the stress of what he was doing and the safety of himself and his family. At one stage during this day, concerned that his address may have been compromised, he armed himself with a knife and left the flat where he was living to look for the suspect.
96. 19/9/06 was also the day of further communications between DCS Cook and Mr Eaton. In all there were three texts and two telephone calls from Mr Eaton to DCS Cook, and four calls from DCS Cook to Mr Eaton, all of which quickly followed texts or short calls from Mr Eaton to DCS Cook. The total length of the calls exceeded 23 minutes. Police records state that the calls related to welfare issues, problems with Mr Eaton's partner and complaints about accommodation.
97. On 20/9/06, DCS Cook phoned Mr Eaton five times between 03:39 and 04:09. The calls were short. Their total duration was a little over 5 minutes. Police records state that the calls related to welfare issues, problems with Mr Eaton's partner and complaints about accommodation. Asked by Mr Whitehouse Q.C. how he came to be speaking to Mr Eaton at that time of the morning, DCS Cook said that he would not have done so unless Mr Eaton had some how contacted him first. In re-examination he said that he could not comment on the absence of any record of any call to him from Mr Eaton prior to 03:39. He could not remember what these calls had been about.
98. In anticipation of a meeting to be held at 07:30 on 20/9/06, the CJPU officer David Meadows prepared a report/briefing note for his superior officer Dick Lloyd about the difficulties faced by the CJPU in relation to Mr Eaton. No less than 13 problems were listed, as follows:
- 1. We have not been provided with a full threat assessment for any of the parties involved which impinges on our ability to offer an enhanced level of security.*
 - 2. Both clients repeatedly contact friends/associates without permission compromising their locations.*
 - 3. [Mr Eaton] repeatedly makes direct contact with the SIO/de-brief team. We now know he was provided with a mobile to facilitate this in direct contravention of our guidelines.*
 - 4. The sterile corridor has not been maintained between us, the clients and the [investigation and de-briefing teams].*
 - 5. Many decisions we make are overruled by the [investigation/de-brief teams] and they appear to be jointly funding [Mr Eaton]. A prime example was when he demanded to live in the de-brief flat – we refused this on safety issues. He was unhappy with this and had the decision overruled by the [investigation/de-brief teams].*
 - 6. We have no control over the clients' actions and their high expenditure. At present they receive £250 per week with all other bills etc. covered by us. They appear to spend this swiftly and ask for more before the week is out.*
 - 7. We are unable to enforce the conditions of the MOU as [Mr Eaton] knows the [investigation/de-brief teams] will give in to his demands. On one occasion when we warned the client that his actions would*

result in exclusion he came back to us and said the de-brief team had told him we were not allowed to withdraw support. Once again this undermines our position and makes any attempt to control [Mr Eaton] impossible.

8. *The client's repeated breaches of MOU conditions compromise the system, the CJPU officers and the client's safety.*
9. *They have heated arguments often drink related which will no doubt resolve in police being called by neighbours.*
10. *It is clear that [Mr Eaton] plays one party off against the other.*
11. *This is exacerbated by all parties having direct access to [Mr Eaton] but we have limited contact with each other.*
12. *The client has sent postal orders to CO in Feltham compromising his location, enlisting his associates to forward the mail.*
13. *[Mr Eaton] has threatened his handlers with violence."*

It can be seen that items 1, 2, 4 and 8 mirrored the corresponding items in the report of 30/8/06 referred to in paragraph 51 above. Items 3, 5, 6 and 7 expanded on the corresponding items in the earlier report. Items 9 to 13 were new.

99. David Meadows was asked in evidence in chief and when cross-examined by Mr Whitehouse Q.C. about his statement in item 3 that Mr Eaton had been provided with a mobile phone to facilitate direct contact with the SIO and de-brief team. He said that he could not now recall the source of the information that led him to say that. It may have been Mr Eaton himself, but he could not be sure. It was, however, certainly the belief of the CJPU either that Mr Eaton had retained a phone which he should have surrendered, or had been provided with a phone that he should not have had. Mr Eaton himself had told the CJPU that he had often been directly in contact with the SIO, and this had not been via the phone provided by CJPU. The CJPU did not give the investigation team the number of the mobile phone which they (the CJPU) had provided to Mr Eaton. David Meadows added that the CJPU suspected that Mr Eaton was communicating directly with the de-brief team as well, but he did not put it any higher than that.
100. For his part, Dick Lloyd dismissed the suggestion that Mr Eaton had been provided with a mobile phone as suggested in item 3. He said that it was "just the views of one of my junior officers", who was inclined, said Dick Lloyd, to take some points more seriously than Dick Lloyd himself did. Dick Lloyd did not think that this matter was even discussed at the meeting of 20/9/06. DCS Cook was similarly dismissive. He said in evidence that it was absolutely not right that the investigation team had provided Mr Eaton with a phone. DCS Cook had never seen David Meadows's briefing note before. Though I was much more impressed with the demeanour of David Meadows as a witness than I was with that of Dick Lloyd, who I regret to say came across to me as rather arrogant in the way he brushed aside points made in a briefing note that had been prepared for his assistance, there seemed to me to be insufficient evidence overall to justify a finding that Mr Eaton had indeed been provided with a mobile phone to facilitate direct communication with the SIO or the de-brief team.
101. In evidence, David Meadows confirmed the contents of item 5 of his briefing note when asked about it by Mr Whitehouse Q.C., but Dick Lloyd said he did not know exactly what David Meadows was referring to in this item. For his part, DCS

Cook said that it was true that the investigation team had funded Mr Eaton, but only up to the point at which he was handed over to the CJPU (which was on 11/8/06). Again, in my view there is insufficient evidence to justify a finding that the de-briefing or investigation teams were funding Mr Eaton.

102. Mr Christie Q.C. asked David Meadows about the assertion in item 13 of the briefing note that Mr Eaton had threatened his handlers with violence. David Meadows replied that three handlers had been threatened. They did not include David Meadows himself but did include Dick Lloyd. Again however there was a conflict of evidence. Dick Lloyd said that although he had had a few heated conversations with Mr Eaton he had never felt threatened by him. Dick Lloyd seemed to me to be commending Mr Eaton's attitude. Dick Lloyd may have been sufficiently robust not to have felt threatened by Mr Eaton, but he did not deny in terms that Mr Eaton had in fact threatened him. It was David Meadows rather than Dick Lloyd who was having regular contact with Mr Eaton, and I prefer his evidence in this regard.
103. The meeting on 20/9/06 began at 07:30. It was attended by DCS Cook, DSupt Barry Phillips, Dave and Dick Lloyd of the CJPU, and DCI Noel Beswick of the investigation team. Dick Lloyd said that David Meadows's briefing note was not distributed at the meeting. There was a general discussion about the difficulties and challenges presented by Mr Eaton. It was agreed that the CJPU would be the single point of contact for Mr Eaton and Anne O'Connell. Mr Eaton would have no contact with DCS Cook or with the de-brief team outside the de-briefing process except through the CJPU. All operational issues would be referred to the de-brief team by the CJPU. All welfare issues would be managed by the CJPU. A memorandum of understanding incorporating these points would be served on Mr Eaton by an officer of the CJPU. DCS Cook would retain duty of care responsibility for Mr Eaton and Anne O'Connell "until the sterile corridor is regained." The CJPU would replace the mobile telephones of Mr Eaton and Anne O'Connell and attempt to ensure that Mr Eaton did not have the contact numbers of DCS Cook or DSupt Barry Phillips. Cross-examined about this, DCS Cook accepted that he was a party to the agreement that "Eaton would have no contact with Cook ...except through the CJPU." He described this as the desired outcome, but Mr Eaton had continued to contact him and "it went downhill from there." DCI Beswick told Mr Whitehouse Q.C. that he was aware that there had been contact between Mr Eaton and DCS Cook, of which the CJPU disapproved, as indeed did DCI Beswick.
104. Shortly after that meeting had ended, Mr Eaton sent DCS Cook a text message at 08:33 and at 08:49 made a 5 second telephone call to DCS Cook but on this occasion DCS Cook did not reply to either. Indeed there is no record of any further contact between the two until 14/10/06.
105. Also on 20/9/06 DSupt Phillips, who was one of those attending the meeting, wrote the following memo:

"Following continued telephone calls by subject concerning his concerns on his handling by CJPU which are subject of letter from his Sol. And concerns that subject is making telephone calls that breach sterile corridor, I have decided to visit individual to reinforce need for sterile corridors and

sign new MOU to such effect. This will ensure that I am managing methodology."

Before leaving 20/9/06 I should record that on that day Mr Eaton had a further de-briefing session; and that at some stage DCS Cook visited Anne O'Connell. DCS Cook's note reads: "No contact with [Mr Eaton]. Visit made by DCS Cook to speak with [Mr Eaton's] partner re her concerns about her welfare, family etc and her future."

106. On 21/9/06 Mr Eaton had a further de-briefing session, and the CJPU picked up his old phones and gave him two new ones. Although the matter was not explored in evidence, I assume that one of these phones was intended for Anne O'Connell.
107. There were further de-briefing sessions on 22, 26 and 27/9/06, and on 27/9/06 there was a further counselling session with Dr Oscar, who did not think that Mr Eaton would benefit from further sessions at that stage, and recorded that Mr Eaton did not want any more.
108. On 29/9/06 there was a further de-briefing session, and during which Mr Eaton told the CJPU that his mother had Crohn's disease. There was a further de-briefing session on 3/10/06.
109. On 14/10/06 DCS Cook telephoned Mr Eaton, who later phoned him back. The only reference to these calls in the papers is in an e-mail from DCS Cook to DSupt Barry Phillips dated 15/10/06. The time and the duration of the calls was not stated. Cross-examined by Mr Christie Q.C., DCS Cook could not explain the absence of any record of a telephone call made by him to Mr Eaton on this day. He denied that he had rung Mr Eaton from home. It is correct to note that none of the available telephone records refer to land lines, and thus cannot exclude the possibility that there were further un-recorded calls from DCS Cook to Mr Eaton. Returning to the e-mail of 15/10/06, this stated that the telephone conversations with Mr Eaton on 14/10/06 related to difficulties in his relationship with Anne O'Connell. Twice in this e-mail DCS Cook described Mr Eaton as 'lucid' at the time of their conversations. Cross-examined about this by Mr Whitehouse Q.C., DCS Cook said that he had not meant to imply by this that at other times Mr Eaton was mad, difficult though he certainly was. These were the last recorded contacts between DCS Cook and Mr Eaton until 22/11/06.
110. By now it had become clear that Mr Eaton was beyond the control of the CJPU, and on 18/10/06 it was decided to transfer his case to the DPSWPU.
111. In anticipation of this transfer certain preparatory steps were taken. On 18/10/06 Mr Eaton was re-examined by Dr Swami. Mr Eaton said that he was feeling a bit anxious, but was not depressed any more and felt much calmer. His concentration was normal and his short-term memory was good. There were no signs of mental illness. He was fit to be detained and further interviewed. Dr Swami did not refer on this occasion to the need for an appropriate adult. Also on 18/10/06 Mr Eaton and Anne O'Connell were introduced to Nick, who would become their new handler and were supplied with new mobile phones. On 19/10/06 there was an exchange of e-mails between Keith and DCS Cook. These recorded, amongst other things, DCS Cook's confirmation that unless there was a critical change to

the de-brief he would not make any contact with Mr Eaton, and should Mr Eaton try to contact him he would inform Keith or DSupt Barry Phillips of the de-brief team. Should Mr Eaton contact him on more than two occasions DCS Cook would replace his mobile phone number. In evidence DCS Cook confirmed that he did give that undertaking, and was happy to do so, and intended at the time to abide by it. However he accepted that he subsequently broke it by keeping the same 'phone number even though Mr Eaton continued to contact him.

112. Further de-briefing sessions followed on 19 and 20/10/06. On the former day Mr Eaton referred to the brothers as "Glenn" and "Scott" for the first time. On 24/10/06 Mr Eaton was handed over to the DPSWPU.

113. John gave evidence that when Mr Eaton was first handed over to the DPSWPU he, John, saw the full CJPU file. Both John and Nick said that they were made aware in general terms, though not in detail, of the problems Mr Eaton had presented to the CJPU, including the allegations that he had been making direct contact with the SIO. John added that another reason why Mr Eaton was transferred was that a brief case of one of the officers in the CJPU, which contained material which, if it fell into the wrong hands, could be of benefit to the recipient, had been stolen. Anita said that when she joined the unit she became similarly aware of the problems that Mr Eaton had presented.

114. Evidence was given by Nick, Anita and John of some of the working practices of the DPSWPU. Having taken on a particular client, the Unit and its officers were under a duty of care to keep the client safe. Two officers would normally be assigned to protect and communicate with each client, subject to supervision by their superiors. Each week one of the officers assigned to a client would compile a report on that week's dealings with the client, in which the client would be referred to by a code number rather than by name. The weekly report would usually be submitted to a supervising officer on the Tuesday of the following week. The supervising officer would read and initial the report, which would then be filed in a secure cabinet to which, however, all members of the Unit would have access. The officer preparing the weekly report would rely on his memory and/or any notes he or she had made in their note books during the week concerned. Each such note book would be kept in a separate secure place, accessible only to the officer who had written it.

115. On 26/10/06 there was another de-briefing session with Mr Eaton. On the following day John prepared a risk assessment relating to Mr Eaton. Mr Eaton was being dealt with outside the Metropolitan Police District and in an area where he was not known. At that stage, there was no intelligence to suggest that any body who could pose a potential risk to him or those around him was aware of his whereabouts or that he was assisting the police. He had been briefed about the need to maintain confidentiality as to his whereabouts and current situation. On the same day, Nick received a call from Mr Eaton who was angry and wanted to speak to DCI Cook about a newspaper article. He was told that any such contact must now be through his handlers or the de-brief officers.

116. On 31/10/06 Nick and Bob met Mr Eaton and discussed his family make-up.

Asked about his father, Mr Eaton said: "No idea, think he's in the Brixham area, not seen him in years". It was pointed out by Mr Christie Q.C. in cross-examination of Nick that whereas both his note book and Briefing Note (see para 19 above) referred to this conversation about Mr Eaton's father, the relevant DPSWPU weekly report did not, but I cannot see that anything that turns on the point. On the same day Mr Eaton signed a Memorandum of Understanding with the Metropolitan Police. This said, amongst other things, that he should behave in a manner expected from a law-abiding member of the public, and not reveal to any other person that he was being assessed for the witness protection programme. He also completed a DPSWPU domestic/financial proforma in which he said he had not received treatment for drug or alcohol abuse, or for depression or mental illness; and that he had served in the Navy for 14 years.

117. Mr Eaton was further de-briefed on 1/11/06. Amongst other things, he said that on two occasions about 12 years previously (and thus in about 1994) he had taken quantities of cocaine from the boot of James Cook's car to Croydon Cemetery and given them to a woman in her mid-thirties. One might be forgiven for wondering what the relevance of this was. However it was cited as an example of DCS Cook's powers of suggestion. DCS Cook had referred to drugs and a cemetery when speaking to Mr Eaton on 26/7/06, and although at this time Mr Eaton seemed not to know what DCS Cook was talking about, here Mr Eaton was some three months later talking about drugs and a cemetery. On closer examination, however, this seems to me to be a point without any merit. Although DCS Cook could not recall, when giving evidence, on what he had based his reference on 26/7/06 to drugs and a cemetery, it does seem likely to have been based on information given to him by James Ward on 6/6/06, only about seven weeks earlier, that in March or April 1987 (and thus at about the time of Mr Morgan's murder) he, Ward, had informed the then DS James that a man called Frank Reidy had moved a quantity of cocaine to West Norwood Cemetery. This, however, was completely unconnected with the movement of drugs later referred to by Mr Eaton, which was many years later, and to an entirely different cemetery, West Norwood cemetery and Croydon cemetery being at least five miles apart.
118. I move on. Mr Eaton was further de-briefed on 2, 3, 4 and 6/11/06.
119. In Nick's Briefing Note he stated that on 7/11/06 DS Moore of the de-brief team called the DPSWPU with concerns about Mr Eaton's parents. Nick, Bob and John held a meeting and decided that John should speak to DCS Cook about a risk assessment for Mr Eaton's parents. Mr Christie pointed out to Nick that these matters too had not been referred to in the relevant weekly report. Nick was mystified by the omission. Again, however, I cannot see that anything turns on the point. In re-examination Nick added that he did not know if John had in fact spoken to DCS Cook.
120. There were further de-briefing sessions, on 8, 9, and 13/11/06, and a further consultation with Dr Oscar on 14/11/06.
121. At 14:58 on 22/11/06 DCS Cook phoned Mr Eaton. The call lasted 13 minutes 23 seconds. At 18:22 DCS Cook sent Mr Eaton a text message.

122. On 24/11/06 DPSWPU officers met Mr Eaton and Anne O'Connell. Mr Eaton was again advised not to contact DCS Cook or DSupt Phillips. Any issues should be through the DPSWPU officers or through the de-brief officers when he met them. More de-briefing sessions followed on 27, 28 and 29/11/06 and on 4 and 6/12/06.
123. Overnight on 9 to 10/12/06 Mr Eaton was involved in a disturbance with Anne O'Connell at the temporary accommodation which had been obtained for them by the DPSWPU. Damage was caused to the front door. The police were called. Mr Eaton disclosed to DC Phelps, a local police officer, that he was under the protection of the DSPWPU. On 12/12/06 the Unit wrote to Mr Eaton, pointing out that this was a clear breach of the Memorandum of Understanding that he had signed on 31/10/06, and had compromised his status as a prospective protected person.
124. The de-briefing process continued with interviews on 15 and 22/12/06. On 25/12/06 Mr Eaton sent a text to DCS Cook, recorded as having been "re festive wishes." On 26/10/06 DCS Cook sent a text back.
125. There was a further counselling session with Dr Oscar on 11/1/07 and there were further de-briefing sessions on 15 and 17/1/07.
126. On 18/1/07 John and Bob went to see Mr Eaton. They told him that one Bradley Hanson had been arrested. Mr Eaton became angry, and said he would ring Dave (DCS) Cook to voice his displeasure. Nick asked him not to do it, but Mr Eaton later told Nick that he had in fact done so. However, telephone records indicate a call from DCS Cook to Mr Eaton lasting 5 minutes. There is no record of any further contact between the two until 2/4/07. These matters were not referred to in Nick's Briefing Note.
127. DPSWPU records indicate that on 24/1/07 Mr Eaton punched a hole in the wall of the property where he had been accommodated.
128. Further de-briefing sessions followed on 14, 19, 21, 22, 26 and 27/2/07 and on 6/3/07. During the session of 21/2/07 Mr Eaton told the de-briefing officers that he had lost his father 14 months ago. This was entirely untrue, and to be contrasted with the account he gave on 31/10/06 (see para 116 above).
129. There was another de-briefing session on 8/3/07. Mr Eaton said that his wife had left him because of her infidelity. He did not refer to any domestic violence on his part. She, on the other hand says that Mr Eaton repeatedly physically abused her. Indeed, Mr Eaton has been convicted of assaulting her. When initially served on the defence, the section of the interview in which this was discussed was redacted. DI Clarke said that this was done at the suggestion of DCI Beswick and DS Dalby, and after reference to disclosure Counsel. It has since been "unredacted".
130. Following further de-briefing sessions on 13, 14, 15, and 16/3/07, Mr Eaton was

seen again by Dr Oscar on 19/3/07. Mr Eaton was worried that he might have intestinal cancer, and was having flash-backs because he had to revisit the murder scene.

131. There were further de-briefs on 26 and 29/3/07.

132. At 08:05, on 2/04/07 DCS Cook sent an e-mail to DSupt Barry Phillips. This said:

"[Mr Eaton] contacted me by phone today. General welfare issues were discussed and when anything in relation to the de-brief cropped up I stated that I did not wish to discuss it...basically he appeared to just want to chat... He was given a bollocking for making contact."

However, the available telephone records show only a call from DCS Cook to Mr Eaton at 07:42, lasting 8 minutes 9 seconds.

133. On 4/4/07 DCS Cook sent a text to Mr Eaton, the contents of which are not known.

134. On 18/4/07 Mr Eaton was seen again by Dr Oscar. He had come off anti-depressants and was having no down days. His intestinal condition had been diagnosed as ulcerative colitis.

135. On 20/4/07 Mr Eaton signed his first two witness statements (pages 300 to 321 of the bundle). The account he gave was not dissimilar to though more detailed than that he had given on 12/9/06 (see para 90 above). He was now saying that he saw Jonathan Rees at the Golden Lion. The man who had spoken to him in the toilets was called 'Scott'. He had a brother called 'Glen'. Mr Eaton said he knew them as 'the brothers'. They had a reputation for violence. The other person he had seen sitting in Jimmy Cook's car was 'Glen'. He later received threats from Jimmy Cook and 'Villery' to keep his mouth shut.

136. In a de-briefing interview on the same day, 20/4/07, Mr Eaton repeated that his father was dead.

137. On 29/4/07 DCS Cook called Mr Eaton for 6 minutes 11 seconds.

138. I turn now to an incident about which DS Dwyer gave evidence. He could not put a precise date on it, but in the context of other events it probably occurred in April or May, 2007. On this occasion DS Dwyer met Mr Eaton and Anne O'Connell at a location outside London, in order to convey Anne O'Connell to a location in London where she could see her daughter Sharon and her new grand-child. Mr Eaton said he wanted to come too. DS Dwyer told him that for a variety of reasons he was not coming. The two had words about it before Mr Eaton backed off. Mr Eaton did not threaten or assault DS Dwyer. DS Dwyer said that he recalled that following this incident one of his superior officers, possibly DCS Cook, told him that Mr Eaton did not like him because he had not let Mr Eaton go to London. Mr Christie Q.C. then referred DS Dwyer to a telephone conversation he had had with John O'Connell, the brother of Anne O'Connell on 15/5/07. The call had been audio-recorded. During it, DS Dwyer had said that

later on during the day on which he had been to collect Anne O'Connell "...my boss has told me that [Mr Eaton] has made threats against me... that he knows where I live and he knows where I drink, he's going to get me sorted out, I'm going to get a fucking baseball bat around my head...". Though DS Dwyer had clearly had that conversation, when, nearly 2½ years later, he was asked about it he did not clearly recall it. He said that the "boss" referred to might have been DCS Cook, DCI Beswick or DI Clarke. He said that he did not take any notice of what he had been told. He agreed that a threat of violence made by a SOCPA witness towards an investigating officer would be serious if credible, but he did not believe this particular threat to have been credible. Elsewhere in the recorded telephone conversation he had said of Mr Eaton that he was a "non-doer" who "backs off". Mr Eaton, he said, had never threatened him directly.

139. On 4/5/07 Mr Eaton appeared at the South West London Magistrates' Court.
140. On 12/5/07 DCS Cook called Mr Eaton for 3 minutes 52 seconds and later that day sent him a text. He sent a further text on 14/5/07.
141. On 23/5/07 Mr Eaton was seen again by Dr Oscar. He was angry about impending incarceration and felt that he was going to suffer.
142. On 24/5/07 Mr Eaton signed a third witness statement (pages 322-332 of the bundle). This dealt not with Mr Morgan's murder but with Mr Eaton's own personal, family and criminal history. Amongst many other details he gave he said unequivocally that his father had died 14 months ago. He said that he had served as a steward on a Royal Fleet Auxiliary Ship, the "Resurgent". He was the Captain's personal steward. He got into a fight with a Royal Marine, was arrested for assault and was given a suspended sentence and a fine. Whilst on the "Resurgent" he was selected for an exchange with the "USS Nimitz" on which he served for about six weeks. He then met Christine, left the Royal Fleet Auxiliary in March 1982 and had a daughter Nicola in the following year. In 1985 he met a man called Paul Hanson with whom he committed many serious crimes and worked on the doors of clubs. They were known as "The Dangerous Brothers". In about the same year he also met James Cook. He became involved with James Cook in collecting and distributing drugs, mainly cocaine. He worked with him at Southern Investigations from about September to October 1986. He was involved with James Cook in numerous different serious crimes. In 1999 his relationship with Christine ended, and in 2002 he ceased his association with James Cook. He went on to describe how he had contacted the Sun newspaper in July, 2006 to which I have already referred.
143. There were further de-briefing sessions on 25 and 29/5/07. On 30/5/07 DCS Cook called Mr Eaton at 07:02 for 5 minutes 21 seconds. A further de-briefing session followed.
144. After another de-briefing session on 14/6/07, Mr Eaton signed three further witness statements (pages 335-346 in the bundle) on 15/6/07. These dealt principally with knowledge of and dealings with 'Villery', one Paul Hanson and James Cook. There was a further de-briefing session on the same day. This appears to have been the last such session until 13/11/07.

145. On 29/6/07 DCS Cook sent an e-mail to DSupt Barry Phillips as follows:

"Just to make you aware that [Mr Eaton] contacted me via mobile this morning if you could log it. General discussion about his health and the hospital visit next Monday. He tried to impart something he remembered to me but advised that should be to Tony and on tape. The investigation was not discussed nor any subject of the de-brief."

This telephone call does not appear on any of the available telephone records.

146. On 6/8/07 DCS Cook called Mr Eaton for 9 minutes, and there was further contact between the two on the following day. The only record of that contact states: "Contacted on mobile. No conversation. CJPU informed." No further details are available.

147. The available telephone records show that DCS Cook sent two further texts to Mr Eaton at 11:59 and 14:00 on 25/8/07. The only police record of communication between the two on this day refers to a text in the opposite direction. It reads:

"Text message received – re a meeting with his Counsel on Tuesday and stating that he wants to crack on with any further questions re the de-brief. Forwarded on to Det. Sgt. Clarke to be forwarded on to de-brief team. No conversation took place."

148. There were two more texts from DCS Cook to Mr Eaton on the morning of 28/8/07.

149. Police records indicate that up to 18/9/07 Mr Eaton and Anne O'Connell had received a total of more than £72,000 from the police during the course of Mr Eaton's de-briefing.

150. In a witness statement dated 20/7/09, DCS Cook said that the last scheduled contact that he had with Mr Eaton was on 29/9/07. DCS Cook's record of this contact reads as follows:

"Telephoned by [Mr Eaton] who asked what was happening re de-brief and expressed a desire to continue and get things completed. He was advised to speak to his solicitor re this. Brief general discussion about his health and welfare but no discussion about the case or subject of the de-brief."

However, the available telephone records do not refer to any such call. They show only a call from DCS Cook to Mr Eaton at 10:05 for 12 minutes 24 seconds.

151. On 2/10/07 Mr Rees Q.C. (as he was to become) asked the investigation team to collate information relating to all contacts between members of the investigation and de-briefing teams and various proposed prosecution witnesses including Mr Eaton.

152. Arising out of that request, on 3/10/07 DCS Cook sent an e-mail to DS Dalby in relation to telephone contacts, as follows:

"This is the contact info I have re [Mr Eaton] that I can find. We have to check the Derrieres and Wit. Prot. Schedule. There was a meeting I held

with him near [Reading] where the solicitor was present but that was all about his health, when he broke down etc. I am back in later and we can discuss.”

153. Three matters arise from this. The first relates to the word “Derrieres”. Not surprisingly, DCS Cook was cross-examined on the basis that he had been referring to the checking of backs or back-sides. However, it emerged that DCI Beswick had recently applied the “spell-checker” computer system to the word “De-briefers”. The system did not recognise the word, and produced “Derrieres” instead. In view of this, and the fact that “De-briefers” would suit the context, I am satisfied that DCS Cook typed “de-briefers” and that sinister inferences in that particular regard would be misplaced.
154. The second matter is that DCS Cook confirmed that the meeting near Reading was that held at 18:30 on 5/9/06 to which I have already referred.
155. The third matter concerns the content of the contact schedule drawn up on this occasion by DCS Cook, and of its successors. The initial version, sent to DS Dalby on 3/10/07, covered only the period from 22/7/06 to 20/9/06. However, DCS Cook produced revised and expanded schedules on 5/10/07 and 8/10/07 before producing a final version at some stage after that. The final version covered the period from 24/7/06 to 29/9/07. It is to be found amongst other places, in tab 5 of the bundle of documents disclosed by the prosecution on 4/12/09. I have compared this final version with the available telephone records, conscious of the fact that these records may not paint the full picture. This is because it has not been possible to obtain all the records relating to all the phones that Mr Eaton is known to have been using during the relevant period, and no land-line records have been produced. However, I must not speculate, and must consider the evidence actually available. In that regard, I have concentrated on the period from 9/8/07 (when Mr Eaton’s de-briefing began) to 29/9/07 (the last date covered by the final version of DCS Cook’s schedule). The telephone records now available (many of them produced actually during the Eaton *voire dire*) indicate direct communication between DCS Cook and Mr Eaton by text and/or phone call on 36 days during this period. Of these, the final version of DCS Cook’s schedule refers to only six days, namely 9, 10, 11 and 17/8/06 and 19 and 20/9/06.
156. It is clear in my view that DCS Cook seriously understated the frequency of his previous contact with Mr Eaton when he completed these schedules, and he probably did so knowingly. I could readily understand some omissions due to human error and/or lack of time. However, the stark fact is that the schedule in its final form referred to only one-sixth of the days on which contacts were actually made. Amongst the many omissions, there was no reference to the calls of 9 minutes 22 seconds on 28/8/06 and 21 minutes 41 seconds on 29/8/06 which shortly preceded Mr Eaton’s saying on 1/9/06 for the first time that he had been at the Golden Lion on the evening of Mr Morgan’s murder. Neither was there any reference to the call of 33 minutes 20 seconds made during the evening of 1/9/06; or to the call of 12 minutes 42 seconds made on the morning of the following day; or to the fact that on 5/9/06 he met Mr Eaton shortly before and texted him within an hour before Mr Eaton said for the first time that “the brothers” were involved (though the meeting held in the evening of 5/9/06 was referred to).

157. On 9/10/07 there was a meeting of DPSWPU officers. It was recorded that Mr Eaton "has been advised again not to make contact with Det.Supt. Cook."
158. On 19/10/07 a "Record of Contact Log" in relation to Mr Eaton was commenced by the Metropolitan Police. DCS Cook said in evidence that it was DCI Beswick's idea to start this log. DCI Beswick said that it was started on the advice of prosecution lawyers. He added that DCS Cook told him that he had seen Mr Eaton prior to 19/10/07 but only about welfare matters and that he had informed DSupt Barry Phillips of these contacts. No such record of contact had been kept before, even though the de-briefing had started as long ago as August, 2006. From the date on which this log was started, all the known contacts between Mr Eaton and DCS Cook were recorded in the log.
159. I move on to 17/12/07. On a message form of this date DCS Cook recorded as follows:
- "[Mr Eaton] made contact with me via my mobile this morning. I made it clear that I would not discuss the case but did ask him about his health and a general welfare chat re his partner... He asked how the Morgan family was and I mentioned the fact that they were fine, simply waiting for some decisions to be made."*
- In a witness statement dated 20/7/09 DCS Cook explained that in fact Mr Eaton had first texted him, whereupon he had called Mr Eaton. In cross-examination, DCS Cook accepted that there was a difference of accounts here. So far as I am aware, there is no reference either to the text or to the call in any of the available telephone records. However, DCS Cook's message form was entered in the Record of Contact Log to which I have referred. DCS Cook added in his statement that to the best of his recollection, 17/12/07 was the last day on which he had any contact with Mr Eaton.
160. On 18/12/07 Mr Eaton signed his last witness statement (pages 365-372 in the statement bundle). This did not deal with Mr Morgan's murder, but with Mr Eaton's knowledge of and dealings with Tony Airey, James Cook and a P.C. Dunsmore, among others. This followed some further de-briefing sessions that had taken place towards the end of November, and completed the de-briefing process.

WAS MR EATON PROMPTED?

161. It was robustly suggested to DCS Cook during his cross-examinations by leading Counsel for the defendants that the telephone calls he made to Mr Eaton in breach of his undertakings and in breach of the sterile corridor were to discuss Mr Eaton's evidence and, in effect, to tell him what to say. It was put that the police, after so many failed enquiries, were desperate to "nail" someone, and saw Mr Eaton as the only means of getting their case on the road.
162. DCS Cook was similarly robust in his denial of these suggestions. He said that he would not compromise himself by discussing the evidence of a witness. Had there been any such discussion, he was confident that he would have recorded it. The changes in the accounts given by Mr Eaton were not made at his, DCS Cook's request, instruction or desire. He repeatedly said that his continuing phone calls to

Mr Eaton arose only because Mr Eaton would telephone him first. Mr Eaton was a very difficult person to deal with in very difficult circumstances. DCS Cook would tell Mr Eaton that he did not want to speak to him, but to cut him off on the phone could alienate him. Thus it was that DCS Cook would telephone Mr Eaton back, even though it occurred to him (DCS Cook) that people might later think that he had been "feeding" Mr Eaton. In truth, all their conversations had been confined to the welfare and/or health of Mr Eaton, his partner and his family.

163. Against that background, I turn to consider whether the defence have established that Mr Eaton was prompted by DCS Cook in relation to his evidence.

164. It will be recalled that during his very first meeting with Mr Eaton, DCS Cook said "Give me the name of the brothers" twice in quick succession. To date this was quite wrong in my view. At that stage, the police well knew that Mr Eaton was likely to be a witness, but did not know what if anything he knew about Mr Morgan's murder. He should have been allowed to tell his own story in his own words. That story could then properly have been explored further if necessary.

165. Indeed, DCS Cook must have known that it was quite wrong to say what he did.

This episode was not the only one in relation to which he was taken to task for prompting. On 2/2/05 he had had dealings with James Ward, later to become a prosecution witness. He had said to Ward: "Tell me what you know. I will give you a head start. It was Glenn with the axe, Garry was there and Jimmy with the car." Cross-examined about this, DCS Cook would accept no criticism. He emphasised that by the time he said what he did, it had become apparent that James Ward was not prepared to be a prosecution witness (even though he later changed his mind in this regard). Cross-examined by Miss Humphryes QC on behalf of Garry Vian, DCS Cook said that he would not have given a "head start" to a witness or potential witness: yet that is exactly what he did to the potential witness Mr Eaton.

166. This initial approach to Mr Eaton is particularly worrying given the following additional features of the evidence.

(a) When "the brothers" were suggested to him by DCS Cook, Mr Eaton appeared to know nothing about them. Ultimately, however, he gave an account describing the presence at the scene of the murder of two brothers, albeit naming them as "Glenn" and "Scott" rather than "Glenn" and "Garry".

(b) DCS Cook was aware of the sterile corridor system and of its purpose, but contacted Mr Eaton repeatedly in breach of the system. He continued to do so even after receiving directions and giving undertakings not to do so. As I have said, he said in evidence that the calls were in reply to calls or texts sent to him by Mr Eaton, and that the usual pattern was one of Mr Eaton initiating uninvited and unwelcome contact with DCS Cook. Such records as are available (and I appreciate that complete records are not) cast considerable doubt on this. There are few records of calls from Mr Eaton to DCS Cook. There are many records of calls from DCS Cook to Mr Eaton, and in the vast majority of cases there is no record of any prior text, call or missed call from Mr Eaton to DCS Cook, though a few examples do exist (see eg 2/8/06 and 20/9/06). In any event, if Mr Eaton

did contact DCS Cook, DCS Cook did not have to ring back, and should not have done so. If despite that he did ring back, he could and should have explained to Mr Eaton that although he was responding to his call or text he was not able to speak to him. This could have been done shortly. As has been seen, many of the calls made by DCS Cook to Mr Eaton were of a substantial length.

- (c) DCS Cook usually failed to make any note or record of what was said or texted during his communications with Mr Eaton. Had these all concerned Mr Eaton's accommodation or welfare and domestic matters, that could have been easily recorded. Moreover, it should not have needed the advice of a CPS lawyer to set up a "Record of Contact Log" of the kind instituted on 19/10/07, by which time Mr Eaton's de-briefing was almost complete in any event.
- (d) The timing of some of the telephone calls seems to me to have been significant. On 28/8/06 and 29/8/06 there were telephone calls from DCS Cook to Mr Eaton which were far longer than any that had gone before. On 1/9/06 Mr Eaton said for the first time that he had been at the Golden Lion on the occasion of Mr Morgan's murder. That evening there was a call from DCS Cook to Mr Eaton lasting 33 minutes 20 seconds, and on the following morning another one lasting 12 minutes and 24 seconds. No note or record was ever made of the contents of any of these calls.
- (e) Mr Eaton first mentioned that "the brothers" were involved on 5/9/06. He was clearly depressed at the time, and in my view would have been vulnerable. He had met DCS Cook in person earlier that day. No notes were made of what transpired at that meeting. He then received a text message from DCS Cook only 25 minutes before he first referred to "the brothers". No record of the terms of that text is available. Another meeting with DCS Cook in person took place later that day. All this happened while the sterile corridor was meant to be operating, as DCS Cook knew. The purpose of both meetings on 5/9/06 was said to be Mr Eaton's welfare, but his welfare should have been looked after by the CJPU not the investigation team. This had been explained to Mr Eaton by DCS Cook himself on 11/8/06. Then at the meeting of the Operation Abelard II Gold Group on the evening of 4/9/06, the very day before the meetings, the text and Mr Eaton's first reference to "the brothers" on 5/9/06, concern had been expressed by very senior officers about calls from Mr Eaton to DCS Cook (no mention apparently having been made of all the calls from DCS Cook to Mr Eaton) and Commander Sawyer had said that the CJPU should be divorced from the investigation team and manage the risks. When Mr Eaton referred to "the brothers" on 5/9/06 he did not name them. He effectively repeated what DCS Cook had said to him when the two first met on 26/7/06, and shortly after direct contact with and a text from DCS Cook earlier on 5/9/06. Within seven hours of Mr Eaton signing the short statement to which I have referred, saying in effect that he would need further reassurance as to the safety of his family before going into any further detail, he received that assurance in person not from the CJPU but from DCS Cook.
- (f) During a de-briefing session on 12/9/06 Mr Eaton referred to a man who came into the toilet at the Golden Lion, and another man sitting in a car. He did not name them, or indicate that they were brothers. That evening,

DCS Cook called him for 7 minutes 21 seconds. On 13/9/06 the man in the toilet was being referred to as "brother 1".

- (g) There were a very large number of further calls from DCS Cook to Mr Eaton of which no record is available before Mr Eaton arrived at his final detailed account of the events of 10/3/87.
- (h) DCS Cook grossly under-stated the number of contacts he had made with Mr Eaton when compiling his schedule in October 2007 at the request of Mr Rees QC.

167. I appreciate that I did not hear evidence from Mr Eaton himself, and have to base my conclusions on the evidence that was presented to me. The defendants who sought to exclude Mr Eaton's evidence were not required to go further than to establish conclusions on a balance of probabilities. Taking into account the evidence which I dealt with in detail earlier in this judgment, the salient points of which I have just briefly summarised, I conclude that DCS Cook probably did prompt Mr Eaton to implicate the Vian brothers. I am not in a position to find whether the prompting was to name two defendants to whom Mr Eaton would not otherwise have referred at all, or whether it was as to details of his final account to which he would not otherwise have referred; but I am satisfied that there was improper prompting of some kind. I have considered whether DCS Cook may have prompted Mr Eaton also in relation to other defendants. I am concerned that he may have done so, given the number of times he contact Mr Eaton when he should not have done, the frequent absence of any records of what was said, and the understatement of the numbers of contacts which I have recently referred. Despite these anxieties, I am not able on the evidence available to me to find on a balance of probabilities that such further prompting did take place. However, the fact that any prompting occurred, that it occurred in breach of the sterile corridor system, and that the person prompted, Mr Eaton, had personality disorders which included a tendency to lie, sometimes for no apparent reason, are obviously extremely concerning.

SHOULD THERE HAVE BEEN AN APPROPRIATE ADULT?

168. It was submitted to me on behalf of the defendants that an appropriate adult should have been present at Mr Eaton's de-briefing interviews; and that the failure of the police to arrange for one to be present was culpable and should be taken into account in deciding whether Mr Eaton's evidence should be excluded pursuant to s78 of the 1984 Act. It will be recalled that I set out Mr Eaton's psychiatric history towards the beginning of this judgment, and it will be recalled that during his de-briefing he was seen on several occasions by Dr. Oscar, the Consultant Psychotherapist; and by Dr Swami, the Forensic Medical Examiner, on 6/9/06.

169. In this connection, Professor Nigel Eastman was called to give evidence on behalf of the defendants, and Dr Lawrence Chesterman was called on behalf of the prosecution. Both are highly experienced Consultant Forensic Psychiatrists approved under s12 of the Mental Health Act, 1983. Both had reviewed the available medical records and reports relating to Mr Eaton, and were asked to provide opinions on three principal issues.

1. At the time that he was de-briefed, did Mr Eaton have a mental or personality disorder?

2. Should an appropriate adult have been present during the interviews when he was de-briefed?
3. To what extent if at all would a jury be assisted by expert evidence on the effect or possible effect on his evidence of any mental or personality disorder he may have?

Having regard to my conclusion that Mr Eaton's evidence would not have been admitted had there been a trial, no useful purpose would be served by reviewing the evidence about or expressing a conclusion on question 3, and I do not propose to do so.

162. Neither expert witness had examined Mr Eaton. Neither had had access to all the medical records they would have liked. In particular, neither had had access to Mr Eaton's hospital records other than psychiatric hospital records. Moreover, when writing their reports and giving evidence neither had had access to his General Practitioner records. These were only made available after Professor Eastman and Dr Chesterman had given evidence. I do not know if Dr Chesterman has seen them, but Professor Eastman clearly has, since I have received a short further report from him dated 22/12/09 on the limited number of entries in those records which have any bearing on the issues I have to resolve. I should add that the absence of a complete set of records did not inhibit either expert from expressing robust opinions.
163. Despite references in the available material to encephalitis, to a possible stroke and to excessive consumption of alcohol in relation to Mr Eaton, neither expert suggested that there was any evidence of brain damage from any of these causes or at all. It is unnecessary to examine this matter in any further detail.
164. I turn now to consider whether, when he was de-briefed, Mr Eaton had a mental or personality disorder. Before analysing the competing arguments, it may be helpful to review the nature of personality disorders. The diagnostic tool for such disorders referred to by Professor Eastman and Dr Chesterman was the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, referred to for short as "DSM4". I will attempt a summary of the definition in DSM4 of a personality disorder in general terms. It is an enduring pattern of inner experience and behaviour that deviates markedly from the expectations of the individual's culture in relation to at least two of the areas of cognition, affectivity or mood, interpersonal functioning and impulse control. It is a pervasive and inflexible condition, with an onset in adolescence or early adulthood. It is stable over time, and leads to significant distress or impairment in social, occupational or other important areas of functioning. Professor Eastman added, and I did not understand Dr Chesterman to dispute, that a personality disorder could descend from time to time into frank mental illness in the form of depression, a process sometimes referred to in the evidence as "decompensation". Under the umbrella of personality disorders there are no less than 10 identifiable individual disorders, each with its own diagnostic criteria. Those that have been referred to most often in this case are the Antisocial Personality Disorder ("APD") and the Borderline Personality Disorder ("BPD"), to both of which I will return in a moment.

165. Some of the diagnostic features of identifiable personality disorders overlap, and an individual may suffer from more than one disorder at the same time. However, a personality disorder may not fit neatly into any one or more of these separately identifiable disorders, in which case it is commonly referred to as a personality disorder "not otherwise specified".
166. I turn specifically to APD. DSM4 states that the essential features of this disorder are a pervasive disregard for or violation of the rights of others beginning in childhood or early adolescence and continuing into adulthood. To substantiate a diagnosis of APD, there must be evidence of conduct disorder in the form, for example, of aggression to people or animals, destruction of property, deceitfulness, theft or frequent rule-breaking e.g. truanting, before the age of 15 years. The characteristics found in persons with this disorder include a failure to behave lawfully; that they are frequently deceitful and manipulative for personal profit or pleasure, and may repeatedly lie; impulsivity and lack of forethought or foresight (which seem to me to be different aspects of the same thing); irritable and aggressive behaviour; a reckless disregard for the safety of themselves and others; irresponsibility, for example in relation to employment or financial matters; and a tendency to blame the victims and to minimise the effects of their offences. APD may become less evident and even remit with age, particularly in the fourth decade of life, and especially in relation to criminal behaviour.
167. I next consider BPD. DSM4 identifies the essential features of this condition as a pervasive pattern of instability in personal relationships and in self image, and marked impulsivity beginning in early adulthood. A diagnosis requires five or more of the following characteristics: frantic efforts to avoid real or imagined abandonment; a pattern of unstable and intense interpersonal relationships; identity disturbance; impulsivity; recurrent suicidal behaviour; affective or mood instability; chronic feelings of emptiness; inappropriate intense anger or difficulty in controlling anger; and transient stress-related paranoid ideation or severe dissociative symptoms. It can be seen that some of these characteristics overlap with APD.
168. The opinions of Professor Eastman and Dr Chesterman were expressed by reference to the diagnostic criteria in the DSM4 and to Mr Eaton's psychiatric history.
169. It was Professor Eastman's opinion that Mr Eaton suffers from a personality disorder; specifically both APD and BPD. I do not propose to recite every point the Professor made in his written report and oral evidence to support his conclusion, but the following appeared to me to be his central arguments.
170. First, he relied on the number of occasions on which a personality disorder had been diagnosed in Mr Eaton's past. To recap, an unspecified personality disorder was diagnosed at Sutton Hospital in April and May 1982. Longstanding personality problems again of an unspecified kind were referred to in the reports following his admissions to the Henderson Hospital later in 1982 and to the Sutton Hospital in 1999. The results of Dr Devonshire's psychometric tests in May, 2000 suggested Negativistic Personality Disorder, BPD, and traits associated with APD and Sadistic Personality Disorder. In May, 2000 Dr Evans referred to Mr Eaton's depression having uncovered clinical features indicative of a personality disorder; rehearsed Dr

Devonshire's conclusions and expressed no disagreement; expressed the view that BPD was not the primary personality dysfunction (without saying that it was not present at all); and went on to list the number of personality features which, said Professor Eastman, were essentially features of APD, albeit that the features were not limited to that category of disorder, and albeit that Dr Evans did not make an express diagnosis of APD. Professor Eastman went on to refer to the constellation of personality disorders referred to by Dr Rogers in August, 2000 and to Dr Lee's reference in the following month to features of a severe personality disorder of a psychopathic/sociopathic type. Moreover, in October 2005 Dr Guest had said that Mr Eaton continued to suffer from APD.

171. Secondly, Professor Eastman pointed to instances when Mr Eaton's personality disorder had descended into frank mental illness in the form of depression, namely on admission to the Chiltern Wing of Sutton Hospital from September to November 1999; and at the times of the reports of Dr Rabee and Dr Evans in 2000.

172. Professor Eastman also attached importance to the fact that the broad conclusions of a variety of psychiatrists had been confirmed or, as it was put, cross-validated, by the findings of the psychologists Dr Devonshire and Dr Rogers in May and August 2000 respectively.

173. Moreover, Professor Eastman pointed to the number of personality features identified in the medical records and reports which consistently recurred in Mr Eaton's case and were characteristic of a personality disorder. These included but were not confined to offending behaviour; indiscipline; impulsivity; mood instability; lying pointlessly; the enjoyment of a structured environment, such as that provided by employment; a tendency to self-harm; the excessive use of alcohol and drugs; occasional auditory hallucinations; paranoia; inherently poor self-esteem; the enjoyment of his reputation for violence, and the increased self-esteem resulting from the adulation he received from certain individuals as a result of that reputation; a lack of remorse and empathy; an exaggerated tendency to hold grudges against others; and an inability to reflect on things he said.

174. Professor Eastman also noted the many inconsistencies of account which Mr Eaton had given over the years about himself, his personal and employment history and his symptoms, which in the Professor's view might in part have been accounted for by Mr Eaton's personality disorder.

175. Finally, Professor Eastman observed that it was accepted by all sides that Mr Eaton had told demonstrable lies in the past (of which, saying that his mother and father were dead when in fact they were alive are prime examples). Deceitfulness, said Professor Eastman, was another feature of the personality disorders from which Eaton suffered. The Professor did accept, however, when cross-examined by Mr Hilliard Q.C., that the lie to Dr Louise Guest that his mother was dead might have been wholly unrelated to any disorder, and simply a deliberate attempt to deceive and gain the sympathy of the Court when it came to sentencing him for his offences of drunken, disqualified and uninsured driving. (If so it did not work. Mr Eaton received 5 months' imprisonment).

176. My first impression of Professor Eastman's evidence, and the points he made in

favour of Mr Eaton having a personality disorder, was a favourable one. At that stage, however, I had not foreseen that Dr.Chesterman would be giving evidence on behalf of the prosecution as he ultimately did. He having done so, I have carefully considered his evidence, and the arguments he presented counter to those of Professor Eastman.

- 177.Dr.Chesterman accepted that Mr Eaton had significant personality problems, and had displayed anti-social behaviour as an adult, but disagreed with Professor Eastman's central conclusion that Mr Eaton suffered or at least continued to suffer from any or any significant personality disorder. Dr Chesterman's view was that at worst Mr Eaton might have a mild personality disorder not otherwise specified. However, there was insufficient evidence to justify a diagnosis either of APD or of BPD. As with Professor Eastman, I do not propose to repeat every point that Dr Chesterman made in his written report and oral evidence, but will endeavour to summarise what seemed to me to be the central arguments.
- 178.First, Dr Chesterman observed that not all the medical reports had expressly stated that Mr Eaton was suffering from a personality disorder. In particular, Dr Evans's report had not done so. Moreover, not all the reports that had expressly diagnosed a personality disorder had identified any particular type or types of disorder. Conversely, the reports that did identify a particular type or types did not always identify the same type or types. All of these are valid points, but in my judgment they do not overcome the fact that there have been repeated diagnoses of personality disorders of one kind or another during Mr Eaton's adult life, most recently in 2005; and repeated descriptions of behaviours and attitudes indicative of a personality disorder, and in particular APD. In relation to Dr Evans's report it is true that she did not say in terms that Mr Eaton was suffering from a personality disorder; but she did say that the partial resolution of his depression had uncovered clinical features of a personality disorder; she did refer back to Dr Devonshire's recent report which pointed to a variety of personality disorders including APD; and she did then set out features indicative of an APD. I accept Professor Eastman's view that Dr Evans clearly agreed with the diagnosis of a personality disorder, and would add that in my view it is a proper inference that Dr Evans agreed with the more specific diagnosis of APD.
179. Dr Chesterman also relied on Mr Eaton's ability to sustain relationships and employment as pointing away from rather than towards a personality disorder. The evidence is that Mr Eaton has had two relationships which have been long-lasting, the main one with Christine Kirkby, who left him in 1999 but also with Anne (sometimes referred to as Annette) O'Connell, his current partner. However, Christine Kirkby complained of repeated physical abuse at his hands. At times he has admitted abusing her, while giving very different accounts of how often he has done so. At other times he has denied it altogether. He certainly has a conviction for assaulting her. Anne O'Connell too appears to have complained of abuse by Mr Eaton, but I do not consider that I have sufficient material to make a finding in that regard one way or the other. Turning to Mr Eaton's employment, I regard the evidence as sketchy. His own accounts have been inconsistent. A prime example of such inconsistency can be seen in the different accounts which he gave at different times about the length of his service in the Navy. He certainly did serve in the Navy for a period, and worked for an unknown period for London Underground before losing that job in 1999.

Otherwise, there seems to me to be no real history of sustained employment during Mr Eaton's 30 years or more of potential working life to date. I conclude that the fact that Mr Eaton had one long but abusive relationship, and a second relationship of shorter duration, and that he has sometimes been able to hold down jobs, pales into insignificance in the face of all the evidence pointing towards the existence of a personality disorder.

180. Next, Dr Chesterman drew attention to the gap of 17 years between 1982 and 1999 when there was no evidence that Mr Eaton had needed any medical or psychiatric treatment, or engaged in problematic behaviour, self-harm or attempted suicide. I have already observed that when Dr Chesterman wrote his report and gave his evidence, he had not seen Mr Eaton's General Practitioner records. Professor Eastman has now seen them, and I assume that had there been anything significant between 1982 and 1999 he would have referred to it in his ensuing report of 22/12/09. In fact, he refers in that report only to a GP record entry for 10/3/97. This reads: "...failed to keep follow up appointment with consultant neurologist at South London and St. George's Mental Health Trust." In the absence of anything other than this very brief entry, there is insufficient in my view to displace Dr Chesterman's premise. There is indeed no evidence of Eaton's needing medical or psychiatric treatment, or engaging in problematic behaviour, self-harm or attempted suicide during the 17-year period concerned. That gap, said Dr Chesterman, was significant. It pointed away from rather than towards Mr Eaton having a personality disorder, and in particular BPD.
181. In answer, Professor Eastman made two points. The first was that the absence of a full set of medical and psychiatric records and reports during the period concerned does not necessarily mean that Mr Eaton actually received no medical or psychiatric treatment, or that he never exhibited behaviour indicative of a personality disorder. Some of the force of that argument is removed by the recent disclosure of the General Practitioner records. In any event, however, I have to base my judgment on the evidence I have, rather than to speculate. Professor Eastman's second point in answer carried much more weight, in my view. This was that given the clear evidence of a personality disorder before and after the 17 year gap, and given that personality disorders are persistent in nature, it is legitimate to infer that there was a personality disorder which continued during the 17 year period. I agree.
182. Next, Dr Chesterman relied on the lack of any evidence of a conduct disorder prior to the age of 15 as establishing that Mr Eaton did not suffer from APD. He stressed that the history provided by Mr Eaton's parents when Mr Eaton was admitted to Sutton Hospital in 1982 did not suggest any relevant conduct disorder.
183. I heard a lot of evidence on this subject. In fact, it seems to me that there is some evidence of conduct disorder prior to the age of 15. The General Practitioner's reference in 1970 to "acute behaviour" though not further explained, points in that direction. Moreover, when Mr Eaton was first admitted to Sutton Hospital in 1982 his parents reported that he had truanted latterly at school; and Mr Eaton himself told the psychotherapist Adam Jukes in September, 2000 that his teachers were concerned about him from the age of 7, and telling him he had to learn to control himself. All that said, I accept Dr Chesterman's evidence that we do not have here clear evidence of conduct disorder before 15 of the nature and extent contemplated by DSM4.

184. This brings into play the role of the DSM4 criteria in the diagnosis of personality disorders. The publication itself states, and both expert witnesses accepted, that it is not to be used as a “cook book”, in the sense that it requires rigid adherence to its diagnostic rules. Instead, the governing principle is that the diagnostic criteria are meant to serve as guidelines to be informed by clinical judgment. The publication goes on to give the following example: that the exercise of clinical judgment may justify a certain diagnosis even though the clinical presentation falls just short of meeting the full criteria for the diagnosis, as long as the symptoms are persistent and severe.
185. Dr Chesterman, accepting that DSM4 was no cook book, argued that the absence of any of the specified features of conduct disorder before 15 cannot be seen as falling “just short of meeting the full criteria for the diagnosis” of APD. Whilst admiring the spirited manner in which Dr Chesterman presented his argument, I regret that I cannot accept it. To begin with, as I have said, there is some evidence, albeit limited, of a conduct disorder before the age of 15 in Mr Eaton’s case. More importantly, the passage of DSM4 in which the reference to falling just short of the full diagnostic criteria appears, gives an example of the operation of the general principle, rather than stating the general principle itself. The general principle is that diagnostic criteria are guidelines to be informed by clinical judgment. To adopt an expression popular in legal circles, they are guidelines and not tram lines. In those circumstances, I accept Professor Eastman’s evidence that where one has a repeated history of behaviours and diagnoses, albeit in adulthood, all pointing to the existence of a personality disorder, the DSM4 criteria do not require one to ignore the reality of the situation because of a paucity of evidence in relation to conduct disorder before the age of 15.
186. Dr Chesterman also argued that since personality disorders, in particular APD, may become less evident or remit with age, and since Mr Eaton was 49, when Dr. Chesterman gave evidence, it could not be said with confidence that any previous personality disorder there may have been still had any significant impact on his mental functioning. I accept without hesitation Dr Chesterman’s evidence that personality disorders may wane or remit with age, but I can find no evidence that this has happened in Mr Eaton’s case. There was a formal diagnosis of personality disorder as recently as 2005. I have heard evidence of his repeated truculent, irresponsible and mendacious behaviour during the course of his de-briefing interviews and more recently while serving the prison sentence imposed by His Honour Judge Gordon. I have referred to some of the relevant incidents in the general chronology earlier in this judgment, but not all of them. By way of example, Mr Eaton persistently flouted instructions not to contact the officer in charge of the case. On one occasion he appeared to be about to attack the officers de-briefing him. He told a police officer who had nothing to do with this case that he was a protected witness. Remarkably, and for no apparent reason, he told his de-briefers that his father was dead. He told various medical practitioners that his mother was dead as well. He has committed disciplinary offences during his most recent prison sentence, including for abusive and irate behaviour directed towards prison staff. If anything, these behaviours point towards a continuing personality disorder in my view. They certainly do not point away from it.

187. Another argument presented by Dr Chesterman was that Mr Eaton's previous expressions of remorse for being violent to his partner, and his pleas of guilty pursuant to his SOCPA agreement to offences which would probably not otherwise have been traced to him, are counter-indicative of a personality disorder. As to that, it is true that Mr Eaton has on previous occasions expressed remorse for being violent to his partner. At other times, however, he has flatly denied being violent at all. Moreover, there is evidence that he has physically abused one if not two partners repeatedly over a substantial period of time. The fact that he kept on doing it seems to me to make any expressions of remorse shallow indeed. So far as the SOCPA offences are concerned, Mr Eaton could expect to receive and did receive a very substantial discount in sentence. He thereby avoided the future risk, however remote, of serving a very long total sentence for the offences concerned, should they or any of them be brought to his door at some future time. There was a very strong element of self-interest in Mr Eaton's decision to participate in the SOCPA scheme. In the circumstances, I do not regard the supposed remorse for violently abusing his partner or his pleas of guilty to the SOCPA offences as pointing away from his having a personality disorder.
188. In the end, therefore, Dr Chesterman's evidence did not displace the favourable preliminary impression which I had formed of Professor Eastman's evidence.
189. Accordingly I conclude that Mr Eaton suffers from a personality disorder, and has done throughout his adult life. Encompassed within his disorder is APD, though he also exhibits features indicative of a BPD and possibly other identifiable disorders, and indeed of a disorder not otherwise specified. From time to time, in my judgment, his condition has deteriorated into frank mental illness in the form of depression.
190. These findings raise two particular questions. The first is whether the fact that Mr Eaton suffers from one or more personality disorders of a kind which render him particularly prone to be untruthful, coupled with the fact that he has been a demonstrable liar in the past, should be taken into account when considering whether his evidence should be excluded under s.78 of the 1984 Act. I will return to this matter in the 'Conclusion' section which, as might be expected, is at the end of this judgment. The second is whether an appropriate adult should have been present when Mr Eaton was de-briefed; and if so, whether the absence of such a person should have been taken into account when considering whether his evidence should be excluded 1984.
191. The second question will take longer to answer. I will begin by referring to the relevant provisions of Code of Practice C made pursuant to s.66 of the 1984 Act. The version that applied at the relevant time can be found at paras A-39 et seq. in the third supplement to Archbold (2007). This governed "...the Detention, Treatment and Questioning of Persons by Police Officers". The introductory section, "Commencement-Transitional Arrangements", stated that the Code applied "...to people in police detention after midnight on 24 July, 2006..." (by remarkable coincidence the very day on which Eaton first made contact with police officers investigating Daniel Morgan's murder).
192. Para C:11.15 of the Code provided that "A...person who is mentally disordered or otherwise mentally vulnerable must not be interviewed regarding their involvement or

suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of interview, in the absence of an appropriate adult...". The paragraph went on to refer to exceptions, none of which apply in this case.

193. Para C:1.4 provided: "If an officer has any suspicion, or is told in good faith, that a person...may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of this Code. See note 1G."
194. Guidance note C: 1G provided: "'Mentally vulnerable' applies to any detainee who, because of their mental state or capacity, may not understand the significance of what is said, of questions or of their replies. 'Mental disorder' is defined in the Mental Health Act 1983, section 1(2) as 'mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind'. When the custody officer has any doubt about the mental state or capacity of a detainee, that detainee should be treated as mentally vulnerable and an appropriate adult called."
195. "Appropriate adult" was defined in para C: 1.7. In relation to a person who is mentally disordered or mentally vulnerable, "appropriate adult" meant:
 "...(iv) a relative, guardian or other person responsible for their care or custody;
 (v) someone experienced in dealing with mentally disordered or mentally vulnerable people...;
 (vi) failing these, some other responsible adult aged 18 or over...".
196. Guidance note C: 1D provided: "In the case of people who are mentally disordered or otherwise mentally vulnerable, it may be more satisfactory if the appropriate adult is someone experienced or trained in their care than a relative lacking such qualifications. But if the detainee prefers a relative to a better qualified stranger or objects to a particular person their wishes should, if practicable, be respected."
197. Para C: 11.17 provided: "If an appropriate adult is present at an interview, they shall be informed:
- they are not expected to act simply as an observer; and
 - the purpose of their presence is to:
 - advise the person being interviewed;
 - observe whether the interview is being conducted properly and fairly;
 - facilitate communication with the person being interviewed."
199. Guidance note C: 11C provided that "...people who are mentally disordered or # otherwise mentally vulnerable ...may...be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's...mental state...".
200. Professor Eastman was clearly of the view that Mr Eaton should have been

accompanied by an appropriate adult when being de-briefed, having regard to what is known about his personality disorder. The Professor also drew attention to the events of 5/9/06, to which I have referred, and to the possibility that the stress of the de-briefing process may have led to deterioration in Mr Eaton's condition. This is a matter to which I will have to return later. The appropriate adult, said the Professor, should have been someone, such as a social worker, with some mental health experience. Such an appropriate adult would have been able to see that no miscommunication or misunderstanding occurred during the de-briefing interviews due to Mr Eaton's disorder. The appropriate adult would also have been able to detect Mr Eaton's general condition, for example a deterioration in mood, increased depression or anxiety or the onset of symptoms of paranoia. An appropriate adult without mental health experience could have been of some assistance, but to a lesser degree.

201. Professor Eastman had not seen the transcripts or listened to the recordings of Mr Eaton's de-briefing interviews. This is not intended as a criticism of him. He was instructed late in the day and simply would not have had time to do so. As a result, he was not able to point to any particular examples of misunderstanding or miscommunication. He said, however, that even a reading of all the transcripts and/or listening to all of the tapes would not have provided a full answer. An appropriate adult at the de-briefing interviews could have detected significant physical reactions and facial expressions, and could have gauged Mr Eaton's demeanour in a way that could never emerge from tapes and transcripts.
202. Professor Eastman was asked to comment on the situation which was known to have arisen, namely that when the police raised with Mr Eaton the question of an appropriate adult, he said that he did not want or see the need for one (an approach endorsed by his solicitor). Professor Eastman said, rightly, that this was really a legal matter. He accepted that the presence of an unwelcome appropriate adult could make the interviewee uncomfortable or distracted, and hinder rather than help the communication process. He inclined to the view, however, that unless and until Mr Eaton agreed to the presence of an appropriate adult, the de-briefing procedure should have been stopped. Mr Eaton's mental condition and his Solicitor's presumed inexperience in mental health matters meant that neither was in a position to express a worthwhile opinion on the matter.
203. Dr Chesterman argued to the contrary. First, he doubted whether a person with a personality disorder was "mentally disordered or otherwise mentally vulnerable" and thus whether paragraph 11.15 of Code C (to which I will return) required the presence of an appropriate adult at all. He observed that if para 11.15 did apply to such a person, then the majority of people arrested by the police would have to be interviewed in the presence of an appropriate adult. He then observed that Mr Eaton was not under arrest when being de-briefed. On the contrary, he had approached the police with an offer to provide information. Moreover, an independent person was present throughout all of Mr Eaton's interviews in the form of Keima Payton, a Solicitor who knew Mr Eaton well and was well placed to perform a similar if not identical role to that of an appropriate adult. In addition, Dr Chesterman said that he was not aware of any evidence of misunderstanding or of any lack of communication during Mr Eaton's de-briefing interviews, and he had not detected any such during the two hours or so of interview tapes that he personally had listened to.

204. Dr Chesterman accepted that had Mr Eaton, during his interviews, developed a mental illness such as depression which had the effect of interfering with understanding or communication, the presence of an appropriate adult would have been appropriate. However, he said, there was no evidence that Mr Eaton developed any form of mental illness at all when being de-briefed. He did not accept that Mr Eaton's presentation on 5 and 6/9/06 (to which I referred earlier) indicated a depressive illness. Asked about the Beck's Depression Inventory administered by Dr Oscar on 6/9/06 he said that people tended to over-react to this procedure, the results of which by themselves would be insufficient for a diagnosis of significant depression. On the same subject, Dr Chesterman said that during the two hours of tape-recorded interviews that he had listened to (the interviews concerned having taken place early in 2007) he had heard Mr Eaton become distressed and tearful when describing Morgan's dead body, but this too did not suggest a depressive illness. Anyone might react similarly when describing such a scene. Moreover, Mr Eaton had been speaking normally and asking questions appropriately earlier during the interviews concerned.
205. In my judgment, on a strict and literal interpretation, Code C did not apply to the information about Daniel Morgan's murder which Mr Eaton provided during his de-briefing interviews. This is so for two reasons. The first is that Mr Eaton was not in custody or detention. The second is that during those parts of his interviews when he was providing information about Mr Morgan's murder, and then signing witness statements which summarised that information, he was not being interviewed regarding his involvement or suspected involvement in a criminal offence (he never having been suspected of complicity in the murder) and was not signing a written statement under caution or a record of interview. Thus para C: 11.15 did not apply.
206. However, in my view, a strict and literal interpretation of Code C would not meet the justice of this exceptional case. This is so for two reasons. The first is that the overall subject-matter of Mr Eaton's de-briefing interviews involved both his providing information about the Mr Morgan's murder for which he was not a suspect, and his confessing his own crimes, which were many and serious. The second reason is that, at least on and after 12/9/06, the de-briefing officers themselves without fail offered Mr Eaton an appropriate adult before each interview began. In the circumstances, it would be unrealistic to approach this case on the basis that the need for an appropriate adult never arose.
207. That being so, it seems to me that the following questions arise:
- (1) Should Mr Eaton have been offered an appropriate adult from the beginning of his de-briefing process?
 - (2) When Mr Eaton was eventually offered an appropriate adult and declined, should the de-briefing process have ended, at least until he agreed to the presence of an appropriate adult?
 - (3) To what extent do any failings in this regard on the part of the police bear on the decision whether to exclude Mr Eaton's evidence pursuant to s.78 of the 1984 Act.
208. In my view, the answer to the first of these questions is "yes". To begin with, I see no reason why a person with a personality disorder such as APD or BPD should be excluded from the category of persons who are "mentally disordered or otherwise

mentally vulnerable” within para C: 11.15, taking into account the provisions of guidance notes C: 1G and C: 11C. This is not to say that the police are obliged to assess and/or check the psychiatric history and/or arrange for the examination of everyone who comes into their custody. There would have to be something to point to the possibility that a detainee might be mentally disordered or vulnerable, and thus to trigger para C: 1.4. As is said in Archbold (2010) para 15-490, “...the approach of Code C is not to require police officers to make judgments about whether or not the suspect is mentally disordered or vulnerable, but to require them to err on the side of caution.”

209. In the present case, however, it should have been obvious from what Mr Eaton told DCS Cook and DS Dalby at his very first meeting with them on 26/7/06 that there were potential mental problems. I appreciate that DS Dalby said that such potential problems did not “jump out at me”, and I also appreciate that I have the benefit of hindsight. The fact remains, however, that Mr Eaton said that he had been sleeping for only two hours a night, had recently lost a huge amount of weight, had been in a psychiatric unit in the past, his health was suffering and “they want me to go back in again”. Having regard to paras C: 1.4 and C: 11.15 of Code C read together, the need then arose forthwith in my view for an appropriate adult to be present at Mr Eaton’s de-briefing interviews. DCS Cook and/or DS Dalby should therefore have passed on to the de-briefing team what Mr Eaton had said to them in this regard. In the event, the de-briefing team began their interviews with Mr Eaton in ignorance of any psychiatric history or possible mental disorder or vulnerability. It may well be that Mr Eaton’s presentation did not at first put them on guard. It certainly did so, however, when he broke down on 5/9/06 at which stage there is clear evidence in my view that his condition had deteriorated into one of depression or at the very least of mental vulnerability. The de-briefing team then properly had Mr Eaton medically examined, and the need for an appropriate adult that had already arisen by virtue of paras C: 1.4 and C: 11.15 was confirmed.

210. It will be apparent, therefore, that as to whether the need for an appropriate adult arose, I again agree with Professor Eastman rather than with Dr Chesterman, though as much for legal as for medical reasons.

211. I now consider whether the de-briefing interviews should have ceased when Mr Eaton, having been offered an appropriate adult, refused to have one present. My interpretation of Code C is that they should have ceased. Para C: 11.15 is expressed in mandatory terms: “...must not be interviewed...in the absence of the appropriate adult...”. No exception is provided to cover the situation in which the person being interviewed refuses to have an appropriate adult. Indeed, I can find no reference to such a situation anywhere in Code C.

RETURN TO THE CHRONOLOGY

212. On 29/1/08 Mr Eaton sent DCS Cook a text about a Court appearance which he had made the previous day. This message was retained on DCS Cook’s mobile phone and was later entered in the Record of Contact Log.

213. On 30/1/08 Mr Eaton sent a text to DCS Cook in the following terms:

“Dave can you call me make it a welfare call or whatever Gary.”

DCS Cook retained this message on his mobile phone, called Eaton back and

later sent an e-mail to DCI Beswick describing his conversation with Mr Eaton as follows:

"I spoke to [Mr Eaton] in response to a text regarding a welfare chat. He was apologetic about Monday blaming his legal team for the delay but I refused to enter into discussion about that or apportion blame...He re-affirmed his commitment to the ongoing investigation but again I refused to be drawn into discussion... No useful information obtained other than his welfare chat."

This e-mail was later copied into the Record of Contact Log opened on 19/10/07. Asked about the matters referred to in this paragraph by Mr Whitehouse Q.C., DCS Cook denied that Mr Eaton's saying "make it a welfare call or whatever" betrayed an understanding on Mr Eaton's part that DCS Cook would be willing to use a supposed welfare call as a pretext to discuss Mr Eaton's evidence; and denied that his own expression "No useful information obtained other than his welfare chat" amounted to recognition that he had discussed the case with Eaton in the past. DCS Cook told Mr Christie Q.C., that his call to Mr Eaton had indeed been a welfare call. DCI Beswick was also asked about this e-mail, and said that he was not aware that Mr Eaton had been providing any information to DCS Cook.

214. I move on to 8/2/08. On that day, Mr Eaton attended the Central Criminal Court in relation to his own case. The case was adjourned until 20/2/08, when it was expected that he would be arraigned, (though in the event he was not arraigned until April). In the DPSWPU weekly log covering 8/2/08 Nick recorded that DCS Cook would be completing a risk assessment on Mr Eaton, Anne O'Connell and their families in time for the adjourned Court hearing on 20/2/08. To assist in this process, the DPSWPU would meet Mr Eaton and Anne O'Connell on 14/2/08 to discuss the risk to their families.
215. On 11/2/08 DCI Beswick completed a "Risk Assessment and Risk Management Form" relating to Mr Eaton's next Court appearance on 20/2/08. He sent a copy of the Form to DS John of the DPSWPU in time for that Unit's meeting with Mr Eaton and Anne O'Connell which, it seems, DCI Beswick mistakenly thought was due to take place on 18/2/08 rather than 14/2/08. The Form stated amongst other things that the completion of the criminal proceedings against Mr Eaton would potentially heighten the risk to his family and associates. In this regard, Mr Eaton's son, daughter, mother, sister, partner and his partner's son and daughter were identified, but his father was not. The Form stated that the investigation team intended to visit each of the people thus identified, assess their individual risks, and take appropriate measures. Thus their whereabouts must have been known. Later in the Form it was said that "If physical harm occurs to [Mr Eaton] or his associates his willingness to be a witness will be affected. His evidence forms a key part of the prosecution case and his absence would be critical."
216. Thus the areas of responsibility were clearly defined. The investigation team would deal with the relatives and associates of Mr Eaton who were seen as being at possible risk, and the DPSWPU would communicate with Mr Eaton and Anne O'Connell about the matter.
217. Accordingly, on 14/2/08 Nick and John of the DPSWPU met Mr Eaton to

discuss the risk to his family. Of his father, Mr Eaton said "...no contact 8 years – no idea where he is." Later, Nick wrote a report about this meeting. In it he listed the members of Mr Eaton's family who might be at risk. Under the heading "Father of [Mr Eaton]" he recorded simply: "No contact for many years. No details known." Nick added when giving evidence that Mr Eaton never suggested to Nick that Mr Eaton's father was not alive; however, Mr Eaton was not able to tell Nick where his father was with a view to the DPSWPU's protecting his father.

218. On 21/2/08 and 20/3/08 Mr Eaton had his penultimate and final sessions with Dr Oscar. It was anticipated that Mr Eaton would go into custody on 4/4/08 (which was now the expected date of his arraignment) and Dr Oscar said that he would be fit to do so.
219. On 22/3/08 Mr Eaton sent DCS Cook a text which stated: "wishing you and family a happy easter best wishes gary and anne." DCS Cook retained this message on his mobile phone, and the text was recorded in the Record of Contact Log opened on 19/10/07.
220. On 2/4/08 Mr Eaton sent a text to DCS Cook. DCS Cook did not reply, but informed DCI Beswick of the text by e-mail on the following day. The sending of the text was later entered on the Record of Contact Log to which I have referred. The DPSWPU learned of this text, and Nick called Mr Eaton, advising him not to try to make contact with DCI Cook.
221. Nick's Briefing Note records that a family risk assessment meeting was held on 3/4/08 involving DCI Beswick, DI Simon, DS John, Nick and Anita. At this stage, it was expected that Mr Eaton would be arraigned and that the defendants in the present case would be arrested imminently. In evidence Nick said that DCI Beswick would have been informed at this meeting of what Mr Eaton had said about his father on 14/2/08 (i.e. that he had no idea where his father was). However, in re-examination Nick said that he was unable to say if there had in fact been any reference back to the meeting of 14/2/08. For his part, DCI Beswick said that he and DS John were the principal contributors to the meeting. In advance of the meeting DCI Beswick had prepared a schedule of 25 prosecution witnesses or family or friends of Mr Eaton who would have "potential safety issues" when the suspects were arrested. The list did not include Mr Eaton's father. DCI Beswick said in evidence and I accept, that this was because he believed that Mr Eaton's father was dead. He added that noone told him on 3/4/08 that Mr Eaton's father was or may be alive. Indeed, to the best of his recollection, Mr Eaton's father was not mentioned at all. Certainly, there is no indication that Mr Eaton's father was added to the list. In my view, there is no evidence to warrant a finding that DCI Beswick was in fact informed at the meeting of 3/4/08 of what Mr Eaton had said about his father on 14/2/08. I accept DCI Beswick's evidence that he believed Mr Eaton's father to be dead.
222. On 4/4/08 Mr Eaton appeared before His Honour Judge Gordon at the Central Criminal Court. He pleaded guilty to 20 serious offences, and asked for 31 others to be taken into consideration. The offences to which he pleaded guilty included conspiracy to murder, bribing police officers, blackmail, possessing firearms, robberies, burglaries and conspiracies to supply cocaine and cannabis resin. Sentence

was adjourned and he was remanded in custody. Later, on 18/10/08, he received a total sentence of 3 years' imprisonment, the sentencing Judge indicating in normal circumstances he might have expected a sentence of 28 years.

223. Also on 4/4/08, Mr Eaton sent a text to DCS Cook to which DCS Cook did not reply. The text was recorded on the Record of Contact Log,

224 A police incident message from DCI Beswick dated 15/4/08 records:

"There is no current intelligence to suggest an actual threat to the persons outside the witness protection scheme but it is entirely appropriate to inform them that the five suspects are in custody (by name) and their relative has provided evidence. A risk assessment will need to be completed for each... The DPSWPU are aware of all these persons..."

This was clearly written in anticipation of the present defendants being arrested. It is accepted that the "persons outside the witness protection scheme" were Mr Eaton's relatives and associates, and that "their relative" was Mr Eaton himself.

225. On 21/4/08 Jonathan Rees, Glenn and Garry Vian, James Cook and Sidney Fillery were arrested for the murder of Mr Morgan.

226. Also on 21/4/08 DC Groombridge and DS Barnes visited Christine Kirkby. This was pursuant to a police action record print which stated "...*Christine Kirkby will be visited initially by Abelard 2 Officers to conduct needs assessment... She is the ex-wife of Gary Eaton...she is known to [James] Cook and his relatives, she would be a potential conduit for Cook/his agents to find his son and daughter.*" I assume from this that DCS Groombridge and DS Barnes were officers of the investigation squad. Their ensuing report recorded that Christine Kirkby, on being seen, thought it very unlikely that she herself would be approached in any way. She was, however, more concerned about her son and daughter. She thought they may be more susceptible to an approach, and therefore helped in arranging meetings with her children, following which their risk assessments would be updated.

227. On 22/4/08 DC Groombridge and DS Barnes visited Rita Howe, Mr Eaton's mother and then his sister Deborah Johnson, the latter at her home address. A full risk assessment was completed in relation to Deborah Johnson, who was given contact numbers in case of any concerns.

228. On 23/4/08 Jonathan Rees, Glenn and Gary Vian and James Cook were charged with Mr Morgan's murder. Sidney Fillery was charged with perverting the course of justice.

229. On 25/4/08 DI Clarke visited Gary Johnson, Deborah Johnson's husband, and he offered his services as a single point of contact with the family.

230. On 27 May, 2008 DCI Beswick became absent from work, whereupon DI Clarke became the deputy SIO to DCS Cook. DCI Beswick gave evidence that at this time he definitely thought that Mr Eaton's father was dead.

231. On 17/6/08 James Cook, now remanded in custody for Mr Morgan's murder, was interviewed by DCs Groombridge and Winks. During the interview, he said that Mr Eaton's father was not dead, contrary to what Mr Eaton has said. Asked about this, DI Clarke said that neither DC Groombridge nor DC Winks had communicated what James Cook had said either to him (DI Clarke) or to DCS Cook; and that no entry was put on the HOLMES computer system at that time to the effect that James Cook had said that Mr Eaton's father was still alive. DI Clarke explained that he and DCS Cook would have access to the transcripts of such interviews, but these took time to be prepared. Indeed, in re-examination DI Clarke said that he still did not know of what James Cook had said in this interview when he learned, early in July 2008 and from a different source, that Mr Eaton's father was still alive. DI Clarke's evidence in this regard later received support when DS Dalby gave evidence that the transcript of James Cook's interview did not go onto the HOLMES computer until 29/7/08.

232. On 19/6/08 DC Caroline Linfoot and DS Jo Brunt saw a lady called Mel Raven known as "Big Mel". Both officers gave evidence. They were asked about the purpose of their visit. DC Linfoot said that she knew that Mel was a friend of James Cook and went to see if she could help the enquiry. DC Linfoot's attention was drawn in cross-examination to a police incident message relating to this visit in which it was recorded that "...we were there to investigate what had been said about the allegations made by Gary Eaton and also what Jimmy Cook had said about the allegations made by Gary." DC Linfoot agreed with that account. On the same subject, DS Brunt said that they went to see Mel because DS Brunt had received information from a sensitive intelligence source that Mel was helping James Cook; and because the officers were aware that when interviewed following his arrest James Cook had challenged some of the assertions that had been made by Mr Eaton. The officers were not, however, aware at that stage that on 17/6/08 James Cook had challenged Mr Eaton's assertion that his father was dead. The nature and source of the sensitive intelligence referred to by DS Brunt were explored in depth, but in the end there was nothing in my view to suggest that at the time of this visit on 19/6/08 DS Brunt did know that two days earlier James Cook had challenged what Mr Eaton had said about his father. As will appear, DS Brunt first became aware that there was controversy over whether Mr Eaton's father was dead or alive early in July 2008.

233. As to the meeting with Big Mel itself, DC Linfoot recorded in an incident message that Mel told the officers that she had indeed seen various people on behalf of Jimmy Cook, and provided them with written statements made by three such people. The people Mel had seen included the following:

1. A man called Steve Allum who would say that he had not been assaulted by Mr Eaton, contrary to what Mr Eaton himself had said.
- 2&3. Clare and Mark Howe who had taken Mr Eaton in, six to nine months after his discharge from the Chiltern Unit, Sutton Hospital. (It is not clear which discharge is being referred to, but nothing turns on this.)
4. Theresa, a blind lady with two blind children, who would say that Mr Eaton had befriended her in the Chiltern Unit, following which she put him up for a time. However, he then gained access to her credit card and current account and stole from her. There was a suggestion that Mr Eaton had also assaulted her.

The testimony that it was anticipated that these and other potential witnesses approached by Mel would give, would be intended to discredit certain features of Mr

Eaton's anticipated evidence and damage his credibility. For good measure, Mel also told the officers that Mr Eaton had apparently told people that years ago he had pushed someone into Camden Lock who then drowned.

234. Cross-examined by Mr Whitehouse Q.C., DC Linfoot said that she did nothing to discourage any of the people referred to by Mel, or indeed by anyone at all, from assisting Jimmy Cook's team. "*You're not meant to*", she said. "*You're not allowed to.*" DS Brunt later gave evidence to similar effect. Cross-examined by Mr Christie Q.C., DC Linfoot denied a suggestion that she had told Mel in front of her husband that she believed that Mel had had an affair with Jimmy Cook, and there is no evidence that DC Linfoot did say such a thing. DI Clarke told Mr Christie that he knew nothing about this visit to Big Mel.
235. On 2 or 3/7/08 DS Brunt received information from a sensitive intelligence source that Jacky Cook (James Cook's wife) was in possession of a statement from Mr Eaton's father who, if the information was correct, was obviously therefore alive and not dead as Mr Eaton had previously told the de-briefing team.
236. DI Clarke and DCS Cook both said that they got to learn of this intelligence, but they gave different accounts as to the time at which and the circumstances in which they did so. DI Clarke said that within 24 hours of DS Brunt placing the intelligence on the HOLMES computer, he learned of it and notified DCS Cook. He recalled speaking to DCS Cook about it in room 205 of Tintagel House. He told Miss Humphreys Q.C. that he thought that this had happened around 3/7/08. DCS Cook, however, said that he heard the news on 6 or 7/7/08 "or something like that". He could not recall who had told him. It was brought to his attention when he heard a discussion about the matter in the incident room. Neither DI Clarke nor DCS Cook made any notes at all about these matters, neither did they place any entries on the HOLMES computer. I have no reason to doubt that at some stage between 3 and 7/7/08 DCS Cook learned of the intelligence suggesting that Mr Eaton's father was alive, but I am unable to gain from his evidence or that of DI Clarke a clear impression of exactly when or how DCS Cook did so.
237. At least DI Clarke and DCS Cook agreed that once the latter had learned of the intelligence, he instructed the former to make enquiries of Mr Eaton, through the DPSWPU, as to whether his father was dead or alive. DCS Cook said that he did not give DI Clarke any instruction about the precise form of the question to be asked of Mr Eaton. He made no note of the instruction that he did give, expecting DI Clarke to make notes of what he had been told to do. He could not now recall exactly what the terms of his instruction to DI Clarke were. However, he would not have told DI Clarke to ask the DPSWPU to tell Mr Eaton that James Cook's defence team were out to rubbish him. DI Clarke said that DCS Cook instructed him that Mr Eaton should be asked only if his father was dead or alive. Later, however, when cross-examined by Miss Humphreys Q.C. he said that he could not recall exactly what instructions he was given. He too made no notes about the matter.
238. DI Clarke and DCS Cook agreed to some extent about the reasons why they needed to find out if Mr Eaton's father was dead or alive. Both said that if it transpired that the father was alive, consideration would have to be given to the father's welfare and protection; and both officers recognised that Mr Eaton's credibility as a witness would

have to be re-assessed. However, DI Clarke said that he attached more importance to the first reason, and DCS Cook said he attached more importance to the second. If Mr Eaton had been lying to the police about his father it would, said DCS Cook, be a massive area of concern, a big issue, something that would have to be reported to the CPS.

239. As to how the approach should be made to Mr Eaton, both DCS Cook and DI Clarke pointed out that Mr Eaton's de-briefing was over, and that the only way to approach him was now through the DPSWPU. DCS Cook said that he did consider the possibility of arranging a further de-briefing interview with Mr Eaton, but concluded that it would take too long to do this, and that clarification was needed as soon as possible. DI Clarke said that the possibility of organising a further de-briefing interview was not considered.
240. DI Clarke was asked why it was necessary to contact Mr Eaton at all. Why didn't the officers ask Christine Kirkby, or Mr Eaton's sister, mother or step-father or his sister's husband if they wished to ascertain whether Mr Eaton's father was alive, before approaching Mr Eaton himself? DI Clarke was unable to recall why no such steps had been taken, but did point out that he carried out a Google search on Mr Eaton's father, whose name was John Eaton, but with no result. Similar questions were asked of DCS Cook, who accepted that others could have been approached first. However, he said that faced with what to him was a novel situation, he took the view at the time that going straight to Mr Eaton was the obvious and the correct course to adopt, taking into account that if it transpired that Mr Eaton had told a serious lie the CPS would have to be informed. He vehemently denied that he had decided to go straight to Mr Eaton to tip him off that he had been caught out lying by the defence to keep Mr Eaton 'on board' and/or to give him time to think of an explanation for having lied about his father. DCS Cook said that he was curious about why the course he had taken was now thought to be irregular.
241. I will summarise the evidence of what happened next as clearly as I can, but it will soon become clear that there were many significant inconsistencies between the accounts of different witnesses.
242. DI Clarke said that following the instruction he had received from DCS Cook, he spoke to Nick on Nick's mobile phone on either 7 or 8/7/08. He denied suggestions made to him in cross-examination that he had actually contacted Nick at some time earlier in July, and had had an unrecorded conversation with him; alternatively, that the investigation team had somehow informed Mr Eaton that he had been caught out lying about his father from as early as 17/6/08 (the date of James Cook's interview referred to above). DI Clarke said that he asked Nick to contact Mr Eaton to find out if his father was dead or alive. He would also have told Nick that if Mr Eaton said that his father was alive, Nick should ask where his father was. He would probably have briefed Nick as to why this enquiry was to be made of Mr Eaton. He was asked if he had said that he wanted Mr Eaton to know that James Cook was out to rubbish him (Mr Eaton). He began by denying it. Then he said that he would have used the word "undermine". Later he accepted that he may have used the word "rubbish". This, however, would only have been during his briefing of Nick, and not with a view to it being passed on to Mr Eaton. It was not his intention to let Mr Eaton know that he had been caught out lying, or to communicate to him anything about which he

would be giving evidence. When cross-examined by Miss Humphryes Q.C. he said that had the main concern been the integrity of Mr Eaton's evidence it would have been quite wrong to use a handler to tip him off in this way. Moreover, said DI Clarke, the police had not suggested to Mr Eaton the explanation that he should give were it raised with him in future that he had lied about his father. DI Clarke said that he did not think he was doing anything wrong. He did not make notes himself, but never asked the DPSWPU not to do so. Neither did he tell the DPSWPU to tell Mr Eaton to keep quiet about the approach now being made to him.

243. Nick's evidence was completely at variance with that of DI Clarke. Nick said that he was on holiday from 6 to 21/7/08. His mobile phone would have been switched off, if he had it with him at all. He did not recall any request from DI Clarke to him to speak to Mr Eaton about whether or not his father was alive. Had he received such a request, he would have made a note of it, and there was no such note. The telephone conversation which DI Clarke said had taken place between himself and Nick had simply never happened. It is worth noting that records relating to Nick's telephone show no contact with DI Clarke or with the prison where Mr Eaton was lodged between 4/7/08 and 23/7/08.

244. Nick was referred to the entry for 8/7/08 that he later made in the Briefing Note.

This read:

"Contact from DI Clarke requesting WPU contact [Mr Eaton] and [Mr Eaton's] mother to clarify where [Mr Eaton's] father is and to arrange for [investigation squad] officers to interview the mother. Anita made contact, the mother had not seen [Mr Eaton's] father for about 15 years and did not know his whereabouts. On speaking to [Mr Eaton] he stated his father as far as he knew was still alive, but was dead as far as he was concerned because of the treatment of his mother etc. He advised contact with sister for last known address of father and he did not express any concerns with his father being contacted by police. At the request of...DI Clarke the WPU made contact with [Mr Eaton's] sister and obtained an old address for the father."

Nick said that he had taken this from the relevant DPSWPU weekly report, which had been compiled not by him but by Anita. Although he had not been asked by DI Clarke to ask Mr Eaton whether his father was dead or alive, he had had contact with DI Clarke on many occasions about witness protection issues relating to Mr Eaton's father and other family members.

245. He was also asked about certain passages from the Moore report (see para 16 above).

The passages appear in paragraphs 12 and 20 of that report. They read as follows:

"[On 29/9/09] Nick told me that he had been asked to speak to [Mr Eaton] about his father by DI Clarke, but this was because there were concerns over his safety. I did not challenge Nick directly over what was said, but I did explain to him that this should never happen. He accepted my view but stated the request came from DI Clarke and he complied with it...Also on 30/9/09 I spoke with Nick...I mentioned to him that [Mr Eaton] had spoken about the conversations regarding his father. He informed me that he had spoken briefly to DI Clarke on the matter, but he was merely acting on instructions. DI Clarke had offered him an apology."

Nick took issue with parts of this report. He did not agree with the sentence: "he accepted my view but stated the request came from DI Clarke and he complied with

it." Neither had he any recollection of being offered any apology by DI Clarke. Otherwise, he said that the report by DI Moore was broadly correct. But the fact was that he had had numerous conversations with Mr Eaton about his father, and with both Mr Eaton and DI Clarke about family protection issues, which would be normal procedure.

246. I turn to the evidence of Anita. She gave evidence by reference to the note book that she compiled very shortly after each relevant communication, and to an entry she made in the relevant DPSWPU weekly record. She confirmed that Nick was away on holiday at the relevant time. Before he left, he had said nothing about having been asked to find out from Mr Eaton whether his father was dead or alive. It was to her, and not to Nick, that DI Clarke had made requests in relation to Mr Eaton's father.
247. Anita said that her first contacts with DI Clarke and Mr Eaton in relation to Mr Eaton's father took place on 8/7/08. Her first contact with Mr Eaton on that day concerned unrelated matters. Later, however, she received a call from DI Clarke. He was asking the DPSWPU to let Mr Eaton know that his mother and her partner would have to be spoken to, to ascertain if Mr Eaton's father was still alive and if so, where he was, even though Mr Eaton had said his father was dead. Anita said that she knew very little about Mr Eaton's father at this stage, but had always been under the impression that his father was alive. She had never previously had a discussion either with DI Clarke or with Nick concerning whether Mr Eaton's father was dead or alive. She said that DI Clarke also told her that there was information that Mr Eaton's father had given a statement to Jimmy Cook. DI Clarke wanted to know if either Mr Eaton's mother or step-father had also provided a statement to Jimmy Cook. DI Clarke also wanted Mr Eaton to know that Jimmy Cook was out to "rubbish" him, which is why they needed to follow up this information and ascertain the truth. DI Clarke did not ask her, however, to ask Mr Eaton what he meant by saying that his father was dead.
248. Anita said that she then spoke to her Detective Sergeant, John, about this request because she had only recently joined the WPU. Had Nick been there, she would have asked him instead. She said that she would have passed on to DS John everything that DI Clarke had said to her. DS John gave her the go-ahead.
249. She was questioned by Mr Whitehouse Q.C. and Miss Humphryes Q.C. about the propriety of what DI Clarke was asking her to do, and about the extent to which, if at all, it had witness protection implications. She said that she saw nothing improper about it at the time, because it did have witness protection implications, even though DI Clarke did not refer to witness protection issues specifically. In essence, Anita said that although she had always understood Mr Eaton's father to be alive, if there was doubt about it, it needed to be clarified, and if the father was alive and had been approached on behalf of Jimmy Cook, the father should be traced as he may be in need of protection. Moreover, consideration would need to be given to who else had been approached on Jimmy Cook's behalf. Anita accepted that informing Mr Eaton in effect that he had been caught out lying about his father and that James Cook was out to rubbish him would not in itself have any witness protection implications; but she did not think that she was doing any thing wrong in passing on to Mr Eaton every thing that DI Clarke had referred to, "rubbishing" and all. She pointed out that her Detective Sergeant had cleared the matter. She also pointed out in re-examination

that this had nothing to do with the substance of the evidence that Mr Eaton was to give at his trial.

250. Anita went on to say that before she had been able to speak to Mr Eaton, DI Clarke rang back and asked the DSPWPU approach Mr Eaton's mother and step-father in the first instance, before speaking to Mr Eaton himself. By reference to her hand-written notes Anita added that DI Clarke said on this occasion that Mr Eaton's having stated that his father was dead "*will not assist us*". I accept her evidence, and conclude that DI Clarke was well aware of the damaging effect which Mr Eaton's lie in this regard could have on his credibility as a witness.
251. Anita referred this second request to her Detective Sergeant, John, who told her to do as DI Clarke had asked but to notify Mr Eaton afterwards what she had done.
252. John also gave evidence about this day. His evidence was handicapped by the fact that he did not have any notes to which to refer. He said it was not his practice to make notes. He gave evidence that Anita told him that she had had a telephone conversation with DI Clarke in which he asked her to speak to Mr Eaton's mother and step-father to ascertain whether Mr Eaton's father was still alive. DI Clarke had first said to go through Mr Eaton himself, but had later changed this and said to go to the mother and step-father directly. Anita had not been sure whether she should do this, and was looking to John for guidance. John took the view that the approach suggested by DI Clarke would not be improper. His reasons for that conclusion were very similar to those expressed by Anita. John said that he believed the father to be alive, but if there was any doubt about it the doubt needed to be resolved, and if people were approaching Mr Eaton's father there was a potential risk. Thus witness protection issues did arise. Cross-examined by Miss Humphryes Q.C., he said that it just did not seem at the time that DI Clarke or the investigation team were trying to undermine Mr Eaton's evidence or pass messages to him, or indeed check whether he had lied or not. No alarm bells rang. He had no qualms about what Anita was going to do. Now, with the benefit of knowledge and hindsight, John could see how it looked. Cross-examined by Mr Christie Q.C., John agreed that there was in fact no need to tell Mr Eaton about the information that his father had given a statement to Jimmy Cook, or that Jimmy Cook was out to rubbish him. It could have been done differently. It was also suggested to John that there was no need to speak to Mr Eaton at all once his mother and step-father had been spoken to. With this, he disagreed. He said that if the DSPWPU had not told Mr Eaton that they had spoken to members of his family, it would undermine their relationship with him if he found out later. He accepted that the DSPWPU had had contact with members of Mr Eaton's family long before 8/7/08.
257. In re-examination, John said that the information they had had up until then was that Mr Eaton's father was alive but off the scene. Accordingly, no problems requiring witness protection were then anticipated. However, if it was true that the father had been traced and contacted on behalf of Jimmy Cook, it might be necessary to consider whether there was now any risk to him or to other family members, or indeed whether there was a risk through them to Mr Eaton himself. Similar considerations would arise if the mother and step-father had been approached on behalf of Jimmy Cook.

258. I return to the evidence of Anita. She said that having obtained the approval of her Detective Sergeant, she spoke to Mr Eaton's mother. She said that Mr Eaton's father was still alive as far as she knew, though she had not seen him for about 15 years. She would know how to find him, but was not prepared to give his address without speaking to Mr Eaton first. She did not know Jimmy Cook, though she had heard his name mentioned in conversation by Mr Eaton and his partner. Neither she nor her present husband had given Jimmy Cook a statement. She did not know anything about Mr Eaton's father making a statement to Jimmy Cook.
259. Anita said that she then rang DI Clarke and told him of her conversation with Mr Eaton's mother. DI Clarke agreed that Anita did so.
260. Anita said that she then rang Mr Eaton. She did so because her Detective Sergeant had instructed her to do so, and because Mr Eaton's mother, though saying that Mr Eaton's father was alive, had qualified that by saying "*as far she knew*". Thus the enquiry of Mr Eaton was still of value. She told him of the discussions that she had had with DI Clarke and his (Mr Eaton's) mother. He did not object to the investigation team's tracing and visiting his father, but thought that they had already done so. He did not think that any of his relatives would have made a statement to Jimmy Cook. He told Anita that he could not understand it, because his father was still alive as far as he knew, but dead to him because of how he had treated his mother, leaving her for another woman. Anita said in evidence that Mr Eaton just came out with this. He was quite passionate about it. He was not able to give his father's last known address over the phone, but said in effect that his sister would know the address. Anita's impression was that he did know his father's last known address, but was unwilling to state it over the phone for security reasons. In re-examination, Anita said that at no stage did Mr Eaton say that he had already discussed the same issues with Nick.
261. I turn now to Mr Eaton's account. He did not give evidence, but an account emerged at an interview he had with the police on 30/9/08, and to which I will return in more detail later. During this interview he was asked about his earlier statement that his father had died 14 months ago. He said that he had already spoken to his handler Nick about this. Nick had telephoned him about 3 months ago, apparently at the instigation of the investigation team. Nick was asked in evidence about Mr Eaton's account, and said that it was wrong. Had there been a conversation of the kind described by Mr Eaton, it would have been noted. There was no such note. Whenever Nick had spoken to Mr Eaton about his father, as he had done, it was on the basis that his father was alive.
262. I now return to Anita's evidence. She said that she reported back to DI Clarke what Mr Eaton had said to her. She said that DI Clarke told her that he would contact Mr Eaton's sister, and that he had no need to speak to Mr Eaton's mother or her partner at present.
263. However, giving evidence in chief DI Clarke said that it was Nick (and not Anita) who later informed him of Mr Eaton's reply to the question about his father – namely to the effect that his father was alive, but dead to him, there having been a family rift. That said, at one stage of his cross-examination by Mr Whitehouse Q.C., having been shown a passage from Anita's notebook, DI Clarke agreed that it was Anita and not

Nick who had told him of Mr Eaton's reply. He said that having learned of Mr Eaton's reply he was in touch with the DPSWPU to see if a risk assessment was needed for Mr Eaton's father, and later sent an investigation squad officer to see the father. (This referred to a visit to the father by DC Linfoot on 15/7/08 to which I will come in early course.) DI Clarke added that he passed on what he had learned to DCS Cook. DCS Cook agreed, but again no notes were taken.

264. I interpose to say that just as DI Clarke gave different accounts at different stages as to whether it was Nick or Anita who told him what Mr Eaton's reply had been, his evidence was similarly unsatisfactory as to how often he spoke to Nick about these matters. At different stages, DI Clarke said that he spoke to Nick once, twice, and several times. Nick denied ever having spoken to DI Clarke at the time now under consideration.
265. I return to Anita's evidence. She says that on the evening of 8/7/08 she was contacted by Mr Eaton's mother. She and her husband were concerned about a phone call that they had received, during which she had unguardedly given her address to an unknown male caller. (Later enquiries established that there was in fact no cause for alarm). Anita said that she then told DI Clarke of this conversation, and that DI Clarke replied that there was no intelligence relating to a possible approach to Mr Eaton's mother and step-father, though there was intelligence that Jimmy Cook's wife was trying to find Mr Eaton. DI Clarke added, however, that since Jimmy Cook had been refused bail due to previous witness intimidation, it would ruin his chances of ever getting bail if grounds arose for suspecting that he was now trying to interfere with the current witnesses. DI Clarke's evidence about this exchange was again unsatisfactory. Cross-examined by Mr Whitehouse Q.C., DI Clarke said that he probably did have this conversation with Anita. Confusingly, however, when cross-examined by Miss Humphryes Q.C., he said that he could not recall speaking to Anita at all, though he was not positively saying that he had not done so.
266. To round off the events of 8/7/08 I should add that Anita said that she rang John again to update him, and it was decided to give some advice to Mr Eaton's mother and her partner about safety precautions.

WAS MR EATON TIPPED OFF?

267. Given the substantial inconsistencies between witnesses as to what happened during 8/7/08, where does the truth lie? I begin by saying that where the account of DI Clarke conflicts with those of Nick and Anita (as it does on most points) I clearly prefer the evidence of Nick and Anita. This is so for several reasons.
268. To begin with, Nick and Anita had the considerable advantage that they could refer to notes made as the events concerned unfolded, and/or to weekly reports prepared shortly afterwards. On the other hand, DI Clarke made no notes at all at the time. He first committed himself to paper in a witness statement dated 18/5/09, some 10 months later. He said that he made no notes not because he had anything to hide, but because he expected the DPSWPU and in particular Nick to make notes. We are left with the highly unsatisfactory state of affairs in which DCS Cook made no notes because he expected DI Clarke to make notes, and DI Clarke made no notes because he expected the DPSWPU to take notes. At one stage, DI Clarke went so far as to say that it would have been a waste of time to make any notes. In re-examination, his

tone was more contrite. He accepted that he should have kept a note. It had been a learning curve. As if in mitigation, he said that he had made some entries onto the police HOLMES computer about these and other discussions that he had had with Nick, but it later transpired that he had not in fact done so. Certainly no such entries were recovered when the HOLMES computer was accessed on 9/11/09, during the Eaton voire dire.

269. Further, it is in my view significant that there are no DPSWPU notes anywhere to suggest that DI Clarke ever asked Nick to approach Mr Eaton to see if his father was dead or alive. Nick said there would have been notes had this happened, and I accept this. The DPSWPU notes were not absolutely perfect. For example particular instances were pointed out in cross-examination of Anita where entries she had made in her pocket book were not replicated in the relevant weekly reports. However, though not perfect the notes made by the DPSWPU officers seem to me to have been as full as could reasonably be expected. As I have already mentioned, DI Clarke's evidence was that he never asked Nick not to make notes. Moreover, having seen Nick in the witness box for a substantial period of time, I do not think that he would have agreed not to record a conversation of the kind that DI Clarke says took place, had DI Clarke asked him not to do so.
270. Further, I had the advantage of seeing the witnesses giving their conflicting evidence over a period of several days. I had ample opportunity to observe their demeanour, see how they reacted to searching cross-examinations and gauge the reliability of their evidence. I was particularly impressed by Anita. In my view, her evidence was given in a careful, measured way and I assessed her to be an honest and accurate witness. The fact that she was able to refer to virtually contemporaneous notes will have eased her task. I find it inconceivable that she fabricated all the notes and all her evidence. Nick too, though prone to some nervous reactions in the witness box, I found to be an honest and accurate witness. It is not disputed that he was in fact on leave on 7 and 8/7/08.
271. I found DI Clarke a much less impressive as a witness. There were a number of inconsistencies and changes of direction during his evidence as to what discussions or communications he had, with whom and when. I have referred to these in the preceding paragraphs of this judgment and do not propose to repeat them. Moreover, DI Clarke tended to become flustered when challenged in cross-examination, and to give answers that were not properly thought through. On his own account, he was in contact at different times with both Nick and Anita during the relevant period, and I conclude that in casting his mind back he has become confused as to who he spoke to, when, and what about. His evidence was adversely affected by the complete absence of notes to which to refer to refresh his memory after this period of time.
272. So far as Mr Eaton is concerned, I did not hear evidence from him. I attach no weight to the un-sworn account he gave when interviewed on 30/9/08. This case is littered with features which cast serious doubt on his reliability as a witness. I have referred to many of them earlier in this judgment. I will be referring to them again in the concluding section of this judgment.
273. Turning to DI Moore, I found him to be an honest and well-intentioned witness, but one who was capable of making errors of recollection. I have accepted the evidence

of Anita and Nick that it was Anita and not Nick that spoke to DI Clarke and to Mr Eaton on 8/7/08. Consistently with that, I reject the evidence of DI Moore to the extent that he suggests that Nick told him that it was he and not Anita who spoke to DI Clarke and to Mr Eaton on that day.

274. Accordingly, I find the following facts:

1. DCS Cook learned at some stage between 3 and 7/7/08 of intelligence suggesting that Mr Eaton's father was still alive.
2. He then instructed DI Clarke to ask the DPSWPU to approach Mr Eaton to ascertain if his father was alive.
3. DI Clarke did so by speaking to Anita on 8/7/08.
4. Anita's recollection of what was said between the two of them during that day is accurate. This included DI Clarke telling her that he wanted Mr Eaton to know that Cook was out to rubbish him.
5. The purpose of the approach to Mr Eaton in my view was in part at least to tip him off that he had been caught out lying about his father. I can see no other reason why DI Clarke should have told Anita (as I accept he did) that there was information that Mr Eaton's father had given a statement to Jimmy Cook, who was out to "rubbish" Mr Eaton. I accept that additional witness protection issues would arise if Mr Eaton's father was alive. But had the only object of the exercise been to find out whether the father was alive or dead, the investigation squad could have done this without approaching Mr Eaton at all. As I have said, at the time of DCI Beswick's risk assessment of 11/2/08 he (and presumably the investigation team generally) were aware of the existence and whereabouts of Mr Eaton's son, daughter, mother, sister and partner. Of these, his mother and sister had been visited on 22/4/08. In addition, his former partner Christine Kirkby had been visited on 21/4/08, and his sister's husband had been visited on 25/4/08. Thus there were many other sources from whom the investigation team could have ascertained whether or not Mr Eaton's father was dead or alive. Moreover if, as DCS Cook said, one of the reasons why Mr Eaton was approached was that the CPS would have to be informed if Mr Eaton had been lying, one wonders why they were not informed either of the intention to approach Mr Eaton or of the outcome of the approach. There is no evidence that such information was ever given to the CPS.
6. An inevitable and in my view intended effect of tipping Mr Eaton off that he had been caught out lying would be to give him time to think of an explanation should he be challenged about this later; though in the event he gave Anita almost immediately the explanation that his father was not dead, but dead to him.
7. However, Anita was not asked by DI Clarke to ask Mr Eaton what he had meant by saying that his father was dead; or to suggest to him what he should say if questioned about having lied about his father; or speak to him about the evidence he was to give at the trial. Neither did Anita speak to him about any of these matters.

275. I have considered the argument that if Anita's evidence is correct, DI Clarke must have contacted Nick before 7 or 8/7/08, and asked him to ask Mr Eaton whether his father was alive and/or to tell him that he had been caught out lying about his father and/or to tell him what answer to give should he be asked in future about his father

and what he had said about him; or, putting the proposition more broadly, that a member or members of the investigation team must have somehow informed Mr Eaton from as early as 17/6/08 that he had been caught out lying. This argument is based on DI Clarke's evidence that it was Nick to whom he spoke, and Mr Eaton's account that it was Nick who spoke to him. Moreover, if DI Clarke is right about the time at which DCS Cook instructed him to ask the DPSWPU to contact Mr Eaton about his father (ie. on or about 3/7/08) DI Clarke is unlikely to have waited until 7 or 8/7/08 to do it. I will refer to this as "the delay point". In addition, it is known that Nick did make a telephone call to Mr Eaton on 4/7/08.

276. In truth, however, there is simply no evidence to sustain the argument. I have found that DI Clarke spoke to Anita, and not to Nick, on 8/7/08. DI Clarke never suggested in evidence that he spoke to Nick on two separate occasions, or to Nick and Anita on separate occasions. I accept Nick's denial that he ever spoke to DI Clarke about approaching Mr Eaton to see if his father was dead or alive. There are no DPSWPU or investigation squad notes or records to assist the argument. There is no evidence in my judgment that any member of the investigation squad knew before 2 or 3/07/08 that Mr Eaton's father was or may be alive, though as I have said there were sources from whom they could have found out, had the need to enquire arisen. All the information coming from the de-brief, including Mr Eaton's witness statement of 24/5/07, indicated that his father was dead. I appreciate that he had been telling Nick that he did not know where his father was, thus suggesting that his father was alive, but there is no evidence that Nick told the investigation team what Mr Eaton had said to him. One would therefore expect the investigation team to have worked on the basis that Mr Eaton's father was dead, and all the indications are that they did. Thus on 11/2/08 DCI Beswick's risk assessment did not include Mr Eaton's father amongst those seen as being at potentially heightened risk. On 3/4/08 DCI Beswick met four officers of the DPSWPU, as stated above, but for the reasons I explained earlier I find that DCI Beswick was not informed on that occasion of what Mr Eaton had been telling the DPSWPU about his father. The delay point, unsupported by anything else, carries no real weight. In any event, for the reasons I have explained, I am unable to reach a reliable conclusion from the evidence of DI Clarke and/or DCS Cook as to when it was that the former informed the latter of the intelligence that Eaton's father was alive; or as to when the latter instructed the former to enquire of Mr Eaton via the DPSWPU whether indeed his father was dead or alive. I have not overlooked the fact that Nick telephoned Mr Eaton on 4/7/08, but he was perfectly entitled to do so for perfectly legitimate reasons, and the fact that he did so on this particular day is another feature which in my view carries no weight.

277. I move gratefully on to the events of 9/7/08. Adopting her entry for this day in the DPSWPU's weekly record and referring also to her handwritten notes for the day, Anita said, in summary:

1. She spoke to Mr Eaton. He asked that DI Clarke be informed that "*his father would do anything for money*".
2. Anita informed DI Clarke accordingly. He asked Anita to ring Mr Eaton's sister to get the father's address.
3. Anita spoke to Mr Eaton's sister. She gave a last known address but was unsure of the number of the house.

4. Anita spoke to Mr Eaton again. He confirmed what his sister had said and gave a description of the location of the house, of which he too did not know the number.
5. Anita again updated DI Clarke.
6. Later Anita spoke to Mr Eaton again. He was concerned about the safety of his partner, mother, father in law, son and ex-wife. He thought that if Jimmy Cook had got to his father, he must have got his father's whereabouts from leaning on his son or ex-wife. He wanted DI Clarke to find out if that was the case.
7. Anita again updated DI Clarke. He said that he would make enquiries with Mr Eaton's father.

Amongst the many questions that Anita was asked about her handwritten notes and weekly record entry it was pointed out that her note book entry in relation to 6 above was not in her handwriting. She could only think that she must have been driving at the time and that a colleague therefore made the note. However, she confirmed, it was she and not anyone else who spoke to Mr Eaton. She added that Nick had nothing to do with any of the events of this day. Mr Mendelle Q.C. pointed out to her that Nick's telephone records showed a call from him to her on this day. She replied that this would only have happened if someone had rung him and he had redirected the caller to her.

278. The evidence of DI Clarke as to the events of 9/7/08 did not follow a consistent path. When cross-examined by Mr Whitehouse Q.C. he appeared to agree that Anita had spoken to him on the occasions referred to at 2 and 5 in the preceding paragraph of this judgment. However when cross-examined by Miss Humphreys Q.C. and when re-examined he said that he could not recall speaking to Anita at all on this day though he was not positively saying that he did not do so. This served only to reinforce my impression that DI Clarke's evidence was not to be regarded as reliable.
279. Also on 9/7/08 DC Linfoot and DS Dwyer went to see Christine Kirkby, Mr Eaton's ex-partner. One of the matters discussed was whether she knew if Mr Eaton's father was still alive. DC Linfoot said that this visit was made at the request of DI Clarke. Christine Kirkby told the officers that Mr Eaton's father was indeed alive, and she provided them with a full address in Brixham. She said she had last seen him a month ago. She would call him after the officers had left, and get him to contact DC Linfoot. Other topics of conversation included:
- (1) Christine Kirkby had received a phone call from Jacky Cook, Jimmy Cook's wife, asking her to make a statement for his defence.
 - (2) Christine Kirkby had lived with Mr Eaton from 1983 to 1999. He had beaten her through out their relationship and put her in hospital several times.
 - (3) Several years ago Mr Eaton had told people that his mother had died, and made a collection amongst local people for her funeral. (This was completely untrue. His mother was alive.)
 - (4) Christine Kirkby did not want to get involved in the case, to go to Court or to make a statement.

CONCLUSION

280. That takes my detailed chronology of events relating to Mr Eaton as far as I propose to go. I should add that during the Eaton voire dire many subsequent developments and issues were examined in considerable detail. For example, it was alleged that on

or about 11/7/08 DI Clarke had acted improperly in telling Christine Kirkby not to give a statement to Jimmy Cook's representatives, and in seeking to put Mr Eaton in a good light. There was also a lengthy and highly complex investigation, which attracted the soubriquet "Mooregate" as to whether members of the investigation team and/or the DPSWPU had conspired together in September and October 2008 to cover up the approach that had been made to Mr Eaton in July 2008 about his lie that his father was dead. Consideration was also given to whether DCS Cook had committed perjury when giving evidence on Mr Eaton's behalf at the hearing on 18/10/08 at which Mr Eaton received 3 years imprisonment for the offences that he had admitted during his de-briefing.

281. I do not propose to set out the chronology of events relating to these matters, or to express conclusions in relation to them, except that I think it fair to DCS Cook to indicate that I would acquit him of perjury on 18/10/08. As for "Mooregate", I have made findings of fact in relation to the approach to Mr Eaton that was made by Anita on 8/7/08. This judgment has sought only to explain why I announced in open court that I would exclude the evidence of Mr Eaton should I decline to stay the proceedings. Findings of fact in relation to Mooregate itself would have been necessary had I had to decide whether or not to stay the proceedings as an abuse of the process of the court. The prosecution having offered no evidence, that decision no longer needs to be made.
282. My decision to exclude the evidence of Mr Eaton was based on a combination of factors to which I have already referred at different stages during the course of this judgement, and which I will now seek to draw together.
283. My finding that Mr Eaton was probably prompted by DCS Cook to implicate the defendants Glenn and Garry Vian played a significant part in my decision; and I found it difficult to disregard entirely my anxieties that further prompting may have taken place, even though I could not find on a balance of probabilities that it had done so.
284. I turn to consider the failure of the police to arrange for the presence of an appropriate adult at the beginning of the de-briefing process and their continuing with that process after Mr Eaton was offered but declined an appropriate adult.
285. Had these matters stood alone, I would have admitted Mr Eaton's evidence. The situation would in my judgment not have met the test for exclusion under s.78. I say this for the following reasons:
- (1) It is a familiar general principle that the breach of a Code of Practice does not lead automatically to the exclusion of evidence obtained as a result of the breach: see e.g. *R. v. Delaney* 88 Cr. App. R. 338.
 - (2) Thus, there is no rule that a confession obtained from a mentally handicapped person in the absence of a solicitor and an appropriate adult should automatically be excluded under s.78: see *R. v. Ali* [1999] 2 Archbold News 2.
 - (3) The fact that an interviewee refuses the offer of an appropriate adult must in my judgment be a factor capable of being taken into account when deciding whether or not to exercise the discretion to exclude evidence under s.78.

- (4) That is so particularly where the reason given the decision is one based on reason. Mr Eaton refused an appropriate adult on 6/9/06 and thereafter for reasons connected with his own security. He wanted as few people as possible to know what was happening. Given the concern he expressed from the outset of his dealings with the police about his own safety and about police corruption, I think it highly likely that had he been offered an appropriate adult when his de-briefing began, he would have refused for the same reasons.
- (5) His solicitor Keima Payton was with him throughout his de-briefing interviews. As was pointed out in *R. v. Lewis* [1996] Crim. L. R. 260, a Solicitor's function overlaps with that of an appropriate adult. Both have to ensure that the interviewee fully understands his rights, that the interview is conducted correctly, that the police do not abuse their position, that the interviewee is able to make himself clearly understood, and that he clearly understands what is put to him.
- (6) Thus, it has been held that the absence of an appropriate adult from an interview, at which the detainee's solicitor was present, is unlikely by itself to be a reason to exclude the interview: see *R. v. Law-Thompson* [1997] Crim. L. R. 674.
- (7) It is right that a Solicitor might have less insight than an appropriate adult into mental disorder and vulnerability. On the other hand, it is clear from para C: 1.7(b) that had Mr Eaton agreed to the presence of an appropriate adult, he could have nominated someone who had no experience or knowledge of mental disorder or vulnerability.
- (8) Keima Payton was a familiar face to Mr Eaton, and she was familiar with him. As Professor Eastman recognised, to have an unfamiliar appropriate adult present might have hindered rather than helped the process of communication and understanding.
- (9) The police arranged regular psychotherapy sessions for Mr Eaton during the course of his de-briefing, albeit that the psychotherapist had a limited brief.
- (10) When all is said and done, I have not been referred to any examples of actual misunderstanding or miscommunication during the course of the de-briefing interviews.

286. I appreciate, however, that these matters did not in fact stand alone, and they contributed, albeit only to a very limited extent, to my overall decision that Mr Eaton's evidence should be excluded.

287. Despite the length at which the matter was investigated, my finding that Mr Eaton was tipped off that he had been caught out lying about his father's death and thus given the chance to think of an explanation would not by itself have led me to exclude his evidence. As already stated, as it happened he gave an explanation almost immediately and without prompting. The lie about his father did not affect the subject-matter of his anticipated evidence at trial itself. It did of course go to his credibility, but the matter could have been elicited before the jury in that regard at any trial that may have taken place.

288. As in relation to the failure to provide an appropriate adult, however, I appreciate that the "tip off" did not stand alone, and it contributed, albeit again only to a very limited extent, to my overall decision that Mr Eaton's evidence should be excluded.
289. I should make it clear that the conduct of the police in prompting Mr Eaton, and tipping him off that he had been found out lying about his father were, of course, relevant also to the decision whether or not the proceedings should be stayed as an abuse of the process of the court. I would have taken then into account, together with my findings in relation to many other allegations of police misbehaviour that were made during the course of these proceedings. In the event, however, it has not been necessary to make rulings in relation to abuse of process generally, or allegations of police misbehaviour other than in relation to Mr Eaton in particular.
290. I turn finally to consider the reliability of Mr Eaton as a witness. Many features of the evidence placed before me would suggest that he was not reliable. He has a significant criminal record. He has a personality disorder which, amongst other things, renders him prone to telling lies, sometimes for no apparent reason. He has given different accounts at different times in relation to the day of Mr Morgan's murder. He has told many demonstrable lies, not least about his own mother and father. He demonstrated irresponsible, difficult and truculent behaviour during his de-briefing. I do not propose to repeat myself in this regard. Reference can be made to Mr Eaton's psychiatric history with which I have already dealt in some detail and, by way of example, to the events referred to in the chronology set out above relating to 26/7/06; 10, 11, 24 and 30/8/06; 1, 3, 4, 6, 9, 16, 17, 19, 20 and 29/9/06; 27 and 31/10/06; 9 and 10/12/06; 8/3/07; and 24/5/07.
291. In addition, off course, Mr Eaton is vulnerable to the criticism that as a SOCPA witness he is giving evidence for reasons of self-interest, having received a greatly reduced sentence for the many serious offences which he admitted in the course of his de-briefing.
292. Despite these many indicators of unreliability, I would not have excluded Mr Eaton's evidence because of them had they stood alone. The final assessment of the reliability of a witness is almost always one for a jury to make. All the indicators of unreliability in Mr Eaton's case could have been explored during a trial. And although it has not been necessary for me to form a final view, my strong provisional view is that it would have been right in this particular case to admit expert evidence to inform the jury of the possible impact of Mr Eaton's condition on his reliability as a witness.
293. However, in this case it is highly relevant that the man who, as I have found, was prompted in relation to the account he gave and thus as to his evidence, was a man whose reliability as a witness was so open to scrutiny; and what I have described as Mr Eaton's indicators of unreliability have in that indirect way played an important part in my decision that his evidence would not have been admitted had there been a trial.
294. As I indicated in the Introduction, this judgment is intended to amplify pronouncements I made in open court about my approach to Mr Eaton's evidence. I hope that it will also be helpful to the Judge and the parties in the future case in which it is anticipated that Mr Eaton will give evidence. However, entirely different considerations may apply in that case, about which I know nothing. I would not

presume to influence how the future case should be conducted, and this judgment should be seen in that light.