

DEC-01/08

REPORT OF AN INVESTIGATION

BORIS JOHNSON

**MAYOR OF LONDON
CHAIRMAN, METROPOLITAN
POLICE AUTHORITY**

BY JONATHAN GOOLDEN, BA(LAW) SOLICITOR

24th February 2009

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Annexe

Schedule of evidence

1. Summary

- 1.1 Boris Johnson is the Mayor of London. He became Chairman of the Metropolitan Police Authority (MPA) on 1st October 2008. As such, he is subject to the codes of conduct for members of both the Greater London Authority (GLA) and the MPA.
- 1.2 Len Duvall is a member of the London Assembly (part of the GLA) and was Chairman of the MPA until 1st October 2008.
- 1.3 On 8th October 2008, the Cabinet Office asked the Metropolitan Police Service (MPS) to conduct an investigation into leaks of confidential Home Office documents.
- 1.4 As part of that investigation, MPS officers decided to arrest Damian Green MP and conduct searches of his home and offices. At about 10 am on 28th November 2008 the then Deputy Commissioner of the MPS, Sir Paul Stephenson, told Mr. Johnson as Chairman of the MPA that a public figure was due to be arrested that day. At 1.19 pm, Sir Paul Stephenson told Mr. Johnson that Mr. Green was to be arrested. Mr. Green was arrested at 1.37 pm.
- 1.5 At 2.02 pm that day Mr. Johnson telephoned Sir Paul Stephenson about the arrest, the basis for it and why Mr. Green had not been invited for questioning rather than arrested. At 10.44 pm that night, Mr. Johnson's Director of Communications Guto Harri issued a press statement indicating that Mr. Johnson had expressed concern, in trenchant terms, about the arrest of Mr. Green to Sir Paul Stephenson.
- 1.6 At about 8 pm on Sunday 30th November 2008, Mr. Harri sent a text message to Mr. Green asking "*can you talk*". Mr. Green telephoned Mr. Harri at about 6 pm the following day and then spoke to Mr. Johnson. Mr. Johnson asked Mr. Green about the police investigation.
- 1.7 On Wednesday 3rd December 2008, Mr. Johnson attended a meeting of the London Assembly in his capacity as Chairman of the MPA. A number of Assembly members, including Mr. Duvall asked Mr. Johnson about the arrest of Mr. Green. Mr. Johnson said that he was yet to be dissuaded that the investigation was likely to yield either a charge or a successful prosecution.
- 1.8 On Friday 5th December 2008, Mr. Duvall made three complaints that Mr. Johnson had failed to comply with the codes of conduct of the GLA and MPA. Specifically, he complained that:-
 - (a) by making public his conversation with Sir Paul Stephenson, Mr. Johnson had disclosed confidential information in breach of paragraph 4(a) of the GLA and MPA codes of conduct;

- (b) by discussing the police investigation with Mr. Green, Mr. Johnson had used or attempted to use his position improperly to confer an advantage on Mr. Green and / or a disadvantage on the MPS in breach of paragraph 6(a) of the GLA and MPA codes of conduct;
- (c) by commenting on the police investigation at the London Assembly meeting on 3rd December 2008, Mr. Johnson had brought his office or authority into disrepute in breach of paragraph 5 of the GLA and MPA codes of conduct.

1.9 I was asked by the Monitoring Officers of the GLA and MPA to conduct an investigation to:-

- (a) establish the facts in relation to Mr. Duvall's complaints;
- (b) consider in what capacity Mr. Johnson was acting in relation to the events;
- (c) conclude whether Mr. Johnson had failed to comply with the GLA and MPA codes of conduct, and
- (d) make recommendations as to future actions.

1.10 As a result of my investigation, I consider that:-

- (a) the key facts are as set out above;
- (b) Mr. Johnson was acting as Chairman of the MPA in relation to all three incidents giving rise to Mr. Duvall's complaints. When he issued a press statement at 10.44 pm on Thursday 27th November 2008, he was also giving the impression of acting as the Mayor of London;
- (c) Mr. Johnson has not failed to comply with the codes of conduct of the GLA or MPA;
- (d) whilst Mr. Johnson did not fail to comply with the codes of conduct of the authorities, in my view:-
 - (i) he should have sought advice from MPA officers before issuing a press statement relating to an ongoing police investigation;
 - (ii) his actions in speaking to a person arrested in a criminal investigation were extraordinary and unwise; and
 - (ii) there is a risk that frank and full discussion of operational matters between senior MPS officers and the MPA Chairman could be inhibited in future if Mr. Johnson were to make public his reaction to operational briefings on critical incidents as a matter of course.

- (e) I recommend that the MPA, MPS and Mayor's Office jointly consider the adoption of a protocol to cover the management of information by senior police officers, senior members and officers of the MPA and the Mayor in relation to critical incidents.

2 My appointment, the complaints and the investigation

My appointment

- 2.1 Acting under section 57A(2) of the Local Government Act 2000, as amended, the Assessment Sub-Committees of the Standards Committees of the GLA and the MPA meeting jointly, referred three complaints by Mr. Duvall to the Monitoring Officers (MOs) of both authorities for investigation. The complaints concerned Mr. Johnson, as the Mayor of London and Chairman of the MPA.
- 2.2 The MOs of both authorities jointly commissioned me to undertake an investigation with the following terms of reference:-
- (a) to establish the facts in relation to the following events:
 - (i) Sir Paul Stephenson's briefing to Mr. Johnson on the Whitehall leak inquiry, including who was present, what was discussed and the basis on which the information was given;
 - (ii) the report in the Times on 29 November 2008, including how the reporter received the information on which the report was based;
 - (iii) Mr. Johnson's contact with Damian Green MP, including when and how this took place, what was said and who was present;
 - (b) to consider in respect of each of the Authorities the role and capacity Mr. Johnson was acting in, in the particular events described above;
 - (c) to conclude whether Mr. Johnson has breached the GLA and the MPA codes of conduct;
 - (d) to make recommendations on future actions.
- 2.3 I hold an honours Bachelor of Arts in Law degree from the University of Sheffield. I am a solicitor and an accredited mediator. I have been employed by various local authorities as a solicitor for a period of 14 years and have held the position of MO in two authorities for six years. I was a clerk (now termed chief executive) of a police authority. I now practice law as a solicitor on my own account advising local authorities, police authorities and other public bodies on regulatory, governance and public law matters. I have conducted, or am conducting approximately 30 investigations into allegations of misconduct by members of local authorities.

- 2.4 I was assisted in the conduct of the investigation by Martin Dolton. Mr. Dolton holds an honours Bachelor of Science degree in Local Government Studies from the University of Birmingham. He was a police officer for a period of 29 years, attaining the rank of Superintendent, and is also an associate investigator for the Standards Board for England.

The complaints

- 2.5 Mr. Duvall made three complaints against Mr. Johnson in a letter dated 5th December 2008 (enclosed at JTG 1).
- 2.6 Mr. Duvall's first complaint (Complaint 1) was that Mr. Johnson had made public his view on the investigation concerning Mr. Green following a confidential conversation with Sir Paul Stephenson, then Acting Commissioner of the Metropolitan Police, now Commissioner. Mr. Duvall complained that this was a breach of paragraph 4(a) of the codes of conduct of the GLA and MPA which requires that members of those authorities do not disclose information given in confidence, or information acquired which the member believes or ought reasonably to be aware is of a confidential nature.
- 2.7 Mr. Duvall's second complaint (Complaint 2) was that Mr. Johnson had admitted that he had been in contact with Damian Green MP "*as a friend and ex colleague*". Mr. Duvall complained that by discussing an on-going criminal case with the suspect in that investigation, Mr. Johnson had breached paragraph 6(a) of the GLA and MPA codes of conduct which requires that a member must not use or attempt to use their position improperly to confer on or secure for themselves or another person, an advantage or disadvantage. Mr. Duvall had in mind that Mr. Johnson might have conferred an advantage on Mr. Green and / or a disadvantage on the MPS.
- 2.8 Mr. Duvall's third complaint (Complaint 3) was that Mr. Johnson had pre-judged the outcome of the police investigation by saying "*I am yet to be dissuaded that it is likely to yield either a charge or a successful prosecution*" at a plenary meeting of the London Assembly on 3rd December 2008. Mr. Duvall complained that as Chairman of the MPA, Mr. Johnson had no business commenting publically on an on-going police investigation and that he had thereby breached paragraph 5 of the GLA and MPA codes of conduct which state that a member must not conduct themselves in a manner which could reasonably be regarded as bring their office or authority into disrepute.

The investigation

2.9 I commenced my investigation on 15th January 2009. I completed a draft version of this report on 16th February 2009 and the final version on 24th February. During the investigation I met and obtained signed statements from the following:-

Catherine Crawford Len Duvall	Chief Executive of the MPA London Assembly Member, complainant
Guto Harri	Mayor's Director of Communications and Spokesperson
Roisha Hughes Sir Paul Stephenson	Mayor's Private Secretary Metropolitan Police Commissioner

2.10 Mr. Harri provided a supplemental statement in clarification of certain points. Sir Paul Stephenson supplied a statement drafted by him. Mr. Green declined to provide a signed statement, but responded to a number of written questions put to him by e-mail. In other cases, I, either alone or with Mr. Dolton, questioned each witness and prepared a draft statement on the basis of their responses which the witness then revised as appropriate and signed.

2.11 Mr. Dolton and I conducted a taped interview with Mr. Johnson on 3rd February 2009 from which a transcript was prepared. A copy was provided to Mr. Johnson's solicitor, Stephen Hocking of Beachcrofts in order to correct errors and make comments.

2.12 As set out in section 4 below, the Rt. Hon. Jacqui Smith MP, Home Secretary made a statement to the House of Commons on 3rd December 2008 in relation to the arrest of Mr. Green. In addition, the House of Commons Home Affairs Committee commenced an inquiry into the policing of Home Office leaks and took evidence in public from the following:-

Rt. Hon. Jacqui Smith MP Sir David Normington Mr. Johnson Robert (Bob) Quick	Home Secretary Permanent Secretary, Home Office Mayor of London and MPA Chairman MPS Assistant Commissioner, Special Operations
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2.13 I have relied in part on evidence given or statements made by the above to the House of Commons and/or the Home Affairs Committee as part of my investigation.

2.14 It should be noted that the Home Affairs Committee had not completed its inquiry at the date of this report. Transcripts from its proceedings are uncorrected, meaning that neither witnesses nor members of the Committee had had the opportunity to correct the record and the transcripts are not yet an approved formal record of the proceedings.

- 2.15 Copies of the statements obtained, together with the transcript of Mr. Johnson's interview, Mr. Green's responses to me and other relevant documentary material are enclosed in a separate schedule of evidence.
- 2.16 A draft version of this report and the schedule of evidence were supplied to Mr. Duvall, and to Mr. Hocking on behalf of Mr. Johnson. Their comments have been taken into account where relevant in the final version of the report and are set out in section 12 below.
- 2.17 I wish to record my thanks and those of Mr. Dolton for the co-operation and courtesy shown to us by those we had reason to contact during the investigation.

3 The Code of Conduct

3.1 At the time of the complaint both the GLA and the MPA had adopted the Model Code of Conduct set out in the schedule to the Local Authorities (Model Code of Conduct) Order 2007 as their codes of conduct.

3.2 Paragraph 2 of the Model Code states:-

“(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you –

(a) conduct the business of your authority (which in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim or give the impression you are acting as a representative of your authority,

And references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

.....”

3.3 Paragraph 4 of the Model Code states:-

“You must not -

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where –

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

.....

(iv) the disclosure is –

(aa) reasonable and in the public interest; and

(bb) *made in good faith and in compliance with the reasonable requirements of the authority*

.....”

3.4 Paragraph 5 of the Model Code states:

“You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.”

3.5 Paragraph 6 of the Model Code states:

“You –

(a) *must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;*

.....”

4 Background

Greater London Authority (GLA)

- 4.1 The GLA was established by the Greater London Authority Act 1999. Its principal functions are the promotion of economic and social development, and the improvement of the environment in Greater London. It has particular functions in relation to transport, planning and policing in London.
- 4.2 The GLA is composed of a directly elected executive mayor – the Mayor of London, and the London Assembly. The Mayor of London is responsible for developing and implementing strategies on transport, spatial development, economic development and the environment. The Mayor also proposes budgets for the GLA, Transport for London, the London Development Agency, the MPA and the London Fire and Emergency Planning Authority.
- 4.3 The London Assembly consists of 25 elected members. It holds the Mayor to account through scrutiny, approval of budgets and investigation of issues of importance to London.
- 4.4 Mr. Johnson was elected as Mayor in May 2008. His biography appears on the GLA website (copy enclosed at JTG 2). He joined the Daily Telegraph as a correspondent in 1987, becoming assistant editor in 1994. From 1999 to 2005 he was editor of the Spectator. From 2001 to his election as Mayor, he was a Member of Parliament and held a number of shadow government posts.

The Metropolitan Police Authority (MPA)

- 4.5 The MPA was also established by the Greater London Authority Act 1999. Its main function is to secure the maintenance of an efficient and effective police force for Greater London, apart from the City of London. Under section 5C of the Police Act 1996, the MPA is composed of 23 members.
- 4.6 The Metropolitan Police Authority Regulations 2008 (the 2008 Regulations) came into force on 1st April 2008. Under the 2008 Regulations, 12 members of the MPA must be members of the London Assembly, appointed by the Mayor. One of the 12 may be the Mayor. If the Mayor is a member of the MPA, then he must be its Chairman.
- 4.7 On 1st October 2008 Mr. Johnson appointed himself as one of the 12 members of the MPA from the London Assembly and thus became the Chairman of the MPA.

Metropolitan Police Service investigation into Home Office leaks

- 4.8 On 8th October 2008, the Cabinet Office requested the assistance of the MPS in investigating a series of leaks of confidential Home Office documents. The request followed a number of internal Home Office leak inquiries which had not identified the source of the leaks (see Home Secretary's statement to the House of Commons on 3rd December 2008, enclosed at JTG 3).
- 4.9 On 19th November 2008, a Home Office civil servant (subsequently identified in the media as Chris Galley) was arrested on suspicion of misconduct in public office. On 27th November 2008, police officers arrested Mr. Green on suspicion of conspiring to commit misconduct in public office and searched his office in Westminster and other premises (see Home Secretary's statement – JTG 3).

Mr. Johnson's comments on the arrest of Damian Green MP

- 4.10 An article (web version enclosed at JTG 4) appeared in the Times Newspaper on 29th November 2008. The article, entitled "*Mayor Boris Johnson orders Met chief Sir Paul Stephenson to justify raid*" referred to Mr. Johnson giving advice in trenchant terms to Sir Paul Stephenson after being told that Mr. Green was about to be arrested.
- 4.11 The article quoted a spokesman for Mr. Johnson as saying that the Mayor had told the then Acting Commissioner that he would need to see convincing evidence that the arrest was necessary and proportionate.
- 4.12 It is a function of the MPA to respond to questions on policing by the London Assembly. On 3rd December 2008, Mr. Johnson attended a meeting of the Assembly in his capacity as Chairman of the MPA to respond to questions on policing. He attended with Sir Paul Stephenson. A transcript of the session is enclosed at JTG 5.
- 4.13 Responding to questions by Mr. Duvall and other Assembly Members, Mr. Johnson said that he and members of his staff had been in contact with Mr. Green "*as a friend and an ex-colleague*" and "*to ascertain...where the facts seemed to lie*".
- 4.14 Again responding to questions from Mr. Duvall and other Assembly Members, Mr. Johnson said "*I am yet to be dissuaded that [the police investigation] is likely to yield a charge or a successful prosecution*".

House of Commons Home Affairs Committee inquiry

- 4.15 The arrest of a serving Member of Parliament and the search of his office in the Palace of Westminster aroused considerable controversy and a number of inquiries were set up. On 11th December 2008 the House of Commons Home Affairs Committee announced that it was to hold an inquiry into the policing process of Home Office leak inquiries (see Home Affairs Select Committee press statement at JTG 6).
- 4.16 The Home Affairs Committee took evidence from the Home Secretary and Sir David Normington, Home Office Permanent Secretary on 20th January 2009 (uncorrected transcript enclosed at JTG 7). The Committee also took evidence from Mr. Johnson on 3rd February 2009 (uncorrected transcript enclosed at JTG 8) and MPS Assistant Commissioner Robert (Bob) Quick on 10th February 2009 (uncorrected transcript enclosed at JTG 9). The Committee has not yet published a report of its inquiry.

5. Complaint 1 – evidence

The complaint

5.1 In his letter of 5th December 2008 (enclosed at JTG 1), Mr. Duvall said:-

“Mr Johnson made public his view on the on-going investigation into criminal suspect Damian Green MP following a confidential conversation with a senior MPS officer. The Times reported on 29 November 2008 (attached) that Mr Johnson spoke “in trenchant terms” to Sir Paul Stephenson, and that a spokesman for Mr Johnson “told the acting commissioner that he would need to see convincing evidence that his action was necessary and proportionate”.

This appears to be a clear breach of general obligation 4 (a) of the MPA and GLA codes of conduct: “You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought to reasonable be aware, is of a confidential nature”.

By making details of a private conversation with senior police officers public, I believe Mr Johnson has committed a serious breach of the codes of conduct and undermined the relationship between the Chair of the MPA and the Metropolitan Police Service (MPS) with regards to operational policing and on-going criminal investigations.

It is appropriate for the Chair of the MPA to give senior officers in the MPS private advice and personal views. What is not appropriate is to then put this advice – and in this case Mr Johnson’s prejudicial views – in the public domain for what can only be perceived as for political ends.”

Times article

5.2 The relevant text of the Times article of 29th November 2008 (enclosed at JTG 4) is as follows:-

“Having rid himself of one troublesome police chief, Boris Johnson, the Mayor of London, raged yesterday at another. He spoke “in trenchant terms” to Sir Paul Stephenson, the Acting Metropolitan Police Commissioner, after being told on Thursday that Damian Green was to be arrested.

....Mr. Johnson said he found it “hard to believe” that anti-terrorism police had been used to “target an elected representative of Parliament for no greater crime than allegedly receiving leaked documents”.

A spokesman for Mr. Johnson said: "The Mayor told the new acting commissioner that he would need to see convincing evidence that this action was necessary and proportionate. He suggested that this is not the common sense policing that people want when London faces a real terror threat..."

....Mr. Johnson was informed as chairman of the Metropolitan Police Authority."

Mr. Duvall

5.3 In his statement (enclosed at JTG 10), Mr. Duvall said:-

- (a) he had been Chairman of the MPA for 4 years;
- (b) in the course of being the Chairman of the MPA, he had received confidential briefings on sensitive operational matters from senior MPA officers. The purpose of such briefings was to enable him to be informed and to maintain an appreciation of the impact of such matters on wider policing issues;
- (c) on occasions he had provided advice in response to such briefings. For example, he may have asked the MPS to consider whether other parties should be informed. On some occasions he had expressed concerns or had asked to be satisfied as to the grounds for actions by the MPS, though recognising that the Commissioner had operational autonomy. He described his role as to guide, counsel and warn;
- (d) in the main, the conversations or briefings had remained private so as not to undermine any ongoing police operations;
- (e) he had specific concerns about the management of information passing between the Commissioner and the Chairman of the MPA now that the Chairman was the Mayor of London. This was because the Mayor was a highly politicised, high profile role. Mr. Duvall knew from his experience of being MPA Chairman the benefits of free and frank discussions between the Chairman and the Commissioner;
- (f) third parties would assume that the Chairman had detailed knowledge of operational matters. If information about discussions between the Chairman and the Commissioner was used inappropriately this could lead to major consequences for policing operations.

Ms. Crawford

5.4 In her statement (enclosed at JTG 11), Ms. Crawford said:-

- (a) she had been Chief Executive of the MPA for nine years. Previously, she had been Executive Director of the Association of Police Authorities for five years;
- (b) from her experience in both roles, she would consider it a normal and acceptable practice for a chief officer of police to keep the chairman of the relevant police authority informed of significant operational matters, including the progress of sensitive operations;
- (c) such briefings were provided as a matter of courtesy and to ensure the chairman of the police authority was aware of what matters were sensitive should they be asked about them by others such as the press;
- (d) she would regard it as highly unusual for the chief executive of the relevant police authority not to be present when such information was given or otherwise aware of it;
- (e) she would expect such information to be given in confidence;
- (f) it would be normal for a police authority chairman to discuss the information provided with the chief officer of police, to give views on the matter and ask questions which the chief officer might or might not be prepared to answer;
- (g) a police authority chairman might give advice such as how a particular matter might be perceived by the community at large. Such advice would not be given to stop or influence the proposed police action;
- (h) Sir Paul Stephenson told her at 8 am on Thursday 28th November 2008 that Mr. Green would be arrested later that day. She agreed with Sir Paul that Mr. Johnson as Chairman and Kit Malthouse as Vice Chairman of the MPA needed to be told of the arrest;
- (i) a meeting of the MPA was due to take place at 10 am that day at City Hall. Sir Paul Stephenson told Mr. Johnson and Mr. Malthouse just before the meeting that a Conservative MP would be arrested;
- (j) in her view, Mr. Johnson was told of the planned arrest in his capacity as Chairman of the MPA;

- (k) since Mr. Johnson had become Chairman of the MPA, press statements on policing matters had normally been prepared by the MPA Press Office at the request of Mr. Malthouse. The MPA Press Office had often liaised with the Mayor's Press Office in relation to specific press statements;
- (l) sometimes there might be a need to make a comment to the press on high profile matters, however there was a risk that such a practice might in some circumstances inhibit full and free discussion of such matters between a chief officer of police and a police authority chairman.

Mr. Harri

5.5 In his first statement (enclosed at JTG 12), Mr. Harri said:-

- (a) he was the Director of Communications and personal spokesperson for the Mayor. He did not issue press statements for the MPA which had its own communications arrangements;
- (b) though he might, if relevant, include a factual statement that Mr. Johnson was also Chairman of the MPA or Transport for London, he was acting on behalf of Mr. Johnson as Mayor;
- (c) he often made media responses to ongoing or unanticipated events on behalf of Mr. Johnson without referring to him;
- (d) at lunchtime on 27th November 2008, he was with Mr. Johnson at a publicity event in the Portobello Road Market in West London to mark Mr. Johnson's decision to remove the Western Extension of the Congestion Charge Zone;
- (e) he received a message from Mr. Johnson's office at City Hall asking Mr. Johnson to call Sir Paul Stephenson as soon as possible;
- (f) Mr. Johnson telephoned Sir Paul Stephenson at about 1.20 pm as he and Mr. Harri were walking to Ladbroke Grove Underground Station. Mr. Johnson told Mr. Harri that he had been informed that police officers intended to arrest Mr. Green later that day in relation to a leak investigation;
- (g) Mr. Johnson telephoned the Leader of the Opposition, David Cameron MP at 1.59 pm.
- (h) shortly after 2 pm, Mr. Johnson telephoned Sir Paul Stephenson again. Mr. Johnson told Sir Paul that he felt people would have a strong reaction to the arrest of a serving MP. Mr. Johnson asked Sir Paul why it was necessary to arrest Mr. Green rather than invite him to answer questions. Mr. Johnson said that as a former journalist, he felt it was inevitable that he would be asked for his views on the matter as Chairman of the MPA and that he

would need robust reasons to be persuaded that just questioning Mr. Green was not the answer;

- (i) he was clear that there were no references to any detail or police operational matters in the telephone call, nor did Mr. Johnson seem to be advising or directing Sir Paul Stephenson. Mr. Johnson simply gave his views;
- (j) later he was present with Mr. Johnson at a memorial service at Southwark Cathedral for Damilola Taylor. Sir Paul Stephenson was also present. Just prior to the service, at about 3 pm, Sir Paul Stephenson told Mr. Johnson that Mr. Green had now been arrested;
- (k) between about 9.30 and 10.30 pm that evening he became aware from text messages that there was considerable media activity relating to the arrest of Mr. Green. Mr. Harri telephoned Mr. Johnson. They discussed the high level of media interest in the events surrounding Mr. Green and agreed that it was inevitable that Mr. Johnson would be asked to make a statement;
- (l) he agreed the content of the following press statement with Mr. Johnson, which he sent at 10.44 pm that night to the BBC:-

“The mayor of london has expressed grave concern over the arrest of conservative frontbencher, damian green. Boris Johnson, who chairs the metropolitan police authority expressed his concerns – in trenchant terms – ahead of his arrest. A spokesman said the mayor finds it hard to believe that on the day when terrorist have gone on the rampage in India that anti terror police in Britain have apparently targeted an elected representative of parliament for no greater crime than allegedly receiving leaked documents. The mayor told the new acting commissioner of the met that he would need to see convincing evidence that this action was necessary and proportionate. He suggested that this is not the common sense policing that people want when london faces a real potential terror threat and serious knife crime problem on the streets.

Guto Harri

*Director of Communications
[mobile telephone number]*

GREATER LONDON AUTHORITY”

- (m) he included the fact that Mr. Johnson was Chairman of the MPA in the statement as a relevant fact. Whilst it was difficult to separate out the roles of the Mayor of London and Chairman of the MPA, the statement was from Mr. Johnson as Mayor.

Sir Paul Stephenson

5.6 In his statement (enclosed at JTG 13), Sir Paul Stephenson said:-

- (a) he was the Commissioner of the Metropolitan Police. He joined the MPS as Deputy Commissioner in 2005 and became Acting Commissioner on 28th November 2008. Previously, he had been the Chief Constable of Lancashire for three years;
- (b) he had enjoyed a good working relationship with the respective chairmen of his police authorities both as Chief Constable of Lancashire and Deputy Commissioner of the MPS. These chairmen had been Baroness Ruth Henig, Mr. Duvall and Mr. Johnson;
- (c) his working relationships with police authority chairmen had involved private briefings on sensitive operational matters, where appropriate. The purpose of such briefings was to “sight” the chairman, to avoid surprises and the chairman being “door-stepped”;
- (d) generally he would consider giving such a briefing immediately prior to, or following the commencement of an operation. The judgement as to the timing of the briefing would give priority to the integrity of the operation and the need to avoid any suspicion of improper influence by the chairman in operational matters;
- (e) he had not previously given such a briefing to Mr. Johnson as the need had not arisen since he had become Chairman of the MPA;
- (f) he briefed Ms. Crawford on the planned arrest of Mr. Green at 8 am on Thursday 27th November 2008. They agreed that Mr. Johnson needed to be briefed. He briefed Mr. Johnson and Mr. Malthouse just before an MPA meeting at 10 am at City Hall;
- (g) he provided very limited details as Mr. Green had not yet been located and arrested. Sir Paul told Mr. Johnson that a public figure was about to be arrested. Mr. Malthouse guessed that Sir Paul was referring to a Conservative MP. Sir Paul gave no further details except to explain that the arrest might take place during the MPA meeting and that he was briefing Mr. Johnson as he did not want him to be taken unaware by a question by a member of the MPA who might become aware of the operation from their Blackberry during the meeting;

- (h) Mr. Green was not arrested during the meeting. Mr. Johnson left the meeting before it ended and no further discussion took place;
- (i) at about 1 pm, he was made aware that Mr. Cameron had been told that Mr. Green was to be arrested. He made a telephone call to Mr. Johnson at 1.14 pm to ensure that he was not taken unaware in his capacity as Chairman of the MPA and embarrassed through lack of knowledge of police action;
- (j) Mr. Johnson returned Sir Paul's call at 1.19 pm. Sir Paul explained brief details about the nature of the police inquiry and that Mr. Green was the MP who was about to be arrested;
- (k) Mr. Johnson telephoned him at 2.02 pm. Mr. Johnson asked what he should say if asked as Chairman of the MPA as to why the MPS had chosen to arrest Mr. Green rather than invite him in for questioning. Sir Paul explained that he could not give specific details of the case as that could compromise Mr. Johnson, but he explained the police power of arrest, PACE guidelines and the procedures gone through for the arrest;
- (l) he told Mr. Johnson that he recognised how sensitive the matter was. He made it clear to Mr. Johnson that he had not given him any specific details of the case, but had sought to give him an understanding of the procedures so that Mr. Johnson was properly able to respond to questions he might receive as Chairman of the MPA;
- (m) the briefing he gave Mr. Johnson was of a level to ensure that the investigation would not be compromised and there could be no suggestion of improper influence. He gave no information that could have been of advantage to Mr. Green or could have disadvantaged the MPS;
- (n) nothing that he told Mr. Johnson was confidential in this case;
- (o) it was the job of the police to go where the evidence took them and to act without fear or favour in any investigation. An exchange of views between a chief officer of police and a police authority chairman was a helpful and healthy element of the relationship between the chief officer and the governance body;
- (p) Mr. Johnson had expressed his views in response to Sir Paul's briefing but the police remained the decision makers in police investigations. Mr. Johnson's comments did not alter the decision making or course of the investigation;

- (q) the making public of Mr. Johnson's comments on the operation was unhelpful because it made the policing operating environment even more challenging. However, it did not prevent the MPS from executing its investigation in a way that it considered appropriate.

Sir David Normington

5.7 In the uncorrected transcript of the session of the Home Affairs Committee on 20th January 2009 (JTG 7), Sir David Normington said:-

- (a) Assistant Commissioner Quick telephoned him at 1.30 pm on Thursday 27th November 2008. He returned the call at 1.45 pm. He learnt from the telephone conversation that Mr. Green's offices and home were to be searched. Mr. Quick told him that Mr. Johnson, Mr. Cameron, the Cabinet Office and the Speaker of the House of Commons had been told;
- (b) he told the Home Secretary's Private Secretary. The Private Secretary informed the Home Secretary at 2.25 pm;
- (c) he was told that Mr. Green had been arrested at 2.25 pm. The Home Secretary and the Prime Minister were informed at about 3 pm;

Assistant Commissioner Quick

5.8 In the uncorrected transcript of the session of the Home Affairs Committee on 10th February 2009 (JTG 9), Assistant Commissioner Quick said:-

- (a) he had discussed the police operation (in relation to the Home Office leaks investigation) with Sir Paul Stephenson. Mr. Quick was aware in very general terms that it was Sir Paul's intention to alert Mr. Johnson in his capacity as Chairman of the MPA;
- (b) in Mr. Quick's experience as a chief constable, alerting the chairman of the police authority would be an entirely regular thing to do;
- (c) Mr. Johnson was not involved in any operational decision making;
- (d) the MPS had taken a number of decisions to soften the impact of its operational action and not undertake its usual early morning arrest operation. Because of this, police officers were not able to locate Mr. Green;
- (e) police officers therefore sought Mr. Cameron's assistance. Mr. Quick telephoned Edward Llewelyn, Mr. Cameron's Chief of Staff at 1.05 pm on Thursday 27th November 2008, in order to speak to Mr. Cameron;

- (f) Mr. Cameron telephoned Mr. Quick at 1.07 pm. Mr. Quick told him that police would be searching a number of premises relating to Mr. Green and that the police required to speak to Mr. Green;
- (g) he telephoned Chris Wright, the Cabinet Office Director of Security at 1.36 pm to tell him that the police operation to conduct searches was underway;
- (h) Mr. Green was arrested at 1.37 pm by MPS officers in Kent, though he was not aware of that until later;
- (i) he telephoned Sir David Normington at 1.39 pm to tell him that searches were being undertaken;
- (j) he briefed Sir Ian Blair, then MPS Commissioner, on the operation at 1.43 pm;
- (k) he briefed the Crown Prosecution Service at 1.46 pm;
- (l) he telephoned Michael Fuller, Chief Constable of Kent, to inform him that MPS officers were in Kent to search a constituency office and an address;
- (m) searches of the premises took place on or just after 2 pm;
- (n) Deputy Assistant Commissioner Cressida Dick telephoned Mr. Llewelyn at 2.19 pm to speak to Mr. Cameron. Mr. Cameron telephoned at 2.20 pm and DAC Dick told him of the arrest of Mr. Green;
- (o) Sir Paul Stephenson was told of the arrest by message at 2.28 pm;
- (p) DAC Dick telephoned Sir David Normington to tell him of the arrest;
- (q) a message was left with the Cabinet Office informing of the arrest at 2.33 pm

Mr. Johnson

5.9 Mr. Johnson was asked about his actions in the meeting of the London Assembly on 3rd December 2008. A copy of the transcript of that part of the meeting is enclosed at JTG 5:-

- (a) Mr. Duvall asked Mr. Johnson whether he thought it was appropriate to share his comments publically about the ongoing police investigation.

Mr. Johnson replied that it was. He said *“you had a situation in which to be seen to say nothing about a investigation that was going to cause the most fantastic political commotion, to be seen to do absolutely nothing to warn or counsel the police about the possible consequences of that arrest would, I think, have been a falling down in my duty as Chairman of the MPA”*;

- (b) Mr. Duvall asked Mr. Johnson was it not more appropriate for Mr. Johnson to have said *“look, the police have to carry out what they are doing; I have a view about that; at the right time I will make my views known”*;

Mr. Johnson said that he thought it was entirely right for the Chairman of the MPA to issue his own layman’s view about the likely political consequences of an arrest in the case of a leak enquiry. He thought he said that the arrest would *“go off like a rocket”*. He thought it was the duty of the Chairman of the MPA who had to protect the police and had to counsel them, to warn them of cases in which tactics would be perceived as heavy handed, disproportionate and would cause an adverse reaction;

- (c) Mr. Duvall asked Mr. Johnson when did a private conversation where he was urging caution become public;

Mr. Johnson said that nothing he had said in his conversation (with Sir Paul Stephenson) turned the course of the police inquiry since events were in train (the arrest) when it took place. He said perhaps he should be arrested for leaking the details of his own conversation. He did nothing to impede the investigation, nor was it possible for him to do so;

5.10 In his interview with Mr. Dolton and me on 3rd February 2009 (JTG 14), Mr. Johnson said:-

- (a) Sir Paul Stephenson briefed him and Mr. Malthouse at about 10 am on Thursday 27th November 2008 that an MP was about to be arrested;
- (b) shortly after lunch that day when he was launching the cancellation of the Western Extension of the Congestion Charge, he returned a telephone call from Sir Paul Stephenson. Mr. Johnson was at an Underground Station with Mr. Harri at the time. Sir Paul told him that Mr. Green had or was to be arrested in connection with a leak enquiry;
- (c) he telephoned Sir Paul back about about 2 pm from his office in City Hall. Mr. Johnson wanted to ascertain as much detail as it was necessary for him to know because he could imagine that he would be asked about the arrest;
- (d) he told Sir Paul that he *“would need some pretty convincing reasons for why it was necessary to arrest an MP in pursuit of a*

leak enquiry". Mr. Johnson said that as chairman of the MPA and someone with experience of journalism and politics, he expressed concerns that the police might incur adverse publicity by arresting an MP in pursuit of a leak enquiry, particularly because as far as he was aware, MPs did not sign the Official Secrets Act;

- (e) Sir Paul Stephenson told him at about 3 pm at the memorial service for Damilola Taylor at Southwark Cathedral that Mr. Green had been arrested;
- (f) he did not feel that Sir Paul Stephenson had passed any confidential information about the police investigation to him;
- (g) he attended a dinner that evening with the Head of the Beijing Communist Party. After about 10 pm, he was made aware that the media were asking for his views on the arrest of Mr. Green;
- (h) he could see no particular harm in him making his views on the arrest known as he considered it was part of his function as Mayor to represent the people (of London) and to be a critical friend to the MPS. He did not think for a minute that his conversation with Sir Paul Stephenson was confidential, nor that his own side of the conversation could conceivably be confidential;
- (i) he agreed the wording of a press statement jointly with Mr. Harri. The press statement was for general release to the media;
- (j) he agreed that Mr. Harri was his spokesperson as Mayor and that the MPA had its own press arrangements, however he felt that that his role as Mayor and MPA Chairman were indivisible.

5.11 In the uncorrected transcript of his evidence to the Home Affairs Select Committee also on 3rd February 2009 (JTG 8), Mr. Johnson said:-

- (a) Mr. Green's arrest was the only occasion since he had become Chairman of the MPA that he had been informed that someone was about to be arrested;
- (b) he was alerted shortly before 10 am on Thursday 27th November 2008 by Sir Paul Stephenson that he should be ready to deal with a controversy involving an MP. Sir Paul did not tell him which MP at that point;
- (c) at about 1 pm that day, Sir Paul made contact with a member of Mr. Johnson's team to say that Mr. Green was to be arrested in connection with a leak enquiry. Mr. Johnson telephoned Sir Paul once from an Underground Station platform in West London and later on from his office in City Hall:

- (d) Sir Paul called Mr. Johnson in his capacity as Chairman of the MPA to alert him to the arrest. Mr. Johnson called him back to clarify the facts and to make it clear to Sir Paul that Mr. Johnson felt he would obviously be asked about the arrest. It seemed to Mr. Johnson that there would be a controversy and it was right for him as Chairman of the MPA to tell Sir Paul that. He thought he said “*this thing will ‘go off like a rocket’*” and that he would need to have a pretty good reason to think that the arrest of an MP in the House of Commons was not a disproportionate response to a leak inquiry;
- (e) he understood that police officers were trying to find Mr. Green to arrest him when he spoke to Sir Paul Stephenson. He was told Mr. Green had been arrested when he met Sir Paul at 3 pm at Southwark Cathedral;
- (f) he felt the MPA was there to serve as a critical friend to the MPS and monitor what it was doing. In issuing a statement expressing concern over the arrest, he was doing that. The MPA was not there to be the spokesman of the MPS not to represent it to the wider world. If there were going to be issues where Mr. Johnson was specifically alerted in advance to a controversial decision, then he saw no harm, indeed he felt he had every right and duty to make his views plain.

5.12 Mr. Johnson was asked to indicate when he spoke to Mr. Cameron about the arrest of Mr. Green. Mr. Johnson clarified in correspondence with the Committee on 10th February 2009 that he spoke by telephone to Mr. Cameron at 1.59 pm on Thursday 27th November 2008.

Conclusion on facts

- 5.13 Mr. Duvall, Ms. Crawford and Sir Paul Stephenson all indicate that it is normal practice for chairmen of police authorities to receive briefings from senior police officers on sensitive or high profile operational matters. The purpose of such briefings is to ensure that the chairman is kept informed of operational issues and is not taken unawares by media enquiries. Sir Paul Stephenson indicated that such briefings would generally be given just before or just after a police operation.
- 5.14 Such briefings would generally be provided in confidence.
- 5.15 On occasions a chairman of a police authority might offer advice or express a reaction to such a briefing.
- 5.16 Police officers planned to arrest Mr. Green on Thursday 27th November 2008. The following events took place:-

Time	Location	Event
8 am	New Scotland Yard, London	Sir Paul Stephenson informs Ms. Crawford that Mr. Green will be arrested
9.55 am (approx)	City Hall, London	Sir Paul Stephenson informs Mr. Johnson and Mr. Malthouse that a high profile arrest will take place during the day. Mr. Malthouse guesses that it will be a Conservative MP.
10 am	City Hall, London	MPA meeting starts. Mr. Johnson leaves early
Early lunchtime	Portobello Road Market, West London	Mr. Johnson and Mr. Harri attend launch of cancellation of Western Extension of Congestion Charge Zone
1.05 pm	-	Police unable to locate Mr. Green. AC Quick telephones Mr. Llewelyn to speak to Mr. Cameron
1.07 pm	-	Mr. Cameron telephoned AC Quick. AC Quick informs Mr. Cameron that a police operation was underway and that it was intended to search premises in connection with a Conservative MP. AC Quick asks Mr. Cameron to tell Mr. Green to contact AC Quick's office.
1.14 pm	-	Sir Paul Stephenson telephones Mr. Johnson, seeking to speak to him.
1.19 pm	At or near Ladbroke Grove Underground Station	Mr. Johnson telephones Sir Paul Stephenson and is told that Mr. Green will be arrested
1.30 pm	-	AC Quick telephones Sir David Normington
1.36 pm	-	AC Quick telephones Mr. Wright, (Cabinet Office Director of Security) and tells him that police operation to conduct searches is underway.

1.37 pm	Ashford, Kent	MPS officers arrest Mr. Green.
1.39 pm	-	AC Quick telephones Sir David Normington seeking to speak to him.
1.43 pm	-	AC Quick briefs Sir Ian Blair
1.45 pm	-	Sir David Normington telephones AC Quick and is told Mr. Green's offices and home was to be searched
1.46 pm	-	AC Quick briefs Crown Prosecution Service
1.51 pm	-	AC Quick telephones Mr. Fuller (Chief Constable of Kent) to inform him that MPS officers were in Kent intending to search a constituency office and an address
1.59 pm	City Hall, London	Mr. Johnson telephones Mr. Cameron
2 pm	Ashford, Kent Westminster	Searches of Mr. Green's offices and home take place.
2.02 pm	City Hall, London	Mr. Johnson telephoned Sir Paul Stephenson and expresses reaction to the arrest
2.19 pm	-	DAC Dick telephones Mr. Llewelyn to speak to Mr. Cameron.
2.20 pm	-	Mr. Cameron telephones DAC Dick and is informed of Mr. Green's arrest
2.25 pm	-	Home Secretary informed of search by her private secretary
2.28 pm	-	Sir Paul Stephenson informed of Mr. Green's arrest by message
2.30 pm	-	DAC Dick tells Sir David Normington that arrest of Mr. Green had taken place
3 pm (approx)	Southwark Cathedral, London	Sir Paul Stephenson tells Mr. Johnson that arrest of Mr. Green had taken place

3 pm (approx)	-	Home Secretary and Prime Minister informed that arrest had taken place
10 pm (approx)	Dinner for Beijing delegation	Mr. Harri telephones Mr. Johnson to alert him to growing media interest in the arrest. They agree a press statement
10.44 pm	-	Mr. Harri releases press statement with Mr. Johnson's comments on the arrest

- 5.17 In his telephone conversation with Sir Paul Stephenson at 2.02 pm, Mr. Johnson said he thought that the arrest would “*go off like a rocket*”. In his view as Chairman of the MPA and as someone with experience of journalism and politics, he felt the MPS would incur adverse publicity by arresting an MP. He felt he would “*need some pretty convincing reasons*” why it was necessary to arrest an MP in pursuit of a leak enquiry.
- 5.18 Sir Paul Stephenson explained that he could not give specific details of the case, but explained the police power of arrest, PACE guidelines and the procedures gone through for the arrest.
- 5.19 Both Sir Paul and Mr. Johnson said that there was nothing in their conversation that was confidential. Sir Paul spoke to Mr. Johnson as Chairman of the MPA.
- 5.20 At about 10 pm that night, Mr. Harri told Mr. Johnson of the increasing media interest and they agreed a press statement. Mr. Harri issued the press statement to the media at 10.44 pm. This led to the Times Article on 29th November. Mr. Harri felt that he issued the press statement on behalf of Mr. Johnson as Mayor. Mr. Johnson regarded the roles as indivisible.

6. Complaint 1 – reasoning

Capacity

- 6.1 Both the MPA and GLA codes of conduct only apply to a member acting in their official capacity. Paragraph 2(1) of the Model Code requires that a member must comply with the Code whenever they:-
- (a) conduct the business of the authority, including the business of the office to which the member is elected or appointed; or
 - (b) act, claim to act or give the impression they are acting as a representative of their authority.
- 6.2 There is a need to consider whether Mr. Johnson was acting in an official capacity in relation to the events which gave rise to the complaint and whether he was acting as Mayor of London (under the GLA Code) or as Chairman of the MPA (under the MPA Code) or as both.
- 6.3 The events which gave rise to the complaint were:-
- (a) just before 10 am at City Hall, Sir Paul Stephenson gave advance warning to Mr. Johnson that a public figure was going to be arrested (the City Hall Briefing);
 - (b) at 1.19 pm at or near Ladbroke Grove Underground Station, Mr. Johnson returned Sir Paul Stephenson's telephone call. Sir Paul told Mr. Johnson that Mr. Green would be arrested (the Ladbroke Grove Telephone Call);
 - (c) at 2.02 pm at City Hall, Mr. Johnson telephoned Sir Paul Stephenson and gave his reaction to the proposed arrest (which had by now taken place) (the City Hall Telephone Call);
 - (d) at 10.44 pm, Mr. Harri released a press statement referring to Mr. Johnson's comments to Sir Paul Stephenson in the City Hall Telephone Call (the Press Release).

The City Hall Briefing

- 6.4 Mr. Duvall said that he had received briefings on sensitive operational matters from senior MPS officers as part of being Chairman of the MPA. Ms. Crawford and Sir Paul Stephenson said that Mr. Johnson was told of the arrest as Chairman of the MPA. Mr. Duvall, Ms. Crawford and Sir Paul Stephenson said the purpose of such a briefing was to ensure the Chairman of the Police Authority was kept informed and to avoid him being "door stepped".
- 6.5 The receipt of such a briefing must be considered to fall within the business of the office of a chairman of a police authority.

- 6.6 It is possible that the Mayor of London might be provided with a police operational briefing on, for example, such as measures to counter a terrorist attack on the infrastructure of the capital. However, I do not think that there would have been any reason to brief the Mayor on the pending arrest of an MP as there was no particular connection with the functions of the Mayor.
- 6.7 I consider that Mr. Johnson was conducting the business of the office of Chairman of the MPA only when he received the City Hall Briefing. Accordingly only the MPA Code applied to him.

The Ladbroke Grove Telephone Call

- 6.8 The Ladbroke Grove Telephone Call was simply an extension of the earlier briefing process. Sir Paul Stephenson had told Mr. Johnson in the City Hall Briefing that a public figure was to be arrested. Then he told him it was Mr. Green.
- 6.9 The same considerations must therefore apply. Mr. Johnson was conducting the business solely of the office of Chairman of the MPA and the only the MPA Code applied to him.

The City Hall Telephone Call

- 6.10 It is clear from Mr. Harri, Sir Paul Stephenson and Mr. Johnson that Mr. Johnson gave his reaction to the arrest in the City Hall Telephone Call. He asked why it was necessary for Mr. Green to be arrested and warned that the arrest would “go off like a rocket”.
- 6.11 Mr. Duvall and Ms. Crawford indicated that police authority chairmen would normally discuss an operational briefing, give views and ask questions. Such activity may be considered part of the functions of a police authority chairman.
- 6.12 Mr. Johnson’s reaction was to the Ladbroke Grove telephone call, which itself was an extension of an earlier briefing process which started at 10 am at City Hall provided to him as MPA Chairman. As I have said above, there would have been no reason for the Mayor of London to be so briefed.
- 6.13 Therefore I consider that Mr. Johnson was conducting the business of the office of Chairman of the MPA, not that of Mayor and only the MPA Code applied to him when he gave his reaction to the arrest to Sir Paul Stephenson.

The Press Release

- 6.14 Mr. Harri advised Mr. Johnson of the rising media interest in the arrest. They agreed the form of the press statement which Mr. Harri released to the media.

- 6.15 Mr. Harri works for the Mayor of London. Though there might be liaison between the MPA and the Mayor's Press Offices, Ms. Crawford said that MPA press releases would go through the MPA and she would be consulted on their content.
- 6.16 The press statement refers to Mr. Johnson as Chairman of the MPA, but Mr. Harri said that he included that as a relevant fact in the same way he might for other offices held by the Mayor, such as Chairman of Transport for London. The press release also includes Mr. Harri's details as working for the GLA. Mr. Johnson said the positions of Mayor and Chairman of the MPA were indivisible. I consider Mr. Harri believed he was acting for the Mayor of London when he issued the press statement.
- 6.17 However, Mr. Johnson received the operational briefing and responded to it as Chairman of the MPA. It was reasonably a part of his functions to make a media comment on the matter as Chairman of the MPA.
- 6.18 Though he used the resources of the GLA to issue the press statement, I consider he was acting in his capacity as Chairman of the MPA because the press statement was about his actions undertaken as MPA Chairman.
- 6.19 However, the press statement also referred to Mr. Johnson as Mayor and included Mr. Harri's details as working for the GLA. Paragraph 2(1)(b) of the Code indicates that a member must comply with the Code whenever they act, claim to act or give the impression they are acting as a representative of their authority. A recipient of the press statement would reasonably assume that it had been made by Mr. Johnson as Mayor of London.
- 6.20 Accordingly, I consider that Mr. Johnson was:-
- (a) conducting the business of the office of Chairman of the MPA and the MPA Code applied to him, and
 - (b) acting or giving the impression he was acting as a representative of the GLA

when he asked Mr. Harri to issue the press statement and therefore both the MPA and GLA Codes apply to him in respect of this complaint.

Code elements

- 6.21 Paragraph 4 of the Codes of both authorities requires that (subject to some exceptions) a member must not disclose information given to the member in confidence, or information acquired by the member which they believe, or ought reasonably to be aware, is of a confidential nature.

6.22 The elements of the Code are:-

- (a) the member must have made the disclosure; and
- (b) the disclosure must be of:-
 - (i) information given to the member in confidence; or
 - (ii) information acquired by the member which they believe, or ought reasonably to be aware is of a confidential nature.

Disclosure

6.23 It is clear that the information contained in the Times article on 29th November 2008, referred to in the complaint, was derived from Mr. Harri's press release. Mr. Johnson asked Mr. Harri to send the press release, so Mr. Johnson made the disclosure of the information.

Confidential information

6.24 Mr. Duvall and Ms. Crawford said that operational briefings given by senior police officers were normally confidential. In his comments in the draft report, Mr. Duvall said that the briefing was confidential because it related to an on-going police investigation and should have been treated as such. However, Sir Paul Stephenson said that in this case he did not give any confidential information to Mr. Johnson.

6.25 At Q30 of the Case Review 2007, the Standards Board for England (SBE) advises that information can only be confidential if all the following apply:-

- “ ■ *It has the necessary 'quality of confidence' about it (trivial information will not be confidential but information that you would expect people to want to be private would be).*
- *It was divulged in circumstances importing an obligation of confidence (information properly in the public domain will not be confidential)*
- *Disclosure of it would be detrimental to the party wishing to keep it confidential.”*

6.26 Despite Mr. Duvall's comments, it is difficult to see how the briefing had the attributes of confidentiality. Even if it was possible that:-

- (a) Sir Paul Stephenson might have wanted the content of the briefing to be kept private, and
- (b) the briefing was given in circumstances where it was understood Mr. Johnson might under a duty to keep the information secret,

Sir Paul said that:-

“the briefing I gave [Mr. Johnson] was of a level to ensure the investigation would not be compromised and there could be no suggestion of any improper influence”.

- 6.27 Disclosure of the briefing could not therefore have been detrimental to the MPS and it was not confidential information within the SBE’s definition.
- 6.28 However, the information set out in the press release was not what Sir Paul Stephenson said to Mr. Johnson, but Mr. Johnson’s response to it. Mr. Johnson said (no doubt light-heartedly) in the 3rd December 2008 MPA meeting that perhaps he should be arrested for leaking his own conversation, but this captures the essential point. The Code covers information given to the member or acquired by them. Their own views cannot be information which has been given to, or acquired by them.
- 6.29 On that basis, Mr. Johnson has not breached paragraph 4 of the Codes of Conduct of the MPA and GLA. Even if I am wrong in my analysis, and the Code covers the information received by Mr. Johnson, that was not confidential information within the SBE’s definition.

Disrepute

- 6.30 Paragraph 5 of the Code provides that a member must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.
- 6.31 Mr. Duvall did not refer specifically to disrepute in relation to this complaint but it is appropriate to consider whether Mr. Johnson’s actions referred to in all three of the complaints could have brought his office or authority into disrepute.
- 6.32 I have considered disrepute generally in section 10 below.

General comments

- 6.33 Mr. Duvall highlighted the benefits of free and frank discussions between the chief officer of police and a chairman of the police authority. Ms. Crawford indicated that some times there might be a need to make a comment to the press on high profile matters, however there was a risk that such a practice in some cases might inhibit full and free discussion of such matters between the chief officer of police a police authority chairman.
- 6.34 Sir Paul Stephenson said that Mr. Johnson’s comments did not alter the decision making or course of the investigation but the making public of his comments was unhelpful because it made the policing operating environment even more challenging.

- 6.35 I recognise that Mr. Johnson and Mr. Harri felt that it was necessary for him to make a comment to the media. I said in the draft version of this report that as both are highly experienced former journalists, I must respect their knowledge of the press and assessment that this action was needed. Mr. Duvall commented on this that there was no need to issue a press statement at this point and that the MPA Press Office would have “if asked” lines prepared for the media along the lines of “it would be inappropriate for me to comment until the police investigation has run its course”.
- 6.36 Mr. Duvall further commented that the fact that the press statement was a good story and provided Mr. Johnson with maximum media exposure and political capital was not reason enough for the MPA Chairman to involve himself publically in an on-going investigation, especially where this was of a friend and colleague.
- 6.37 Mr. Johnson said in interview that he considered that making his views on the arrest known was part of being a critical friend of the MPS.
- 6.38 Mr. Johnson did not follow normal processes for issuing an MPA press statement, which would have included seeking the advice of Ms. Crawford as MPA Chief Executive. Mr. Duvall commented on the draft version of this report that Mr. Johnson told the Home Affairs Committee that he did not seek any formal advice about issuing a press statement.
- 6.39 There is always a risk of prejudicing an active policing operation by making a public comment and Mr. Johnson should have sought advice from the MPA before issuing the press statement, especially as it related to a policing operation affecting a friend and former colleague of his.
- 6.40 Though this may not have been a detrimental effect on the police operation on this occasion, I recommend the MPA and the GLA review and strengthen their arrangements for the issuing of press statements on critical incidents as part of considering the adoption of an overall protocol on such incidents.
- 6.41 I have addressed this further in section 11 – recommendations.

7. Complaint 2 – evidence

The complaint

7.1 In his letter of 5th December 2008 (enclosed at JTG 1), Mr. Duvall said:-

“At the plenary meeting held on 3 December 2008, Mr Johnson freely admitted that, after receiving a briefing from senior police officers on the impending arrest of a criminal suspect, Damian Green MP, he and his political office had been in contact with Mr Green and others. As confirmed by Acting Commissioner of the Police of the Metropolis, Sir Paul Stephenson, at the plenary meeting, Mr Johnson received the information relating to Damian Green’s arrest as Chair of the Metropolitan Police Authority. Mr Johnson told the Assembly on 3 December 2008 that he was subsequently in contact with Mr Green as “a friend and ex-colleague”

By discussing the on-going case with the criminal suspect to “ascertain...where the facts seem to lie” and letting be know his views on the on-going investigation, Mr Johnson has clearly breached general obligation 6 (a) of the GLA and MPA codes of conduct: “you must not use or attempt to use your position as a member improperly to confer on or secure for yourself or another person, an advantage or disadvantage”.

London Assembly meeting on 3rd December 2008

7.2 A transcript of the relevant part of the meeting is enclosed at JTG 5. Mr. Duvall and other Assembly Members asked Mr. Johnson a number of questions:-

- (a) Mr. Duvall asked Mr. Johnson whether he or any of his office had spoken to anyone outside the police service connected with the (Home Office leaks) investigation;

Mr. Johnson said that he expected that there had been contacts but that he did not propose to go into it;

- (b) later in the meeting, John Biggs asked whether Mr. Johnson or members of his office had had any conversations with Mr. Green since the matter broke;

Mr. Johnson said there had. When asked whether he considered these conversations appropriate, he said that he was not involved in the investigation. He thought it was *“perfectly proper for me and my office to try to ascertain as well as we can where the facts seem to lie and to take a view..”*. Mr. Johnson said he thought there was a duty to inform himself about what was going on and to avoid unnecessary errors;

- (c) Mr. Biggs asked Mr. Johnson whether there was not a risk that the public perception might be that he as an inexperienced Chair of the Police Authority might be straying into operational policing matters;

Mr. Johnson said that he was *“a mere toenail in this”*. There was nothing he could do about how the police conducted the investigation;

- (d) Mr. Biggs asked Mr. Johnson whether, by him speaking to a suspect in a criminal matter when he was Chair of the Police Authority there was not a risk that the public would perceive a conflict between his two roles;

Mr. Johnson said no one had been charged. It was his hunch that there would no charges or prosecution.

- (e) Mr. Duvall asked Mr. Johnson whether he thought it was unwise for him to talk to a potential suspect;

Mr. Johnson said that he had every possible right to inform himself about what was going on in any way that was most expeditious;

- (f) Mr. Duvall asked Mr. Johnson what information he was seeking and why he would seek information from a potential suspect in his role as Chair of the MPA or even as Mayor of London;

Mr. Johnson said that he wanted for the sake of his own conscience just to talk to Mr. Green and see that he understood the circumstances correctly. He saw absolutely no harm in that. His initial advice had been based on a hunch, but he wanted to check whether that hunch was correct;

- (g) Mr. Duvall commented that Mr. Johnson had reached conclusions about police activity by talking to a potential suspect rather than waiting for an investigation;

Mr. Johnson said *“it was then entirely right... to go back and check with ...Damian Green, who is, as you can imagine, a friend and ex-colleague of mine..”*

- (h) James Cleverly asked Mr. Johnson whether he had shared any operationally sensitive material that he might have received in his capacity as Chairman of the MPA with Mr. Green;

Mr. Johnson said that he had not.

Mr. Duvall

7.3 Mr. Duvall did not comment further on this complaint in his statement.

Sir Paul Stephenson

7.4 In his statement (JTG 13), Sir Paul Stephenson said:-

- (a) he gave no information to Mr. Johnson that would have been advantageous to Mr. Green or would have disadvantaged the MPS;
- (b) on the basis of *his* conversations with Mr. Johnson, no advantage or disadvantage could have been conferred by him speaking to Mr. Green.

Mr. Harri

7.5 In his two statements (JTG 12 and 15), Mr. Harri said:-

- (a) sometime after Mr. Green's arrest, Mr. Johnson and he were wondering how Mr. Green was coping personally with the pressure of the arrest and the intense media interest. Mr. Harri told Mr. Johnson that he would find this out;
- (b) at 7.58 pm on Sunday 30th November 2008, Mr. Harri sent the following text message to Mr. Green's mobile telephone – "*Guto harri here. Can you talk?*";
- (c) Mr. Green telephoned him during the afternoon of Monday 1st December 2009. Mr. Harri was with Mr. Johnson and Roisha Hughes (Mr. Johnson's private secretary) in Mr. Johnson's office in City Hall. Mr. Harri handed his telephone to Mr. Johnson;
- (d) Mr. Johnson and Mr. Green had a short telephone conversation, lasting about two minutes;
- (e) Mr. Johnson asked Mr. Green if he was OK. Mr. Johnson said light-heartedly that he hoped Mr. Green's passport had not been taken from him so he could go skiing. Mr. Johnson said he hoped Mr. Green would understand why Mr. Johnson felt unable to get involved in any way with the difficulties Mr. Green was facing. Mr. Johnson did not discuss any detail of the police case with Mr. Green.

Ms. Hughes

7.6 In her statement (JTG 16), Ms. Hughes said:-

- (a) she was Mr. Johnson's Private Secretary and ran the Mayor's private office;

- (b) she checked her voicemail between 5.45 and 6.15 pm on Monday 1st December 2008 and found that she had received a message from Mr. Green. In his message, Mr. Green asked to speak to Mr. Johnson and left a mobile telephone number;
- (c) she went into Mr. Johnson's inner office to tell him about the message. At around the same time, Mr. Harri came into the office through another door saying that he had Mr. Green on his mobile telephone;
- (d) Mr. Harri passed his phone to Mr. Johnson. Ms Hughes and Mr. Harri sat on a sofa in Mr. Johnson's office and listened to the conversation;
- (e) Mr. Johnson asked Mr. Green if he was OK. Mr. Johnson asked him what had happened in relation to his arrest. Mr. Johnson asked a number of questions about the alleged leaks from the Home Office;
- (f) she could not remember the precise words of the conversation, but Mr. Johnson's tone was light-hearted and asked whether state secrets were involved and whether the leaked information was already in the public domain. She thought Mr. Johnson was trying to get behind the media hype that was circulating at the time;
- (g) in a light hearted manner, Mr. Johnson asked whether the police still had Mr. Green's passport and whether he would still be able to go skiing;
- (h) Mr. Johnson did not pass on any information to Mr. Green that was not already in the public domain.

Mr. Green

7.7 In his responses to the questions I put to him and his subsequent e-mail (enclosed at JTG 17), Mr. Green said:-

- (a) Mr. Johnson was a friend and former colleague;
- (b) he and Mr. Johnson spoke once by telephone between 5 and 6 pm on either Friday 28th November or Monday 1st December 2008;
- (c) Mr. Johnson expressed his sympathy with what had happened to Mr. Green and wanted to check that Mr. Green's family were alright. Mr. Johnson did not seek any information from him and did not give him any information;
- (d) Mr. Johnson was acting as a friend. The conversation had no effect on his position with regard to the police investigation.

Mr. Johnson

7.8 In his interview with Mr. Dolton and me on 3rd February 2009 (transcript at JTG 14), Mr. Johnson said:-

- (a) Mr. Green was a friend and colleague of long standing. They were MPs together for about seven years. Mr. Johnson considered Mr. Green a friend in the sense that he considered all Conservative MPs friends. He was not a close personal friend;
- (b) he had thought it would be a good idea to reassure himself as to the essential facts of the case as far as Mr. Green saw them;
- (c) someone, possibly Mr. Harri, made contact with Mr. Green over the weekend (of 30th - 31st November 2008) and Mr. Green telephoned Mr. Harri on Monday in the afternoon (1st December 2008);
- (d) Mr. Harri handed his phone to Mr. Johnson who said *"hello Damian. How are you, how's it all going?"*. Mr. Johnson was fairly sure he prefaced his remarks by saying that there was not very much he could say but that he just wanted to see what Mr. Green had to say about the essential facts of the case;
- (e) Mr. Green made various remarks to the effect that he had not tried to bribe anybody and that there was no breach of the Official Secrets Act;
- (f) he said he hoped that Mr. Green still had his passport and that he would be able to take a skiing holiday if he was lucky enough to be able to afford one;
- (g) he only had one telephone conversation with Mr. Green. Ms. Hughes and Mr. Harri were present;
- (h) he did not give Mr. Green any advice about the investigation, nor did he tell him anything about what Mr. Johnson thought might be happening. He had nothing of value to communicate to Mr. Green;
- (i) the reason he spoke to Mr. Green was because he had offered an opinion on the case as Chairman of the MPA and he wished to establish as quickly and economically as he could whether his instincts were right;
- (j) he did not believe that he had given Mr. Green an advantage or put the MPS at a disadvantage.

7.9 In his evidence to the Home Affairs Committee, also on 3rd February 2009 (uncorrected transcript at JTG 8), Mr. Johnson said:-

- (a) he did not contact Mr. Green before his arrest. He did not tell Mr. Green what was about to happen;
- (b) contact with Mr. Green was initiated over the weekend (30th – 31st November 2008) and a telephone conversation took place from Mr. Johnson's office at about 5 pm on Monday (1st December 2008);
- (c) when asked whether he spoke to Mr. Green as Mayor of London, Chairman of the MPA or as a friend and political ally, Mr. Johnson said it was difficult to make any meaningful distinction between the three roles;
- (d) since a statement had been put out in his name about the arrest, he thought it would be prudent and for the good of the MPA if he took the trouble briefly and economically to substantiate his instincts by telephoning Mr. Green to ascertain, on the balance of probabilities whether he was correct;
- (e) he would have telephoned any MP on either side of the House of Commons in those circumstances.

Conclusion on facts

7.10 Mr. Johnson had been a fellow Conservative MP with Mr. Green for seven years. Mr. Green was a friend but they did not have social contact.

7.11 Sometime after Mr. Green's arrest, Mr. Harri and Mr. Johnson were wondering how Mr. Green was coping. Mr. Harri sent a text to Mr. Green at 7.58 pm on Sunday 30th November asking if he could talk. Mr. Green telephoned Mr. Harri at about 6 pm on Monday 1st December 2008. Mr. Harri passed his phone to Mr. Johnson.

7.12 Mr. Johnson asked Mr. Green if he was OK. They had a short conversation in which he asked Mr. Green about the alleged leaks from the Home Office. Mr. Green told him that he had not tried to bribe anyone and that there was no breach of the Official Secrets Act. Mr. Johnson asked him whether he still had his passport so he could go skiing.

7.13 Sir Paul Stephenson had not told Mr. Johnson information which could have been of advantage to Mr. Green. In any event, Mr. Johnson did not discuss the police investigation.

7.14 In my view, Mr. Johnson decided to speak to Mr. Green for two reasons. The first reason was to enquire after his welfare, as a friend and former colleague. The second reason was to ask Mr. Green whether it was alleged state secrets had been leaked and whether the information was already in the public domain. I believe Mr. Johnson had formed an initial view that Mr. Green's arrest was unnecessary and disproportionate and this lay behind his comments to Sir Paul Stephenson. He spoke to Mr. Green to inform himself on whether he had been right to express concerns.

8. Complaint 2 – reasoning

Capacity

- 8.1 Both the MPA and GLA codes of conduct only apply to a member acting in their official capacity. Paragraph 2(1) of the Model Code requires that a member must comply with the Code whenever they:-
- (a) conduct the business of the authority, including the business of the office to which the member is elected or appointed; or
 - (b) act, claim to act or give the impression they are acting as a representative of their authority.
- 8.2 As with the previous complaint, there is a need to consider whether Mr. Johnson was acting in an official capacity in relation to the events which gave rise to the complaint and whether he was acting as Mayor of London (under the GLA Code) or as Chairman of the MPA (under the MPA Code) or as both.
- 8.3 Mr. Johnson has said many times that he spoke to Mr. Green as a friend and also to check the facts about the leak investigation. As I have said in section 7, above, I consider that the purpose of the telephone conversation was twofold. Some of the motivation for the call arose from the purely private matter that he knew Mr. Green as a friend. If this had been the only reason for the call, it is possible that Mr. Johnson might not have been conducting the business of his office and the Code might not apply.
- 8.4 When asked in what capacity he made the call, Mr. Johnson said that it was difficult to make a meaningful distinction between his role as Mayor, MPA Chairman or friend and political ally. However, Mr. Johnson had said that the other purpose for his call was to *“to try to ascertain...where the facts seem to lie and take a view”*. He said to the Home Affairs Committee that he thought it would be prudent and for the good of the MPA if he took the trouble to substantiate his instincts by telephoning Mr. Green.
- 8.5 On this basis, Mr. Johnson was making his own inquiries on behalf of the MPA and was therefore discharging his functions as Chairman of the MPA. In commenting on the draft version of this report, Mr. Duvall said that it was farcical to suggest that one of the functions of the MPA Chairman was to conduct his own inquiries into ongoing police investigations. I disagree. I have described below the way that Mr. Johnson chose to go about this as extraordinary and unwise, but I do consider that it is part of the functions of any member of a police authority to satisfy themselves that efficient and effective policing is being carried out.

- 8.6 The telephone conversation with Mr. Green resulted from the briefing and telephone calls Mr. Johnson had with Sir Paul Stephenson on Thursday 27th November. I have already taken the view that these took place in Mr. Johnson's capacity solely as MPA Chairman and therefore so too did the telephone conversation with Mr. Green.

Code of conduct

- 8.7 Paragraph 6 of the Code provides that a member must not use or attempt to use their position improperly to confer on or secure for themselves or any other person, an advantage or a disadvantage.
- 8.8 It is inferred from the complaint that the advantage might be to Mr. Green and the disadvantage to the MPS.
- 8.9 At Q46 on page 61 of the SBE's Case Review 2007, the following guidance is given:-

"There are circumstances where it will be proper for a member to confer an advantage or disadvantage and other circumstances where it will not.

For example, there can be no objection to members voicing their opposition to the closure of a local public library. This conduct is clearly intended to secure an advantage for the users of the library. What is crucial is that members' attempts to secure this advantage are clearly part and parcel of their duties as a local representative. Therefore, these activities are not improper.

The term "improperly" is not defined in the Code of Conduct. This ensures that the scope of the provision is not unnecessarily limited. The underlying principle is that members are elected or appointed to public office to serve the public interest.

A member's conduct would be improper if they were to use their public position to further private interests of themselves or associates....to the detriment of the public interest. Any conduct that unfairly uses a member's public position to promote private interests over the public interest will be improper."

- 8.10 Whilst part of Mr. Johnson's motivation in calling Mr. Green was to speak to him as a friend, Sir Paul Stephenson said that he gave no information to Mr. Johnson that would have been of advantage to Mr. Green or would have disadvantaged the MPS.
- 8.11 Mr. Johnson, Mr. Harri and Ms. Hughes said that Mr. Johnson did not give any operational information to Mr. Green.
- 8.12 If Mr. Johnson was not in a position to confer an advantage on Mr. Green or a disadvantage to the MPS then he cannot have breached paragraph 6 of the Code of Conduct.

- 8.13 In commenting on the draft version of this report, Mr. Duvall said that Mr. Johnson attempted to confer an advantage on Mr. Green by displaying a public show of support by telephoning him, by forming a view on his innocence and then telling the London Assembly three times that he felt there would be no charge, prosecution or trial.
- 8.14 I have given careful consideration to Mr. Duvall's comments, but I consider that Mr. Johnson did not display a public show of support for Mr. Green. He only admitted to contacting him in response to direct questioning from Mr. Duvall at the London Assembly meeting on 3rd December 2008. There is no evidence as to whether Mr. Johnson formed a view on Mr. Green's innocence or guilt. Mr. Johnson said twice to the London Assembly meeting that he thought the police action might have been disproportionate and twice that he thought there would not be a prosecution.
- 8.15 I have said above that it is part of the functions of any member of a police authority to satisfy themselves that efficient and effective policing is being carried out. Whilst it was unwise for Mr. Johnson to do this by contacting Mr. Green, he was not attempting to confer an advantage on Mr. Green or if he did so, this arose through him trying to satisfy himself that effective and efficient policing was being carried out. Actions which may be seen to be foolhardy are not necessarily an attempt improperly to confer an advantage, see *Eggington, Mansfield District Council* (2007) APE 0382.

Disrepute

- 8.16 Paragraph 5 of the Code provides that a member must not conduct themselves in a manner which could reasonably be regarded as bring their office or authority into disrepute.
- 8.17 Mr. Duvall did not refer specifically to disrepute in relation to this complaint but it is appropriate to consider whether Mr. Johnson's actions referred to in all three of the complaints could have brought his office or authority into disrepute.
- 8.18 I have considered disrepute generally in section 10 below.

General comments

- 8.19 Whilst Mr. Johnson might not have been in a position to confer an advantage on Mr. Green or disadvantage the MPS investigation, for a chairman of a police authority to contact a person recently arrested in an operation by his own police force was, in my view, extraordinary and unwise.
- 8.20 It was extraordinary because as the non executive chairman of the MPA, Mr. Johnson decided to conduct his own enquiries into the circumstances of the arrest. Had he felt it was necessary to investigate the matter further, he could and should have raised his concerns with officers of the MPA and sought their advice on the best way forward.

- 8.21 It was unwise for two reasons. Firstly, Mr. Green was a friend and political ally and in my view this created a risk that Mr. Johnson would be perceived to be furthering private interests by contacting him. Secondly, by speaking to Mr. Green he placed himself at risk of being called as a witness by either the CPS or defence in any criminal prosecution of Mr. Green, to the potential detriment of his office as Chairman of the MPA.
- 8.22 In his comments on the draft report, Mr. Hocking for Mr. Johnson took issue with my view that Mr. Johnson's actions were extraordinary and unwise. Mr. Hocking said that the arrest of a serving MP and the search of his office within the Palace of Westminster was a highly unusual event. There was intense public interest in the actions of the MPS. What might be extraordinary generally might not be in this context. In Mr. Hocking's view it was not unreasonable for Mr. Johnson to take some basic steps to check that his views were not manifestly ill founded.
- 8.23 Mr. Hocking said that perhaps a way could have been found for Mr. Johnson to obtain the information he felt he needed without presenting Mr. Duvall with the opportunity to make a complaint. However, Mr. Johnson had been careful to keep his conversation within proper boundaries and "unwise" was too strong a description.
- 8.24 In his comments on the draft report, Mr. Duvall said another description for Mr. Johnson's actions would be "reckless and improper". He highlighted comments by the Lord Chancellor and Secretary of State for Justice in the House of Commons on 9th December 2008 describing the act by a police authority chairman of contacting a person who was part of an ongoing police inquiry as *"misconduct with a small 'm' because it would have almost certainly compromised a police investigation"*.
- 8.25 Whilst there is no evidence that Mr. Johnson has compromised the police inquiry, I remain of the view that his actions in contacting Mr. Green were extraordinary and unwise.
- 8.26 I have addressed this further in section 11 – recommendations.

9. Complaint 3 – evidence

The complaint

9.1 In his letter of 5th December 2008 (enclosed at JTG 1), Mr. Duvall said:-

“At the same meeting, Mr Johnson went on to pre-judge the outcome of the investigation by saying “I am yet to be dissuaded that it is likely to yield either a charge or a successful prosecution”. The Mayor, as Chair of the MPA, has no business publicly commenting – and potentially corrupting – an on-going police investigation.

As a result of the Mr Johnson’s words at the plenary meeting and in the press, the public could understandably infer that – given his position as Chair of the MPA – he was privy to information which led him to take a view on the case and pre-judge its outcome.

By publicly pre-judging the outcome of an on-going police investigation and implying to the public that he had access to sensitive information regarding the investigation into his “friend and ex-colleague”, I believe Mr Johnson has brought the MPA and office of Mayor into disrepute. He has therefore breached general obligation 5 of the GLA and MPA codes of conduct: “You must not conduct yourself in a manner which could reasonable be regarded as bringing your office or authority into disrepute” ”

London Assembly meeting on 3rd December 2008

9.2 A transcript of the relevant part of the meeting is enclosed at JTG 5. Mr. Johnson spoke about the case and Mr. Duvall and other Assembly Members asked Mr. Johnson a number of questions:-

- (a) Mr. Johnson said that he did not want to prejudice any of the subjects which the Chairman of the London Assembly had mentioned (the Damian Green investigation and the death of Baby P). Mr. Johnson said that he intended to minimise his involvement in any conversation about them;
- (b) Sir Paul Stephenson made a statement about the Home Office leaks inquiry by the MPS. He said:-

“this is an on-going investigation and everyone must tread carefully and with caution when speaking about the details, and I include myself in that. The Contempt of Court Act 1981 applies as soon as anyone is arrested. However, there is a large amount of comment and speculation already in the public domain, and I think that it is right and proper for me to present some facts surrounding this investigation, which lie at the heart of

how the Metropolitan Police Service operates”.

- (c) In response to a question from Assembly Member Tony Arbour, Mr. Johnson said that there was a difficulty presented to anyone who was called upon to speak on the matter because they could be held to be improperly trying to influence events if they were seen to be trying to counsel caution in respect of the arrest of a Conservative MP. On the other hand, if they did not counsel caution, they could be said to be falling down in their duty to protect the MPA from the consequences of an action that might be widely misinterpreted;
- (d) Mr. Johnson said the best thing was to let the police get on with it. The process had to continue, to run its natural course. After that time, he thought the MPA should look at what lessons could be learnt from it. He thought it would be a mistake to offer any kind of running commentary or any kind of view on what was taking place or had taken place;
- (e) later on in the meeting Mr. Johnson said:-
- “I think that if and when this inquiry on this particular matter comes to an end, however it eventuates, I do not know if it produces charges, a court case, I do not know. I think it would be unlikely but whatever happens I do think that there is a case for looking at some of the difficulties the police find themselves in, in cases of this kind. Particularly the operation of PACE as it affects arrests. I think we should have a serious discussion on the MPA about the way in which the police seem to be driven to make these arrests because of formal requirements of PACE, when actually a more common sense approach might do..”*
- (f) Assembly Member Mike Tuffrey put it to Mr. Johnson that he needed to be clear what role he was playing at any given point and to accept that as Mayor of London and Chairman of the MPA he needed to be sparing when he used information;

Mr. Johnson responded:-

“...if you look at what has happened in the last few days and if you look at the torrent of abuse that has been directed at the Metropolitan Police Service and against this particular action, not just from the Conservative Party, not just from the Liberal Democrats, but also of course from a great many outraged people in the Labour Party;

I think it was entirely right as Chairman of the MPA to give my feelings, my instinct, my hunch, in advance, that I thought this would probably go very badly and people would take a lot of convincing that this action was not

disproportionate. Of course you have to wait for the outcome of the inquiry, but I have to tell you, for my own part, I still remain to be convinced that it was not disproportionate..”

(g) in response to a question from Mr. Biggs, Mr. Johnson said:-

“...my own feeling though is simply that, as I have said before, I think that this particular action could easily be construed as disproportionate. I am yet to be dissuaded that it is likely to yield either a charge or a successful prosecution. You know, that was why I spoke as I did in advance, and I think I was absolutely right to do so.”

(h) in response to a series of questions from Mr. Biggs relating to whether Mr. Johnson should have spoken to Mr. Green, Mr. Johnson said:-

“No one in this matter has yet to be charged...I do not wish to be provoked in this matter. If you asked me what I thought about this case it would be, quite frankly - - it is my hunch that it will not produce either a charge or a prosecution.”

Mr. Duvall

9.3 Mr. Duvall did not comment further on this complaint in his statement.

Sir Paul Stephenson

9.4 In his statement (enclosed at JTG 13), Sir Paul Stephenson said that Mr. Johnson’s comments did not alter the decision making or course of the investigation. Although unhelpful in making the police operating environment even more challenging, they did not prevent the MPS from executing its investigation in the way that it considered to be appropriate.

Mr. Johnson

9.5 In his interview with Mr. Dolton and me on 3rd February 2009 (transcript at JTG 14), Mr. Johnson said:-

- (a) he attended the meeting on 3rd December 2008 as Chairman of the MPA;
- (b) he agreed that he had said he was yet to be persuaded that it (the investigation) was likely to yield a charge or successful prosecution but there was a need to look at the comment in the totality of his comments to the meeting, most of which were to the effect that the police should be allowed to get on with their investigation;

- (c) such comment as he made about the investigation was extorted or coaxed from him with considerable effort by Mr. Duvall;
- (d) he asked the MPA and interested parties to respect the police investigation but he was invited several times to make further comment;
- (e) his making of the comment had not had an effect on the reputation of his office as Mayor or Chairman of the MPA. It would have been extremely odd for the Chairman of the MPA not to have said something about an extremely controversial investigation when he was specifically spoken to in advance;
- (f) the job of the MPA was to serve as a monitor and critical friend of the MPS;
- (g) it was slightly perverse of Mr. Duvall to make a titanic effort to elect comments from him on the case, when he specifically said he did not want to comment about it, and then to make a standards complaint when he did.

Conclusion on facts

- 9.6 Mr. Johnson attended a meeting of the London Assembly on 3rd December 2008 with Sir Paul Stephenson in order to respond to questions on policing. He said he was doing so in his capacity as Chairman of the MPA.
- 9.7 Mr. Johnson said that he did not want to prejudice the police investigation and that he intended to minimise his involvement in any conversation about them.
- 9.8 Mr. Johnson said the best thing was to let the police get on with the investigation. He said he thought it would be a mistake to offer any kind of running commentary on what had taken place.
- 9.9 However, Mr. Johnson commented three times on the investigation, as follows:-
- (a) in response to Mr. Tuffrey – *“I still remain to be convinced that [the police action] was not disproportionate..”*
 - (b) in response to Mr. Biggs – *“...I think that this particular action could easily be construed as disproportionate. I am yet to be dissuaded that it is likely to yield either a charge or a successful prosecution..”*
 - (c) again in response to Mr. Biggs – *“it is my hunch that it will not produce either a charge or a prosecution.”*

9.10 Sir Paul Stephenson said that Mr. Johnson's comments did not alter the decision making or course of the investigation. Although unhelpful in making the police operating environment even more challenging, they did not prevent the MPS from executing its investigation in the way that it considered to be appropriate.

10. Complaint 3 - reasoning

Capacity

- 10.1 Both the MPA and GLA codes of conduct only apply to a member acting in their official capacity. Paragraph 2(1) of the Model Code requires that a member must comply with the Code whenever they:-
- (a) conduct the business of the authority, including the business of the office to which the member is elected or appointed; or
 - (b) act, claim to act or give the impression they are acting as a representative of their authority.
- 10.2 As with previous complaints, there is a need to consider whether Mr. Johnson was acting in an official capacity in relation to the events which gave rise to the complaint and whether he was acting as Mayor of London (under the GLA Code) or as Chairman of the MPA (under the MPA Code) or as both.
- 10.3 Mr. Johnson said at the meeting that he was attending as Chairman of the MPA. Under section 20 of the Police Act 1996, a relevant local authority must make arrangements for enabling questions on the discharge of the functions of a police authority to be put by members of the local authority at a meeting of it for answer by a person nominated by the police authority for that purpose.
- 10.4 The MPA resolved at its meeting on 30th January 2003 to adopt job profiles for its members. The profile for the Chairman includes the following:- *“to attend GLA Functional Bodies Question Time to answer questions on policing issues”*.
- 10.5 It is clear that Mr. Johnson was conducting the business of his office at MPA Chairman when attending the London Assembly meeting. He was therefore acting in an official capacity and subject to the MPA Code of Conduct.

Disrepute

- 10.6 Paragraph 5 of the Code of Conduct provides that a member must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.
- 10.7 At Q43 on page 55 of the Standards Board for England’s publication the Case Review 2007, the following guidance on the meaning of disrepute is given:-

“In general terms, disrepute can be defined as a lack of good reputation or respectability.

In the context of the Code of Conduct, a member's behaviour in office will bring that member's office into disrepute if the conduct could reasonably be regarded as either:

- 1) *Reducing the public's confidence in that member being able to fulfil their role; or*
- 2) *Adversely affecting the reputation of members generally, in being able to fulfil their role.*

Conduct by a member which could reasonably be regarded as reducing public confidence in the authority being able to fulfil its functions and duties will bring the authority into disrepute...."

10.8 Q44 in the same publication advises that:-

"An officer carrying out an investigation about someone allegedly breaking the Code of Conduct does not need to prove that a member's actions have actually diminished public confidence, or harmed the reputation of an authority, in order to show a failure to comply. The test is whether or not a member's conduct "could reasonably be regarded" as having these effects.

This test is objective and does not rely on any one individual's perception. There will often be a range of opinions that a reasonable person could have towards the conduct in question..."

10.9 Q42 in the same publication advises that:-

'A case tribunal or standards committee will need to be persuaded that the misconduct is sufficient to damage the reputation of the member's office or authority, as opposed simply to damaging the reputation of the individual concerned'

10.10 In summary, disrepute can be characterised as conduct which, viewed objectively, is sufficient to damage or reduce the public's confidence in the member or members generally in being able to fulfil their role or the authority being able to fulfil its functions and duties.

10.11 The function of a police authority is to secure the maintenance of an efficient and effective police force. Implicit in the functions of a police authority is the notion of holding the force to account. Mr. Johnson is not alone in describing this in terms of being a critical friend to the police.

10.12 It is therefore necessary to consider whether by expressing a view on the police investigation Mr. Johnson has damaged or reduced the ability of the MPA to carry out its functions.

- 10.13 Given Sir Paul Stephenson's comments on the lack of effect of Mr. Johnson's statements on the functioning of the police investigation, it is not possible to say that Mr. Johnson damaged the efficiency and effectiveness of the MPS.
- 10.14 It could even be said that by commenting critically in public on the police investigation, Mr. Johnson was furthering the functions of the MPA in its critical friend role. I do not therefore consider that by his actions in the GLA meeting, he brought his office or authority into disrepute.

Whether disrepute in relation to complaint 1

- 10.15 I said above that I would consider disrepute issues in relation to Mr. Duvall's first complaint here for convenience.
- 10.16 I concluded that Mr. Johnson had not breached the requirement of the Codes of the GLA or MPA not to disclose confidential information when he set out his reaction to Sir Paul Stephenson's operational briefing on the arrest of Mr. Green in a press statement. I noted that Sir Paul Stephenson said that Mr. Johnson's comments did not alter the police investigation but the making public of them was unhelpful because it made the policing operating environment even more challenging.
- 10.17 I also noted that Mr. Duvall highlighted the benefits of free and frank discussions between the chief officer of police and a chairman of the police authority. Ms. Crawford indicated that some times there might be a need to make a comment to the press on high profile matters, however there was a risk that such a practice might in some cases inhibit full and free discussion of such matters between the chief officer of police a police authority chairman.
- 10.18 I consider that Mr. Johnson's actions did not damage the functions of his office or authority as Chair of the MPA on this occasion, but were he to publicise his reactions to an operational briefing as a matter of course in future he could inhibit full and free discussion of such matters between him and senior MPS officers, thereby potentially bringing his office or authority into disrepute.
- 10.19 There is no evidence that Mr. Johnson's actions damaged his functions as the Mayor of London. Indeed, such a figure elected to act as voice for Londoners might be expected to comment publically on high profile matters.

Whether disrepute in relation to complaint 2

- 10.20 As for complaint 1, I said above that I would consider disrepute issues in relation to Mr. Duvall's second complaint here for convenience.

- 10.21 I concluded that Mr. Johnson had not improperly conferred an advantage on Mr. Green or a disadvantage on the MPS in breach of the Code when he spoke to Mr. Green. However I described his actions as extraordinary and unwise.
- 10.22 As for complaint 1, there was no effect on the police investigation and hence I consider Mr. Johnson did not damage the functions of his office or authority on this occasion, but he runs a risk that he would do so if in the future he spoke as MPA Chairman to a person arrested in a criminal investigation.
- 10.23 In his comments on the draft report, Mr. Duvall said that taking into account Sir Paul Stephenson's statement that Mr. Johnson's public comment was unhelpful because it made the policing environment even more challenging and Ms. Crawford's statement that commenting on high profile matters might inhibit full and free discussion of such matters between a chief officer of police and a police authority chairman, he was at a loss to understand how Mr. Johnson's actions had not damaged the functions of his authority.
- 10.24 Again, I have given careful consideration to Mr. Duvall's comments but have not changed my conclusions. There is a difference in magnitude between something which is unhelpful and that which is damaging. Sir Paul Stephenson said that Mr. Johnson's actions did not prevent the MPS executing its operation in the way it considered appropriate. Ms. Crawford's comments about the potential risk of such actions in general must be taken in the context of Sir Paul Stephenson's comments that there was no adverse effect in this case.

11. Recommendations

- 11.1 I have concluded that in relation to the police investigation of Mr. Green, Mr. Johnson did not fail to comply with the Code of Conduct of the MPA. Specifically, he did not disclose confidential information, improperly confer and advantage or disadvantage or bring his office or authority into disrepute in breach of the Code.
- 11.2 Nonetheless, I have expressed the view that he could inhibit free and frank discussion of operational matters if he chose to publicise his reaction to briefings in future. I have highlighted that he did not follow normal MPA processes for issuing a press release, nor did he seek advice from MPA officers on making a press statement and in my view, he should have done so. I have also described his contacting a potential suspect in a criminal investigation as extraordinary and unwise.
- 11.3 I note that a number of police authorities have protocols in place to cover the handling of information about significant or critical incidents.
- 11.4 West Midlands Police Authority, for example, adopted a communications protocol in September 2008 setting out guidance on the provision of information on a number of different types of incident through a single point of contact between the Force and Authority. A copy of the protocol is enclosed at JTG 18, together with similar examples from Cheshire (JTG 19) and Surrey Police Authorities (JTG 20).
- 11.5 There appears to be no MPA policy which covers these issues, nor are they addressed on the MPS guide to the management and prevention of critical incidents.
- 11.6 I recommend that the MPA, MPS and the GLA jointly consider the adoption of a protocol to cover the management of information by senior police officers, senior members and officers of the MPA and the Mayor in relation to a critical incident.

12 Comments from complainant and respondent

Mr. Duvall

12.1 Mr. Duvall made the following comments in a letter dated 23rd February 2009, revised and reissued on 24th February (enclosed at JTG 21):-

1. *Thank you for providing me with a copy of your draft report of an investigation into Boris Johnson. You asked for my comments, which I have outlined below.*
2. *I note that, during the course of your investigation, a significant amount of new information has come to light; some introduced by those you have taken statements from, and some as part of the Home Affairs Select Committee (HASC) investigation into Home Office leaks. I will therefore include in my response references to the new information, some of which I believe to be extremely significant, and on none of which I have yet had chance to comment.*

Complaint 1

3. *You conclude that, in making public the details of his conversation with Sir Paul Stephenson, Mr Johnson has not breached the code of conduct on the grounds that nothing the then acting Commissioner said was confidential. I of course accept Sir Paul Stephenson's statement as fact. What I do not accept is that because the details of his conversation with Mr Johnson conversation were not confidential, this renders the briefing public property.*
4. *While I accept your reasoning that the content of Sir Paul Stephenson's briefing did not compromise the investigation, it was a confidential briefing. I cannot therefore accept that Mr Johnson's actions do not amount to a breach of the Code.*
5. *In my view, the briefing that Mr Johnson received on the morning on 27 November was confidential because it related to an on-going police investigation and should have been treated it as such. As stated in Catherine Crawford's evidence in paragraph 5.4 (e) or your draft report "she would expect such briefings to be given in confidence". The clear implication being it would not be expected that this briefing be shared with the world.*
6. *I do not accept your reasoning in paragraph 6.28 that because "[Mr Harri and Mr Johnson] are highly experienced former journalists, [you] must respect their knowledge of the press and their assessment" that it was*

necessary to issue a statement on behalf of Mr Johnson. As a former Chairman of the MPA, I am fully aware of the potential media interest in high profile investigations. In such cases the MPA press office would have "if asked" lines prepared for the media along the lines of: 'It would be inappropriate for me to comment until the police investigation has run its course'.

7. *What you are asking me to accept is that because Mr Johnson and Mr Harri are former journalists and can spot a good story, they were entitled to get this story into the public domain. This is not reason enough for an MPA Chairman to involve himself publicly in an on-going investigation in such an unprecedented and reckless manner. There may well be a case for the Chair to intervene or to give advice. However, this needs to be exercised carefully having regard to the public interest and relevant considerations and disregarding (particularly personal) considerations. It should not be done in circumstances when it can provide a politician with maximum media exposure and maximum political capital.*
8. *The fact that Mr Johnson is a friend and colleague of the person under investigation makes it even more imperative that he should have gone out of his way to not comment publicly on the case or the police investigation. Mr Johnson appears to have done the opposite, circumventing due process to publicly undermine the MPS, help out his friend and reveal that he had received a confidential briefing to add credibility to his criticisms.*
9. *I do not accept that this was a mishap due to a proper press protocol not being in place. In my four years as Chairman there was a clearly understood protocol for issuing press releases and dealing with the media. I believe Mr Johnson acted very deliberately and misused his office to bypass this process, using a confidential police briefing for political gain.*
10. *This is evidenced by the fact there is nothing anywhere in your report to suggest that at any time did Mr Johnson or his spokesman feel they were acting on behalf of the MPA. On the contrary, Mr Harri (paragraph 5.5) "did not issue press statements for the MPA" but "might, if relevant, include a factual statement that Mr Johnson was also Chairman of the MPA". It is absolutely clear to me that, in this case, Mr Harri was issuing a statement from the Mayor of London and included the fact he was Chairman of the MPA only as background information.*
11. *The statement issued to selected members of the press at 10:44pm on 27 November clearly states (paragraph 5.5*

l), “The Mayor of London has expressed grave concern....” and “Boris Johnson, who chairs the metropolitan police authority”. It is signed off “Guto Harri, Director of Communications, and Greater London Authority”.

12. You accept (paragraph 6.6) that there would have been no “reason to brief the Mayor on the pending arrest of an MP”. There was, therefore, no reason why the Mayor should issue a statement from his political office, defending his friend, colleague and political ally, using information he received confidentially as Chairman of the MPA. There was no input from the Chief Executive of the MPA or the MPA press office; neither was any attempt made by Mr Johnson or Mr Harri, based on the evidence in your report, to contact the Chief Executive or the press office.
13. When asked if he had sought advice before issuing what was bound to be a highly controversial statement, Mr Johnson told the HASC that “he might have consulted [his] immediate team”. He went on to say that he would act the same way again.
14. While Mr Johnson did tell the HASC that he did not seek any formal or verbal advice in this instance, it is unclear from your investigation whether he or any senior members of his team have sought or been given any such advice since Mr Johnson took the Chairmanship of the MPA. If they have, it was clearly ignored in this instance.
15. It may well be the case that, as you propose, the MPA and Mayor’s Office should review and strengthen their arrangements for the issuing of press statements. But I do not believe that this was a significant factor in determining Mr Johnson’s actions on 27 November. The apparent lack of a written press protocol may have allowed Mr Johnson to use his office to jump to the defence of his friend and ally, but did not cause him to.

Complaint 2

16. You conclude that because Mr Johnson did not possess operational information on Mr Green’s case he was (paragraph 8.12) “not in a position to confer an advantage on [him] or a disadvantage to MPS then he cannot have breached paragraph 6 of the Code of Conduct”.
17. Firstly, I do not accept that no advantage was conferred to Mr Green. Secondly, I remain of the belief that Mr Johnson attempted to use his position to confer an

advantage on Mr Green. As you are aware, paragraph 6 of the Code provides that a “member must not use or attempt to use their position improperly to confer on or secure for themselves or any other person, an advantage or disadvantage.”

18. *I believe Mr Johnson improperly conferred an advantage to Mr Green by contacting him to discuss his case, assuming his innocence, and then, in a public arena, undermining any case against him. I do not intend this to sound flippant but, unless Mr Johnson is going to contact all high profile criminal suspects after they have been arrested to “inform himself about what was going on” (paragraph 7.2 e) then he has at the very least attempted to confer an advantage to Mr Green, at worst, contacted a friend, criminal suspect and political ally and made a public show of support on his behalf thereby potentially compromising any future legal proceedings against him.*
19. *Additionally, while I accept Sir Paul Stephenson’s statement that Mr Johnson’s actions “did not prevent the MPS from executing its investigation”, the fact that they were “unhelpful and made the policing environment more challenging” points to a real or perceived disadvantage to the MPS and a real or perceived advantage to Mr Green. Sir Paul Stephenson’s comments also highlight the potential dangers caused by Mr Johnson’s actions. The Mayor’s status in the public eye means that great significance is attached to his comments.*
20. *It is clear from the evidence of Mr Johnson and Roisha Hughes that, during the telephone conversation between Mr Johnson and Mr Green on 1 December, Mr Johnson sought details of Mr Green’s case. He “asked whether state secrets were involved and whether leaked information was already in the public domain” (paragraph 7.6 f) and “a number of questions about the alleged leaks” (paragraph 7.6 e). Mr Green told Mr Johnson he “had not tried to bribe anybody and there was no breach of the Official Secrets Act” (paragraph 7.8 e). Clearly, by discussing such relevant details of the case with the suspect, Mr Johnson has put himself at risk of being interviewed by the MPS as part of their investigation.*
21. *There appears to be a significant discrepancy between the accounts of Mr Johnson and Ms Hughes and those of Mr Green and Mr Harri. Mr Harri states “Mr Johnson did not discuss any detail of the police case with Mr Green” (paragraph 7.5 e). Mr Green states “Mr Johnson did not seek any information from him and did not give him any information” (paragraph 7.7 c). In coming to a final decision, I would ask that you consider the implications of*

such serious discrepancies in the evidence submitted to your investigation.

22. *In my view, and in light of this new information, it is irrelevant whether Sir Paul Stephenson furnished Mr Johnson with sensitive information. But it is clear that Mr Johnson contacted Mr Green to ascertain whether or not he had “tried to bribe anybody” and whether there was a “breach of the Official Secrets Act” – two of the very matters under police investigation. He then formed a view of Mr Green’s innocence, presumably based on this conversation, and told the London Assembly on 3 December three times that he felt there would be no charge, prosecution or trial. Frankly, if this is not improperly conferring advantage to someone, I am at a loss to understand what is. Mr Johnson is, I would emphasise, a man of considerable influence and what he says will attract widespread public attention.*
23. *I do not accept that, in contacting Mr Green, Mr Johnson was “discharging his functions as Chairman of the MPA”. It is farcical to suggest that one of the functions of the Chairman of the MPA is to conduct “his own inquiries” (paragraph 8.5) into ongoing police investigations.*
24. *I welcome your conclusion that it was “extraordinary and unwise” for Mr Johnson to contact a criminal suspect, especially as Mr Green is a friend and political ally. Another description would be reckless and improper. The evidence revealed during the course of your investigation has strengthened my belief that Mr Johnson’s offices have been brought into disrepute by his actions. Whether intentional or not, his actions were reckless to the consequences. Ignorance of his duties is no defence. The appearance of actions and the maintenance of public confidence are vital to the policing and governance of London.*
25. *I am therefore struggling to understand how you have concluded that, in acting in an “extraordinary and unwise” manner and placing “himself at risk of being called as a witness by either the CPS or defence in any criminal prosecution of Mr Green”, Mr Johnson has not failed to comply with the Code. It is hard to imagine a more serious way that a police authority chair could act to the detriment of his office.*

Complaint 3

26. *You conclude that “by commenting critically in public on the police investigation, Mr Johnson was furthering the functions of the MPA” and did not therefore bring “his*

office or authority into disrepute". I strongly dispute this analysis, which could not be further from the truth. It is not a function of the MPA to publicly undermine on-going police investigations and it is certainly not the function of its Chairman to pronounce a criminal suspect's innocence. This applies always even when the suspect is not a friend and political ally.

27. *Far from "furthering the functions of the MPA in its critical friend role", I believe Mr Johnson has damaged this function. In my view he has actually made it less likely that senior officers will discuss high profile cases with him in the future and has compromised public confidence in the impartiality of the position of Chair.*
28. *There is a time when it is appropriate for the MPA and its Chair to be a "critical friend" of the MPS. In the most extenuating circumstances, it may be necessary for advice to be public. But, whatever the circumstances, this time is at the end of any police investigation and when the judicial process has run its course. Not during an ongoing case. In finalising your conclusion you should consider carefully the precedent it sets in its current form. You are effectively giving carte blanche to police authority chairs and members throughout the land to use their position to speak up on behalf of any friends, political allies or associates who find themselves under police investigation. This is clearly untenable and not, I'm sure, your intention.*
29. *In coming to a final view on this potential breach, I would ask that you consider the unprecedented nature of Mr Johnson's actions. I would like to draw your attention to the comments of the Lord Chancellor and Secretary of State for Justice on 9 December in the following extracts from Hansard:*

Clive Efford: How does my right hon. Friend feel he should have been judged if, when he was at the Home Office and effectively the police authority for London, he had rung someone who was part of an ongoing inquiry by the police to discuss their case? Would that have been a matter of misconduct, and would it have been a resigning issue?

Mr. Straw: It certainly would have been misconduct with a small "m" because it would have almost certainly compromised a police investigation. I suspect that there would have been demands for my resignation not just from the

Opposition, but from those on the Labour Benches as well.

And:

David Taylor: My right hon. Friend was our first Home Secretary in 1997, and has extensive experience of police authorities throughout the land. There are 44 police authorities in England and Wales, including the British Transport police. Outside of London, can he think of a single instance when a chairman of a police authority has contacted a close personal, political and professional friend after they have been bailed as a potential criminal suspect? Further to the question by my hon. Friend the Member for Eltham (Clive Efford), should we be looking to redefine misconduct in a public office to incorporate reprehensible behaviour of that kind?

Mr. Straw: I cannot think of a single occasion when a chairman of a police authority acted in the way that my hon. Friend described. As for the definition of that common law offence, the general view up until now has been that taken by the hon. and learned Member for Harborough when he considered this matter as a member of the Joint Committee on the Draft Corruption Bill—he decided that it did not need further statutory definition at that that stage.

30. *You also conclude that “Mr Johnson’s actions did not damage the functions of his office or authority on this occasion” but might “in the future” (paragraph 10.21).*
31. *Taking into account Sir Paul Stephenson’s statement, that Mr Johnson’s public comment was “unhelpful because it made the policing environment even more challenging” (paragraph 5.6 q) and Catherine Crawford’s statement that commenting on high profile matters “might inhibit full and free discussion of such matters between a chief officer of police and police authority chairman”, I am a loss to understand how Mr Johnson’s actions have not damaged the functions of his authority.*
32. *If the Chief Executive of the authority of which he chairs and the Commissioner of the Police Service of which he oversees have criticised Mr Johnson’s actions, again, it is hard to see what else he would have to do to damage the function and reputation of his office.*

33. *Your conclusion that Mr Johnson's actions "did not damage the functions or authority on this occasion" in effect amounts to a warning; in my opinion an unacceptable conclusion. It is not the purpose of this investigation to speculate on what actions Mr Johnson might take in the future, but to come to a view on the actions he has already taken. Either there has been a breach or there has not. This third ruling satisfies no one.*
34. *More generally, I am concerned that you appear to have taken literally and given more weight to the statements of some individuals than you have to the actions of Mr Johnson and the evidence uncovered. You have been very forgiving of Mr Johnson's actions and consistently given him the benefit of doubt throughout your report.*
35. *I have one additional concern that you have not addressed in your investigation and I did not address in my complaint because, as with much of your report, it concerns information that has subsequently come to light. According to your timeline (paragraph 5.16), Mr Johnson was told of Mr Green's arrest at 1:14pm by Sir Paul Stephenson and again spoke to him at 1:19pm. Yet it appears he only expressed his concern to the Commissioner after speaking to the leader of the Conservatives, a third party who had no relevance to the police investigation.*
36. *Mr Johnson telephoned David Cameron at 1:59pm. Three minutes later he telephoned Sir Paul Stephenson again and "[expressed] his reaction to the arrest". Presumably this is when he spoke "in trenchant terms" to the MPS Commissioner. The question that has not been asked is why Mr Johnson contacted the Leader of the Opposition. Until this question is answered the only conclusion I, or any member of the public, can draw is that this phone call and Mr Johnson's subsequent actions were for nothing more than party political gain.*
37. *I would like to place on record my appreciation of how you have conducted your investigation and the amount of relevant and new information you have gleaned. I remain concerned, however, that you have failed to appreciate the seriousness of Mr Johnson's actions; actions reflected in the compelling evidence that you have uncovered and the conclusions you have drawn. For such serious and obvious transgressions of the Code, to which your report clearly points, it would be a dereliction of duty to allow Mr Johnson to escape more serious rebuke than the drafting of a written press protocol.*

38. *I would like to emphasise that the conclusions of your report and any deliberations by the GLA and MPA sub-committees will set a precedent that could lead to major implications for high profile, sensitive police investigations. Given the clear public interest in the outcome of this case for policing in London and nationally, I would ask that you include my comments in their entirety in your final report to both Sub-Committees by way of an annex to that report or otherwise.*
39. *My preference would be for you to revisit your findings in light of the new information uncovered during your investigation and my representations in this letter. If you are proposing to amend your report before it is presented to the concurrent sub-committees, I would expect to be forwarded a copy of your re-draft so that I can make further representations as necessary.*

Response to Mr. Duvall's comments

- 12.2 I have considered Mr. Duvall's extensive comments with care and taken them into account in formulating my final report. Where appropriate, I have included his comments and responded to them in the main body of the report.
- 12.3 There are two specific matters in Mr. Duvall's comments that I have not addressed elsewhere. These are Mr. Johnson's telephone call to Mr. Cameron at 1.59 pm on Thursday 27th November 2008 and Mr. Duvall's request for a further opportunity to comment on the report.
- 12.4 Mr. Johnson's telephone call to Mr. Cameron was not a matter I was asked to investigate as part of the terms of reference agreed by the GLA and MPA Monitoring Officers. It was a matter which came to light towards the end of the investigation, after I had interviewed Mr. Johnson. Mr. Johnson has described the conversation as "*very perfunctory*" to the Home Affairs Committee. He later indicated to the Committee it took place at 13.59 pm as did Mr. Harri to me in his first statement.
- 12.5 It would not be my normal practice to supply a second draft of a report to a complainant for comment and I regret that there would be no opportunity to do this whilst remaining within the timescale for the consideration of the report by the GLA and MPA Standards Committees.

Mr. Johnson

- 12.6 Mr. Hocking on behalf of Mr. Johnson made the following comments on the draft report by an e-mail on 19th February 2009 (enclosed at JTG 22) :-

"The report is clearly and carefully argued, and we would like to

thank you, and Mr Dolton, for the time and trouble you have put into it.

We are happy with your overall conclusions that there were no breaches of the MPA code of conduct. This is the essential point, and under those circumstances we do not wish to comment on the text of the report in detail.

We do wish to comment on your broader observation that Mr Johnson's actions in speaking to Mr Green were "extraordinary and unwise" and that there is a risk that discussion of operational matters might be inhibited if Mr Johnson were to make public his reaction to operational briefings as a matter of course. (These observations are summarised at the report's para 1.10(d), and repeated or developed at other points in the body of the report.) With respect we do take issue with those conclusions.

In one sense, this whole incident was "extraordinary". The arrest of a serving MP in connection with a leak enquiry and the search of his offices within the Palace of Westminster is, to put it mildly, a highly unusual event. There was intense public interest in the MPS's actions. The entire incident has to be taken as sui generis, and care taken before drawing any general statements from it. What might be extraordinary generally might not be in this context. So we do not agree it was extraordinary, in a pejorative sense, to contact Mr Green, in the circumstances of this case. Mr Johnson had views on this incident, and it was surely not unreasonable to take some basic steps to check that those views were not manifestly ill founded.

Likewise, in a sense, the incident could be seen as unwise, not least because it has enabled Mr Johnson's opponents to make mischief. Perhaps with the wisdom of hindsight a way could have been found for Mr Johnson to obtain the information he felt he needed without presenting Mr Duvall with this opportunity. But the facts show, as you have found, that Mr Johnson was very careful to keep his conversation strictly within proper boundaries, and the call was made in company so that Mr Johnson's version of events could be corroborated. Under the circumstances you might feel on reflection that the judgement that this was "unwise" seems too strong. Maybe "open to misinterpretation" would capture the point?

As to your second point, that there would be a risk that frank and full discussion of operational matters might be inhibited in future if Mr Johnson were to make public his reaction to briefings on critical incidents as a matter of course, that must be so. Mr Johnson has never said he will do this. Again this incident has to be seen in context. It is at best a moot point whether Mr Johnson was making public his reaction to an operational briefing. At the time Mr Johnson made public comments, Mr

Green's arrest was in the public domain, as was a great deal of adverse (and continuing) comment on it. Mr Johnson was not commenting on an operational briefing, he was commenting on a fact in the public domain, the arrest of an MP. There seems to be no reason why Mr Johnson should not have said he was concerned about the arrest, nor that he had expressed that concern to the MPS. The operational briefing was the occasion for Mr Johnson's initial reaction to the MPS, but this reaction would have been the same even if Mr Johnson had not learnt of the arrest until it after came into the public domain. Provided he stays within his proper role, as he did here, there is no reason why Mr Johnson should not comment on policing matters, indeed, there is a expectation that he will do so.

Finally, if Mr Duvall genuinely believes that it is a breach of the code of conduct for Mr Johnson to comment on such matters, it is to be hoped that he will future refrain from asking for such comments at public meetings.

Other than these observations, and subject to the point that under the circumstances we do not need to critique the text of the report or its individual findings, we are happy with your findings.

*Stephen Hocking
Partner, Public Law Department
For Beachcroft LLP"*

Response to Mr. Johnson's comments

- 12.7 As with Mr. Duvall's comments, I have considered Mr. Hocking's comments with care and taken them into account in formulating my final report. Where appropriate, I have included his comments and responded to them in the main body of the report.

13 Conclusion

Terms of reference

- 13.1 I was asked to establish the facts in relation to:-
- (a) Sir Paul Stephenson's briefing to Mr. Johnson on the leak inquiry, including who was present, what was discussed and the basis on which the information was given;
 - (b) the report in the Times on 29th November 2008, including how the reporter received the information on which the report was based;
 - (c) Mr. Johnson's contact with Mr. Green, including when and how this took place, what was said and who was present.
- 13.2 I was asked to consider in respect of the GLA and the MPA, in what role and capacity Mr. Johnson was acting in relation to the above events.
- 13.3 I was asked to conclude whether Mr. Johnson had breached the GLA and MPA codes of conduct.
- 13.4 I was asked to make recommendations on future actions.

Sir Paul Stephenson's briefing

- 13.5 Sir Paul informed Mr. Johnson and Mr. Malthouse just before 10 am on Thursday 27th November 2008 at City Hall that a public figure would be arrested that day. Mr. Malthouse guessed that it would be a Conservative MP. Ms Crawford was present for part of the time.
- 13.6 At 1.19 pm that day, Sir Paul told Mr. Johnson that Mr. Green was to be arrested. At 2.02 pm, Mr. Johnson expressed his reactions to the arrest to Sir Paul Stephenson. Mr. Harri was with Mr. Johnson for both telephone conversations. The contents of the conversations were not confidential.

Times report

- 13.7 The Times report of 29th November 2008 was derived from a press statement prepared and released by Mr. Harri at 10.44 pm on Thursday 27th November with the agreement of Mr. Johnson.

Mr. Johnson's contact with Mr. Green

13.8 Mr. Johnson had one short telephone conversation with Mr. Green at about 6 pm on Monday 1st December 2009. Mr. Johnson was in his office at City Hall with Mr. Harri and Ms. Hughes. Mr. Johnson asked how Mr. Green and his family was, whether it was alleged that state secrets had been leaked and whether the information was already in the public domain.

Mr. Johnson's role and capacity

13.9 Mr. Johnson was acting in an official capacity, as Chairman of the MPA in respect of all three events and subject to the Code of Conduct of the MPA.

13.10 He also gave the impression of acting as the Mayor of London when he issued the press statement at 10.44 pm on Thursday 27th November 2008 and was to that extent, subject also to the Code of Conduct of the GLA.

Codes of conduct

13.11 Mr. Johnson did not fail to comply with the Codes of Conduct of the MPA or GLA.

Recommendations

13.12 I recommend the MPA, MPS and the GLA jointly consider the adoption of a protocol to cover the management of information by senior police officers, senior members and officers of the MPA and the Mayor in relation to a critical incident.



Jonathan Goolden BA(Law), Solicitor

24th February 2009