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HEDDLU DE CYMRU • SOUTH WALES POLICE



# The Murder of PHILLIP SAUNDERS 1987

Related allegations and complaints made by

Michael O'BRIEN

FINAL REPORT PURSUANT TO  
SECTION 73(1) THE POLICE ACT 1996

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## **Executive Summary**

1. This document is the final report relating to the murder of Phillip Saunders and subsequent allegations and complaints made by Michael O'Brien. The report is submitted to the IPCC (acting in the capacity of the former Police Complaints Authority) pursuant to Section 73(1) of the Police Act 1996. The report author has remained cognisant throughout the process of preparation of this document, that the death of Phillip Saunders remains a Category 'A' (undetected) murder investigation.
2. The report is, in the main, presented chronologically. However, due to the lengthy time period involved (27 years), understandably, events occasionally have 'overlapped'.
3. Late on the evening of 12<sup>th</sup> October 1987, Phillip Saunders, aged 52 years, was attacked and robbed in the rear yard of his home in Anstee Court, Cardiff. He sustained a number of blows to his head causing serious injuries. Mr Saunders died in hospital 5 days later as a result of his injuries.
4. The investigation led to the arrests of Michael O'Brien, Ellis Sherwood and Darren Hall. Initially, all three were interviewed and released on bail. However, on 10<sup>th</sup> November 1987, as a result of developments, they were re-arrested. During a subsequent interview, Darren Hall fully admitted his involvement in the murder and in doing so implicated Michael O'Brien and Ellis Sherwood. O'Brien and Sherwood denied any involvement in the murder.
5. At the conclusion of the planned interviews, O'Brien and Sherwood were being held in adjacent police cells, when a conversation between them was overheard by the lead officer in the case, Detective Inspector Stuart Lewis (now retired). Detective Inspector Lewis stated that he

recorded the conversation on an expense form(s) which he had in his possession at that time.

6. The record amounted to alleged remarks between the suspects capable of being construed as admissions of participation in the murder, remarks subsequently denied by O'Brien and Sherwood. Both men claimed that the officer had fabricated elements of an innocent conversation that had taken place between them.
7. All three suspects were charged with robbery and murder and remanded in custody until trial in June 1988. At the conclusion of the trial, all three were found guilty of the offences and were sentenced to life imprisonment. The evidence of the overheard cell conversation was heard during the trial.
8. Following protestations of innocence by Michael O'Brien, and concerns about the veracity of Darren Hall's admissions, the BBC broadcast a documentary about the case. The programme questioned the reliability of the evidence offered at the trial.
9. Subsequently, in 1997, Michael O'Brien petitioned the Home Office, alleging a 'Miscarriage of Justice'. This resulted in the Criminal Cases Review Commission (CCRC) conducting an investigation and referring the case to the Court of Appeal. One of the grounds for appeal was that there were '*significant doubts about the alleged cell conversation overheard by Detective Inspector Lewis*'.
10. Concerns about the original investigation unearthed during the CCRC review, which was conducted by Detective Superintendent Partridge, Thames Valley Police (TVP), resulted in the matter being referred to the Police Complaints Authority (PCA), as a potential police misconduct case. TVP assumed responsibility for the subsequent investigation into the alleged criminal conduct of police officers involved

in the original murder investigation, including Detective Inspector Stuart Lewis. The TVP enquiry concluded that none of the criminal allegations were substantiated.

11. The Court of Appeal delivered its judgement on 25th January 2000 and quashed the convictions of Michael O'Brien, Ellis Sherwood and Darren Hall, based on their findings of breaches of the Police and Criminal Evidence Act 1984 (PACE) in relation to aspects of the custody detention process, and also the unreliability of Darren Hall's confession(s).
12. A series of allegations were subsequently made against police officers by Michael O'Brien (by way of his legal representative). However, at the request of his legal team, the investigation of his complaints was delayed whilst he simultaneously pursued a civil claim against South Wales Police.
13. Following the conclusion of the civil litigation process, O'Brien pursued his original complaints. In response South Wales Police commenced 'Operation FORTITUDE' which was established to investigate the allegation that:
  - Named key 'civilian' witnesses (non Police) had perjured themselves at the trial by providing false evidence.
14. 'Operation FORTITUDE' has since been concluded and reported that whilst it was evident that a number of civilian witnesses had provided false evidence, it could not be established which specific aspects of their evidence had been fabricated. The investigation also concluded that it could not be established what, if any, influence had been exerted upon them to do so. All available evidence was presented to the Crown Prosecution Service (CPS) who concluded that no charges would be brought against any of the identified individuals.

15. Detective Superintendent Hopley, from Norfolk Constabulary, was appointed as the Senior Investigating Officer (SIO) for Operation Fortitude. Following his retirement, he was replaced by Detective Superintendent Holland from Merseyside Police. At this juncture, Operation FORTITUDE was reaching a conclusion and Operation RESOLUTE was in its infancy; however both investigations were inextricably linked, with Operation FORTITUDE naturally progressing into Operation RESOLUTE.
16. 'Operation RESOLUTE' was subsequently established to consider and investigate allegations that:
  - Police Officers had threatened and pressurised key witnesses into providing and giving false evidence.
  - Detective Inspector Stuart Lewis had perverted the course of justice by fabricating the overheard cell conversation.
  - Detective Inspector Stuart Lewis had perjured himself by presenting the fabricated evidence against Michael O'Brien and Ellis Sherwood at the trial.
17. Attempts were made by the Operation RESOLUTE investigation to obtain accounts from the identified civilian witnesses. However, they all refused to assist the police investigation. As a result, the Operation RESOLUTE investigation was unable to identify any evidence to support or refute the allegations that police officers had pressurised witnesses into giving false evidence against O'Brien and Sherwood.
18. The investigation relating to allegations laid against Detective Inspector Stuart Lewis found no evidence of criminality.
19. No complaints have been lodged by Ellis Sherwood or Darren Hall against South Wales Police. Darren Hall declined to engage with either the Operation FORTITUDE or RESOLUTE investigating teams.

**THE MURDER INVESTIGATION**

20. Phillip Saunders was 52 years of age at the time of his death. He was a single man who resided alone in a terraced house at 12, Anstee Court, Canton, Cardiff. He was the proprietor of a number of newspaper and confectionery kiosks located in Cardiff. He was a man of habit and routine, and it was quite widely known that having collected the takings from his kiosks, he would attend a local pub for a drink before driving the short distance home.
21. Mr Saunders was attacked at the rear yard of his home at about 23.15hrs on Monday 12<sup>th</sup> October 1987. He was struck several times with what was believed to have been a shovel, sustaining serious injuries to his head. The 'takings' from his business were stolen. The police were alerted by a neighbour and Mr Saunders was conveyed to hospital. He subsequently died from his injuries, some five days later.
22. A Major Crime Investigation was immediately launched by South Wales Police and the (then) force Head of CID was appointed as the Senior Investigating Officer (SIO).
23. During the course of the police investigation, three local men, Michael O'Brien (aged 20 yrs), Ellis Sherwood and Darren Hall, (both aged 19yrs), were arrested. During their period in detention, Hall made admissions regarding the murder and implicated O'Brien and Sherwood. However, O'Brien and Sherwood both denied any involvement in the murder. Initially, all three were released on bail whilst the investigation continued.
24. A number of witnesses provided crucial evidence and further implicated O'Brien and Sherwood. As a result, on 10th November 1987, the three suspects were re-arrested. They were interviewed throughout that day during which time, in line with procedure, they

were kept apart from each other. It appears that following the conclusion of the interviews and processing, at 20:20hrs and 20:40hrs respectively, O'Brien and Sherwood were placed in adjacent cells in the custody area at Canton Police Station.

25. At 20:43hrs that evening, Detective Inspector Stuart Lewis provided evidence that whilst outside the cells complex, he had overheard a conversation between O'Brien and Sherwood. Detective Inspector Lewis subsequently provided evidence that he had contemporaneously written out the conversation on papers he had with him, the content being as follows:

**Michael O'Brien:** *"They're going to charge me and you."*

**Ellis Sherwood:** *"No they're not all they've got is Hall, he's grassing us."*

**Michael O'Brien:** *"I can't hold out for much longer. I may have to tell them the truth."*

**Ellis Sherwood:** *"Don't do that we'll be fucked."*

**Michael O'Brien:** *"I can't hold out for much longer, I might have to tell them what happened."*

**Ellis Sherwood:** *"You're talking about life being on remand means nothing."*

**Michael O'Brien:** *"I can't hold out for much longer. I'm scared I'll have to tell them what happened."*

**Ellis Sherwood:** *"Just keep your mouth shut."*

**Michael O'Brien:** *"Why don't you tell them what happened."*

**Ellis Sherwood:** *"I can't can I, if Hall hadn't opened his mouth we wouldn't be here."*

**Ellis Sherwood** *"I think there's someone listening. I'll catch up with you later OK."*

**Michael O'Brien:** *"Ye, Okay."*

26. Both O'Brien and Sherwood were confronted regarding the overheard conversation in the presence of their solicitors.
27. During subsequent interview, both O'Brien and Sherwood denied that the cell conversation had taken place in the manner alleged by Detective Inspector Lewis and they maintained that the content was inaccurate.
28. Having engaged in consultation with the Crown Prosecution Service and the SIO, Detective Inspector Lewis formally charged O'Brien, Sherwood and Hall with the murder and robbery of Phillip Saunders and they were remanded in custody by the court.

### **THE TRIAL**

29. The trial of the three defendants took place at Cardiff Crown Court, commencing on 27<sup>th</sup> June 1988. Darren Hall pleaded guilty to the charge of robbery, and offered a guilty plea to the manslaughter of Phillip Saunders, which was not accepted by the prosecution. Michael O'Brien and Ellis Sherwood both pleaded 'not guilty' to the offences, and continued to deny any involvement in the incident. Hall gave evidence against his co-defendants claiming that he had only acted as the 'lookout', whilst Sherwood and O'Brien had actually committed the robbery and murder.
30. In addition to the admissions provided by Hall, further evidence was provided by a number of key civilian witnesses who provided evidence against Michael O'Brien and Ellis Sherwood and also by Detective Inspector Stuart Lewis, who presented his evidence relating to the overheard cell conversation to the court.
31. All three defendants were convicted of the murder and robbery, receiving life sentences.

### **APPLICATION FOR LEAVE TO APPEAL**

32. On 16th March 1990, Michael O'Brien, Ellis Sherwood and Darren Hall applied for leave to appeal against their convictions on the grounds that:
- (a) Darren Hall should have been tried separately.
  - (b) An alleged misdirection by the Judge relating to 'joint enterprise'.
33. The applications also touched on arguments that a named key witness made comments in the absence of the jury, comments that the jury should have been allowed to hear. Additionally, that the Judge did not direct the jury that the sworn evidence of the said witness was unreliable because of the contradictory nature of the statements that he had made. A suggestion that the witness gave false evidence as a result of influence and pressure from police officers was not relied upon at that time. No arguments were made that related to the alleged fabrication of the overheard cell conversation. Having considered the grounds and all arguments the Appeal Court rejected the application(s).

### **SOUTH WALES POLICE INTERNAL REVIEW**

34. In 1993, South Wales Police undertook an internal review of the original investigation. The investigation discovered that some case papers had been mislaid and despite extensive searches and enquiries with the CPS, they were not traced. The review author recommended that South Wales Police consider undertaking a reinvestigation into the murder of Phillip Saunders.

### **BBC DOCUMENTARIES**

35. In 1996, in response to contact from Michael O'Brien protesting his innocence, the BBC conducted journalistic investigations, which

culminated in a programme being aired. This 'Week In Week Out' production, 'A Night to Remember', raised a number of concerns about the convictions of the three men. Within this programme, Darren Hall retracted the previous admissions, and a number of other key witnesses appeared to retract the evidence that had provided during the murder trial. It was these retractions that were to lead to the CCRC case review. Over the following years, the BBC continued to commission and broadcast further investigative documentaries relating to the murder investigation, as issues arose from the ongoing judicial processes.

### **SOUTH WALES POLICE SECOND INTERNAL REVIEW**

36. In response to the issues and concerns raised in the BBC 'Week In Week Out' documentary, in 1996 South Wales Police commissioned a second review of the murder investigation. The second review was subsequently halted on a procedural basis, as a result of the CCRC review having commenced.

### **CRIMINAL CASE REVIEW COMMISSION REVIEW**

37. In April 1997, Michael O'Brien petitioned the Home Office alleging a 'Miscarriage of Justice' and the matter was referred to the CCRC. Detective Superintendent Partridge, Thames Valley Police, was appointed to conduct the review. He was assisted by CCRC investigators.
38. Detective Superintendent Partridge's final report was concluded in September 1998 and highlighted a number of concerns relating to the original murder investigation. The CCRC findings ultimately resulted in a recommendation that the case should be heard before the Court of Appeal.

## **POLICE COMPLAINTS AUTHORITY INVESTIGATION**

39. The concerns identified by the 'Partridge' / CCRC report were referred to South Wales Police, who in turn made a voluntary referral of the complaint to the Police Complaints Authority (PCA). A PCA investigation commenced, again led by D/Supt Partridge, addressing the identified concerns relating to the arrest, detention, treatment and questioning of O'Brien, Sherwood and Hall as well as concerns regarding missing original documents from the murder investigation. At the conclusion of the PCA investigation, the decision was made (although not until after the Court of Appeal Hearing) that no criminal charges would be brought against any officer in relation to the matters under investigation.

## **COURT OF APPEAL**

40. Following the investigations by the PCA, CCRC and legal teams representing O'Brien, Sherwood and Hall, the matter was referred to the Court of Appeal. In December 1998, all three men were granted leave to Appeal and released on bail. On 25th January 2000, the Court of Appeal ruled that the convictions of Michael O'Brien, Ellis Sherwood and Darren Hall were unsafe and were quashed.

41. Following the Court of Appeal ruling, and at the conclusion of the PCA investigation into misconduct, on the 21st July 2000, Hickman and Rose (Solicitors) wrote to the PCA raising further issues. The correspondence identified seven areas of complaint and concern regarding the conduct of the original Police investigation.

42. On 5<sup>th</sup> December 2000, SWP made a decision to record the seven matters referred to in the letter of 21<sup>st</sup> July 2000 as 'Complaints against Police' and referred the matters back to the PCA.

43. On 11<sup>th</sup> December 2000, Hickman and Rose forwarded a 'Notice of Civil Action' to SWP on behalf of Michael O'Brien. They made a request that South Wales Police did not investigate his complaints at this time, as they wanted the civil action to take primacy. The request included a caveat recording their right to raise the complaints on conclusion of the civil action.
44. On 3<sup>rd</sup> January 2001, South Wales Police made the decision that the seven complaints would therefore be treated as 'Withdrawn'.

### **CIVIL ACTION**

45. In 2001 a civil action for 'Malicious Prosecution' and 'Misfeasance' was lodged against South Wales Police by legal representatives acting on behalf of Michael O'Brien. Civil proceedings and related legal arguments would subsequently continue for some five years.

### **INDEPENDENT REVIEW**

46. In April 2001, South Wales Police commissioned an independent review of the murder investigation, which was conducted by a reviewing officer from Devon & Cornwall Police (D&C). A report on the officers' findings and recommendations of the review was submitted to South Wales Police in November 2002.
47. The reviewing officer recommended twofold: (i) the original murder should be reinvestigated (ii) a number of civilian witnesses should be investigated in relation to offences of conspiracy to pervert the course of justice viz: that they had falsely retracted their evidence with a view to assisting the defence of Michael O'Brien, Ellis Sherwood and Darren Hall.

## **RE-INVESTIGATION OF THE MURDER**

48. In 2003, as a result of the recommendations resulting from the Devon and Cornwall Police Review, South Wales Police launched a re-investigation into the murder of Phillip Saunders.
49. The extensive re-investigation found no further evidence that implicated any previously identified or unidentified person(s) in the murder of Phillip Saunders.

## **EVENTS BETWEEN 2006 - 2009**

50. In October 2006, by way of agreement by both parties, the Civil Action claim (which had been lodged in 2001) was settled, with 'No admission of liability' on the part of South Wales Police.
51. On 19<sup>th</sup> December 2007, Hickman and Rose (Solicitors) forwarded a letter to the IPCC on behalf of Michael O'Brien in which they once again raised issues involving complaints against the Police, suggesting that many of the complaints made both before and during the civil litigation process had not been addressed. In summary, the letter cited mistreatment of O'Brien, Sherwood and Hall, allegations that witnesses had been coerced by Police to provide false evidence and complaints as to the overall conduct of the investigation.
52. One allegation in particular again related to Detective Inspector Stuart Lewis, suggesting that he had perverted the course of justice by fabricating the contents of a conversation he had allegedly overheard, in the cell complex at Canton Police Station between Michael O'Brien and Ellis Sherwood.
53. In a further letter dated 12<sup>th</sup> February 2008, from Hickman and Rose to South Wales Police, criminal complaints were made in relation to

offences of alleged perjury committed by four named witnesses who had given evidence during the original murder trial.

54. In response, in a letter dated 22<sup>nd</sup> April 2008, SWP decided that:
- In relation to the allegation of mistreatment, the matter had already been addressed by the 'Partridge' enquiry, and would not be recorded.
  - Alleged coercion of witnesses would be addressed by way of a (SWP) criminal investigation (which would ultimately become Operation Fortitude) with any evidence of Police wrongdoing that became apparent to be referred to the IPCC.
55. Whilst Hickman and Rose subsequently appealed against the 'Non recording' decision, they agreed the decision to criminally investigate the allegations against the civilian witnesses.
56. Within a letter dated 26<sup>th</sup> February 2009, the IPCC recorded their decision viz: *'H & R Appeal – Not Upheld. The two further complaints to be recorded by SWP. O'Brien's complaints of 21<sup>st</sup> July 2000, still 'live' under the Police Act 1996'*.
57. Further correspondence was exchanged between parties, on 15<sup>th</sup> April 2009 and the 2<sup>nd</sup> June 2009. The position in relation to all of the complaints was agreed as a result. SWP Chief Officers commissioned an investigation into the criminal allegations made against civilian witnesses by Michael O'Brien named Operation FORTITUDE.
58. In relation to the original 7 complaints against police officers made by Michael O'Brien in the complaint letter of 21<sup>st</sup> July 2000, he subsequently 'withdrew' 4 of these. Complaints 1, 2, and 5 which remained 'live', related to the allegations that officers had put pressure on witnesses to provide fabricated evidence, and also to matters relating to the evidence provided by Detective Inspector Lewis about

the overheard cell conversation between O'Brien and Sherwood and the subsequent disappearance of the contemporaneous notes he made. These complaints were investigated by Operation RESOLUTE.

### **OPERATION FORTITUDE**

59. Operation FORTITUDE was established in order to investigate the conduct of civilian (non Police) witnesses who provided evidence at the trial of Michael O'Brien, Ellis Sherwood and Darren Hall in June and July 1988. The investigation commenced in May 2009, and was subsequently led by Detective Superintendent Hopley of Norfolk Constabulary. The objective was to specifically investigate whether the witnesses had committed any offences in respect of the evidence that they provided to the police, during the murder trial at court, or subsequently during accounts they provided in the course of later investigations and processes.

### **Summary of the Allegations Against Witnesses**

60. The investigation was to specifically focus on investigating the criminal complaint made by Michael O'Brien viz: *'South Wales Police to investigate offences of perjury and perverting the course of justice committed by a number of prosecution witnesses at the criminal trial in 1988'*.
61. The complaint outlined what it described as a 'prima facie' case against four specific named individuals. The complaint content supported the allegations that the individuals had provided false evidence at the trial, resulting in the wrongful conviction of Michael O'Brien. In essence, the evidence presented and later retracted by the witnesses related to alleged confessions by O'Brien and Sherwood to the robbery and murder of Phillip Saunders.

62. The complaints and allegations made by Michael O'Brien all centred on his assertions that the civilian witnesses had been influenced in some way by police officers, in order to force or encourage them to provide evidence that assisted the prosecution case. His arguments were supported by the fact that certain witnesses had retracted the original evidence that they provided before and during the murder trial, and had alleged that they had done so because of threats and inducements from the investigating Police Officers.
63. A number of recommendations made by the D&C review related to civilian witnesses. The review suggested that an investigation should take place in relation to whether a number of these witnesses had conspired to pervert the course of justice.
64. Although the recommendations were made by D&C in 2002, their investigation had been delayed pending the outcome of the reinvestigation into the murder of Phillip Saunders. Neither the re-investigation, nor the civil litigation process (which also took priority) concluded until 2006. As a result, the recommendations made by D&C had not been addressed by the time that Operation FORTITUDE commenced.
65. It was decided therefore, that in addition to considering the involvement of those civilian witnesses who had been identified by the complaints of Michael O'Brien, those civilian witnesses who had been highlighted as part of the D&C recommendations would also be considered and investigated as part of Operation FORTITUDE.

### **Terms of Reference**

66. Prior to commencement of the investigation, bespoke 'Terms of Reference' were documented, in order to provide the Senior Investigating Officer with strategic and tactical direction viz:

67. *‘Conduct an investigation into the conduct of witnesses who provided evidence at the original trial [of Michael O’Brien, Ellis Sherwood and Darren Hall] and consider any criminal allegations.*
68. *Identify and consider any fresh evidence or new lines of enquiry in relation to the murder of Phillip Saunders, which may emerge during the course of the investigation’.*

### **Structure of the Investigation**

69. It was decided that one independent Police Officer would be responsible for the conduct and management of both Operation FORTITUDE (and subsequently Operation RESOLUTE). With the approval of the IPCC, Detective Superintendent Hobley, Norfolk Constabulary, was appointed Senior Investigating Officer.
70. In line with requirement, a methodical approach to the investigation was applied and the following applications were put in place:
- Commission Terms of Reference.
  - Structure and resource Major Incident Room.
  - Recover and undertake detailed analysis of all documentation available relating to the murder of Phillip SAUNDERS and subsequent pertinent events that unfolded.
  - Establish early engagement and liaison with other relevant agencies (IPCC / CCRC / PCA / CPS).
  - Identify, trace and interview all relevant individuals involved in the original murder investigation and subsequent trial.
  - Prepare and submit findings to the Specialist Crime Division of the Crown Prosecution Service.

### **Crown Prosecution Service**

71. From the outset of Operations FORTITUDE and RESOLUTE, the Senior Investigating Officers sought the services of the Crown Prosecution Service. Early engagement with the agency proved to be an invaluable asset to the SIO throughout the duration of the investigations. The senior case lawyer(s) were able to provide appropriate advice and guidance, thereby ensuring that all matters undertaken by investigating officers adhered to the correct legal framework. The policy provided 'legal safeguarding' that was to be embedded in the tasks undertaken by all investigating officers, in their dealings with witnesses and suspects involved.

### **Independent Advisory Group**

72. In accordance with accepted good practice, an Independent Advisory Group (IAG) was established to provide both scrutiny and advice to the Operation FORTITUDE investigation. The establishment of the IAG contributed to the integrity and transparency of the investigation, by ensuring that it was conducted fairly, appropriately and thoroughly. In addition, the group were able to assess the overall strategy from the viewpoint of the public in general.

### **Gold Group**

73. A Chief Officer 'Gold Group' was also established by South Wales Police. The main purpose of the group was to provide corporate support, guidance and strategic direction to the investigation. The meetings held ensured that the force senior managers maintained knowledge of progress, and ensured that the required resources were made available for the investigation. By way of invitation from South Wales Police, each Gold Group meeting was attended by a representative of the IPCC.

## **The Investigation and its findings**

74. As explained above, the Operation Fortitude investigation considered the allegations made not only by Michael O'Brien but also the issues raised by the D&C findings. Having combined the list of witnesses that were named in the letters of complaint from Michael O'Brien with those that were identified by D&C, it was identified that there were fourteen witnesses whose actions would need to be considered.
75. Specifically, having carefully examined the accounts provided by these fourteen witnesses at every stage of the previous investigations as well as any supporting evidence available, Operation FORTITUDE identified five individuals whose evidence appeared to have altered over time. These five would subsequently become designated as 'suspects' in relation to alleged offences of perjury and / or perverting the course of justice. A brief summary of the findings of the investigation in relation to each of the five suspects is provided below.

### **Suspect 1**

76. Suspect 1 was a key witness for the prosecution in that, in a series of statements he gave evidence that apparently implicated both Michael O'Brien and Ellis Sherwood. He stated that he had initially been approached the day before the attack on Phillip Saunders when Sherwood had asked him to be involved in a robbery that he was planning. He also gave evidence that in the days immediately following the incident, he had spoken with both O'Brien and Sherwood in Cardiff city centre, where they had made admissions as to their involvement in the attack upon Mr Saunders, and had shown him money that they claimed they had stolen from him.
77. In giving evidence at the trial, Suspect 1 initially provided evidence that was in keeping with the witness statements he had provided. However,

during cross examination he started to change his account alleging that his evidence had been 'made up by the police'.

78. He subsequently reinforced the retraction of his original evidence on a number of occasions when interviewed by the BBC, CCRC and defence solicitors, providing further information that he had been pressured and threatened by the police into giving fabricated evidence in the first instance.
79. It was apparent to the Operation Fortitude investigation that Suspect 1 in initially providing evidence against O'Brien and Sherwood and later retracting the account certainly contradicted himself and therefore may have lied and provided false evidence in at least some stage of the investigation and subsequent proceedings. As a result, he was arrested on suspicion of committing perjury and of perverting the course of justice.
80. He was interviewed in relation to his previous involvement in this matter and in particular the accounts he provided and reasons for doing so. He exercised his legal right and refused to answer any questions.
81. Extensive enquiries were conducted in relation to Suspect 1's involvement. Despite this, whilst it was clear that he may have lied during at least one stage of the investigative process, it was not possible to establish whether it was his initial evidence or his retractions, or indeed either, that were actually untruthful. Information and evidence was gathered that could be presumed to support both scenarios. However, neither case was sufficiently strong to prove, or even argue convincingly, that the contentious aspects of his evidence were untruthful.

**Suspect 2**

82. The circumstances relating to Suspect 2 are broadly similar to those of her long term partner Suspect 1. She also provided a number of statements during the initial murder investigation which served to provide valuable evidence for the prosecution case. She confirmed Suspect 1's account that she had spoken with both Michael O'Brien and Ellis Sherwood in Cardiff City Centre a day or two after Mr Saunders was robbed and attacked. She provided evidence as to both of them making admissions, and showing her money.
83. At the trial, unlike Suspect 1, she repeated the evidence in her statements and despite strong challenges from the defence teams, she maintained that her evidence was truthful. She acknowledged that the police had applied pressure in order to persuade her to provide a statement, but that crucially, the evidence she provided as a result was genuine.
84. It was not until she was interviewed by the BBC, CCRC and defence solicitors, that she first retracted her evidence, stating that the police had 'put words in her mouth' and that her evidence at the trial was fabricated. It appeared therefore that she may have provided false or fabricated evidence at some stage, either in terms of her initial evidence, or in terms of the retractions that she made some years later. Again, the investigation revealed evidence that may be used to support opposing arguments, but not to the extent that it was possible to prove which, if any, of her accounts was genuine.
85. Upon subsequent arrest and interview, Suspect 2 also declined to answer any questions, making 'no comment' replies throughout.

**Suspect 3**

86. Suspect 3 gave evidence for the prosecution during the murder trial. In February 1988, some four months after the murder of Phillip Saunders, he provided a statement to investigating police officers. He informed officers that about five weeks earlier, he had attended HMP Cardiff in order to visit his friend (Suspect 4) Whilst at the prison he found himself sitting alongside Ellis Sherwood in the visiting hall. As a result, they became involved in a conversation during which he alleged that Sherwood made admissions to the effect that he was involved in the attack on Phillip Saunders viz: *"Mike done it; we were there"*.
87. The evidence Suspect 3 gave at the trial reflected the content of the statement that he had originally provided to Police. It was however clarified by the Judge that his testimony did not amount to evidence against Michael O'Brien and should only be considered in relation to the case against Ellis Sherwood. The allegation was denied by Sherwood who stated that the conversation did not take place. It was also refuted by Suspect 4, who stated that Sherwood was not present in the next visiting cubicle, as Suspect 3 had claimed.
88. Subsequently, during interviews with the BBC and CCRC, Suspect 3 stated that his evidence had not been true. He admitted to having lied when giving evidence at the trial and stated that he had fabricated the evidence with a view to receiving a reduced sentence for offences he had committed. He indicated that police officers were aware that his evidence was fabricated. His retraction was not entirely consistent as he had informed the BBC that the visit did not take place, prior to informing the CCRC that it had in fact taken place.
89. He provided a statement to police who were re-investigating the murder of Phillip Saunders in 2005. In this he reverted to his original

evidence, stating that the evidence he gave in court had been truthful and that his retraction had been false.

90. Suspect 3 was interviewed by Operation FORTITUDE under caution in relation to the offences of perjury and perverting the course of justice. As with the other suspects, he declined to answer questions put to him. He did however provide a prepared statement in which he stated that the evidence he provided to the original investigation and subsequently gave at the murder trial was accurate.
91. Although it was clear Suspect 3 had provided conflicting accounts, it was not possible to state with any certainty, precisely which aspect(s) of his evidence were truthful or untruthful.

#### **Suspect 4**

92. Suspect 4 was said to have been present at Cardiff Prison, when he was visited by Suspect 3. Suspect 4 though did not provide a statement to the police in respect of this visit and the alleged 'admissions' that were made by Ellis Sherwood in the next visiting cubicle. He gave evidence at the murder trial on behalf of Ellis Sherwood, and stated that although he was visited by Suspect 3, Sherwood was not present at the adjacent table and that he could not have made the comments alleged by Suspect 3.
93. In an interview with the BBC in 1996, Suspect 4 maintained that Sherwood had not made the admissions attributed to him by Suspect 3. His evidence did appear to change, as he now denied that the visit by Suspect 3 had ever taken place.
94. Suspect 4 was subsequently interviewed under caution in relation to offences of perjury and perverting the course of justice. He too exercised his right to make 'no comment' to each of the questions put.

95. Whilst it was unclear whether Sherwood and Suspect 3 had come into contact or had any conversation, the investigation was able to obtain evidence to the effect that Suspect 3 had visited Suspect 4 at Cardiff Prison as claimed.

### **Suspect 5**

96. Suspect 5 was a witness who had provided a number of statements during the original murder investigation. Her accounts did change within these statements, but by the time she provided her fifth and final statement, her evidence was that she had had a conversation with Ellis Sherwood during the weeks that followed the murder. During the conversation Sherwood made admissions to her that he had been present at Anstee Court on the night that Phillip Saunders was attacked and robbed.
97. Suspect 5 gave evidence at the murder trial, where she repeated that Ellis Sherwood had admitted to her that he had been at Anstee Court on the night in question. The conversation was denied by Sherwood. When questioned as to why she had not provided the evidence in her earlier statements, she stated that she was 'never asked'.
98. When interviewed by the BBC in 1996, she was one of a number of witnesses who retracted their evidence. She stated that Ellis Sherwood had not told her that he had been in Anstee Court and that this had been included in her statement by a police officer. However, she continued to be inconsistent in the accounts she provided. Having confirmed her retraction in a statement to Sherwood's defence team in 1999, in 2005 she stated to the South Wales Police reinvestigation, that the evidence she provided at the murder trial would have been accurate.

99. Given the contradiction and discrepancies in her accounts, Suspect 5 was interviewed under caution in relation to the offences of perjury and perverting the course of justice. Initially, she provided responses to many of the questions put. However, at a point whereby she was asked about the more significant aspects of her evidence, she chose to provide a prepared statement. She declined to answer any further questions.
100. As with the other four suspects, a thorough investigation was unable to establish with any certainty whether Suspect 5 had provided truthful evidence either during the trial or in making her subsequent retractions.

**Immunity from Prosecution.**

101. In a letter dated 9<sup>th</sup> September 2010, addressed to the Independent Police Complaints Commission, Michael O'Brien's solicitor, Nogah Ofer, made representation that the investigation into the various allegations should consider the use of immunity from prosecution provisions under Section 71 of the Serious Organised Crime and Police Act 2005. This suggestion was made in relation to Suspect 1 and 2.
102. Section 71 of the Serious Organised Crime and Police Act 2005 enables a specified prosecutor to offer immunity from prosecution of any offence where appropriate by giving a written notice (an 'immunity notice').
103. An immunity notice is only ever considered in the most exceptional cases and requires the consent of the Attorney General. A more common practice is a 'restricted use' undertaking as provided for by section 72 of the Serious Organised Crime and Police Act 2005, which enables a specified prosecutor, where he/she thinks it appropriate, to offer any person an undertaking that any information acquired during

an investigation or prosecution of any offence will not be used against them in subsequent proceedings.

104. The question as to whether it was thought that the use of the 'immunity legislation' was appropriate was initially considered by Detective Superintendent Hobley. In doing so he considered the various degrees of immunity available, as well as taking into account the CPS guidelines. Detective Superintendent Hobley established that the decision on whether it is appropriate to offer a formal written agreement in any particular case is entirely a matter for the discretion of the specified prosecutor, and nothing in the 2005 Act creates a right for the defendant to insist that assistance given or promised is recognised in this way.
105. Detective Superintendent Hobley's view was that the provisions of the Serious Organised Crime and Police Act 2005 should not be used in seeking to secure accounts from Suspects 1 or 2 in the first instance. He acknowledged that this option presented the greatest risk to the investigation in terms of both suspects declining to answer any questions when interviewed. However, he recognised that if they were to provide an account during interview, any evidence obtained without the incentive of immunity legislation would be likely to carry more weight, as it would be free from any suggestion that the evidence had been obtained as a result of any form of inducement.
106. In order to ensure that the use of 'immunity legislation' was considered from an independent point view, and without influence from a police perspective, Detective Superintendent Hobley presented all of the available options to an Independent Advisory Group (Subsequent heading 'Independent Advisory Group' refers).
107. Ultimately, it was agreed prior to the arrest of Suspects 1 and 2 that efforts would be made in the first instance to obtain an account from

them without any use or even mention of 'immunity'. This decision was made following initial consultation with the CPS. There were concerns that given the already contradictory accounts provided by both suspects, any evidence that they provided would need to be presented in its most reliable and untainted form if it was to be of any evidential value.

108. The solicitors representing Suspects 1 and 2 made no request that any offer of immunity be considered in relation to their clients, and gave no indication that they would provide an account if they were offered protection from prosecution.
109. This was confirmed in a letter which stated "*...our clients will not in any way cooperate with the police in relation to this investigation. This is their final decision and they do not wish to be contacted further in relation to it.*"
110. The suspects had made their position clear. They would not assist the investigation in any circumstances. Therefore, even if the use of immunity was an option, it would not have been of any assistance in gathering further accounts from these individuals.
111. Upon the completion of the Operation FORTITUDE investigation, its findings were submitted to the Crown Prosecution Service who concluded that there was insufficient evidence to charge any individual with either the offence of Perjury, or Perverting the Course of Justice.

### **OPERATION RESOLUTE**

112. Operations FORTITUDE and RESOLUTE are inextricably linked. Much of the evidence that was identified and recovered during the Operation FORTITUDE Investigation would be of significance to Operation RESOLUTE, and many of the issues would 'cross over' between the

two. A key example is the previous section which considered the use of legislation to provide Immunity from Prosecution, which was of relevance to both investigations.

113. As a result, there was no clear delineation between the two investigations. Detective Superintendent Hobley retired as Operation FORTITUDE was reaching its conclusion, however he did play an important part in some aspects of Operation RESOLUTE such as the Linguistic Work that he initiated. Following his retirement, his successor Detective Superintendent Holland took over during the transition from Operation FORTITUDE into Operation RESOLUTE.

### **Terms of Reference**

114. Operation RESOLUTE was established in order to provide a thorough investigation into:
- The complaints made by Michael O'Brien concerning the conduct of certain of the police officers who were involved in the original murder investigation. (Police Complaint Matters 1, 2 and 5 which are contained within a letter of complaint, dated 21<sup>st</sup> July 2000 from Hickman & Rose Solicitors).
  - Any other criminal or conduct matters related to officers or staff who were involved in the original murder investigation that the IPCC deem appropriate to be incorporated into the complaint investigation.
115. Given that the letter of complaint written by Hickman and Rose Solicitors on behalf of Mr O'Brien was submitted on 21<sup>st</sup> July 2000, the Operation RESOLUTE investigation into the allegations it contained was conducted in accordance with provisions of the Police Act 1996. It has been 'supervised' by the IPCC who have been acting in the

capacity of the Police Complaints Authority (in accordance with Section 72 of the Police Act 1996).

116. The specific complaints made on behalf of Michael O'Brien that were to be investigated were:
- That two named key witnesses provided evidence to the CCRC that they were pressurised by Police Officers to give fabricated statements on behalf of the prosecution. (Complaint matter 1 contained within the letter of 21<sup>st</sup> July 2000 from Hickman and Rose)
  - That a key named witness provided evidence to the CCRC that he had given fabricated evidence against Michael O'Brien and Ellis Sherwood at the request of officers as part of a deal he had entered into to avoid a prison sentence for another matter. (Complaint matter 2 contained within the letter of 21<sup>st</sup> July 2000 from Hickman and Rose)
  - To investigate the disappearance of the note made by Detective Inspector Lewis of the conversation he allegedly heard between Michael O'Brien and Ellis Sherwood whilst they were in neighbouring cells at the Police Station and the complaint that this evidence had been fabricated. (Complaint matter 5 of the letter of 21<sup>st</sup> July 2000 from Hickman and Rose)

### **Investigation into Complaint Matter 1**

117. The two witnesses who made allegations to the CCRC that they had been pressurised by Police officers into giving fabricated evidence on behalf of the prosecution, were investigated as part of Operation FORTITUDE (Suspects 1 and 2). This again serves to demonstrate how Operations FORTITUDE and RESOLUTE were inextricably linked, as the evidence gathered during the former would inevitably inform the

investigation into the allegations against police officers investigated as part of the latter.

118. All available evidence was considered, and every account previously provided by these two individuals was examined. Every allegation they made concerning the conduct and actions of police officers was also identified and considered. What was found, as outlined in the summary of the Operation FORTITUDE investigation, was that these two individuals provided a number of differing and often contradictory accounts. It was not possible to establish with any certainty which of these accounts, if any, were accurate and genuine, which was demonstrated by the CPS decision that there was insufficient evidence to charge them with offences.
119. These two individuals were given the opportunity to provide further accounts during their suspect interviews, in which it was hoped that they would provide a definitive explanation. However, they refused to answer any questions, and in doing so, provided no evidence against police officers. Furthermore, having been told that no charges would be brought against them, they were provided with another opportunity to provide a witness account. They declined to assist the investigation further.
120. The evidence relating to the allegations against police officers was also considered by the CPS. It was found that there was insufficient evidence available to support any criminal proceedings against officers in relation to the allegations made in respect of the treatment of the two individuals. This was due to a lack of evidence. It was also due to their lack of credibility as witnesses.

**Investigation into Complaint Matter 2**

121. The witness who made allegations to the CCRC that he had provided fabricated evidence as part of a deal entered into to avoid a prison sentence for another matter was also investigated as part of Operation FORTITUDE (Suspect 3). As a result, that investigation identified and explored every account that he provided, as well as obtaining all other available evidence. In addition, each of the allegations that he had made against police officers was identified and considered. As outlined in the summary of the Operation FORTITUDE investigation, Suspect 3 provided many differing accounts, which were often contradictory. It was not possible to establish with any certainty which of these accounts, if any, were accurate and genuine. This view was supported by the CPS decision that there was insufficient evidence to charge him with offences.
122. This individual was provided with an opportunity to provide a further account when interviewed as a suspect as part of Operation FORTITUDE. Although he declined to answer any questions put to him, he did provide a prepared statement in which he stated that the evidence he provided to the murder investigation, and subsequently at the trial, was genuine.
123. The evidence relating to the allegations made by this individual against police officers previously was also considered by the CPS. It was found that there was insufficient evidence available to support any criminal proceedings against officers. This was due to a lack of evidence. It was also due to his lack of credibility as a witness.

## **Investigation into Complaint Matter 5**

124. Given that the complaint brought into question the disappearance of the note made by Detective Inspector Lewis, and alleged that he had fabricated the evidence of the overheard cell conversation, they amounted to allegations that Detective Inspector Lewis had perverted the course of justice and perjured himself by presenting this evidence at trial.

125. In order to ensure that the investigation was thorough and all encompassing, it was structured in the same way as Operation Fortitude. Being an integral part of events and significantly contentious, the challenges to the content and subsequent disappearance of the 'overheard cell conversation' note(s) made by Detective Inspector Stuart Lewis was systematically and thoroughly investigated viz:

- The precise placement of Michael O'Brien and Ellis Sherwood in the cells complex
- The presence of Detective Inspector Lewis outside the cells complex
- The overheard cell conversation
- Disclosure of the overheard cell conversation
- Subsequent custody processes (Disclosure, Interview and Charge)
- The decision to charge
- Preparation of the prosecution case
- Events at the trial
- The disappearance of the overheard cell conversation note(s)
- Expert evidence (Linguistics).

126. The above sub categories were identified as particular themes or aspects of the overarching 'overheard cell conversation complaint'. By investigating each of these in isolation, before then going on to

consider the overall picture, it was possible to ensure that every relevant part of the complaint was thoroughly investigated.

127. All evidence that was available from the investigation of the murder of Phillip Saunders, right through to that gathered as part of Operation FORTITUDE was fully reviewed. In addition, all new lines of enquiry were considered, which resulted in further witness accounts being obtained. As part of this process, both Michael O'Brien and Ellis Sherwood were interviewed as witnesses, and both gave detailed accounts. Whilst both admitted that a conversation had taken place between them in the cells complex, they denied that certain parts of it had occurred.
128. Due to the passage of some 25 years, memory recall of key individuals was limited and occasionally non-existent, substantially restricting investigators' main objective in seeking fresh or previously unknown information and evidence.
129. In relation to the trial records, virtually all were destroyed before their later significance was realised. As a result, only (summarised) CPS notes made during the trial and a summary of the Judges' 'summing up' remain in existence. Consequently, the lack of source material substantially hampered the provision of information being available to both Operation FORTITUDE and the subsequent Operation RESOLUTE investigations.
130. The other key document that could not be located, and which was specifically referred to in the complaint, was the record of the overheard cell conversation. The evidence available suggested that the note(s) had been presented by Detective Inspector Lewis at the trial, but this could not be categorically proven. In fact, no evidence was found that clearly indicated where the note was, or when it had last

been seen. Similarly, no evidence was found that proved how the note had disappeared.

### **The interview of Detective Inspector Stuart LEWIS**

131. Given the nature of the allegations, and after due consideration of all of the evidence gathered (Retired Detective Inspector) Stuart Lewis was designated as a 'suspect'. He was interviewed at some length under caution by the Operation RESOLUTE team. He responded to all questions put to him, and in doing so denied all of the allegations.
132. He concluded by stating that the cell conversation did take place, and that it was recorded as precisely and as accurately as possible given the circumstances. He denied any allegations of wrongdoing.

### **Linguistics**

133. One key aspect of the complaints related to the suggestion that Detective Inspector Lewis, in giving evidence at the trial, described the note he made of the overheard cell conversation as a 'verbatim' record. The investigation found that this description was contained in notes made by a CPS representative present in the court when Detective Inspector Lewis gave his evidence. Unfortunately, these notes amount to a summary document, and cannot therefore provide conclusive proof that this word was used by Detective Inspector Lewis. The court transcript which would have been a more accurate and reliable record were destroyed many years ago, before their relevance was recognised.
134. Detective Inspector Lewis was asked about his use of the word 'verbatim' during his suspect interview. He stated that given the passage of time, he could not recall whether he used this word or not, however he added that he recorded the conversation as accurately as

he could in the circumstances, that it was possible that the text was not word for word accurate, that any inaccuracy would have been due to an honest mistake and would not have been significant.

135. The question of whether a record could be recorded in a verbatim manner was considered by Linguistic experts. They also considered other factors such as the speed of writing and the presence of repetition within the content of the record. The chronological summary of their involvement follows.
136. On 11<sup>th</sup> December 2000 South Wales Police received notification from solicitors acting on behalf of Michael O'Brien that he intended to take civil action against South Wales Police for malicious prosecution.
137. In preparation of the claim, O'Brien's solicitors sought expert opinion on how long it would have taken Detective Inspector Lewis to write the note detailing the 'Overheard Cell Conversation'. In doing so, Hickman & Rose commissioned expert opinion.
138. The following summary of events demonstrates to the reader the extent of the work undertaken by both Michael O'Brien's legal team and South Wales Police to explore any opportunities that might have existed.
139. The following analyses were undertaken during the then on-going civil case proceedings:
140. Forensic document examiner Doctor Robert Hardcastle considered how long it would have taken to write the transcript of the overheard cell conversation. He highlighted difficulties with the examination because the original handwritten note was not available. He stated that if it had been available then an accurate assessment of the speed of writing could have been made.

141. When the evidence provided by Dr Hardcastle was presented to South Wales Police, the force commissioned their own expert opinion report from Doctor Stephen Day, again, a forensic scientist specialising in the scientific examination of documents and handwriting.
142. Doctor Day challenged the views of Doctor Hardcastle as to the application of speed of writing tests and provided his rationale. Doctor Day also highlighted the fact that Doctor Hardcastle had not commented on whether or not his speed of writing findings supported the view that the record of the conversation was a true one.
143. In an effort to reach common ground, Doctors' Hardcastle and Day prepared a joint memorandum. This report was prepared by order of the court in order to establish the points upon which they agreed and those upon which they disagreed.
144. The experts concluded their report by stating that there were no major points of disagreement. The essence of their findings was that *"In view of the many uncertainties involved, it is not possible to say whether the record of conversation given in the typed statement of Detective Inspector Lewis is accurate or not."*
145. As a result the solicitors acting on behalf of Michael O'Brien commissioned the services of another linguistic' expert, in order to provide further evidence in support their pursuance of the civil claim. They instructed Professor Hoey, University of Liverpool, who reported that it was extremely difficult to produce an accurate record of a conversation between two people, but that two things in this case which Detective Inspector Lewis had highlighted may have made this easier.
146. These factors were the pauses that were described between what was being said, and the need to talk more loudly as they were in separate

cells. However, despite having been provided with the civil statement of Detective Inspector Lewis in which he stated that the record was not 'verbatim', Professor Hoey highlighted the 'oddity' of the conversation, particularly in relation to the lack of responses and the repetitions.

147. In response a further expert, Malcolm Coulthard, Professor of Forensic Linguistics, was instructed by South Wales Police. He was asked to provide his opinion.
148. Professor Coulthard provided the following opinion that whilst agreeing on some of the matters, he commented, *'Even so, it is my opinion that there are no linguistic grounds to deny that much of the reported conversation 'may have taken place'; indeed the report written by Professor Hoey does not oppose this conclusion and even Mr O'Brien accepts over 20% of the record as accurate'*.
149. Because of the differing opinions of Professors Hoey and Coulthard, the Civil Court ordered the preparation of a joint memorandum, in an effort to reach common ground. The 'Joint Memorandum' prepared is a brief but technical report in which they state that they largely agree with each others findings.
150. Despite concluding the report with the comment that there were no major differences in their opinion, the debate continued, with additional reports being submitted by them individually, seemingly at the request of the solicitors.
151. Professor Hoey wrote to Michael O'Brien's legal team on 21<sup>st</sup> August 2006 in which he clarified his position. In this he responded to a suggestion apparently made by SWP that it is not within the expertise of the experts to decide whether the inaccurate record of conversation was as a result of poor transcription, or the fact that it was fabricated.

152. Professor Hoey argued, *“I disagree. While it is impossible for the experts to express probabilities with exactitude, their frequent experience of teaching and supervising transcriptions under a variety of conditions means that they have an expertise with regard to what is more or less likely to occur during untrained transcription.”* He argued that his experiences allowed him to form a view. He stated that a double repetition would have a very low likelihood of occurrence.
153. The views of Professor Hoey were presented to Professor Coulthard, who provided an additional report in which he further expressed his views viz: *“I am in full agreement with Professor Hoey that the three utterances 3, 5 and 7 (the three consecutive comments attributed to Michael O’Brien starting ‘I can’t hold out for much longer) are very unlikely to have co-occurred in the form in which they are recorded - in other words this cannot be a verbatim account of the conversation, but then no one could have made such a verbatim account of the conversation. However, I disagree that the double repetition can be used to suggest that individual utterances, let alone the whole dialogue, have been “constructed”. My opinion is that it is in fact impossible to say whether or not the repetition occurs in Detective Inspector Lewis’s record because of poor quality recording - i.e. as a natural consequence of the contemporaneous handwritten recording - or if it has some other cause.”*
154. This report from Professor Coulthard was the last that was prepared in order to contest the Civil Claim of Michael O’Brien. Only a few days after this last report was submitted, on 11th October 2006 South Wales Police agreed upon an ‘out of court settlement’ with Michael O’Brien.
155. At the outset of the Operation RESOLUTE investigation, Detective Superintendent Hobley reviewed the linguistic evidence that had been offered by both sides in the presentation of their cases for the civil litigation process. Having done so, he looked to establish whether any

additional evidence could be obtained that would assist this investigation. He found that the only experts deemed suitable to assist in a case like this were the ones who had already assisted with the civil case.

156. Michael O'Brien highlighted that in his 2006 report, Professor Coulthard had cited the results of transcription exercises that had taken place. They requested that such an exercise be conducted specifically in relation to the overheard cell conversation. As a result, the feasibility of conducting such an exercise was considered.
157. Following consultation between D/Supt Hobley and Professor Hoey, it was agreed that the transcription exercise would take place at the University of Liverpool, using students from the English Language Department. Professor Hoey presented his findings in a report dated 13<sup>th</sup> May 2011.
158. Upon receipt of Professor Hoey's report, the findings were reviewed by both the Operation RESOLUTE investigation team, and the Crown Prosecution Service. This resulted in Professor HOEY being asked to clarify a number of points in relation to the exercise, his findings, and the evidential value of his conclusions.
159. Professor Hoey responded to the questions asked in a letter dated 2<sup>nd</sup> August 2011.
160. Upon receipt of this report from Professor Hoey, it was agreed that Professor Coulthard would be asked to comment on the methodology of the exercise, his findings and his views, in order to provide a balanced approach, as had been sought throughout the process of obtaining expert evidence.

161. Professor Coulthard provided a lengthy and detailed report in response to the request made of him to review the findings of Professor Hoey's transcription exercise.
162. In answering whether he was able to conclude, to the required criminal standard, that the transcript *must* represent a fabricated conversation, Professor Coulthard wrote, *"There is no way in which a linguist can conclude that the transcript is fabricated in my understanding of the word fabricated that is 'did not happen' which Mr O'Brien asserts in one of the television interviews. Indeed in their interviews shortly after Detective Inspector Lewis made the note both accepted that it took place, although they disputed his record of much of what was said."*
163. Importantly, he concluded, *"At the same time it is possible to conclude, to the required criminal standard, that the transcript cannot represent a complete or even an accurate record of the wording of the conversation."* He added that *"the oddities of the actual record Detective Inspector Lewis produced strongly suggest that it cannot be a verbatim record anyway, but at best an honest attempt to record significant parts of what was said."*
164. The number of differing views and opinions in the linguistic reports that have been summarised tend to offer the initial impression that there is little agreement between the experts in this matter.
165. The expert opinions have evolved over the years due to the fact that they have been provided with additional information. All have considered each others reports, and have examined the recent exercise, designed to test peoples' ability to record conversations as they happen.
166. In summary, both Professors Hoey and Coulthard are in agreement that the conversation recorded and presented by Detective Inspector

Lewis is not 'verbatim'. This would not be possible, even in perfect conditions. There are therefore inaccuracies in the record, as demonstrated by the unusual repetition and lack of responses, which indicate that basic rules of conversation were not complied with. This questions the reliability of the transcription as evidence. They agree that the potential reasons for this apparent inaccuracy could be fabrication or poor transcription.

167. Professor Hoey states that the double repetition indicated either that the dialogue was constructed, or the transcriber was unusually confused. Professor Coulthard later stated that he believed it is impossible to prove which of these factors was responsible. The 'transcription exercise' conducted by Professor Hoey led him to conclude, *'I do not believe however that the conversation the officer heard could have been recorded in its entirety and with near to complete accuracy unless there were frequent long pauses between utterances, and I feel I can state this to the required criminal standard'*.
168. Having examined the available records, and considered the accounts provided by Michael O'Brien, Ellis Sherwood and Detective Inspector Stuart Lewis, the experts are clear in their opinion that the note(s) cannot be a complete or entirely accurate record of the conversation.
169. In 2011, after extensive in depth analysis and discussion by and between the various experts, the final conclusion reported was (in summary):

*"There is no way in which a linguist can conclude that the transcript is fabricated in my understanding of the word fabricated that is 'did not happen' which Mr O'Brien asserts....."*

## **CONSIDERATION OF THE EVIDENCE BY THE CPS**

170. Upon its completion, the investigation findings were submitted to the Specialist Crime Division of the Crown Prosecution Service at York, who concluded that there was insufficient evidence to charge any individual with either the offence of Perjury, or Perverting the Course of Justice.

## **POLICE MISCONDUCT PROCEEDINGS**

171. All of the police officers against whom allegations have been made have now retired. As such, they are no longer subject to Police Disciplinary Regulations. However, the investigation has found no evidence to implicate the officers in any wrongdoing, either in terms of criminal offences, or in terms of misconduct offences that would have been pursued had any officers still been serving.

## **MEDIA AND COMMUNICATIONS**

172. Media and communication strategies were agreed between South Wales Police and the IPCC and implemented in order that a cohesive and transparent approach to press releases was ensured. The aims and objectives, together with relevant and appropriate key investigative activities undertaken by both Operation FORTITUDE and RESOLUTE were released for public awareness. This of course took into account the fact that the murder of Phillip Saunders remains undetected, with care being taken that information that could impact on any future investigation or proceedings should not be disclosed.

173. Additionally, the strategies sought to correct or clarify any misinformation that may have been conveyed to the key individuals involved or their immediate families, by response in a timely manner viz:

'To deal effectively with media and wider stakeholder interest into the investigation into allegations made against civilian witnesses, relating to the original investigation and criminal trial, and complaints against Police made by Michael O'Brien. To present the investigations in a positive and professional way, and in particular, to ensure that public confidence in the investigation is maintained'.

## **ORGANISATIONAL LEARNING**

174. In order to ensure that all aspects of the original murder investigation and subsequent events were scrutinised to identify opportunities for South Wales Police to 'learn lessons', the following topics were explored:

- The manner in which evidence was obtained from key witnesses.
- The detention and treatment of the suspects.
- Completion and scrutiny of custody records.
- The interviewing of the suspects.
- SIO policy and recording.
- Charging decision.
- The overheard cell conversation.
- Exhibit management.
- Disclosure of evidence to the defence.
- Retention and storage of information and evidence.

175. There have been significant, well publicised changes in police procedures and working practices nationally. Over the 27 year period since the tragic murder of Phillip Saunders, legislation, policy, national doctrines and guidance manuals have been developed and published. South Wales Police has throughout the years embraced such change and improvements with vigour, ensuring emphasis on robust and intrusive scrutiny by supervisory officers and line managers.

176. The key areas for learning are:
- Major Crime Investigative Structures Systems and Procedures
  - Murder Investigation Training
  - Information Management (HOLMES & MOPI)
  - Investigative Training
  - Management Training
  - Interview Techniques
  - Application of PACE (Treatment of witnesses and detention of suspects)
  - Disclosure Training
  - Review of Major Crime Investigations
  - National Review Officers Training
177. Nevertheless, it is the case that Phillip Saunders was murdered over 27 years ago and police practices and procedures in each of the above key areas have developed and evolved and no longer reflect the position as it was in 1987.
178. National systems and structures for the investigation of Major Crime have been developed for the Police Service in England and Wales, and all forces including South Wales Police have adopted the Major Incident Room Standard Administration Procedures (MIRSAP) structure for investigation. The systems are now tried and tested having been in place for a number of years.
179. In relation to the interviews of Michael O'Brien, Ellis Sherwood, Darren Hall and key witnesses involved in the murder investigation, it is fair to say that South Wales Police have become a lead force nationally in the development and implementation of structures and systems for the conduct of interviews and interview technique training for Police Officers.

180. There has been considerable national investment in developing investigative training and accreditation. Both Senior Investigating Officers and all staff conducting key role duties within the Major Incident Room, at whatever level, are now qualified to do so to a nationally recognised standard.
181. The application of PACE by all forces in England and Wales was relatively new in 1987 with the legislation having been introduced in 1984. As a result, the management, care and treatment of persons who are in custody and witnesses, is now a world away from where we were in 1987.
182. Trained dedicated custody staff and electronic custody records ensure that all matters relating to any individual brought before the Custody Officer are strictly controlled and contemporaneously recorded. The Bridewell Custody Suites serving South Wales Police are all fitted with video and audio facilities. The Code of Practice for detention of persons and treatment of witnesses has been revised on a number of occasions over the years and is fit for purpose.
183. In relation to the review of major crime investigations, the point is made that South Wales Police are now considered to be national leaders in the process.
184. In addition to the organisational learning, significant and cutting edge advances in forensic techniques, particularly DNA, were not available at the time of the original investigation.
185. It has to be emphasised that the organisational learning arising from the 1987 original murder investigation has been recognised by the Police Service nationally, and the required responses have long since been implemented by South Wales Police.

## **CONCLUSION**

186. The following is a summary of the key issues appertaining to the purpose and conduct of Operation FORTITUDE and RESOLUTE.
187. To investigate complaints made by Michael O'Brien viz:
- (i) That Police Officers had threatened and coerced key witnesses into providing and giving false evidence.
  - (ii) That named key 'civilian' witnesses (non Police) had perjured themselves at the trial by providing false evidence.
  - (iii) That Detective Inspector Stuart Lewis had perverted the course of justice by fabricating the overheard cell conversation.
  - (iv) That Detective Inspector Stuart Lewis had perjured himself by presenting the fabricated evidence against Michael O'Brien and Ellis Sherwood at the trial.
188. Given that Operation FORTITUDE related to criminal allegations involving civilian witnesses, it was not subject to the requirement for supervision by the IPCC.
189. However, in light of the close links with the Operation RESOLUTE investigation, it was requested that the Commission be kept fully updated with progress. By doing so the IPCC were able to maintain an oversight in relation to the conduct and thoroughness of the investigation.
190. Operation RESOLUTE was supervised by the IPCC acting in the capacity of the Police Complaints Authority (in accordance with Section

72 Police Act 1996), providing independent assessment and scrutiny at each stage of the investigation.

191. Throughout the course of the investigations into the allegations and complaints levelled by Michael O'Brien, officers analysed and considered over 20,000 documents. Six individuals were interviewed under caution and ninety witnesses interviewed with written statements obtained from all during the process.
192. Other key individuals have been traced and spoken to in an effort to glean all information or evidence that might still be available for consideration.
193. In addition to the involvement of the IPCC and CPS as previously alluded to, the thoroughness, transparency and integrity of the investigations were assured by way of additional scrutiny by the South Wales Police Chief Officer 'Gold Group' and involvement of an Independent Advisory Group.
194. The Senior Investigating Officer and the investigation teams have ensured that there has been 'no stone left unturned' in pursuit of justice for all concerned. From the outset of Operations FORTITUDE and RESOLUTE, the Senior Investigating Officer sought the services of the Crown Prosecution Service. Early engagement with the agency proved to be an invaluable asset to the SIO throughout the duration of the investigations, when and where necessary.
195. All officers against whom allegations have been made have since retired. As such, they are no longer subject to Police Regulations, and proceedings. The Operation FORTITUDE and RESOLUTE investigations have found no evidence to implicate any officers in any wrongdoing, either in terms of criminal offences, or in terms of

Smisconduct offences that would have been pursued had any officers still been serving.

196. Upon its completion, the investigation findings were submitted to the Crown Prosecution Service. On 21<sup>st</sup> November 2012, the CPS concluded that there was insufficient evidence to charge any individual with either the offence of Perjury, Perverting the Course of Justice or Police misconduct.
197. In February 2013, Michael O'BRIEN's legal team expressed their intention to seek a judicial review of the decision not to prosecute Detective Inspector Stuart Lewis. The matters were heard before the Lord Chief Justice and Mr Justice Irwin at the High Court of Justice, Queens Bench Division on 25<sup>th</sup> October 2013. The Judgement was delivered on 28<sup>th</sup> November 2013.
198. Having heard all the facts as presented, the court ruled that the decision of the prosecutor in the case was not only reasonable but correct. The application for judicial review was dismissed.