

IN THE MATTER OF THE LATE JIMMY SAVILE

Report¹ to the Director of Public Prosecutions

**by
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¹ anonymised for publication

[A] SUMMARY

1. This case concerns four allegations that the late Jimmy Savile indecently assaulted girls and young women in the 1970s¹.
2. During 2007 and 2008 Surrey Police investigated three complaints that he had engaged in sexual behaviour with young girls. During the same period Sussex Police were investigating a similar, but apparently unrelated, complaint involving a young woman.
3. No prosecution was brought in relation to any of the four, on the grounds that none of the victims² was “*prepared to support any police action*”³. I have been asked by the Director of Public Prosecutions⁴ to consider whether these decisions were correct; in doing so I have tried to ensure as far as possible that I have judged the cases on the basis of what was known at the time, rather than the information available today.

¹ I have not used the expression “historic” as many victims take exception to this, on the basis that it suggests that the offences committed against them are consigned to the past, when for many of them the consequences continue to affect their lives.

² The expression “complainant” is inappropriate in the circumstances of this case. Where I have described the women as “victims” this is for the sake of convenience; I of course acknowledge that these allegations have not been proved to the criminal standard

³ the phrase used by the CPS prosecutor in his charging decision.

⁴ ‘DPP’

4. The records from 2007 to 2009 are in parts either incomplete or contain internal inconsistencies and this has made it at points difficult to assess what happened at the time. However, I have sent the relevant sections of my report to the two police forces in question in order that they could comment on any issues of fact and they have provided me with their observations. In addition, following the preparation of my draft report, I met three of the four alleged victims⁵, one of the witnesses, and the CPS reviewing lawyer. Where I have felt it to be useful or appropriate to do so I have reflected the comments of those with whom I have had contact.
5. The police investigations have been the subject of internal reviews and are, in addition, being considered by Her Majesty's Inspectorate of Constabulary. Despite this, I have concluded that it would give an incomplete picture were I not to reflect the fact that I have a number of concerns about the approach taken by both police forces.
6. Drawing the threads together, the principal conclusions I have reached are as follows.

⁵ The fourth alleged victim declined my invitation to meet (see further below)

- i. I have seen nothing to suggest that the decisions not to prosecute were consciously influenced by any improper motive on the part of either police or prosecutors.

- ii. That having been said, I have reservations about the way in which the prosecutor reached his decision.

- iii. On the face of it, the allegations made were both serious and credible; the prosecutor should have recognised this and sought to “build” a prosecution. In particular, there were aspects of what he was told by the police as to the reasons that the victims did not want to give evidence which should have caused him to ask further questions. Instead, he appears to have treated the obstacles as fatal to the prospects of a prosecution taking place.

- iv. Looked at objectively, there was nothing to suggest that the alleged victims had colluded in their accounts, nor that they were in any way inherently less reliable than, say, a victim of a burglary or a road traffic accident. Despite this, the police

treated them and the accounts they gave with a degree of caution which was neither justified nor required.

v. Most of the victims continue to speak warmly of the individual officers with whom they had contact. However each of those to whom I have spoken⁶ has said that had she been given more information by the police at the time of the investigation, and in particular had she been told that she was not the only woman to have complained, she would probably have been prepared to give evidence.

vi. Having spoken to the victims I have been driven to conclude that had the police and prosecutors taken a different approach a prosecution might have been possible.

⁶ The considerations in relation to Ms G are slightly different (see the paragraphs which follow).

[B] METHODOLOGY AND MATERIAL CONSIDERED

Documents

7. The CPS appears to have no record at all of this case, because the original file was returned to the police following the decision that no prosecution would take place. There is nothing on CMS⁷; the only reference says that the file was “destroyed” on 26th October 2010. I am told that what this means is that because the decision had been reached that no further action should be taken, for data protection reasons and in accordance with our normal policy, the CMS record was automatically deleted. It is not now possible to retrieve it. It follows that I have been dependent on the material provided by the police to show what documents were seen by the reviewing lawyer and the advice which was given.

8. I set out at *Appendix A* the documents with which I have been provided by Surrey police, which include a number of tapes of interviews with witnesses and with Jimmy Savile.

⁷ The CPS internal electronic case management system

9. I have concluded that it is probably now impossible to recreate with any certainty the file sent to the CPS in 2009 and I cannot say that I am clear as to which documents were seen by the reviewing lawyer at the time he made his decision. The reviewing lawyer⁸ himself is (unsurprisingly) now unable to remember. What is beyond argument is that I have now seen more documents than he saw at the time.

Meetings with the victims and witnesses

10. As set out in paragraph 5 above, I have had meetings with three of the four alleged victims (Ms A, Ms C and Ms G⁹) and with the witness Ms B. The fourth alleged victim, Ms E, declined my invitation, saying that she could not see that it would achieve anything.
11. My purpose in holding these meetings was limited. First, I wished to make the victims aware that the DPP intended to publish my review; secondly, I intended to show them the parts of it which set out in anonymised form the accounts they had given the police in 2007 to

⁸ Who has now retired

⁹ See section [C] below

2008. I invited them to indicate if there was anything in those extracts with which they were unhappy; all four¹⁰ told me that they were content for their details to be published in that form.

12. I did not regard it as necessary to ask them to rehearse the accounts they had given to the police at the time of the original investigation; however, during the course of our conversations some of them did repeat their allegations and two of them volunteered further detail about what had happened.
13. I did not tell any of them of my provisional conclusions, which were that I had reservations about the approach taken by both the police and the prosecutor.
14. Having given the matter considerable thought, I decided that I would ask Ms A, Ms C and Ms G a limited number of questions as to why they had been reluctant to give evidence¹¹. My reasons were these: if they were to say that their resolve had been unshakable then that would be something that I would want to reflect in my review, because it would have meant that even had a different approach been

¹⁰ That is to say, the three victims and the witness

¹¹ As will be seen from the paragraphs which follow, Ms B was a witness, not an alleged victim; she had always said that she was prepared to give evidence.

taken it would have made no difference. As it transpired, each of them volunteered their views before I reached those questions. The detail of their accounts appears in the paragraphs which follow.

15. The remaining two women whose accounts form part of my review, Ms D and Ms E, were both contacted but declined my invitation to meet (as is of course their right). I have therefore not been able to show them the parts of the report which concern their accounts nor to explore with Ms E her reasons for not wanting to give evidence. I have sought to anonymise Ms E's allegation so that her identity does not become publicly known.

16. Where I have felt it appropriate to do so, I have reflected the observations made on behalf of the two police forces and those of the reviewing lawyer in the paragraphs which follow.

Television programmes about Jimmy Savile

17. When I began my review I made a conscious decision not to read the newspaper reports or watch any of the television programmes about the allegations which have been surfacing posthumously about Jimmy

Savile, as I wanted as far as possible to ensure that I was not judging the police or prosecutor on the basis of what is now known, as opposed to the knowledge they would have had in 2007 to 2009.

18. Having reached a number of provisional conclusions and met the victims, I decided that for completeness' sake I should watch the programmes. I have now seen the ITV programme *Exposure*¹², the follow-up programme which gave an update on the police investigations¹³, and the *Panorama* investigation into why the *Newsnight* programme on Jimmy Savile was not broadcast in 2011.

¹² Broadcast on 8th October 2012

¹³ Broadcast on 21st November 2012

[C] THE FACTS

19. Four separate allegations of inappropriate sexual behaviour were investigated by Surrey and Sussex police between 2007 and 2009.

The Sussex allegation¹⁴

20. This is the oldest in time.

21. The complainant is Ms A. She alleges that she was indecently assaulted by Jimmy Savile in 1970 when she was in her early twenties; she was in her sixties at the time she reported it to the police in 2008.

22. The following account is taken from Ms A's signed witness statement dated 4th March 2008. I have shown the paragraphs which follow to Ms A who is content that they should be published.

23. Ms A was a member of Jimmy Savile's fan club. In about 1968, when she would have been twenty, she saw an episode of *Top of the*

¹⁴ The only documents I have seen are a witness statement taken from Ms A together with a number of pages of internal Sussex police documents. Some of these (as set out in *Appendix A*) are described as "Page 1 of 2" but only page 1 is present. It is not clear to me which, if any, of these documents were shown to the CPS reviewing lawyer and of those which were, whether they were in a complete or incomplete state. In particular, there is no reference to the witness statement having been provided, and it was not sent to us in 2012 as part of the copy advice file.

Pops which he was presenting, during which he had said that he needed a holiday and had asked if anyone could “put him up” so that he could have one. She wrote him a letter suggesting that he could stay at her mother’s B&B; some time later she received a reply on his behalf, thanking her but saying that he was too busy to take her up on their offer. Ms A said in her statement that she believed she might still have the letter.

24. One Saturday at about lunchtime, she thought in about July 1970, her husband called upstairs to her that there was “someone at the door”. The “someone” was a chauffeur who had arrived unannounced at her house to take her to see Jimmy Savile. Ms A said that she was shocked but her husband encouraged her to go. The chauffeur was driving a large Rolls Royce; Ms A got into it and was driven to the local Town Hall. When she saw Jimmy Savile, he had his arms around two people she thought were probably Chelsea Pensioners.

25. The next thing she remembered was that he had his arm around her shoulders and they ended up in a caravan that was outside the Town Hall. He started saying things to her such as “*you are lovely; I’d like to lock you up in a cupboard and you’d be with me all the time*”, and that he

would like to buy the house next to hers and that then he would be happy all the time. He said he could get her a job on *Top of the Pops*¹⁵.

26. She was then pushed down onto the bed, ending up on her back; he was lying next to her and started to touch her breasts over her clothes. He asked if she was on the pill and she replied “*no, I don’t do that sort of thing*”. He then called her something like a “*little dolly bird*” and took hold of one of her hands and placed it on his groin. His penis was erect; he moved her hand up and down until she pulled her hand away.
27. He then sat up, asked her whether she had her bus fare home and told her that she could choose something from the caravan as a memento¹⁶. She picked a small crucifix with a deer at the foot, and he told her that he had been given it in Belgium. She still has it; indeed she brought it to show it to me when we met.
28. When she got home, Ms A told her husband what had happened. He was angry and said that he was going to complain, but Ms A said that she felt silly and naïve and convinced him that it didn’t matter. She

¹⁵ According to the crime report, although this does not appear in her witness statement

¹⁶ When I met her she told me that in fact he had offered her a memento before he assaulted her; she remarked that she wouldn’t have chosen it had she realised what she was expected to do in return.

said that she felt shocked and upset by what had happened but just wanted to forget it as she felt stupid for having allowed herself to get into that situation. She remembered that the following Monday she had told the girls she worked with what had happened; they had thought it was funny (though she did not). She was unable to remember the names of any of the girls. A short while after, she and her husband emigrated.

29. The following account as to how Sussex police came to investigate her allegation is taken from documents compiled by the police in 2008, which either were provided to the reviewing lawyer¹⁷ or, on the face of it, would have been available to him had he asked to see them.

30. After many years Ms A returned to live in the UK; she used to see Jimmy Savile on the television and it made her angry to see the high regard in which he was held when she knew what he was really like. In 2007 she decided she was going to do something about it, so she wrote a letter to *The Sun* newspaper which she hoped would go in a column. She said that this was so that she could get it off her chest.

In November that year a female reporter turned up at Ms A's home

¹⁷ The MG3 (the form used by the police to request advice from the CPS) described the "crime report" as having been attached

to interview her. The reporter told her that “*a lot of others*” had been in a similar situation as her and some had “*not been as fortunate*”.

31. The reporter told Ms A that all it took was for one person to make a complaint and then others would follow. Ms A says she remained reluctant and told the reporter that she was not willing to go to the police.

32. On 3rd March 2008 the reporter reappeared at Ms A’s door and asked her again whether she had considered reporting it. The journalist went on to tell her that she could keep her name out of the story, and that she had some information that Jimmy Savile may have been connected to the infamous care home in Jersey¹⁸ but that she could do nothing about it unless Ms A were prepared to make a complaint. Ms A said that (at least in part) as a result of what she had been told by the journalist, she rang Sussex police to report what had happened to her.

33. It would appear that Ms A had no connection with any of the other complainants in this case, nor with the Duncroft Children’s Home¹⁹.

¹⁸ a number of allegations had been made about the sexual abuse and murder of children at this home

¹⁹ Which was the focus of the Surrey Police investigation

It seems to have been a coincidence that she made her allegation at about the same time as them (possibly prompted by the fact that Jimmy Savile seems frequently to have been on the television at around this time).

34. The sequence of events is further examined in part [D] below.
35. It would seem that at this stage Ms A was at least open to the idea of there being a prosecution, not least because she had been told that Jimmy Savile may have been responsible for other offences but that someone needed to make the first complaint.
36. In her statement she says that she was visited that evening by DS O and DC T who explained “*the information they would need to pursue an allegation*”. There is a contemporaneous memorandum written by DS O to his superior officer in which he described the conversation thus:

“When [T] and I attended we discussed the various options open to Ms A. These included making a formal allegation of indecent assault in which case we would fully investigate the matter. We advised it would involve contacting witnesses including her ex-husband and work friends from nearly 40 years ago. We discussed the fact that questioning Jimmy was not simply a case of allegation made and arrest but that the case would need fully investigating and the allegation corroborated / supported before Jimmy would ever be approached. Various other issues were discussed with [Ms A] and her partner [X], and I detailed a list of things we would require from her should she choose to make a formal allegation, including

her ex-husband's contact details, work friends details, the contact she has had with Sun newspaper to name a few. [Ms A] requested time to consider these options and it was agreed we would re-contact her today.”
(emphasis added)

37. Ms A's statement says that after they had left, she texted the reporter from *The Sun*. She also talked to her partner and decided that she was not willing to [support²⁰] a police investigation. The reasons she gave were that it was a long time ago and she did “*not have access to the information required by the police and it would be difficult to find*”. In addition, she would rather :

“let sleeping dogs lie, I don't want to be dragging it all up again and end up in court, I have decided I just want to get on with my life in a normal way without any more hassle”²¹

38. Looking at the documents created in 2008 I found it difficult not to conclude that the officers had, even if unintentionally, dissuaded her from pursuing her allegation. Insofar as she was led to believe that “corroboration” was required before a prosecution could take place, this was wrong as a matter of law. Further, whilst it is true that supporting evidence is always helpful, in fact in this case, support was capable of being provided by the evidence of the other three

²⁰ The statement has a word missing

²¹ Witness statement

complainants. Although the Sussex officers would not have known about the three Surrey complainants at the time this conversation took place, there came a point at which they became aware of their existence but appear not to have appreciated the significance of it. I analyse this further below.

39. When I met Ms A and her partner²², both wanted to emphasise how much they had liked DS O and DC T, whom they felt had Ms A's best interests at heart. Ms A told me that she felt that DC T believed her and had said to her that he would leave "no stone unturned" if that was what she wanted. However, he had left her in no doubt as to how difficult it would be for a prosecution to take place because Jimmy Savile was a "big celebrity"; she said to me that the police had told her that no one would believe her. She remembered DC T telling her that because he had plenty of money, Jimmy Savile would have the best lawyers, it would all take place in a "big court in London" and his lawyers would make "mincemeat" of her. She also got the clear impression from the police that she would be publicly branded a liar and that her name would be all over the newspapers, particularly if she "lost the case".

²² This is the same gentleman referred to by the police

40. I asked Ms A whether at any stage she had been told that there were other women who had made allegations to the police about Jimmy Savile; she said that she had not. I then asked her whether she was able to say if it would have made any difference had she known this; she said she thought that it would have done, because she remembered telling both the police and the reporter from *The Sun* that if others came forward, she would too, but that she would not support a prosecution because she “*did not want to be the only one*”. Her partner confirmed that she had said this to the police at the time.

41. I asked Ms A whether it had been explained to her that the Press are not allowed to identify those who make allegations of sexual assaults to the police²³, or about the “special measures” available in criminal trials to allow complainants to give evidence from behind a screen or by television link. She said she had known nothing of these things.

42. Finally (given what the officers had written in their internal documents as to the need for “corroboration” and that they would require Ms A to locate her former husband and work colleagues from

²³ Unless the complainant consents (sometimes described in the newspapers as “waiving her right to anonymity”)

forty years ago), I asked Ms A whether it would have made a difference to her had she known that the officers were wrong to say that this was a requirement. Both she and her partner said that that *“would have made a big difference”*.

43. In order that I should be clear what she was saying I then asked Ms A whether it would have made a difference to her decision not to support a prosecution had she been told of the following:

- That there were other women who had made allegations to the police of sexual assaults committed by Jimmy Savile;
- That she would be entitled not to have her name published, whether Jimmy Savile was convicted or acquitted;
- The existence of “special measures” to help her give her evidence; and
- That there was no requirement in law that she would have to contact her former husband and work colleagues.

44. She and her partner both told me that she might have been prepared to give evidence had she known these things. She was happy for me to publish this as part of my review.

The Surrey allegations

Ms C

45. The Surrey Police investigation in fact began with a report made to Dorset Police by a woman named Ms B which was to the effect that in the late 1970s, whilst she had been resident at a children's home named Duncroft, she had witnessed Jimmy Savile indecently assault a teenage girl. As Duncroft was in Surrey, the allegations were passed to Surrey Police for investigation.
46. I have taken Ms B's account of what she saw from the tape recorded interview conducted with her in July 2008. According to some of the records it would appear that she had given accounts on other occasions which differed in material respects; were this true, it would have significantly undermined her credibility. Having given the matter careful consideration, I am satisfied that the disparities arise from

inaccurate record-keeping by DC S rather than contradictions in Ms B's account. I analyse this further in the paragraphs which follow.

47. Ms B is now in her late forties. Between the ages of thirteen and fifteen she was a resident of the Duncroft Children's Home, which – despite its name – was in fact a facility for adolescent girls run by Dr Barnardo's. It was described as a home for “maladjusted girls”, terminology which, I suspect, would not be used today. When he was interviewed in 2009 Jimmy Savile described it as a “posh Borstal” and said that all the residents were there as a direct alternative to custody, having been convicted of criminal offences. I have seen nothing to suggest that this was true of all the girls, though plainly it may have been of some. Some of the information gathered by the police suggests that the Home may have been designated for girls of high intellectual ability who had been taken into care; certainly it has been described by many as something of an experimental facility. I have not found it necessary to resolve any of these issues.

48. Jimmy Savile was a famous television “personality”, known for his charitable work, much of which involved children, and he used frequently to visit Duncroft. It is of relevance to Ms B's account that

she said that he was held in very high esteem by the staff, who valued his visits and trusted him sufficiently to allow him to spend time unsupervised with the girls.

49. The view the girls took of Jimmy Savile seems to have been rather different. According to Ms B, it was common knowledge that he would make “advances” to some of the girls, but although they thought he was “creepy” and would try to avoid him by hiding in the bathrooms, it was in the main something which they thought was funny. Ms B said her impression was that he was not having actual intercourse with the girls because they were under sixteen, but that he was “grooming” them, and that on their sixteenth birthday he would send them a huge box of chocolates, the size of half a table.

50. Ms B said that she witnessed an incident, which – based on the age she was at the time - she believed had taken place between 1978 and 1979²⁴. There was a girl at the Home whose name was Ms C, whom she believed to have been about fourteen, who told her that Jimmy Savile had been “making advances”. They agreed a code word which Ms C would use if he did it again so that Ms B could see what was

²⁴ According to Ms B, Duncroft closed down in 1979, so she had left when she was fifteen rather than staying until she was sixteen

happening. At this time there was an advertisement on the television for Vesta curry, and the actress had a catchphrase: “*Oooh beef biryani!*”, which was said in a silly voice. Ms B says that they chose this because the girls said it so frequently to one another that it would not attract attention.

51. On the evening in question, they were in the television room; they sat in rows on chairs which had backs but no arms. Ms B described how she was sitting next to Ms C, and that Jimmy Savile was on Ms C’s right hand side. As usual, the lights were off whilst they watched television. Suddenly she heard Ms C say “*oooh, beef biryani!*”; she looked to her right and saw Jimmy Savile take Ms C’s hand and put it over his crotch area:

“he’s got his hand over her hand and he was squeezing it, so then she would have been squeezing his testicles and his penis [through this horrible nylon tracksuit he used to wear]”.

52. Ms B is certain that she saw this incident clearly, with her own eyes. She believed that similar things were happening to other girls, but everything else she could speak of was either supposition or hearsay, in the sense that she had seen things which she had thought were possibly inappropriate but hadn’t seen them clearly, or that other

girls had told her things. One girl had said “*I reckon he wears those jogging bottoms for easy access*”. The only other things she actually witnessed were the arrival of large boxes of chocolates sent by Jimmy Savile to particular girls whom he liked; she believed this happened on about three occasions.

53. When asked why nothing had been said to the staff, she said that there were a number of reasons. One was that the staff admired him greatly because of his wealth, his charity work and the fact that he was on the television a great deal; the girls were frequently told how lucky they were that he chose to visit them. Ms B said “*we could not have said anything against him*”.

54. The other reason was the way the girls perceived themselves. Ms B is plainly a highly intelligent woman, well able to articulate the emotional vulnerabilities of adolescent girls growing up in a children’s home. She described the staff as competent and kind, however many of the girls craved attention and did not have the emotional maturity to differentiate between that which was appropriate and that which was not. She told the police that in her own case she had been repeatedly told by her family that she was in the home because she

was naughty and she did bad things; as a result she (and many of the others) had very low self-esteem. She herself was not one of those in whom Jimmy Savile showed an interest; she regards it as an illustration of how vulnerable they all were that she actively wanted him to pay her attention, even though she was aware of what he was like. She said:

“I’m not going on, like ‘poor me’, but if you were in care at that age, you needed someone else to tell you what was acceptable because you had no judgement. When you think where most of us had come from, we were just easy bloody pickings; we were vulnerable and all we wanted was attention because we did not get it off our families. Whatever people did to us was ok because we had no self-esteem, we were like second-class citizens. We were always being told we were in care because we were bad”

55. Thus it never occurred to the girls to tell the staff, not least because most of them liked the attention. At worst they regarded what he was doing as a laugh or a bit creepy:

“it wasn’t like a massive thing, [he was just] a bit touchy, a bit gropey.... It’s really hard to explain as an adult.. I was like thirteen and it seemed acceptable, and it seemed really sad if he didn’t like you because then you didn’t get the attention. I don’t know why it seemed acceptable”.

56. She didn’t think she and Ms C had discussed the incident in the television room because *“it was a laugh, it was just one of those things that happened”*.

57. Ms B said that the way in which she had come to report this to the police was as follows. About eighteen months earlier, Jimmy Savile was once again appearing frequently on television. She had often thought in the past about saying something, but it would have involved her bringing up the whole experience of having been in care and she found it very upsetting to think about it. But as the years had gone past she had thought about how vulnerable the girls were and had become increasingly angry about what had happened. She worried that he would die and be remembered as some kind of national hero but when she saw him on television it made her feel sick. In the end she had phoned Childline; the person she had spoken to had told her to contact the police.

58. Ms B said she had been convinced that others would have reported what he had done to them. She said that she felt guilty now, because she realised that if she had said something sooner other children might have been protected. She said:

“it’s really sad that someone can work all their life for charity and everyone’s like ‘he’s such a wonderful person’ and there’s just silly old [B]] sitting at home and she knows he’s not a wonderful person. Whether he’s outed or not, I don’t think half the nation would be surprised... There’s probably nothing, I don’t want to single-handedly, I would just like to say to him ‘you know what you are and I know what you are’. He does

paedo stuff under the guise of charity, it's almost like he's above the law, untouchable. They just get away with it. I just wish I'd said something years ago: no one's going to hear this but I am really sorry to all the girls this happened to"

59. Ms B has always said that she was prepared to give evidence and it has never been suggested otherwise. She has seen this part of my review and is content that the paragraphs above should be published.
60. Some weeks after Ms B had spoken to the police, DC S managed to trace Ms C. Ms C has not made a witness statement, and I am thus dependent on the officer's notes for her account. As explained further below, the police were extremely careful not to suggest to her (or indeed any of the potential witnesses) that they were investigating alleged assaults by Jimmy Savile. All initial contact was by means of a letter which merely said that the police were investigating an incident which had allegedly taken place at Duncroft in the late 1970s.
61. Ms C said to DC S that she had been thinking about things ever since she had received the letter, and that one person had come to mind. She asked whether the investigation involved a famous person; the

officer did not confirm or deny this, but asked her who she had in mind. She replied “Jimmy Savile”.

62. She said that when she was about fifteen, there had been an incident in the television room at Duncroft when Jimmy Savile had been friendly and snuggling up to her, and had taken her hand and put it on his groin, moved it around and made himself “aroused”. She had been wrapped in a blanket at the time having just got out of hospital, and there had been other girls in the room. He asked her to go for a ride in his car; she refused and then two days later he sent her an enormous box of chocolates. This had only happened once and she never saw him again.
63. In terms of when this had taken place, she told the officer²⁵ that she was at Duncroft for one year from the ages of 14 – 15. She thought this incident had taken place in 1978.
64. When asked what view she took, she said he was just a “*dirty old pervert*”, she did not think much of what had happened, and if it were just about her, she did not want to make a statement. She did not

²⁵ on 5th May 2008

remember a girl called Ms B, but thought she must have been one of the other girls who was present in the television room at the time it happened.

65. As with Ms B, I have met Ms C and she is content that these paragraphs should be published.

66. There were only three possible defences Jimmy Savile could have had to the allegation made by Ms B and Ms C:

- That such an incident may have taken place but was accidental or affectionate and had been misinterpreted;
or
- that the touching had never taken place and that Ms B and Ms C had *conspired together* to invent a false allegation;
or
- that the touching had never taken place and each had *independently invented* a false allegation, the details of which bear a remarkable similarity.

67. When Jimmy Savile was interviewed he said that this allegation was an invention, not that it might have been an accidental touching which

had been misinterpreted (see further below). Indeed, given the facts it is hard to see that a defence of accident or misinterpretation would have had any prospect of succeeding.

68. It seems that there is no question of collusion between Ms B and Ms C; there is no suggestion that they have even seen one another since they left Duncroft in the late 1970s.
69. If collusion can be excluded, the only remaining defence would be independent fabrication of their accounts.
70. It is in my view fanciful to suggest that both women had spontaneously and independently invented or imagined an incident which had not in fact taken place.
71. Thus had both women been prepared to give evidence, there was in my view a realistic prospect that Jimmy Savile would have been convicted. The implications of this are examined further below.
72. As will be apparent, Ms C had not herself contacted the police to complain about Jimmy Savile and from the outset she expressed

reluctance about participating in a possible prosecution. It remains unclear to me why it took so many months for the officers to attempt to take a formal statement from her. What is plain is that as the months passed, although she was still prepared to talk to the police, her reluctance in relation to a possible prosecution became more marked. By 13th March 2008 she is recorded as having said that “*she still does not want to get involved if it is just in relation to her*” (emphasis added).

73. At this stage, of course, the Surrey officers did not know of any other allegations.
74. By 5th June 2008 (by which time Surrey Police knew of two more allegations) when the officers decided to try and take a (tape recorded) statement from her, Ms C refused, saying she “*did not deem it necessary*”²⁶. She was, however, prepared to talk to DC S and to let her take notes. The manuscript notes read “*not bothered about me*”. She went on to say that:

“she would like to smack the girl who reported it in the gob as she has felt nothing but upset and worry since my contact. She sees him on TV and thinks he is a dirty old pervert and when she was on holiday she was worried that people taking photos were press. She is not bothered about

²⁶ crime report entry

what happened to her and wants to concentrate on her family who are going through a rough time at the moment. She will not talk to papers and will not make a statement or talk on tape and wants to be left alone²⁷” (emphasis added).

75. The Deputy Senior Investigating Officer²⁸ has recorded:

“she is getting a bit panicky about it becoming public and a bit paranoid if she sees a photographer thinking it might have leaked out and could be the Press. She thinks if it became public it would have an adverse effect on her family”.

76. When I met Ms C, I asked her if she had been told at any stage that there were other women who had told the police that they too had been sexually assaulted by Jimmy Savile; she said that not only had she not been told this, but that she could remember saying to DC S on that final occasion (when she had refused to be tape recorded) that *“if you can find me other people I might change my mind”*.

77. Given the documented concern about her name appearing in the newspapers, I also asked Ms C whether it had been explained to her that the Press would not have been allowed to publish her name, and the existence of “special measures”. She said she had not been told any of these things, but that she is now aware of them because she

²⁷ Officers’ Report dated 16th June 2008

²⁸ ‘DSIO’

has seen them referred to on television. Surrey Police have told me that DC S believes that she discussed the court process and “special measures” with Ms C but cannot now recall whether she mentioned a complainant’s right not to be named in the Press.

78. I asked Ms C whether being given more information would have made a difference to her decision; Ms C replied that it might have done and had the officer “pushed her” she might have “given in”. She had felt that Jimmy Savile would have been likely to have had better lawyers; she had been concerned about her name appearing in the Press and being branded as either a liar, or a “slag” for not having done anything about it at the time.

79. She was content that the extracts set out above could be published, and that I could report that she feels that had she known of the existence of other victims she might have been prepared to go to court.

Ms E

80. After the police had spoken to Ms C, they attempted to contact other girls who had been at Duncroft at the relevant time. As names emerged, they were sent identical letters which, again, gave no indication as to either the identity of the suspect or the incident under investigation. One of those contacted was Ms D²⁹. She too asked DC S whether the incident concerned Jimmy Savile, who she said was “*acting dodgy*” at Duncroft: “*he got involved with underage girls and made an inappropriate play towards them*”. She told the officer that nothing had happened to her, but she might know of others to whom things had been done. She appears to have mentioned Ms G and said something about the issue having been discussed on the *Friends Reunited* website.

81. A few days later she contacted DC S again, and said that one of those to whom she had been referring was in fact her older sister, Ms E, who had not been at Duncroft but had had a “run in” with Jimmy Savile whilst she was a member of a Girls’ Choir in a town north of London. Ms D said that she had in fact known what had happened to

²⁹ Ms D was never invited to make a witness statement; her account is taken from DC S’s notes of their conversations.

her sister, but had felt she should check with her before passing her details to the police.

82. Ms E is now in her early fifties. She described her encounter with Jimmy Savile thus. As a teenager she was a member of the Girls' Choir. On one occasion, when she was about fourteen³⁰, the choir had performed at Stoke Mandeville Hospital, and Jimmy Savile had been there. Just as the choir was getting onto the coach, Jimmy Savile was "*acting the clown, shimmying up and down a flag post on the left-hand side of the hospital*". He called Ms E over and said "*give us a kiss goodbye*". She thought nothing of it and went over to him, expecting a kiss on the cheek; instead, he kissed her on the lips and put his tongue inside her mouth. Ms E said she was shocked; she sprang away from him and got onto the coach. She didn't know if anyone else saw, but she didn't discuss it with anyone except her sister Ms D because she was "*mortified*".

83. As far as I am aware, Ms E does not know either Ms B or Ms C; the only connection is through her sister, Ms D, who was at Duncroft at the same time as them, but who appears to have had no contact with

³⁰ She thinks in about 1973

them since the 1970s. There is nothing to suggest any connection with Ms A.

84. Contact was made with both Ms E and her sister Ms D and I offered to travel to meet them. Both declined, as they were perfectly entitled to, but I have therefore been unable to check with them whether they were comfortable with the above account being published. I have sought to remove any personal details which would allow Ms E to be identified.

85. Ms E's witness statement concluded with the words:

"I never considered going to the police about what happened. I thought it was so insignificant at the time. I think it would be a waste of police time. I'm happy to say what happened but no police or court action".

86. As I have not spoken to Ms E I am unable to say whether that remains her view. However, I note that the reasons she gave were not dissimilar to those given by Ms C; in my view it is therefore a possibility that had she known that others had been the subject of similar assaults she too might have taken a different view.

Ms G

87. Ms G is now in her mid-fifties. Her age is relevant to the question of whether the behaviour she described amounted to a criminal offence. I have taken her account from the taped interview conducted by DC S in July 2008.

88. Ms G said that she had gone to Duncroft after her fifteenth birthday. At the relevant time she was living in Norman Lodge, which was an annex in the grounds of Duncroft in which the older girls lived as a sort of half-way house to prepare them for independent living. I have gathered from the other evidence that girls seemed to have lived at Norman Lodge between sixteen and eighteen, when they moved there from the main house whilst at college or working. In my view it is safe to conclude that at the relevant time, she was certainly over fifteen, and in all likelihood was in fact sixteen or older³¹.

89. Ms G's account³² was that Jimmy Savile used frequently to come to Duncroft and would arrive in large and expensive cars, usually a different one on each occasion. She talked about how much the staff

³¹ When I met her she told me that she would have been seventeen at the time this incident took place

³² Taken from her taped interview

were in awe of him and how they only got decent food when Jimmy Savile was coming. She thought he visited every six to eight weeks.

90. She said he liked to have his shoulders massaged and his hair combed, and he would produce a comb for the purpose.

91. On one occasion the Headmistress, had suggested that Ms G should take him to Norman Lodge and make him tea³³. He knew that she (Ms G) was training to be a nurse and asked whether she had qualified yet. She said that

“he then shocked me by suggesting that if I performed a certain act on him he could guarantee a job when I qualified at Stoke Mandeville...I understand that the term is a ‘blow job’I understand it to mean a woman taking a man’s penis into her mouth and sucking it. He told me it wouldn’t be hard for him, he could just slip down his tracksuit bottoms”.

92. She said that they were alone in Norman Lodge, so she had made an excuse about having heard the kettle boil, and ran away and hid in the lavatories until he had gone. She had got into trouble for abandoning him.

³³ In her taped interview, Ms G used the words “a pot of tea” but when I saw her she was extremely concerned that I should correct this to “tea” by which she meant something to eat

93. This was the only time he had suggested this to her, but she knew that he had suggested it to a girl called F, because F had told her so³⁴.

94. She said that there was certainly more than one incident, involving both her and other people. When asked to develop this, she began to talk about being in the television room but then went off at a tangent and this was not explored further.

95. When asked whether there was anything else of which she wanted to make DC S aware, she replied:

“I just remember that if you were stupid enough to put yourself in a situation where there was an unmarried male on his own and you, it was your fault and it was always going to be your fault”.

96. I did not know at the time I met her that Ms G had participated in a television programme about Jimmy Savile. During that programme she made a number of allegations which go considerably further than those she made to DC S in 2008. When I met her she made reference to having given him a “hand job” but said that she had refused to give him a “blow job”.

³⁴ I have been told that F has not been spoken to, but that may be because no attempts were made to trace her, the decision having been made by that time that no prosecution would take place.

97. Although I did not ask her to explain the discrepancies, Ms G told me that DC S had set date parameters and that she was not interested in anything Ms G had to say that did not fall within those boundaries. I have seen nothing to suggest that this was the case; indeed all the other alleged victims had spoken of DC S with great affection and described her diligence in conducting this investigation. On the other hand, DC S had – apparently for good reason - not told Ms G the nature of the investigation she was conducting, and it may be that Ms G had not understood what it was that she was being asked about. It is apparent that Ms G is in poor health and it is possible that this may have a bearing on matters. Again, I have not found it necessary to resolve this.
98. When I saw Ms G she told me that she had never been asked whether she was prepared to give evidence; had she been asked, she would certainly have done so.
99. There is no record in any document of Ms G refusing to give evidence; she was not asked about this when she was interviewed on tape and she did not say. That having been said, Surrey Police have told me that it is the officer’s “clear recollection” that Ms G was not

prepared to “support a prosecution” and the reviewing lawyer was plainly under the impression that this was the case.

[D] CHRONOLOGY OF THE INVESTIGATION

100. The investigation began on 11 May 2007, when Ms B reported to Dorset police that she had seen Jimmy Savile behave indecently towards a girl during the late 1970s. This was then passed to Surrey to investigate. Two days later, on 13th May, DC S spoke to Ms B on the telephone, who told her that the girl she had seen assaulted was called Ms C. The officer's manuscript notes of this conversation mention the "beef biryani" codeword.

101. About a week later, on 21st May 2007, DC S and another officer from Surrey visited Ms B. It is not clear to me why no statement was taken from her at this point; DC S merely made some notes. The four pages of manuscript notes contain a great deal of general background but little about the incident itself. Such notes as there are read as follows:

*"Ms C – 14 – London – (...)
All know 16 – legal consent. Touch over clothing
Watch TV, board[?] games, lights off. TV room or music room."*

102. It is significant, for reasons that will become apparent, that there is no mention of a blanket.

103. Over a year later, on 4th June 2008, DC S wrote a typed “officers’ report” in which she purported to set out the conversation of 21st May 2007. The report says that:

“this is a summary of what [B] said.....: she spoke to [Ms C] and she said she would say “Beef Biryani” when he did it and she would know to look over. This happened and she only saw Jimmy Savile sitting next to [Ms C] with a blanket over them” (emphasis added).

104. I am satisfied that DC S has described parts of the account which was later given by Ms C as though it had been said by Ms B. I am satisfied that Ms B did not tell DC S that what happened had taken place underneath a blanket³⁵; on the contrary, she was clear and consistent in her description of what she herself had seen. If that is right, then the account given in the 4th June 2008 “officers’ report” was not only likely to have caused confusion but might have had very serious consequences for a possible prosecution, given that the credibility and consistency of Ms B would have been a key issue in the case.

105. Following this meeting on 21st May 2007, attempts were made by Surrey Police to trace Ms C. Information was obtained from Dr

³⁵ See the letter from DCI P, described below. In addition, I asked Ms B whether she had seen a blanket; she said that she had not.

Barnardo's and checks were done. On 10th October 2007 an address was found; a week later DC S sent Ms C a letter, explaining she was investigating "*allegations of a historic nature that have [sic] alleged to have taken place at Duncroft Children's Home in Staines in the 1970s*" and asking Ms C to get in touch. No reply was received.

106. A month later, on 19th November 2007, DC S paid a "cold call" to Ms C's address. There was nobody in so she left a card. Later that day she received a telephone call from Ms C. Ms C said that she had been thinking ever since she had received the letter and she asked whether the investigation concerned a famous person; without confirming or denying it, DC S asked who she had in mind, and Ms C gave the name 'Jimmy Savile'.

107. DC S then took an account from her over the telephone: the manuscript notes say that it had happened when she was about fifteen, she was wrapped in a blanket, he moved her hand on top of his groin area and moved it around and made him aroused. It happened in the TV room. He had asked her to go for a ride in his car and then two days later he delivered chocolates to her and she never saw him again.

108. As far as making a complaint was concerned:

“she felt fine and did not want to make a statement after this time. He was just a dirty old pervert and she didn’t think much of what had happened and thought something had happened to someone else but when I said this was what I had been notified of she did not want to make a statement³⁶”.

109. She told DC S that she had told her husband. She did not remember Ms B.

110. During the weeks that followed, DC S spent time attempting to contact other girls who had been at Duncroft at the relevant time. The decision log contains a number of entries emphasising that care was to be taken about what they were told in order to avoid influencing them. On 29th February 2008 the DSIO noted his decision that at this stage the only Duncroft former residents who would be contacted would be those whose names were provided by both Ms B and Ms C in order not to be accused of “fishing” for victims; these women would be provided with limited information so there could be no suggestion that they had been prompted.

³⁶ Surrey Police chronology

111. Against this background it will be seen that when, on 3rd March 2008, Ms A reported to Sussex Police that she had been indecently assaulted by Jimmy Savile in about 1970, the Surrey investigation was already well underway. As set out in the paragraphs above, Ms A was visited the same evening by officers of Sussex Police (who at that stage would have known nothing of the Surrey investigation), who explained to her the information they would require and left her to “consider her options”. The following morning she contacted the officers to tell them that she had decided not to make a formal complaint and made a witness statement to that effect.

112. On 5th March 2008 a DI W of Sussex Police contacted the officers investigating Ms A’s complaint to say that he wanted some further enquiries to be carried out (for example, he asked that the relevant Borough Council should be contacted to see if Jimmy Savile had in fact visited at the relevant time). He said that once the further enquiries were complete, the matter should be submitted for further review.

113. Back in Surrey, on 13th March 2008, DC S again spoke to Ms C. No statement was taken. According to the various police documents Ms

C was prepared to identify some names she could remember from a list but “*she still does not want to get involved if it is just in relation to her and is not interested in using Friends Reunited*” (emphasis added). Of course, at this stage, the Surrey officers did not know of any other allegation.

114. On 27th March 2008, DC S again spoke to Ms B, who also identified names of girls who had been at Duncroft. One of them was Ms D, a name which had been also recognised by Ms C.

115. On 10th April 2008, Sussex police contacted Surrey Police³⁷. DC S and DS O had a conversation during which they spoke about their respective cases, each of them saying that their victim “*did not wish to proceed with a prosecution*”.

116. On 19th April 2008 there is an entry on the Sussex Police “crime report”³⁸ which reads as follows:

“INI searches have been conducted nationally and there is 1x similar case ongoing in Surrey – details as per C3/11. OIC spoken to and victim there is also not supporting Police. It is likely there [sic] papers will be filed and suspect will not be approached. I personally cannot see that a successful prosecution in this case is likely. The checks conducted have been time consuming and taking me away from other priority cases in the CID

³⁷ It appears that Sussex had made a confidential request of other forces to see whether there was any intelligence which might have an impact on their investigation

³⁸ There are two documents with this date, each consisting of two pages but I have only been provided with a single page of each

office. With a clearly reluctant witness and difficulties corroborating her claim from other sources I feel these papers should be filed”.

117. On 28th April 2008, Sussex Police sent Surrey Police a copy of their crime report. It would seem from later information that by this time they had made a decision that there should be no further action in relation to Ms A’s complaint. I have seen nothing to suggest that the Sussex officers had sought advice from the CPS. It seems³⁹ that the police took the view that the case did not reach the threshold required before it should be referred to the CPS for a decision; however, given that the complainant had been advised that “corroboration” would be needed (which is a legal concept), it might have been wise to confirm that the officers’ view of the law was in fact correct. Certainly it would appear to be common ground that Sussex Police did not at that stage ask the CPS whether there was any more that could be done.

118. On 5th May 2008 Surrey Police held a review meeting at which it was decided to contact the three women who had been named as former

³⁹ Response from the Chief Constable of Sussex

residents of Duncroft by both Ms B and Ms C (one of whom was Ms D). The DSIO noted on the Surrey Police Crime report that:

“although there are discrepancies between her [Ms C’s] account and the informant [Ms B] these are understandable due to the length of time since the offence and the age of the victim and informant at the time. The victim was not given the name of a suspect or any detail about the offence or even that we had been informed that she was a victim, and yet made a disclosure sufficiently similar to the informant to conclude that there is some substance to the allegation. It could also be concluded that on the balance of probabilities the MO of the offence reported to Sussex is sufficiently similar to provide further corroboration. Sussex have finalised their investigation as the victim does not wish to support a prosecution and there are no witnesses as above this does provide some support for this allegation” (emphasis added).

119. On 19th May 2008, Ms D contacted DC S in response to the letter she had been sent. She too asked whether the person being investigated was Jimmy Savile. The following day, Ms D rang back and suggested that something had happened to her sister Ms E (see the account of her evidence above).

120. Throughout May 2008 DC S spoke to a number of other former residents of Duncroft. Many suggested that there were incidents involving Jimmy Savile, but none of them said that anything had happened to them personally.

121. On 28th May 2008 DC S spoke to Ms E, who gave an account which seems to have been consistent with that which she was later to give in her witness statement, namely that Jimmy Savile had put his tongue in her mouth when she was fourteen.
122. On 2nd June 2008, Surrey Police held a meeting. BM⁴⁰ told them that [in a high profile case] there had been criticism of the police for approaching former residents of a children's home where the suspect had worked to see if any of them had been abused by him. In response to this, the DSIO noted that at present their investigation was confined to the specific incident seen by Ms B in the TV room and to trying to find other girls who were in the room at the time, so could not be described as "fishing" to find other victims. The notes say that the police also considered whether it was appropriate to continue as Ms C did not want to make an allegation. It was resolved that a meeting should be held with the CPS "*at an early stage*".
123. On 3rd June 2008 the DSIO decided that no statements were to be taken from any of the former residents except Ms C and Ms E⁴¹, and that Ms B should only be asked to make a statement if Ms C

⁴⁰ I am grateful to Surrey Police for telling me that BM is a senior police officer who had been involved in the case to which reference is made

⁴¹ Ms E of course not had not been a resident but was the sister of a former resident

“supports police action”. The crime report entry for this date says “*obtain statement from Ms E tomorrow and Ms C Tuesday but not make each other aware of other allegations*” (emphasis added). The DSIO’s Incident Notebook⁴² says

“Appointment has been made to see Ms C at 1130. She will probably make a statement but still does not want to go to court. She does not regard it as serious. A negative statement to be obtained if possible.....the victims ([Ms E, Ms C] and female in Sussex) will not be told there are other victims. Obtain advice from CPS first” (emphasis added).

124. On 4th June 2008 Ms E made a witness statement setting out her account. It concluded with the words

“I never considered going to the police about what happened. I thought it was so insignificant at the time. I think it would be a waste of police time. I’m happy to say what happened but no police or court action”.

125. From the notes made by Surrey Police of their internal meetings it seems reasonable to assume that at the time Ms E was asked whether she was prepared to support a prosecution, she had not been told that there were other victims⁴³. I have not been able to ask her whether her attitude might have been different had she known.

⁴² ‘INB’

⁴³ Although her sister Ms D seems to have known that Ms G was suggesting on *Friends Reunited* that Jimmy Savile had done something

126. On 5th June 2008 it was decided not to take a witness statement from Ms C but to tape record her account. However Ms C refused to take part in an interview saying she “*did not deem it necessary*”⁴⁴. She was, however, prepared to let DC S take notes of what she had to say. The manuscript notes read “*not bothered about me*”.

127. The account she gave appears to have been consistent with that which she had first given to the police nearly nine months earlier; the notes included the following:

*“there a year. 14-15 years old. Under 16. sexually aware. About 1978.
Bribe me – “get you something”. Buy me box of chocolates. Week later
big box
Everyone was all over him. Girls got excited. Staff thought he was God.
Not supervised. Roam around. Why me?
Settee. Blanket on me. He just lost his mum - died⁴⁵ - sat next to me –
talking about me
Girl at other end – big room. TV room. No staff. Can’t remember
names.
Under blanket. Not undressed. Rubbing against me.
Teenage girls. Thought funny
Seen on TV “dirty old pervert””*

128. The officer has recorded that:

*“[Ms C] said she looked at the other girl at the end of the sofa and
nodded her head down to indicate the movement under the blanket.
Thought nothing of it. We were teenage girls and thought it was funny.*

⁴⁴ See the crime report entry

⁴⁵ In fact Jimmy Savile’s mother had died in 1973 – [source: profile in *The Times* newspaper]

She never told any girl there. Told her mum who laughed it off.....[Ms C] never saw Jimmy Savile again and she would like to smack the girl who reported it in the gob as she has felt nothing but upset and worry since my contact. She sees him on TV and thinks he is a dirty old pervert and when she was on holiday she was worried that people taking photos were press. She is not bothered about what happened to her and wants to concentrate on her family who are going through a rough time at the moment. She will not talk to papers and will not make a statement or talk on tape and wants to be left alone⁴⁶” (emphasis added).

129. Ms C is said to have said that she did not want to have any further contact from the police as it was having a negative effect on her.

130. The DSIO has recorded:

“she is getting a bit panicky about it becoming public and a bit paranoid if she sees a photographer thinking it might have leaked out and could be the Press. She thinks if it became public it would have an adverse effect on her family”.

131. On 9th June 2008 Surrey Police put the file onto *Holmes*⁴⁷. The following day, 10th June 2008, the DSIO’s INB recorded that Surrey Police intend to:

“meet with CPS. Is this in the public interest to prosecute without cooperation of victims. Balance public protection issues⁴⁸. Decision to interview him [Jimmy Savile] will be made in consultation with CPS”

⁴⁶ Officers Report dated 16th June 2008

⁴⁷ A police system for dealing with major crime

⁴⁸ on the Crime report this is expanded to read “respect for their feelings has to be balanced with the need to protect other people”

132. On the same day further letters were sent out to other residents of Duncroft whose names had been identified.
133. During June 2008 DC S spoke to other former residents of Duncroft. None made explicit allegations though many were aware of rumours.
134. On 9th July 2008, DC S took a statement from Ms B. The conversation lasted for nearly two hours and was recorded on three tapes. No full transcript has been provided but the officer prepared a summary. It contains inaccuracies, many of which are not material but one of which was potentially significant, as it suggests that Jimmy Savile had an erection at the time (which would have supported what Ms C had said) when in fact Ms B had said she did not know whether he had or not. The summary records

“She was squeezing his testicles and penis and I had not done that. It lasted seconds, I didn’t look after but at the time it looked like his penis had gone hard” (emphasis added)

135. What Ms B can be heard to say on the tape was:

“On reflection, I would have looked to see if his penis was hard but I was revolted so I did not look”.

136. It is also of note that Ms B said at one point on the tape that DC S had told her that hers was the only complaint, and this surprised her, because she would have thought there would have been many others. In fact, by this stage DC S knew that there were at least two other complaints, yet she did not correct Ms B. This reflects the entries in the INB and the decision log, namely that no victim was to be told of the existence of any of the others (see further below).

137. On 15th July 2008 the police had a meeting with the reviewing lawyer from the CPS. The DSIO has recorded the lawyer's advice as follows:

“He did not feel there was a case to proceed as the incidents were relatively minor and they were so long ago there would be grounds for an abuse of process argument. He was happy to put this in writing”.

138. As the CPS no longer has any records there is nothing to confirm that this is the advice which was given, but there is no reason to doubt the accuracy of the police note. I have spoken to the (now retired) CPS lawyer; he accepts what has been written and his explanation is set out in the paragraphs which follow. It would seem that at the time, the lawyer had not seen any papers. Nor does it seem

that an advice in writing which repeated this view was ever sent to the Police⁴⁹.

139. For the reasons I set out in the paragraphs which follow it is my view that this advice should not have been given, or at least not in these terms.

140. On 16th July 2008, Ms G finally contacted DC S. She left a long message on the officer's voicemail. The officer's note of this part of the conversation reads:

*“abuse – suggestion made
Wanted massaging further then neck and shoulders – someone called me
Not spoken to anyone”*

141. On 30th July 2008, Ms G was interviewed on tape. The account she gave is set out above. On 4th August 2008 the DSIO was briefed by DC S on her conversation with Ms G; he has recorded that

“when she was 16 years of age⁵⁰ Jimmy Savile asked her for a blow job but she said no. She is not aware of any such incidents involving Jimmy Savile and anyone else”.

⁴⁹ I asked the police to send me everything they had in relation to contact with the CPS

⁵⁰ In fact, Ms G had not said she was sixteen; she had been not entirely clear about the age she was when she arrived at Duncroft

142. Either the DSIO has misunderstood or he was inaccurately briefed; in fact Ms G had said that she believed he had said something similar to a girl called F. She had also said that “*there was certainly more than one incident ... involving me and other people*”, but had not elaborated on this.

143. The entry for 30th July 2008 is the final entry made by DC S on the police chronology. From 18th August 2008 the DSIO made no further notes in the INB. It appears that from this point onwards the investigation rather stalled; the decision log records nearly a year later (in June 2009) that

“the CPS have been consulted and advised that they would not support a prosecution on the grounds that the alleged offences took place so long ago it would be an abuse of process to prosecute”.

144. Despite this, it was decided that Jimmy Savile should be invited for interview under caution. In fact, that interview did not take place for a further year.

145. On 26th August 2008 the Crime Report records that DC S was to prepare a report for the CPS to seek confirmation of their advice and that the file was to be handed personally to the reviewing lawyer.

The formal request for CPS advice

146. On 24th October 2008 DC S completed the form MG3⁵¹, requesting pre-charge advice. It is significant that she described Ms B's evidence thus:

“The reporting witness is a [Ms B] who was aged 13-16 at the time and who witnessed the defendant James Savile (better known as Jimmy Savile) touched [sic] another girl aged about 14 sexually and got her to place his hand on her groin area over his clothing and rub his penis..... [Ms B] said that [Ms C] had previously told her that Jimmy would touch her over her clothing and get her to touch him. She had said that the next time he did it she would say the words “beef biryani” a phrase from a popular TV advert at the time to let her know it was happening. She heard [Ms C] say it and looked over and saw movement under a blanket” (emphasis added)

147. I have seen nothing elsewhere in the papers to suggest that either Ms B or Ms C had suggested that Ms B had seen Jimmy Savile touch Ms C sexually (as opposed to getting her to touch him). Further, DC S seems to have conflated the accounts of Ms C and Ms B: Ms C had never mentioned the “beef biryani” aspect, equally, Ms B had said nothing about a blanket.

⁵¹ A form used by the police to request formal advice from the CPS

148. When I first read these papers I was very concerned about this discrepancy, because if her account is correct, Ms B was an eye witness to an indecent assault, but if one were to rely on DC S's description, then Ms B's evidence at its highest consisted of hearsay and suspicion. Further if she had given two inconsistent accounts this would have had a profound impact on her credibility. In order to resolve this I asked the police where I could find any reference to Ms B having seen movement under a blanket. In a letter of 31st October 2012, DCI P said:

“regarding the reference to [Ms B] having seen a movement under the blanket I can clarify that [Ms B] mentioned that she see's [sic] a hand on top of another on top of Jimmy Savile's groin. She does not mention a blanket. However [Ms C] does say that there was a blanket and the touching was underneath this”.

149. I asked Ms B about this. She said that she had never said anything about a blanket.

150. On the basis of all the material I have seen I am satisfied that Ms B has been consistent in her accounts. One of my reasons for being so satisfied is that in the taped interview which took place on 9th July 2008, Ms B gave a clear account on several occasions of what she had seen and there was no mention of a blanket. Had she given a

different account on an earlier occasion I would have expected the officer to have probed it with her by saying something like “*last time we spoke you said that you had seen movement under a blanket?*” but nothing of this sort was said.

151. It therefore seems that the anomaly in the MG3 is due to inaccuracy by the officer. As will be seen, this may have misled the CPS lawyer.

152. Further, in the MG3, DC S noted:

“another ex-resident of Barnardo’s stated that while she had been at Duncroft the defendant asked the girls to give him massages and on one occasion he asked her to massage his groin area and give him oral sex” (emphasis added).

153. Assuming that this is a reference to the account of Ms G, then I am unaware of any notes which say that she alleged that he asked her to massage his groin area; this certainly was not said during her taped witness interview, when the only allegation she made was that he asked her to perform oral sex on him. Later in the MG3 the officer said that

“Ms G ...mentioned an incident at Duncroft where he asked her to massage him on his penis area”.

154. I have seen no note documenting that such an allegation was made at this point. However, I am now aware that in an interview given to a television programme given in 2012, Ms G appears to have made a similar suggestion.

155. The MG3 continued:

“None of the victims are willing to support any police action which was brought to our attention by the witness Ms B. They are historic incidents and the women feel they have moved on from the past and it is a time they do not wish to remember (being in care). Copy of the Sussex report also attached although this involved a female fan over the age of 18”.

156. This is a rather confusing statement. Two of the four victims⁵² had not been in care. There is no record either of Ms G having said that she did not want to give evidence or the reasons she gave for not wanting to (see further below).

157. The MG3 concludes as follows:

“at this stage the defendant has not been interviewed or made aware of these allegations and advice is sought by CPS on how best to proceed with

⁵² Ms B being a witness rather than an alleged victim

the information obtained and recorded within this file and associated documents”.

158. On 19th November 2008, DC S recorded that the file was complete and had been reviewed by the DSIO and she was awaiting contact from the reviewing lawyer so that she could deliver the file to him. By Christmas she appeared to have heard nothing, and on New Year’s Day 2009 she sent him an email saying she was still waiting to deliver the file to him. A week later he contacted her, and the file was finally handed to him on 22nd January 2009. At this meeting, he suggested to her that the police should read some of Jimmy Savile's autobiographies to see if mention was made of other charities or children’s homes.
159. It appears that the next contact from the CPS was on 31st March 2009, when DC S met the lawyer. It is recorded on the Crime Report that he *“advised that there would be no further action”*.
160. He also advised that the “visit” to Jimmy Savile should be by a “senior officer of rank”. This is puzzling, given the decision that no further action should be taken, which did not appear to have been

said to have been provisional. The reviewing lawyer told me that he had understood from the police that Jimmy Savile was being spoken to, not in order to interview him under caution, but so that he could be given “words of advice”. I am not entirely sure that I understand what this means, but this is a further matter that I do not see it as necessary for me to resolve.

161. There is nothing in writing provided at this stage to confirm this advice, namely that there should be no charges, nor the reason for it, although the officer was plainly expecting something as the crime report shows on 7th May that she was “*still awaiting paperwork from the CPS*” but had been told that the lawyer was on leave.
162. On 2nd June 2009, the DSIO sent a letter to Jimmy Savile to inform him of the allegations. The following day, Jimmy Savile called the DSIO and an arrangement was made that he would meet the police next time he was in their area. On 22nd September 2009, he was sent a further letter inviting him for an interview.
163. On 1st October 2009 Jimmy Savile was interviewed under caution but not arrested. He was asked about the three Surrey allegations but the

Sussex one was not mentioned. In summary he said that all three allegations were invented, and he believed that the complainants were after money. He also said that this was not the first time this had happened and it was an occupational hazard for someone in his position. He told the officers that he had sued five newspapers in the past⁵³ and they had all settled. He remembered Duncroft; it was a “posh borstal” for girls who had committed crimes and was an alternative to custody. He had not visited it very often, he had never been with the girls unsupervised nor had he watched television with them. He had never given them presents nor had he sent chocolates. He said that this was not the first time such suggestions had been made and that he had a “policy” for dealing with them. When asked about his “policy” he said the following:

“If this [these allegations] does not disappear then my policy will swing into action. I have an LLD, that’s a Doctor of Laws, not an honorary one but a real one. That gives me friends. If I was going to sue anyone, we would not go to a local court, we would go to the Old Bailey ‘cos my people can put time in the Old Bailey. So my legal people are ready and waiting. All we need is a name and an address and then the due process would start. I’ve never done anybody any harm in my entire life. I have no need to chase girls, there are thousands of them on Top of the Pops. I have no need to take liberties.....the newspapers consider me to be very boring, I have no kinky carryings on. But because I take everything seriously I’ve alerted my legal team that they may be doing business and if we do, you ladies [the two female officers] will finish up at the Old Bailey as well because we will be wanting you there as witnesses. But nobody ever seems to want to go that far.”

⁵³ Presumably on the basis that they had made similar allegations

164. On 8th October 2009 DC S “verbally updated” the CPS lawyer.
165. On 10th October 2009, an MG3A was sent by DC S to the CPS. It summarised the interview with Jimmy Savile. It concluded thus:

“as previously advised this will be NFA and I will update all parties by letter and send a final report to West Yorkshire police once I have received the final written decision from you”

The CPS written charging decision

166. On 26th October 2009, the reviewing lawyer provided his written decision. In its entirety it reads as follows:

“It is alleged that in the period 1977-1979 this suspect, when visiting a children’s home in Staines, indecently assaulted a girl aged around 14. The initial information came from a female who said that another girl, [Ms C], had told her that the suspect had touched her over her clothing and got her to touch his groin area over his clothing. It was arranged when this next occurred that [Ms C] would say a particular phrase and the female alleged that on a subsequent occasion, she heard this phrase and noticed a movement under a blanket over [Ms C’s] lap. [Ms C] has orally confirmed she was indecently assaulted by the suspect but has declined to make a complaint. Other former residents described the suspect’s behaviour as creepy and causing them to feel uneasy. Two further complaints related to the suspect’s visits to Stoke Mandeville hospital – one by a visiting choir member who alleged French kissing and the other by a former resident who stated that the suspect asked her to massage his groin and give him oral sex. Finally, a female in Sussex also made a complaint that the suspect took her to his caravan and touched her breasts over her clothing. None of the alleged victims is prepared to support any

police action. On 1st October last the suspect was interviewed. He denied all the allegations and suggested that such complaints were motivated by money and the type that a TV and radio personality attracted. However in this case the initial information came from a witness, not a victim and none of the them want to support any police action. Nevertheless at the end of the day, on applying the evidential test in the absence of statements from victims⁵⁴ there is clearly insufficient evidence to charge the suspect with any criminal offence” (emphasis added).

167. There are, as the emphasised sections demonstrate, some factual inaccuracies. The most serious is that which relates to Ms B’s evidence, which is described as though she had not witnessed an assault but had merely seen “*movement under a blanket*”, when in fact she had consistently said that she had seen it with her own eyes. It is possible that the lawyer had been misled by the officer’s description⁵⁵, but given the ambiguities and inconsistencies in the MG3 I would have expected the lawyer to have sought clarification. The significance of this is that if Ms B had witnessed the assault herself, it might in certain circumstances have been possible to prosecute without the victim’s evidence. It does not seem that this had occurred either to the lawyer or to the officer.

168. The lack of analysis is disappointing. There is no reference to the law.

⁵⁴ Only one refused to make a statement; the other three had made statements but had expressed unwillingness to go to court

⁵⁵ I asked him why he had written this; he replied that it must have been his understanding of what the police had told him.

There is no reference to CPS Policy nor to seeing whether the case could be “built” in any way (see further below). Whilst the outcome might have been the same, there is no suggestion from this document that it was even considered - the reluctance of the witnesses has been treated as being determinative.

169. On 28th October 2009 DC S sent letters to Ms G, Ms C, Ms B and Ms E to say that “*the CPS have decided no further police action on this case*”.

170. I asked the reviewing lawyer why it had taken nearly a year for him to reach a formal decision on this case. He told me that at the time he had a number of cases which required his attention, including a number of murders, and that he had simply had to prioritise.

171. The explanation he gave me for his decision that no prosecution should take place is set out in the paragraphs which follow.

[E] ANALYSIS

172. Prosecutions for sexual offences are brought on the same basis as any other offence: the reviewing lawyer must apply the test set out in the *Code for Crown Prosecutors*. This has two stages: the first requires that there should be sufficient evidence to provide a realistic prospect of conviction. Only once the evidential stage is satisfied may the prosecutor go on to consider the public interest. If there is no realistic prospect of conviction, no prosecution can be brought, irrespective of the public interest or the views of the victim.
173. The final written decision in this case was made on the basis that there was insufficient evidence for a prosecution to take place, for the reason that the witnesses would not support the prosecution.
174. The proper approach to offences of this type, where there are similar allegations made against a single suspect, is to consider the offences not only separately but also in the context of one another, not least in order to consider whether each would provide admissible evidence in support of the others.

175. I have concluded in relation to three of the four allegations that had the witnesses been prepared to give evidence, not only was there a realistic prospect of conviction, but that the case was a relatively strong one. The significance of this is considered further in the paragraphs which follow.

The law in relation to sexual offences alleged to have been committed before 1st May 2004

176. Allegations of this type fall to be considered under the *Sexual Offences Act 1956*⁵⁶ and the *Indecency with Children Act 1960*. The old legislation created far fewer offences than are available under the *Sexual Offences Act 2003*.

177. The behaviour complained of would in each case constitute either an indecent assault, or gross indecency with a child.

⁵⁶ 'SOA 1956'

Indecent Assault on a woman – section 14 SOA 1956

178. The prosecution must prove that:

- (i) the accused intentionally assaulted the victim,
- (ii) the assault, or the assault and the circumstances accompanying it, are capable of being considered by right-minded persons as indecent, and
- (iii) the accused intended to commit such an assault as is referred to in (ii) above.

Court [1989] A.C. 28

179. In addition, the prosecution must prove lack of consent or belief in consent, unless the victim was under sixteen in which case any purported consent would not provide a defence.

180. It is significant in the context of this case that it is an essential element that the behaviour complained of amounted to an assault (which in the context of sexual offences generally means a battery). Where the suspect does not touch the complainant, but merely invites the complainant to touch him, this would not constitute an “assault” for the purposes of section 14.

Application to the facts of this case

Ms G

181. The evidence of Ms G in the taped account she gave to the police⁵⁷, taken at its highest, was that Jimmy Savile asked her to perform oral sex on him, but did not actually touch her. Such a request could not amount in law to an indecent assault; whether it amounts to an incitement to an act of gross indecency is considered below⁵⁸.

Ms A

182. Ms A's evidence was that Jimmy Savile touched her breasts over her clothing, and took her hand and placed it on his penis (again, on the outside of his clothing). This plainly is capable of amounting to an indecent assault. Ms. A has said that she was in her early twenties; as a result the prosecution would have to prove not only that she did not

⁵⁷ She has since made a number of other allegations but these would not have been within the knowledge of the reviewing lawyer at the time

⁵⁸ It is clear to me that the allegations now made by Ms G were not known to the officer in 2008.

consent, but that Jimmy Savile knew that she did not consent or was reckless as to whether or not she was consenting. Ms A's evidence is that she did not, in fact, consent. Further, there appears to be nothing that she had said or done that could on any rational view have led Jimmy Savile to believe that she would consent to sexual behaviour. She had never met him before and the incident took place during the afternoon, in July, and therefore apparently in broad daylight. Any suggestion of belief in consent would have to be predicated upon her agreeing to go into the caravan with him. In the modern age, I would not expect an argument advanced by a defendant to succeed where it amounted to no more than "well she must have known what I was likely to do and by agreeing to go to the caravan I thought she was consenting".

183. Contrary to what the officers told Ms A, there is no longer any rule of law or practice which requires the prosecution to adduce any additional evidence in support of the allegation, far less formal corroboration. For many years, juries have been directed that the complainant's evidence alone is sufficient for them to convict, provided that the prosecution has made them sure of all the elements of the offence. This amounts to no more than common sense, not

least because a requirement that there should be supporting evidence would involve imposing a higher standard for sexual offences than for others. If a victim were to report that he or she had been burgled, no one would expect as a matter of either logic or law that corroborating evidence should be adduced.

184. The *CPS Policy for Prosecuting Offences of Rape* was introduced in 2004⁵⁹. In March 2009 it had been expanded and extended and by the time the decisions were made in this case, it was in much the same form as it is today. Whilst it is a Policy for prosecuting offences of rape, it makes it clear that good practice requires that the principles it sets out should be applied to all cases involving sexual offences.
185. The Policy states that the CPS aim is to prosecute cases of rape effectively, and that we are committed to improving our performance, particularly by ensuring that any myths or stereotypes play no part in our decision-making.

⁵⁹ 2004 – Publication of 1st edition of *CPS Policy for Prosecuting Cases of Rape*
2006 – April - Publication of the *Code of Practice for Victims of Crime*
2007 – January – Publication of *Without Consent*, a report on a joint thematic inspection by HM Inspectorates of Constabulary and CPS
2008 – National roll out of compulsory RASSO training for all rape specialist prosecutors
2008 – April - Publication of the *CPS VAW Strategy*
2009 – March – Publication of refreshed *CPS Policy for Prosecuting Cases of Rape*

186. That being said, the Policy does not supersede the *Code for Crown Prosecutors*. Whilst the views and interests of the victim are important, they cannot be the final word on the subject of a CPS prosecution. This is the case whether the victim wishes a prosecution to take place or is in fact opposed to it.

187. The judgment in *The Queen on the application of B -v- The Director of Public Prosecutions*⁶⁰ is of particular assistance when considering allegations of sexual offences.

“There was also discussion whether in applying the "realistic prospect of conviction test" a prosecutor should adopt a "bookmaker's approach" (as it was referred to in argument) or should imagine himself to be the fact finder and ask himself whether, on balance, the evidence was sufficient to merit a conviction taking into account what he knew about the defence case. In many cases it would make no difference, but in some it might.....

“There are some types of case where it is notorious that convictions are hard to obtain, even though the officer in the case and the crown prosecutor may believe that the complainant is truthful and reliable. So-called "date rape" cases are an obvious example. If the crown prosecutor were to apply a purely predictive approach based on past experience of similar cases (the bookmaker's approach), he might well feel unable to conclude that a jury was more likely than not to convict the defendant. But for a crown prosecutor effectively to adopt a corroboration requirement in such cases, which Parliament has abolished, would be wrong. On the alternative "merits based" approach, the question whether

⁶⁰ [2009] EWHC 106 (Admin)

the evidential test was satisfied would not depend on statistical guesswork” (emphasis added)

188. It is this which has come to be known as the “merits-based approach”. In the context of sexual offences, what this means is that even though past experience might tell a prosecutor that juries can be unwilling to convict in cases where, for example, there has been a lengthy delay in reporting the offence, this kind of consideration should not be treated as determinative for the purposes of deciding whether or not there is a realistic prospect of conviction. In other words, the prosecutor should proceed on the basis of a notional jury which is wholly unaffected by any myths such as, for example, that were an allegation really true it would have been reported at the time. The prosecutor must further assume that the jury will faithfully apply directions from the judge, such as the fact that they can still convict even where it is one person’s word against another’s without any supporting evidence.

189. That having been said, in cases of sexual assaults which allegedly took place many years ago but have only recently been reported, a jury will want to know why nothing was said at the time. Ms A has given an

explanation for this, which was that she felt silly and naive, and stupid for having allowed herself to get into that situation. Modern psychological research has demonstrated that it is common for victims to blame themselves in such situations, and there is nothing about this explanation on its face which would suggest that it is untrue.

190. Ms A's reason for deciding to report it nearly forty years later was that she had been told by a journalist that she was not the only person to whom this had happened and that someone had to take the first step : "*that all it took was for one person to make a complaint to the police and that then others would follow*". This appears to be logical and a jury would be capable of assessing it in the same way as it would the credibility of any witness. The fact that the explanation might be prejudicial to the defendant is not in itself a reason for not prosecuting.

191. Increasingly, judges have been required to give juries assistance in sexual cases as to how to eliminate rape "myths" from their thinking.

In *D*⁶¹ (decided by the time the reviewing lawyer was considering this case) it was said that a possible direction on delay might consist of:

“Experience shows that people react differently to the trauma of a serious sexual assault. There is no one classic response. The defence say the reason that the complainant did not report this until...[whatever the trigger incident is said to have been] is because she has made up a false story. That is a matter for you. You may think that some people may complain immediately to the first person they see, whilst others may feel shame and shock and not complain for some time. A late complaint does not necessarily mean it is a false complaint. That is a matter for you”

192. The March 2010 edition of the Crown Court Bench Book suggests the following direction:

“it has been said on behalf of the defendant that the fact that the complainant did not report what had happened to her as soon as possible makes it less likely that the complaint she eventually made was true. Whether that is so in this particular case is a matter for you to consider and resolve. However, it would be wrong to assume that every person who has been the victim of a sexual assault will report it as soon as possible. The experience of the courts is that victims of sexual offences can react the trauma in different ways. Some, in distress or anger, may complain to the first person they see. Others, who react with shame or fear, or shock or confusion, do not complain or go to authority for some time. It takes a while for self-confidence to reassert itself. There is, in other words, no classic or typical response. A late complaint does not necessarily signify a false complaint, any more than an immediate complaint necessarily demonstrates a true complaint. It is a matter for you to determine whether, in the case of this particular complainant, whether the lateness of the complaint assists you at all and, if so, what weight you attach to it. you need to consider what the complainant herself said about her experience and her reaction to it”

⁶¹ [2008] EWCA Crim 2557

193. Whilst this specimen direction had not been published at the time the decision was made in this case, it shows the direction in which the law had been developing. In fact, the CPS Policies on rape, domestic violence and violence against women had been emphasising these points for many years. The reviewing lawyer, as a rape specialist, should have been aware of this.
194. It is my view that the officers' suggestion to Ms A that there was a need for "corroboration" was plainly wrong as a matter of law. Further, there was in fact evidence in existence which potentially supported her allegation, namely that provided by the three Surrey complainants (see "cross-admissibility", below). In addition, the fact that it might have been difficult to trace her former husband and workmates did not make the evidence that she had spoken to them at the time inadmissible, it merely made it less strong than if it had been possible to call the witnesses to confirm her account.
195. It is my view that, looked at objectively on the available evidence, the complaint made by Ms A was apparently credible and, had she been willing to give evidence, there was a realistic prospect of conviction,

either on her evidence alone or in combination with that of the “Surrey victims”.

196. I deal with the question of whether the fact that she had said that she was “unwilling to support a police investigation” was fatal to the prospects of a successful prosecution below.

Ms E

197. The allegation made by Ms E was that Jimmy Savile had kissed her on the lips and put his tongue inside her mouth. Given that she says she was under sixteen, consent would not have been in issue⁶². The only question is whether, provided a jury accepted as a fact that it had taken place, such a kiss is capable of amounting in law to an indecent assault. In *Court* (above) it was said that most indecent assaults will clearly be of a sexual nature, whilst others may have only sexual undertones. The jury must decide whether “*right-minded persons would consider the act indecent or not*”. The test is whether what occurred was “*so offensive to contemporary standards of modesty and privacy as to be indecent*”.

⁶² Subject to what was said in *K* (see footnote to para. 201)

198. Whilst a kiss which involved the suspect putting his tongue into the complainant's mouth would not generally be considered "offensive" (to use the language of *Court*), in my view it is clearly a piece of sexual behaviour. That is demonstrated by the fact that no parent would kiss a child in this way, nor would it be generally regarded as normal between friends. I am therefore of the view that this is capable of amounting to an indecent assault.

199. In this case there appears to have been evidence that Ms E told someone before she reported it to the police (her sister Ms D⁶³). Provided Ms E gave evidence, what she had said to her sister would be admissible not merely as evidence of consistency but of the fact that it had taken place⁶⁴ and would therefore support her account (though I emphasise again that whilst this would strengthen the case, it is not required as a matter of law). Ms E also gave what was, on its face, a plausible explanation for not reporting what had happened at the time and for coming forward in 2008. As with Ms A, the other three allegations are capable of supporting her evidence.

⁶³ Though Surrey police decided not to take a witness statement from Ms D once Ms E had said she did not wish to support a prosecution

⁶⁴ CJA 2003, s120

200. It is therefore my view that, had she been willing to give evidence, there was a realistic prospect of conviction in this case. I consider the effect of her stated unwillingness below.

Ms C

201. Taking hold of a girl's hand and placing it on top of the suspect's genital area is in my view capable of amounting to an indecent assault. Once again, if the girl were under sixteen consent is irrelevant⁶⁵.

202. This is in many ways the strongest of the allegations, because - unusually for a sexual offence - it was witnessed by another person. Had a prosecution taken place, the issues for a jury would have been:

- (a) the credibility of the two women - in essence, whether they were lying; and
- (b) whether, if truthful, their recollections were reliable.

⁶⁵ A genuine belief that she was sixteen or over and she either consented or the defendant genuinely believed that she was consenting would amount to a defence - *K* [2002] 1 A.C. 462. In this case, however, Jimmy Savile was interviewed and did not raise this as a possible defence; indeed, given the circumstances it is hard to see that such a defence would have much prospect of success

203. As far as their credibility is concerned, there seems to be nothing to undermine their accounts of not having seen one another for some thirty years, and in those circumstances it would be absurd to suggest that both women had separately decided deliberately to *invent* an incident which had never taken place.

204. As far as their reliability is concerned, whilst there were a number of discrepancies in their accounts⁶⁶ the inescapable fact is that Ms B had told the police that she saw Jimmy Savile, whilst watching television in the children's home, take the hand of a girl called Ms C and place it on his groin over his clothes. When Ms C was traced she described an assault in identical terms, which had taken place in the television room, and when there were other girls present. It would be expected that a jury would be directed along the following lines:

“It is for you to decide whether the complainant’s recollection of the essential events is reliable. If therefore you are concerned, either about the absence of a circumstantial detail which would have assisted you to judge the reliability of their evidence or by her claim to remember detail which you regard as unlikely after this length of time then that is a legitimate concern, because it is relevant to the question whether the prosecution has proved its case. But it is for you to decide whether your concern affects only

⁶⁶ there would have been ample material for cross-examination, for example as to the number of times this was said to have happened, the issue of the blanket and whether this would have meant that Ms B would not have been in a position to see what she said she saw, the lighting, the possibility of mistake, Ms C’s failure to recall the “beef biryani” code word and so on.

a small part of the complainant's evidence or undermines her evidence as a whole."⁶⁷

205. Juries are routinely directed that they do not have to resolve every detail in a case, they only need to be satisfied of sufficient to say that they are sure that the incident which amounted to the offence took place.

206. I am satisfied that, had both Ms B and Ms C been prepared to give evidence against Jimmy Savile, there would have been a realistic prospect of conviction for indecent assault on the basis of this incident, and that that would have been the case were it to have been considered in isolation; if supported by the evidence of the other allegations it would have been commensurately strengthened.

Ms G

207. As I have already said, in my view the evidence of Ms G⁶⁸, taken at its highest, does not amount to an indecent assault under the SOA 1956

⁶⁷ Crown Court Bench Book, specimen direction on delay, page 33

⁶⁸ as recounted to the officer in 2008

because it consisted of an invitation to her to do something sexual to the suspect.

208. Section 1 of the *Indecency with Children Act* 1960 makes it an offence for a person to incite a child to an act of gross indecency with him. However, for conduct which took place before 2001⁶⁹, the child must have been aged under fourteen. Ms G's evidence was that she did not go to Duncroft until after her fifteenth birthday (in fact, given that she says that she was living in Norman Lodge at the time, the likelihood is that she was sixteen or older; she has now confirmed that she thinks she was seventeen).

209. I am therefore of the view on the material I have seen that the behaviour complained of did not amount to an offence. However, Ms G's evidence arguably would have been admissible in support of the other complaints.

Cross-admissibility

⁶⁹ Section 1 was amended by the CJCSA 2000, which substituted "sixteen" for "fourteen". The amendment took effect on January 11th 2001; for offences committed before that date the relevant age remains fourteen.

210. It is convenient to consider this issue at this stage because it is relevant not only to the strength of the overall case, but to the approach which had been taken by Sussex police in relation to Ms A's complaint.

211. It is not necessary for the purposes of this review to consider the law in detail. Suffice to say that the *Criminal Justice Act*⁷⁰ 2003 contains a comprehensive framework for consideration of "reprehensible behaviour" committed on occasions other than that alleged in the particular count that the jury is considering. It is fair to say that before the enactment of the "bad character" legislation, the task faced by the prosecution in seeking to adduce evidence of behaviour on other occasions was formidable and was largely restricted to "similar fact" evidence. The 2003 Act makes it far easier for the prosecution to put such evidence before the court; it is important to note that, as is usually the case with evidential provisions, the relevant law is that in force at the date of the trial, rather than the date of the commission of the offence⁷¹.

⁷⁰ 'CJA'

⁷¹ *Bradley* [2005] 1 Cr App R 24

212. The leading authority on the admissibility of multiple accusations of sexual offences is *Chopra* [2007] 1 Cr. App. R. 225, a case involving a dentist who was said to have squeezed the breasts of his female patients during the course of their dental treatment. The general principle confirmed by the Court of Appeal is that where an accused faces more than one charge of a similar nature, the evidence of one accuser may be admissible to support the evidence of another.
213. The usual “gateway” of admissibility is that provided by section 101(1)(d), which requires that the evidence must be relevant to an important matter in issue between the defendant and the prosecution. Generally, such evidence is described as the reasoning from propensity, that is to say, a person who has behaved in such a way in the past is more likely to behave in that way in the future than someone who has not.
214. In this case the purpose behind seeking to admit the evidence of behaviour on other occasions would be not merely that Jimmy Savile had such a disposition, but to rebut a possible defence of coincidence. The underlying principle is that the probative value of multiple accusations may depend in part on their similarity but also

on the unlikely prospect that the same person would find himself falsely accused on different occasions by different and independent individuals.

215. Further, it is not necessary for the allegations to be approached sequentially (in the sense that one has to be proved before it can be used in relation to the others); the jury, whilst obliged to reach a verdict on each count separately, may use admissible evidence in relation to any other count, including the evidence of bad character arising from another.

Freeman [2009] 1 WLR 2723

216. In other words, the approach to be taken is “*holistic rather than sequential*”.

McAllister [2009] 1 Cr. App. R. 10

217. Nor is bad character evidence restricted to that represented by a count upon the indictment. The definition of “bad character” evidence is “*evidence of, or of a disposition towards, misconduct*” which is further defined as “*the commission of an offence or other reprehensible*

behaviour”⁷². I have considered whether the behaviour complained of by Ms G would be admissible as evidence of “bad character” despite the fact that it did not amount to an offence⁷³. In *Manister* [2006] 1 WLR 1885, a case concerning a man in his thirties who was having a sexual relationship with a thirteen year old girl, the court drew a distinction between behaviour that was “morally lax” and that which could properly be described as “reprehensible”. It is my view that *Manister* is distinguishable from this case because of the following features: Ms G was, to Jimmy Savile’s knowledge, in care; he was in effect in a position of trust, that trust having been acquired as a result of his fame and his charity work; and the fact that he offered to find her a job in return for oral sex. There is a respectable argument that the behaviour is properly to be described as “reprehensible”⁷⁴ and is thus admissible as evidence of bad character.

218. A judge deciding upon the admissibility of “bad character” evidence is required to assume that the evidence is true⁷⁵.

⁷² CJA 2003 sections 98 and 112

⁷³ On the basis of what I now know there might be some question about her consistency, but that was not apparent at the time this decision was made

⁷⁴ in any event, if the behaviour was not found to come within the bad character provisions, the task of the prosecution becomes easier as all it has to establish is relevance – in *Manister* itself the evidence was admissible because it was capable of demonstrating that the appellant had a sexual interest in teenage or mid-teenage girls

⁷⁵ CJA 2003, section 109 (subject to the qualification in subsection (2))

219. It is my view that all four of these allegations were *prima facie* admissible in support of each other. That being the case, the prospects of a conviction for each of the three offences charged would be commensurately increased.

220. For all these reasons, I am satisfied that if I ignore for the time being the question of whether the witnesses would give evidence, the case against Jimmy Savile was a strong one, consisting as it did of four apparently independent allegations of sexual behaviour towards young women and girls with whom he came into contact as a result of his fame and his charitable work. Many if not all of them had told someone at the time about what had happened to them; such evidence would be relevant and admissible by virtue of section 120 of the CJA 2003, and would in addition tend further to rebut any suggestion of recent collusion. Further, collaboration or indeed contamination (such as, for example, whether there had been discussion of Jimmy Savile's behaviour on the *Friends Reunited* website) would go to weight, not admissibility, and would be for a jury to determine in the usual fashion.

H [1995] A.C. 596

221. It is not necessary, as a matter of law, that the incidents should be identical. That being so, in fact the alleged assaults share a number of similar features (for example, the suggestion that he would get the victims a job, and the placing of their hands on his groin over his tracksuit bottoms). In addition, the women have given similar accounts as to why they said nothing at the time. These included the high esteem in which Jimmy Savile was held, the fear that they would not be believed, their feeling that the incidents were relatively trivial, their belief that they might bear some responsibility because they had behaved in a naïve manner, and their lack of awareness that others had been the subject of similar behaviour.

222. It is therefore to my mind unarguable but that had the witnesses been prepared to give evidence, there was on the evidence I have seen, a realistic prospect of conviction in relation to each of the charges.

The proper approach to be taken in cases where the witnesses are reluctant to give evidence

223. I was not asked by the DPP to comment upon the conduct of the two police forces, save to the extent that this resulted from advice given by the CPS or where the approach taken by the police might have been different had advice been given. That having been said, it has been unavoidable that I have had to consider the approach they took.

224. The critical question is whether, when a witness expresses reluctance to give evidence, that decision should be accepted unquestioningly or whether more can or should be done.

225. The reviewing lawyer in this case was an extremely experienced “rape specialist”. This means that he had been on a number of training courses and was expected to be familiar with CPS Policy and Guidance in this area, as well as the case law.

226. The following parts of the CPS Policy⁷⁶ are of importance in this context:

- although the Policy applies explicitly to rape, the practices and procedures within it should be applied to other types of sexual offence, which should be treated seriously and sensitively.
- early consultation should take place between the prosecutor and police to ensure that all possible avenues of evidence are explored.

227. Surrey Police have documented that they were given oral advice by the reviewing lawyer at an early stage that he would not be inclined to prosecute these cases because they were “relatively minor” and the delay meant that a prosecution could be an abuse of process.

228. When I first saw the note of the reviewing lawyer’s advice, to the effect that these allegations were “relatively minor” I was troubled. Whilst there is plainly a spectrum of gravity, I would hope that any prosecutor would regard a sexual assault as being in and of itself serious. Be that as it may, in any event these particular assaults were

⁷⁶ The version currently in force has been updated this year; however, the principles are broadly the same as in 2009

far from trivial: they represented a course of conduct against vulnerable women and girls by a man who was in effect in a position of trust. When I spoke to the reviewing lawyer he told me that to the best of his recollection at that stage he was asked to give an informal view, and that that is reinforced by the fact that he had not been provided with any papers. Having discussed the matter with him, I am satisfied that even were this to have been his view at the outset, by the time he made the charging decision he regarded these as serious offences.

229. In any event, the seriousness or otherwise of the offences would be relevant to the public interest stage and should not have formed part of the assessment of whether there was sufficient evidence for there to be a realistic prospect of conviction.

Abuse of Process

230. The fact that the suspect might argue abuse of process does not in the circumstances of this case mean that there was no realistic prospect of conviction. The law on abuse of process has been in a state of development over the past decade, particularly as there has

come to be greater appreciation of the factors which may lead to delay in reporting sexual offences. The most recent guidance from the Court of Appeal makes it plain that the explanation for delay in reporting is inextricably bound up with the credibility of the complainant; as such it is classically a matter for a jury to determine and would not without more justify withdrawing a case from a jury⁷⁷.

231. Whilst plainly one should not judge the advice given in 2009 by the standards of a judgment given two years later, it is right to say that *F* does not represent a significant departure from the development of the jurisprudence on abuse of process. The courts have been assiduous in recent years not to, in effect, establish a statute of limitations for sexual offences. Thus the question for the court in 2009 was as it is now, that is to say, not whether the delay was justified, but whether a fair trial would be possible. It would only be in exceptional cases that delay would lead to the case being withdrawn from the jury.

232. Whilst in a case like this it would have been inevitable that the defence would have pointed to the delay as having led to the loss of

⁷⁷ *F* [2011] EWCA Crim 1844

records and the difficulty for the defendant of establishing his whereabouts at the time these offences were said to have taken place, a competent prosecutor should have been able to persuade the court that, given the issue in the case, a jury would be capable of assessing the effect of delay. The issue was, in reality, the truthfulness of these complainants, as there was no room for error or mistake. As set out above, when he was interviewed, Jimmy Savile had made that clear: he did not seek to suggest that any of the girls may have misunderstood innocent affectionate behaviour or jumped to the wrong conclusion, he said that these were allegations which had been fabricated, probably from a financial motive. These are issues which are well within the abilities of a jury to assess.

233. I would, therefore have expected a submission of abuse of process to have had no obviously greater prospect of success in 2009 than would one made today and on these facts I would not expect such a submission to succeed.

The approach to be taken when a victim does not support a prosecution

234. There is a distinction to be drawn between a victim who does not “support a prosecution” and one who refuses to give evidence. *The Code for Crown Prosecutors* makes it plain that whilst the views of victims are important, a prosecution is not a private matter between the complainant and a defendant, and so the victim’s views cannot be determinative of whether a prosecution should or should not take place.

235. A witness who refuses to give evidence, however, may make a prosecution difficult or indeed impossible. That having been said, the Rape Policy makes it plain that the fact that the victim does not want to give evidence should not without more be treated as determinative:

“We know that some victims will find it very difficult to give evidence and may need practical and emotional support.....Sometimes a victim may withdraw support for a prosecution and may no longer wish to give evidence. This does not mean that the case will automatically be stopped”

236. The Policy and the Legal Guidance require that the prosecutor should approach the case in the following way:

- Consider the reasons why the victim does not wish to support the prosecution, and then see whether there are, for example, any special measures or other steps which could be taken to allay the concerns;
- If not, consideration should be given to whether it is possible to continue the prosecution without the victim's evidence, for example by obtaining other evidence or by use of the rules permitting hearsay evidence to be given;
- If this proves not to be possible then the prosecutor should consider whether to continue with the prosecution against the victim's wishes by compelling him or her to attend court. Plainly, this would be an exceptional course to take because of the risk that the victim may see this as compounding the harm caused by the original offence, but the prosecutor's duty to the public at large requires that consideration should at least be given to this possibility.

237. Plainly there is a difference between a victim who was initially in favour of a prosecution but who then withdraws support, and one who from the outset has expressed reluctance to give evidence.

Nevertheless, a prosecutor should apply the Policy in a purposive manner.

238. The Policy is expanded upon in the Legal Guidance, the relevant parts of which read as follows:

“The Policy Statement emphasises the need for case building. Rather than merely spotting the evidential failings, prosecutors are encouraged to think ‘well, there is a problem here but is there any way that we can improve the evidence so that the Code standard is met?’

“A proactive approach to prosecuting is required of prosecutors, working with investigators from early in the investigation to build evidentially strong cases.

“Prosecutors should assess at an early stage whether there is sufficient evidence to proceed without the victim, for example, by relying on statements from other witnesses, 999 call recordings, admissions in interview, CCTV evidence, scientific evidence, photographs and officers’ statements. If there is sufficient evidence, and provided the public interest test continues to be met, there may not be any reason to consider a witness summons if the victim subsequently withdraws support. In any event, it is important for perpetrators of sexual crime to know that a prosecution will not simply rely on the victim’s willingness to give evidence.

“Special measures should always be considered by the prosecutor at the earliest stage in the proceedingsIn some cases, a special measures application may provide sufficient reassurance to the victim for them to decide to reconsider and to support a prosecution. If such an application is not possible or the victim remains unwilling to give evidence, consideration must be given to whether any of the following options is possible and appropriate:

- *proceeding without using the victim’s evidence;*
- *making a hearsay application under section 116 of the Criminal Justice Act 2003;*

- *compelling the victim to give evidence; or*
- *discontinuing as a result of the victim withdrawing support for the prosecution.*

“Where we are considering proceeding against the victim's wishes, we must consider all parties' human rights issues and endorse fully and clearly the decision-making process on the file.

“If there is insufficient evidence to continue without the evidence of the witness or victim, the reviewing prosecutor will need to weigh up whether the facts of the case are sufficiently serious to require the victim or witness to attend court under a witness summons. Factors that will help in determining the public interest in these cases are:

- *the seriousness of the offence;*
- *the victim's injuries - whether physical or psychological;*
- *if the defendant used a weapon;*
- *if the defendant has made any threats before the attack;*
- *if the defendant planned the attack;*
- *the chances of the defendant offending again;*
- *the continuing threat to the health and safety of the victim or anyone else who is, or may become involved*
- *the victim's relationship to the defendant;*
- *the defendant's criminal history, particularly any relevant previous offences;*
- *if the offence is widespread in the area where it is committed;*
- *repeat victimisation by that defendant [reported or unreported].*

“The final decision is that of the prosecutor, but the decision to compel a witness to give evidence may be construed negatively, so every attempt should be made to regain the victim's or witness's support for the prosecution wherever possible.

“If a rape specialist prosecutor has considered whether it is possible to proceed without the victim, and decided that it is but that it would not be right to do so in the particular circumstances, the case will be discontinued. These cases will be rare and should be marked as discontinued in the public interest.”

The reviewing lawyer's recollection

239. The reviewing lawyer told me that, although he struggled to remember the details after all this time, there were a number of things about which he was clear. Principally, he wished to make it plain that he regarded this as a serious case, and the reason he had asked the police to read Jimmy Savile's autobiographies was because he wanted to see if it might be possible to find more evidence (for example, whether there might be any other victims). There was no question of him feeling intimidated because of Jimmy Savile's fame, and he pointed out to me that he had made the decision to charge Z (a very well-known person) with sexual offences, of which he was ultimately convicted.

240. When I asked him about the law he told me that in his view all the allegations were potentially cross-admissible, that any suggestion that "corroboration" was required was clearly wrong, and that although he felt now that the allegation made by Ms G probably did not amount to an offence, it would have been admissible as evidence of bad character. For what it is worth, I agree with him about all of these points.

241. I asked him whether he had appreciated that Surrey police had made a decision not to tell any of the alleged victims that there were others; he appeared surprised by this and told me that he was sure he had not been told, not least because had he known this he would have advised the police that there was no need for such caution and that the victims could be and should have been told in general terms about the others, in order to reassure them.
242. He maintained that for him the determining factor was that he had been told by the police that the victims were “adamant” that they would not go to court, and in the case of one of them, that she would suffer even more if forced to take part in a prosecution. Given this, he took the view that there was no point in considering the matter further as there was nothing more that could be done.
243. He wished to emphasise that whilst he acknowledged the concept of joint “building” of a case, in the end the police had the right to decide what to investigate as well as having both more experience and greater resources. In his view, the system is based upon the police telling the CPS the results of their investigation and the reviewing

lawyer then providing advice based upon what he or she has been told.

The steps which might have been taken in this case

244. Doing the best I can with the available records, it seems that Ms A's complaint was not in fact referred to the CPS by Sussex police for a charging decision. Despite this the reviewing lawyer confirmed to me that he believed that he was being asked to make a charging decision about her case. It is therefore a little difficult to assess whether the decision not to prosecute was a CPS decision or one made by Sussex Police.

245. I am satisfied that a prosecution of Ms A's complaint was entirely dependent on her evidence. Any attempt to adduce her statement as hearsay would have failed if the only basis for doing so was that she was reluctant to give evidence.

Z [2009] 3 All E.R. 1015

246. Thus the only prospect of a prosecution in relation to her allegation depended upon her giving evidence in court.

247. It is plain that the reviewing lawyer knew of Ms A's allegation (though it is less clear whether he had a copy of her witness statement and he can no longer remember). As set out above, it should have been clear from the documentation that Ms A had initially been supportive of the idea of a prosecution but changed her mind. Although there may have been other reasons, on the face of the papers it seems that her principal reason was that she was daunted by what the officers had told her, namely that corroboration was required and that she would need to be able to put the police in touch with her former husband and work colleagues from forty years before.

248. I would have expected the prosecutor to have realised that the advice the Sussex police appeared to have given was wrong, and that not only was corroboration not required, but there was in fact potential supporting evidence in the form of the other complaints (and that in turn her evidence was capable of supporting theirs). I would have hoped that he would have explained this to the officers and invited them to ask Ms A to reconsider whether she would be prepared to give evidence, and to have reassured her about, for example, the

“anonymity provisions” and the special measures available. I asked the reviewing lawyer whether he had done this; his reply was that DC S had said that all the victims were adamant that they would not support a prosecution and that she had told him that there was nothing further that could be done.

249. As a matter of law, there is nothing wrong in principle with investigators and prosecutors seeking to persuade a reluctant witness to give evidence. *C and T*⁷⁸ was a case in which a fifteen year old rape victim was said by her adoptive mother to be in an unfit state to give evidence. The Court of Appeal, in holding that her evidence had wrongly been admitted under section 114(1)(d) of the CJA 2003, said that:

“neither the prosecuting authorities nor the learned judge took steps to test Mrs F’s resolve. She was not asked to make a statement dealing specifically and in detail with the reasons why she objected to C giving evidence. no one from the prosecuting authorities took any steps towards asking C directly what she felt about giving evidence. We appreciate that the authorities would wish to act with a degree of caution and that Mrs F was apparently preventing anyone from speaking directly with C. Nonetheless we find it hard to accept that a suitably qualified professional could not have persuaded Mrs F that it was appropriate for C to be spoken to directly about the issue of giving evidence....”

⁷⁸ [2012] EWCA Crim 2402

250. It seems that no steps were taken to correct the information Ms A had been given by Sussex Police nor to see whether she would have been prepared to change her mind. Ms A now thinks that had she been given more information and reassurance this might have made a difference to her view.

251. In relation to Ms A's case I have concluded that the reviewing lawyer should have advised Sussex police as to the correct position. Whilst it is of course possible that Ms A's current view (namely that she might have been prepared to give evidence) has been reached with the benefit of hindsight it has to be remembered that she had been prepared to report the matter to the police in the first place. I have therefore concluded that had the reviewing lawyer advised and the police given the correct information and suitable reassurance, the outcome might have been different.

The evidence of the three "Surrey victims"

252. I am satisfied that an attempt to prove the allegation made by Ms E without her giving evidence would have failed, as hers was the only

evidence and an attempt to adduce it as hearsay would have failed.
(see Z above).

253. For the same reasons I am also satisfied that the bad character evidence provided by Ms G would not have been admitted as hearsay unless she had been prepared to attend court.

254. Different considerations apply in relation to Ms C, given that there was a witness to that assault, but undoubtedly the most straightforward way of prosecuting the case would have been by calling her to give evidence.

255. As far as Ms G was concerned⁷⁹, there is no record that I have seen of her expressing a view as to whether she was prepared to give evidence. Certainly, during the two hours of taped interview to which I have listened, she said nothing to indicate reluctance and she was not asked what her attitude would have been. I asked where her refusal to give evidence is recorded and DCI P responded that it was not written anywhere but that it was based upon the recollection of the officer in the case. Ms G says that she was never asked. I would

⁷⁹ Whose evidence might have been admissible as “bad character”

have hoped that the prosecutor would have explored with the police the issues said to be causing concern to Ms G.

256. As far as Ms E and Ms C were concerned, a decision was made not to tell them that they were not the only people who had made allegations. This was plainly a well-intentioned strategy and one which made sense at the start of the investigation, as it is self-evident that allegations made by people who know nothing of those made by others have considerable probative force.

257. There came a point, however, at which in my view this strategy should have been reviewed. Both Ms E and Ms C had told the police that they regarded what had happened to them as relatively insignificant and on that basis they were not prepared to go to court. In Ms E's case she said that she regarded it as a waste of police time; in Ms C's case she said that she wouldn't go to court if it were only about her. Plainly this leaves open the possibility that had each been told that she was not the only victim, and reassured about the support and protections that would be available she might have taken a different view. Ms C feels that had this been done she would have

been prepared to give evidence (though the point about hindsight made in relation to Ms A applies with equal or even greater force).

258. There is nothing I have seen which suggests that the reviewing lawyer gave any advice on the strategy of not telling the victims of the existence of the others. Indeed he is adamant that he was neither told that this was the police strategy nor, it follows, the rationale for it; he says that had he known, he would have told them that in his view it was misconceived.

259. It is clear that there is no rule which prevents victims being told that they are not the only ones to have made a complaint. Such a rule would mean that any victim who came forward having learned about offences committed against others could never pursue his or her own complaint, which is plainly not the law. The knowledge that there were other victims would go to the credibility and reliability of the witness' evidence in the usual way and is thus in general terms a question of weight rather than admissibility⁸⁰.

⁸⁰ Surrey Police have told me that the strategy not to inform victims /witnesses of the existence of others was "adopted in good faith and based on a Policy decision with a clear rationale" and further that it had been reviewed during a meeting with Children's Services. I do not doubt any of these statements but it remains my view that adherence to this policy once the alleged victims had given their accounts was misconceived, the more so when some of the victims were indicating that their reluctance to give evidence was at least in part based upon their perception that each of them was the "only one". Surrey Police have drawn my attention to an Action recorded from a meeting that advice should be

260. In the present case, given that the victims had already given their accounts, it is hard to see what damage could have been done by their being told of the fact that there were other complaints. This is particularly so if they were not told the terms of the other complaints (although even if they had, this would not on its face have been fatal to a prosecution). In my view it would have been perfectly proper for each complainant to have been asked whether it would change her mind to be told that there were other victims and that her evidence might help to secure a conviction. After all, had the victims been the subjects of distraction burglaries and had said that they were disinclined to give a statement because it was only them and their insurance had compensated them, I would have expected the police to have told them without hesitation that in fact there had been a spate of such offences and the chances of getting a conviction would be greatly increased were they to give evidence. There can be no justification for applying a different standard to sexual offences⁸¹.

261. In my view the CPS Policy requirement (namely that the case should be “built” rather than simply identifying the obstacles) should have

sought from the CPS as to whether the victims could be told of each other’s accounts; I am not aware of such advice being sought or given and the reviewing lawyer is adamant that he knew nothing of this.

⁸¹ See *B*, above

been followed in this case. Whilst again it is impossible to know what the outcome would have been, there remains a possibility that the complainants might have changed their minds, particularly given that Ms C's concern appeared to be that her children might find out⁸² and that she might appear in the newspapers. Simple reassurance as to her entitlement to anonymity might have made a difference to her; she now believes that it would.

262. There are too many imponderables to make it in any way safe at this remove to speculate as to what the outcome might have been had a different approach been taken. For example, some of the victims might have agreed to have given evidence but not others, in which case, the strength of the evidence and indeed the issue of the public interest would have differed depending on who was prepared to give evidence and who continued to refuse.

263. There remains too the issue of whether consideration should have been given to attempting to prosecute the assault on Ms C without relying on her own evidence, given that there was an eye witness to what had taken place. In principle there is no requirement for the

⁸² She had already told her husband

victim herself to give evidence, but there would need to be evidence either that she was under sixteen at the time (for example by adducing as hearsay the evidence from Barnardo's of her age at the time she left Duncroft⁸³) or that the circumstances were such that the jury could safely infer that she did not consent to the assault on her. Plainly further thought would have been needed; it would not have been easy to prosecute on that basis and it is an interesting question as to whether or not such a prosecution would have been in the public interest, bearing in mind the fact that the victim did not support it, the thirty year delay, the age of the suspect (eighty-three), the fact that the touching took place over clothing and the maximum available sentence (two years' imprisonment⁸⁴). On the other hand, even an isolated incident involving a vulnerable child and a well-known figure who was in effect in a position of trust means that this is not a case where one can say that the public interest was so clearly against prosecuting that it made further investigation unnecessary⁸⁵.

⁸³ For example under section 117 as business documents

⁸⁴ The maximum sentence for indecent assault is usually ten years imprisonment, as a result of an amendment made by section 3 of the SOA 1985. For earlier offences the maximum sentence was five years for indecent assault on a girl under thirteen and two years in all other cases.

⁸⁵ Code for Crown Prosecutors, para 4.2

[F] CONCLUSIONS

264. One of the decisions not to prosecute was correct, but not for the reason given. No prosecution could have taken place on the evidence of Ms G because the behaviour complained of did not amount to a criminal offence. Ms G's alleged unwillingness to give evidence was therefore immaterial.

265. In relation to the three other allegations, on the information available these were credible complaints of criminal offences based on reliable evidence. However, all three alleged victims had expressed unwillingness to attend court.

266. Taken at face value, the decisions not to prosecute in the cases of Ms E and Ms A were not unreasonable, for these reasons:

- there was insufficient other evidence to prosecute in the absence of the complainants' accounts;

- an application to adduce their evidence under the hearsay provisions of Part 11 of the *Criminal Justice Act* 2003 would, in my view, have failed,⁸⁶ and
- issuing a witness summons against a reluctant witness in these sensitive cases must always be a matter of last resort.

267. However, consideration should have been given to the principles expressed in the CPS Policy for prosecuting cases of rape, which makes it clear that rather than merely identifying evidential obstacles, prosecutors should work with the police to “build” the case, by seeing for example whether the victim could be reassured to the extent that he or she might be prepared to give evidence, or by giving consideration to whether there is any way in which the evidence could be added to or improved so that his or her attendance would be unnecessary.

268. The allegation made by Ms C provides a good example of the flaws in the approach taken. Unusually for a sexual offence, there was a

⁸⁶ Both in 2009/2010 and today

credible witness who had seen the assault take place, who could identify the suspect and knew the name of the victim. That witness was prepared to give evidence. All that was needed for a prosecution was evidence that the victim was under sixteen at the time; had it been possible to obtain that then the issue of consent would have been irrelevant and her evidence unnecessary. On the material I have seen I cannot tell whether such evidence existed but it is disappointing that it was not investigated: there were a number of possible ways of proving her age at the relevant time, none of which would have required her to attend court. I have seen nothing which suggests that it occurred to the police to investigate this possibility, and the CPS lawyer has confirmed that he had not considered it. For this reason, I do not consider the decision not to prosecute to have been reasonable; it was simply too early to say whether the full Code test could be met.

269. The prosecutor took the wrong starting point. Instead of treating the unwillingness of the complainants to give evidence as being determinative, he should have recognised that this was on its face a serious case involving apparently credible allegations, and should have

worked with the police to see if a prosecution could have been brought.

270. I am satisfied that Surrey Police took the allegations seriously; it is clear that the investigation was overseen at a senior level. That having been said, the policy that no victim should be informed at any point that there were others who had made similar allegations was in my view unjustified. It was particularly misconceived at the stage at which the victims were variously saying that they felt intimidated by Jimmy Savile's fame and money and expressing concern about giving evidence saying that they did not want to be the "only one". It would have been proper to give each (at least once she had given her initial account) the reassurance of knowing she was not alone.

271. From what they now say, it appears that both Ms A and Ms C might have been prepared to give evidence had they received more information and appropriate reassurance. On the material I have seen, it is my view that there would then have been a realistic prospect of conviction in relation to both their allegations. In the case of Ms E I have been unable to discuss the matter with her and it is

not possible to say whether it would have made any difference in her case.

Alison Levitt QC

Principal Legal Advisor to the Director of Public Prosecutions

January 2013

Appendix A – Documents considered

1. As described in Part [B] above, the CPS appears to have no record at all of this case, because the original file was returned to the police following the decision that no prosecution would take place. There is nothing on CMS; the only reference says that the file was “destroyed” on 26th October 2010. I am told that what this means is that because the decision had been reached that no further action should be taken, for data protection reasons and in accordance with our normal policy, the CMS record was automatically deleted. It is not now possible to retrieve it. It follows that I have been dependent on the material provided by the police to show what documents were seen by the reviewing lawyer and the advice which was given.
2. The reviewing lawyer himself is (unsurprisingly) unable to remember which documents were provided to him.
3. Under cover of a letter from CPS South East dated 24th October 2012 I received the following documents which are, I was told, a copy

of the file sent to the CPS by Surrey Police in 2009 (which had been returned to them following the decision not to charge)⁸⁷:

- Form MG3 “*Report to Crown Prosecutor for a charging decision*” – police request for advice dated 24th October 2008⁸⁸ (4 pages)
- Form MG3A “*further report to Crown Prosecutor for a charging decision*” dated 10th October 2009 (2 pages)
- Form MG3 “*Report to Crown Prosecutor for a charging decision*” – the reviewing lawyer’s charging decision dated 26th October 2009 (3 pages)
- Document headed “*Crime Ref A/07/1450 Chronology of events for job*” -16 pages⁸⁹)
- Document MG15 : record of police interview under caution with Jimmy Savile dated 1st October 2009 (7 pages)
- Document MG11 : Manuscript witness statement of Ms E dated 4th June 2008 (4 pages)
- Document MG15 : Record of interview (witness) with Ms G dated 30th July 2008 (12 pages)⁹⁰
- Document MG15 : Record of interview (witness) with Ms B dated 9th July 2008 (14 pages)⁹¹

⁸⁷ Presumably CPS South East were told this by the police

⁸⁸ But which, as will be seen, was not in fact considered by the CPS until January 2009

⁸⁹ Unpaginated and ending in June 2008

⁹⁰ Self-evidently not a full transcript

4. The same day I received the following additional documents via CPS Headquarters:
- Form MG5 – “case summary”⁹² (undated – 3 pages)
 - Form MG6 - “case file information”(undated - 4 pages)
 - A “Victim letter” from the Surrey Police, addressed to Ms G dated 28th October 2009 saying that the “*CPS have decided no further police action on this case*”
5. I was told that these documents had not formed part of the original file submitted to CPS, but had been provided by the police to assist with the 2012 review.
6. Because I was anxious that the provision of these documents suggested that what I had originally been sent was incomplete, I asked that the Area should check its records. I have been told that I have been sent a copy of everything sent⁹³ by Surrey police to CPS South East this year. I have been told that the reason these last three documents (MG5, MG6 and victim letter) were not originally included was that they had not been provided to the CPS in 2009.

⁹¹ Also not a full transcript

⁹² This alleges that the Sussex police report is attached, but it is not

⁹³ On 10th October 2012

7. Having read everything with which I had been provided, I was concerned that documents were referred to in the MG3 as being “attached” but had not been sent to me. On the face of it, it would seem that these may have been seen by the reviewing lawyer in 2009, but for reasons which are unclear, had not been included in the copy file sent to us by the Surrey Police in 2012. On 29th October I sent an email to CPS South East asking for these and a number of other documents. I received some by email on 31st October and some in hard copy on 1st November. I also received a further email on 1st November.

8. The additional documents I have seen are:

- A letter from Detective Chief Inspector P of Surrey Police dated 31st October 2012 in which she answers the questions I asked
- A “*timeline of contact with the CPS*”, supported by a number of extracts from:
 - the Surrey Police Crime Report,
 - Detective Constable S’s notebook and

- an “Investigator’s Notebook⁹⁴” kept by Detective Inspector D, the Deputy Senior Investigating Officer⁹⁵.
- an updated version⁹⁶ of the chronology
- The “Sussex police crime report” (also described as having been attached to the original MG3) together with the signed manuscript witness statement of Ms A. The “crime report” does not seem to be in the usual format, but rather consists of a collection of internal Sussex police documents, of which some pages are missing: Surrey police say this is how it was received, presumably in 2008⁹⁷
- Exhibit AS/1 – a “principals report Aug/Sept 1978” - (described as having been attached to the original MG3)
- An “officers’ report” summarising phone contact with Ms C (R1A)
- Copies of the “officers’ report” in relation to contact with potential witnesses (numbered 5a – I) and consisting of
 - Summary of script and names of potential contacts
 - Summary of phone calls to witnesses / victims

⁹⁴ ‘INB’

⁹⁵ ‘DSIO’

⁹⁶ It seems to have been updated very recently, and in any event since the posthumous allegations about Jimmy Savile were made

⁹⁷ It seems surprising that no one would have asked Sussex to supply the missing pages

o “update” on investigation relating to
Duncroft

- Documents relating to Ms B, Ms C, Ms G and Ms E (at enclosures 6-9), chiefly consisting of copies of manuscript notes but some typed notes in addition. Many of the manuscript notes were so faint as to be all but indecipherable
- Two intelligence reports from Surrey and West Yorkshire Police Forces
- An extract from DC S’s notebook, recording a conversation with the CPS on 31st March 2009
- Six tapes of interview with Ms B and Ms G (three relating to each), to which I have listened and of which I have made rough transcripts
- Two tapes of interview with Jimmy Savile, to which I have also listened. I was also sent the interview plan (which adds little) and the Record of Taped Interview⁹⁸, which I already had but which I have annotated whilst listening to the tapes.

⁹⁸ ‘ROTI’

9. Having read all these documents (which included three extracts from the Surrey police crime report attached to the time line), I asked to see:

- the full crime report, (which was then sent to me by email on 2nd November 2012),
- the complete Investigator's Notebook
- anything else which might assist with piecing together the course of the investigation and the advice given.
- legible copies of DC S's notes and assurance that there were no missing pages (as there appeared to be some gaps).

10. On 7th November I received:

- a full copy of DI D's Investigator's Note Book,
- the "Major Crime Decision Log",
- a copy of the note of the telephone conversation with Ms C on 16 November 2007 (which had not been sent with the earlier submission although I had expressly requested it).
- more legible copies of the remainder of DC S's notes together with confirmation that there were no missing pages.

11. The original officer in the case, DC S, has been spoken to (by other officers in Surrey Police)⁹⁹. She is unable to recall details of the file submitted in 2009 but believes that it was an “advice file” and therefore contained a Form MG3 and statements. However, there is no reference on the MG3 to the submission of any statement other than that of Ms E. It is not clear, therefore, whether the statement of Ms A was included.

12. I have concluded that it is probably now impossible with any certainty to recreate the file sent to the CPS in 2009 and I cannot say that I am clear as to which documents were seen by the reviewing lawyer at the time he made his decision. The reviewing lawyer himself is (unsurprisingly) now unable to remember. What is beyond argument is that I have now seen more documents than he saw at the time.

⁹⁹ I believe in fact that she was not officially the OIC, but she appears to have undertaken much of the work generally performed by one so it is easier to refer to her this way

APPENDIX B - Involvement of other agencies by the police

1. The DPP has said that in a case such as this where the CPS concludes that the evidence against the suspect is apparently both substantial and credible, but where no prosecution can be brought because the alleged victims are not prepared to go to court, he wished to give consideration to whether the CPS could or should inform other agencies in order to ensure that no other child is put at risk.

2. Surrey Police have been very helpful and have provided me with everything for which I have asked; on reading the documents it is clear to me that similar thoughts were very much in the minds of the police. In particular, it has been very useful to see DI D's INB and the Decision Log, from which I can see that the following steps were taken:
 - i. On 26th November 2007 it is recorded in the Decision Log that social services had been informed at a managerial level but that no other agency (including Barnardo's) had been told. The following day that decision was reviewed and Barnardo's were

informed so that they could check their files, but were asked to keep the name confidential.

ii. Also on 26th November 2007 it is recorded in the Decision Log that in line with the recommendations in the *Richard* report, consideration was being given to creating a “blocked” record that would allow the information to be made available to other forces or agencies should an INI or CRB check be carried out. This was done on 18th December 2008.

iii. On 10th June 2008 a meeting was held with DCI B (SIO) and a member of the Safeguarding Board, Children’s Services to consider the risks posed by Jimmy Savile and what risk management if any needed to be put in place, taking into account his age and any information they had “that he might still be able to use his celebrity status and charity work to form associations with organisations in connection with children”.

The following actions were recorded:

- “ (1) make enquiries with charities commission to find out if they keep records of trustees or patrons and if so, are they aware of JS in either of these roles
- “(2) inform a senior officer in West Yorkshire police and social services and ask them to check their records and be aware of our enquiry and provide any information they have on him
- “(3) have Social services databases checked if possible”.

iv. On 17th June 2008 the SIO met D/Supt O’S. One of the matters discussed was risk assessment and management; and that they “*could find out information about his contact with charities and other organisations involving children*”

v. On 9th July 2008 DSIO emailed the Charity Commission to check their trustee records for Jimmy Savile, and telephoned a senior officer in West Yorkshire. It was agreed that an intelligence report would be sent to him and he would then ensure that it was put on their systems in a confidential way that would be searchable

vi. On 6th August 2008 the DSIO has recorded in the INB that he had again met the member of the Safeguarding Board, Children's Services to review the actions from the previous meeting. He noted *"no grounds to disclose information to Stoke Mandeville Charity or The Jimmy Savile charitable Trust. Neither role has any indication that he will have any direct access to children as a trustee"*

vii. On 3rd June 2009, DSIO called a DCI H of West Yorkshire Police child protection unit. He told her of the investigation and said he would send her the intelligence by email.

3. I have been told by Surrey Police that the documents provided to me contain only a partial account of the action taken at the time. In particular, they contacted Surrey County Council's Children's Services, the Charity Commission, Barnardo's, and West Yorkshire Police to inform them of their investigation. I am happy to include this.