



House of Commons
Home Affairs Committee

**Policing Process of Home
Office Leaks Inquiry:
Government Response to
the Committee's Fourth
Report of Session 2008–09**

Second Special Report of Session 2008–09

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The Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

Current membership

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Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/homeaffairscom. A list of Reports of the Committee since Session 2005–06 is at the back of this volume.

Committee staff

The current staff of the Committee are Elizabeth Flood (Clerk), Eliot Wilson (Second Clerk), Elisabeth Bates (Committee Specialist), Sarah Petit (Committee Specialist), Darren Hackett (Senior Committee Assistant), Ameet Chudasama (Committee Assistant), Sheryl Dinsdale (Committee Assistant) and Jessica Bridges-Palmer (Select Committee Media Officer).

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Second Special Report

On 16 April 2009 the Home Affairs Committee published its Fourth Report of Session 2008–09, *Policing Process of Home Office Leaks Inquiry*, HC 157. The Government's response is published as an Appendix to this Special Report.

In the Appendix, the Committee's original conclusions and recommendations are in bold text and the Government's response in plain text.

Appendix: Government response

The House of Commons Home Affairs Committee published the report of its inquiry into the policing process of the Home Office leaks inquiry on 16 April 2009.

The inquiry focused on:

1. The background to the investigation
2. The response by the Home Office and the Cabinet Office up to the point at which the police were invited to consider an investigation
3. The police investigation

This document sets out the Government's response to the recommendations in the Committee's report. The Government welcomes the Committee's report. Our detailed response to the recommendations is below.

We are grateful to the Committee for their work and the care with which they have drawn up their report. Since the report was published Keir Starmer, QC, Director of Public Prosecutions, has decided not to pursue criminal charges against Mr Green and Mr Galley. The DPP has given a very full explanation of his decision and his consideration of all the evidence. This was not, of course, available to the Committee, so we are attaching it to the Government's response. We particularly want to draw the Committee's attention to the DPP's conclusions about the appropriateness of the decision to call in the Police.

Following the conclusion of the case, Mr Galley has been dismissed for gross misconduct and the Home Secretary has asked HMIC to conduct a review.

Response to the Committee’s conclusions and recommendations:

Involvement of Home Office and Cabinet Office

We do not condone the unauthorised disclosure of departmental information; this is an abuse by officials of their positions of trust, and we support the use of disciplinary action in such instances. We also understand the corrosive effect that persistent leaking of information has on the efficient working of departments, not least as it sows mistrust between Ministers and officials. The Home Secretary made plain to us her anger at the leaks. (Paragraph 13)

The Government welcomes the Committee’s recognition of the impact leaks can have on the efficient and effective working of Departments. Unauthorized disclosures of information are contrary to a civil servant’s obligations under the Civil Service Code. They are also potentially criminal acts. It is not only trust between Ministers and officials that can be affected by such disclosures but also the trust between the citizen and Government. Each citizen has a reasonable expectation, for example, that information provided to Government in confidence or information that is relevant to their safety as citizens should be properly protected.

In this case the Home Office appears to have followed best practice for investigating leaks, as set out in the Cabinet Office’s Memorandum to our sister Committee. Nevertheless, we are concerned that growing frustration in both the Home Office and the Cabinet Office may have led officials to give an exaggerated impression of the damage done by the leaks that could reasonably be presumed to have emanated from the Home Office. (Paragraph 13)

There is a clear mismatch between Sir David’s description of the sort of material that he suspected had been leaked from the Home Office and the Cabinet Office’s letter to the police stating “there has been considerable damage to national security already as a result of some of these leaks”. Sir David suggested that this phrase reflected the concerns not about the 20-plus items he had identified but about the other material that had been leaked from somewhere in Government. However, the Cabinet Office letter did not refer to other departments: only to the Home Office. (Paragraph 14)

We recognise that the Metropolitan Police might still have decided to pursue an investigation on the basis of the damage done to confidence between Ministers and officials and the fear that the leaker(s) might have access to more sensitive information that had not yet been disclosed. We also do not know whether the oral briefing given to the police was less hyperbolic than the letter. However, we think it was unhelpful to give the police the impression that the Home Office leaker(s) had already caused considerable damage to national security. (Paragraph 15)

The Government does not accept these conclusions. In requesting the Metropolitan Police to consider an investigation into leaks, the Cabinet Office and the Home Office were aware of a number of leaks that had taken place over a long period of time for which no source or sources had been discovered. The leaks in question included those which have as a result of this investigation been attributed to Mr Galley but also included a number of others for which there is still no attributed source—a point the Committee itself recognises in its

conclusion at paragraph 18. Some of these other leaks involved national security information and were very damaging. The information in question was held in a limited number of Departments including the Home Office.

At the outset of the investigation, neither Cabinet Office nor Home Office officials nor the Metropolitan Police knew whether there was a single source or multiple sources for the information leaked. What was known was that there was an individual (or individuals) working close to the Home Secretary's office who appeared to be systematically leaking information. It could not be ruled out that responsibility for the leaks, including the leaks of national security information, mentioned above, lay with this person or these persons. Equally, it was clear that an individual (or individuals) close to the Home Secretary was determined to breach the position of trust they were in in order to leak information. There was a significant risk that their central position in the Home Office gave them access to highly classified information which they would be prepared to leak. The purpose of the investigation was to establish the identity of the individual or individuals so that appropriate action could be taken and further damaging leaks prevented.

Cabinet Office officials discussed these matters in detail with the Metropolitan Police before the letter requesting them to consider investigation was sent. The Metropolitan Police were fully aware of the background to all the leaks, including those of national security material, and accepted that they, together with the risks of further unauthorised disclosure of sensitive material, were sufficient to justify their involvement.

When Parliament revised the Official Secrets Act in 1989, it narrowed the scope of the section on unauthorised disclosure of government information, focusing on specific types of damaging information—relating to security and intelligence, defence, international relations and crime and special investigation powers. Unauthorised disclosure of these types of information remained subject to criminal proceedings. This was in line with what the then Home Secretary told the House in December 1988 when introducing second reading of the bill, namely that it would “remove the protection of the criminal law from the great bulk of sensitive and important information”, none of which would “any longer have the protection of the criminal law”. (Paragraph 16)

The Government notes the Committee's conclusion. The determination of criminal charges following a police investigation is of course a matter for the independent prosecuting authorities and, in the case of offences under the Official Secrets Act, for the personal decision of the Attorney General.

The Cabinet Office's guidance to departments says that it is appropriate to involve the police in leak investigations when they involve “a serious and damaging impact on the functioning of a Department and ... suspicion of leaking sensitive information”. However, it is easy to imagine circumstances in which a leak of sensitive information could lead to a damaging impact on the functioning of a Department without falling within the categories laid down in statute. The Cabinet Office's guidance therefore seems to leave open the possibility of involving the police in an investigation without any suspicion—let alone evidence—that a criminal offence under the Act has taken place. We recommend that the Cabinet Office revise its guidance to preclude this possibility. (Paragraph 17)

The Government does not accept the Committee’s conclusion leading to this recommendation. Any decision to approach the police to ask them to consider an investigation is not taken lightly and as a matter of practice would be the subject of discussion with the police before the approach was made. Ultimately, the decision to investigate, including the determination of the potential offences which justify an investigation, is a matter solely for the police.

We note that the only person arrested for leaking information from the Home Office was a junior official providing administrative support, who had security clearance up to the level of ‘secret’. At this stage of the police investigation, it is impossible to say exactly what information Mr Galley did disclose. He may not have been responsible for all the 20-plus leaks identified by Sir David—and, indeed, Sir David said it was not proven that all those leaks emanated from the Home Office. This, together with the fact that there has been no indication so far that Mr Galley is linked to the ‘other’ national security-related leaks that have caused such concern to the Cabinet Office over the last few years, leaves the possibility (to put it no higher) that there are other officials within government leaking more sensitive information. We are unable to judge whether the controversy over the investigation into Mr Galley and Mr Green makes it less likely that those who have disclosed information damaging to national security will ever be discovered. (Paragraph 18)

The Government remains concerned that there have been leaks of information, including information damaging to national security, for which the sources have yet to be discovered. The Committee has acknowledged the corrosive effect of leaks in its conclusion at paragraph 13. The Government will continue to investigate the sources of leaks, including with the assistance of the police where appropriate.

Parliamentary aspects

The aspects of this affair bearing on Parliamentary privilege are not for us to explore. We note, however, that from the outset of the investigation into Mr Green the police were aware of the political sensitivity of the inquiry and were anxious to adopt a cautious approach, including trying to make preliminary contacts with Parliamentary authorities immediately Mr Green’s potential involvement in the case became apparent. It is very regrettable that there should have been any misunderstanding over the issue of consent to search Parliamentary premises, but, in seeking consent before applying for a warrant, the police were following the procedure set down in statute. (Paragraph 24)

The Speaker has subsequently issued a Protocol stating: “In future a warrant will always be required for a search of a Member’s office or access to a Member’s parliamentary papers including his electronic records and any such warrant will be referred to me for my personal decision”. The Speaker’s Protocol goes on to detail the procedures to be followed when the police indicate any intention of seeking a warrant to search Parliamentary premises, and during the conduct of any search. We hope that this Protocol will help the police to determine the right process to follow in future. (Paragraph 25)

In the special circumstances of this case, we urge the Government to table a motion that would allow the House to decide whether to refer this matter to the Committee on Standards and Privileges. (Paragraph 26)

We welcome the Committee's conclusion that the police followed the procedure set down in statute. Details of the policing operation and any future policing decisions are a matter for the police service working with the framework of the law.

Police Investigation

However, in such circumstances all decisions made—who was informed, when, and of precisely what—may be, and have been in this case, subject to question and interpretation as interested parties probe to see whether anyone could have influenced or hindered the police operation. We recommend the adoption by the police of a protocol setting out the exceptional circumstances in which a politician would be informed of any police operation while it was underway. (Paragraph 30)

the involvement of so many officers and, in particular, the heavy involvement of so many high-ranking officers in disseminating information on 27 November caused us some concern. Presumably, the presence of DACs and others was deemed necessary because of the political sensitivity of the operation. This is another reason why it would be sensible not to keep politicians informed during police operations. (Paragraph 31)

Denis O'Connor, Her Majesty's Chief Inspector of Constabulary will undertake a review of the lessons learned from the investigation conducted by the Metropolitan Police Service into the leak of Home Office documents by Mr Christopher Galley. Further information on the terms of reference is below.

We asked the police whether we could see a copy of the report on the operation made by Mr Ian Johnston, Chief Constable of the British Transport Police, at the instigation of Sir Paul Stephenson. Mr Johnston referred us to the Commissioner of the Metropolitan Police, who declined to give us the report. We believe it would be useful to publish the Johnston report as soon as practicable so that lessons may be drawn from this case more widely. (Paragraph 32)

We note that the standards committees of the Greater London Authority and Metropolitan Police Authority found that Mr Johnson [Boris Johnson] had not breached their code of conduct, but some of his actions were unwise, and his motives could have been misinterpreted. (Paragraph 36)

The publication of the report is a matter for the Metropolitan Police and the publication of any documents would be in line with the normal rules and procedures that govern Metropolitan Police handling of information.

Proposed review by Home Secretary

The Home Secretary told us that she was minded to instigate a wide-ranging review into the conduct of the leak inquiry once any court cases resulting from it had finished. AC Quick and Mr Johnson welcomed this, and so do we. We consider that the review should cover both the approach to the inquiry within Government and the procedures adopted by the police, and should address all the issues dealt with in this Report. (Paragraph 37)

Denis O’Conor, Her Majesty’s Chief Inspector of Constabulary, supported by his small team of relevant experts, will undertake a review of the lessons learned from the recent Metropolitan Police investigation in to Home Office leaks. The review will report to the Home Secretary.

Decision on prosecution—Mr Christopher Galley and Mr Damian Green MP, 16/04/2009

The Director of Public Prosecutions, Keir Starmer, QC, has decided there should be no charges brought against MP Damian Green or Home Office civil servant Christopher Galley, following a Metropolitan Police Service investigation into leaks of information from the Home Office.

Introduction

1. The Metropolitan Police Service has investigated a number of leaks of information from the Home Office. That investigation led to the arrest of Mr Christopher Galley, a Home Office civil servant, on 19 November 2008 for an alleged offence of misconduct in public office. When interviewed by the police Mr Galley admitted passing various documents to Mr Damian Green, an Opposition MP. Mr Green was arrested on 27 November 2008 for an alleged offence of aiding and abetting, counselling or procuring the alleged offence by Mr Galley and also on suspicion of conspiring with Mr Galley for him to commit misconduct in a public office. He made no comment in interview.

2. In the course of the investigation by the Metropolitan Police Service searches were carried out at Mr Galley's home address and at Mr Green's home address, his Constituency offices and at his Parliamentary office. Various exhibits were seized at each of these addresses. Mr Green claimed that Parliamentary Privilege attached to most of the documents seized from his Parliamentary office. That claim delayed the investigation in this case, but I have now read and reviewed all of the relevant documents recovered from the searches of the various addresses of Mr Galley and Mr Green.

3. Having reviewed those documents and all of the other evidence available in accordance with the Code for Crown Prosecutors, I have concluded that there is no realistic prospect of a conviction against either Mr Galley or Mr Green for the offences alleged against them. Accordingly I have decided that charges should not be brought against either Mr Galley or Mr Green for those alleged offences.

4. The following paragraphs explain the reasons for my decision.

5. It is important to bear in mind that the question I have addressed is whether there is enough evidence resulting from the investigation to provide a realistic prospect of conviction. That is the test set out in the Code for Crown Prosecutors issued by me as Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985. It is not my function to make findings of fact and I have not done so. I have reached conclusions based on my analysis of the evidence presented to me and I have set out those conclusions later in this document. As in every case, both Mr Galley and Mr Green are entitled to be presumed innocent and that is the basis upon which I have approached this case.

The alleged leaks

6. A series of articles in the national press between October 2007 and November 2008 referred to the contents of restricted and confidential documents that appeared to have been leaked from the Home Office. The Permanent Secretary, Sir David Normington, was seriously concerned about the damage that was being done by these leaks. He was also concerned that whoever was responsible for these leaks may have had access to Ministerial papers and that there was a potential risk that highly sensitive material relating to national security might be disclosed. The assistance of the Metropolitan Police Service was requested and a police investigation followed.

7. The police investigation focussed on six apparent leaks.

8. **Leak One:** On 14 October 2007, an article by Ben Leapman was published in the *Sunday Telegraph*. It was about the asylum and immigration system. It referred to a leaked Home Office memorandum which, it was claimed, had been “seen by this newspaper”. There followed extensive quotes from the leaked document. The article reported that government critics claimed that the document exposed continuing failures in the asylum system even though the number of refugees entering the country was at a 14-year low. Mr Damian Green MP was quoted in the article as “the Conservative immigration spokesperson” commenting on “the chaos that still affects the asylum system”. He added that “Ministers have toughened up their rhetoric but underneath the same old policies are producing the same old results”.

9. The leaked document was the “Asylum and Immigration High Level Monthly Performance Report July 2007”. It was marked “Restricted-Management”. A copy was recovered by the police from Mr Green’s Parliamentary office bearing the name ‘Galley’ in manuscript. In his interview with the police, Mr Galley denied passing this document to anyone. As noted above, Mr Green made no comment in interview.

10. **Leak Two:** On 11 November 2007, an article by Justin Penrose was published in the *Sunday Mirror*. It alleged that up to five thousand illegal immigrants had obtained security jobs in the UK. The article went on to allege that “Officials failed to check if any foreign workers in the security industry were legally allowed to be in Britain. The scandal surfaced when the agency that vets security guards admitted it had not been checking if the applicants were in the country legally.” A spokesman for the Home Office was quoted as saying “Ministers have ordered checks on all existing security licence holders and these will be considered shortly”.

11. Follow up articles appeared in the *Daily Mail* on 13, 14 and 15 November 2007 referring to “leaked documents” and “a fresh Home Office document leaked to the *Daily Mail* last night”. Mr Green is quoted in many of these articles. For example, the *Daily Mail* reported on 13 November 2007 that “Tory immigration spokesman Damian Green said last night: ‘The Home Secretary has been caught red-handed putting the short-term interests of the government before the long-term task of solving a real problem’.” There were also follow up articles in *The Times*, *The Independent*, the *Daily Express*, the *Daily Telegraph* and the *Evening Standard* on 14 and 15 November 2007.

12. The leaked document was a copy of high level submissions to Home Office Ministers in August 2007, updating them about various issues relating to Security Industry Authority (SIA) licences. It was marked 'Restricted'. In his police interview Mr Galley admitted sending this document to Mr Green at the House of Commons. Mr Green made no comment in interview.

13. **Leak Three:** On 10 February 2008, an article by Melissa Kite was published in the *Sunday Telegraph*. It was about an illegal immigrant working in the House of Commons and was based on leaked documents. The article claimed that "The Government stands accused of a cover-up after leaked documents, obtained by the *Sunday Telegraph*, showed that Liam Byrne, the immigration minister, was informed immediately of the case of the Brazilian woman, a cleaner, when she was arrested at Parliament 10 days ago. Yet the Home Office confirmed the security breach one of the most serious to affect Westminster only after being contacted by this newspaper last night".

14. The article carried comments from Mr Green in the following terms: "The Conservatives demanded urgent action to prevent further breaches. Damian Green, the shadow immigration minister, said: 'Of all the Home Office disasters, this has the biggest security implications. Ministers like to talk tough about cracking down on employers but it is clear that the system is failing in our most sensitive buildings. What makes this even worse is that ministers' first instinct was to cover it up'."

15. The leaked document was a copy of a report to Home Office Ministers dated 31 January 2008 about an investigation into an allegedly illegal worker at the Houses of Parliament. It was marked "Restricted-Investigation". In his police interview, Mr Galley admitted posting this document to Mr Green and acknowledged that he "knew it would obviously end up in the press". Mr Green made no comment in interview.

16. **Leak Four:** On 20 April 2008, an article by David Leppard was published in *The Sunday Times*. It described a list of Labour MPs identified by the party Whip's office as 'plotting' against the Counter-Terrorism Bill. The following week the same newspaper published another article by Mr Leppard referring to a "leaked Whitehall document marked restricted" and prepared for the Home Secretary. This was said to have suggested that the government might make concessions on its counter terrorism reforms to win over disaffected opponents.

17. The leaked document was a Briefing on the Counter-Terrorism Bill marked 'Restricted'. In his police interview, Mr Galley denied passing this document to Mr Green, but he did admit that he passed him a Whips' list of the names of MPs who were undecided about their votes in respect of the Counter-Terrorism Bill. Mr Galley told the Police that he had access to this document which was kept in a safe belonging to the Special Advisers: he admitted photocopying the list and handing it to Mr Green. Mr Green made no comment in interview.

18. **Leak Five:** On 1 September 2008, *The Daily Mail* published an article based on a draft letter from the Home Secretary to the Prime Minister, which it claimed had been "leaked to the Daily Mail", predicting that the credit crunch would lead to a rise in crime. A similar article appeared in the *Daily Telegraph* referring to a "leaked Home Office letter". Mr Green was quoted in the *Daily Mail* in the following terms: "Damian Green, the Tory

immigration spokesman, said: ‘This rips the veil off the complacent comments we have been getting from the Home Office ministers about how their performance is improving. It is clear that almost all areas of the Home Office things are going to get worse’.

19. The leaked document was a copy of a “Draft letter to No 10” dated August 2008. It was not marked ‘Restricted’, but from its contents it would have been clear to anyone reading it that it was a confidential document. In interview, Mr Galley admitted passing this document to Mr Green. Mr Green made no comment in interview. A copy of the draft letter was found in Mr Green’s Parliamentary office.

20. **Leak Six:** On 15 November 2008, *The Daily Mail* published an article by Christopher Leake based on a ‘leaked’ Home Office document suggesting that the levels of most violent crime had risen under the Labour government.

21. The leaked document was a Briefing Pack for incoming Ministers at the Home Office. It was marked “Restricted Policy”. In his police interview, Mr Galley denied leaking this document to anyone. Mr Green made no comment in interview.

The alleged offences

22. As already noted, Mr Galley was arrested for an alleged offence of misconduct in public office and Mr Green was arrested for an alleged offence of aiding and abetting, counselling or procuring the alleged offence by Mr Galley and of conspiring with Mr Galley for him to commit the offence of misconduct.

23. This is not a case which falls within the framework of the Official Secrets Acts and I therefore intend to focus on the offence of misconduct in public office. This is a common law offence which has existed for many years. As the Court of Appeal noted in the case of *Attorney General’s Reference No.3 of 2003* [2004] EWCA Crim 868, the circumstances in which the offence may be committed are broad and the conduct which may give rise to it is diverse.

24. There are four essential elements of the offence, namely:

- i. the suspect must be a public official acting as such;
- ii. s/he must have wilfully breached his/her public duties;
- iii. the breach must have been such a serious departure from acceptable standards as to constitute a criminal offence; and to such a degree as to amount to an abuse of the public’s trust in the public official; and
- iv. there must have been no reasonable excuse or justification.

25. The third and fourth elements are critical. They make it clear that not every act of misconduct by a public official is capable of amounting to a criminal offence. There is a threshold and it is a high one. In particular, as the Court of Appeal recognised in the case of *AG’s Reference No.3 of 2003*, to attract criminal sanctions, the misconduct in question would normally have to amount to an affront to the standing of the public office held and to fall so far below the standards accepted as to amount to an abuse of the public’s trust in the office holder.

26. In this case, where the alleged misconduct in question is the leaking of information to an Opposition MP and, apparently through him, to a national newspaper, some assistance on the threshold for criminal culpability is provided by Article 10(1) of the European Convention on Human Rights (incorporated into our law by the Human Rights Act 1998), which strongly protects the freedom of the press. It does so by safeguarding the right of everyone to receive and impart information and ideas without interference. Although this right is not absolute it can be restricted where restriction is prescribed by law, legitimate, necessary and proportionate where it touches on matters of public interest which the press has a legitimate interest in publishing, it attracts special protection. That is because of the well-recognised and special role of the press as a public watchdog. As a result any criminal proceedings which restrict the ability of the press to publish information and ideas on matters of public interest calls for the closest scrutiny. In particular, the need for a criminal prosecution must be convincingly established. However, that does not mean that restricted and/or confidential information cannot ever be protected by the imposition of criminal sanctions in cases of unauthorised disclosure.

The evidence

27. In this case, I have concluded that there is evidence upon which a jury might conclude that the conduct of Mr Galley in passing various documents to Mr Green amounted to a clear breach of his public duties. The documents in question were clearly restricted and/or confidential and in leaking the documents to Mr Green, Mr Galley seriously breached the trust placed in him by the public.

28. I have also concluded that there is evidence upon which a jury might conclude that Mr Green aided or abetted Mr Galley's conduct and, in particular, his breach of the public's trust. There is, additionally, evidence upon which a jury might conclude that there was an on-going relationship between Mr Galley and Mr Green, which Mr Green encouraged in the hope and expectation that Mr Galley would continue to supply restricted and/or confidential information to him.

29. As the Court of Appeal recognised in the *Attorney General's Reference No 3 of 2003*, it will normally be necessary to consider the likely consequences of any breach of duty by public officials in deciding whether the conduct falls so far below the standards of conduct expected as to constitute a criminal offence. Therefore, I have considered the extent to which there has been any actual damage arising or the extent of any potential damage that could have arisen as a result of the conduct under investigation in this case.

30. I have concluded that there is evidence upon which a jury might conclude that there was damage. The integrity of the Home Office arrangements for handling restricted and/or confidential information was breached. That caused damage to the proper functioning of the Home Office, which was exacerbated by the prolonged period of the alleged leaks, the on-going relationship between Mr Galley and Mr Green and the sensitivity of the material to which Mr Galley had access. One of the principal concerns at the Home Office was that whoever was responsible for the leaks in question may have had access to Ministerial papers and that there was a potential risk that highly sensitive material relating to national security might be disclosed. This damage should not be underestimated and once the pattern of leaks was established in this case, it was inevitable that a police investigation would follow.

31. However, it has to be recognised that some damage to the proper functioning of public institutions is almost inevitable in every case where restricted and/or confidential information is leaked and, for that reason, such damage will rarely be sufficient, without more, to reach the high threshold required before a criminal prosecution for misconduct in public office can be justified as appropriate. This was recognised by the European Court of Human Rights in the cases of *Roemen and Schmidt v Luxembourg* (25 May 2003), *Ernst v Belgium* (15 July 2003), *Tillqack v Belgium* (27 November 2007) and *Voskuil v Netherlands* (22 February 2008). It is important that public officials should not leak restricted and/or confidential information. But, it is important that a breach of duty that might best be considered as a disciplinary matter should not be elevated to a criminal offence simply by virtue of the fact that the person leaking the information is a public official. Thus there is a need for an intense focus on any additional damage actually or potentially caused.

32. In this case, I have concluded that there is little evidence of any additional damage caused by the leaks in question. The documents leaked undoubtedly touched on matters of legitimate public interest and Mr Green's purpose in using the documents was apparently to hold the government to account. The extensive coverage of the issues by the national press, along with comments from Government and Opposition sources is evidence of this.

33. The information contained in the documents was not secret information or information affecting national security: it did not relate to military, policing or intelligence matters. It did not expose anyone to a risk of injury or death. Nor, in many respects, was it highly confidential. Much of it was known to others outside the civil service, for example, in the security industry or the Labour Party or Parliament. These examples are not an exhaustive list of the types of information that may be damaging for the purposes of the offence of misconduct in public office.

34. The threshold for criminal proceedings in such circumstances is particularly high, bearing as it does on the freedom of the press to publish information and ideas on matters of public interest. I have reviewed the leaked documents and all the other evidence available as a result of the investigation by the Metropolitan Police Service, in accordance with the Code for Crown Prosecutors. Having done so, I have concluded that, notwithstanding the evidence upon which a jury might conclude that there was a clear breach of duty by Mr Galley and the evidence of damage to the integrity of arrangements of handling restricted and/or confidential information within the Home Office, the overall evidence of damage in this case is not capable of meeting the threshold necessary for the institution of criminal proceedings.

35. In those circumstances, I have concluded that there is no realistic prospect of a conviction in Mr Galley's case because his alleged conduct is not capable of reaching the threshold necessary to make out the criminal offence of misconduct in public office. Equally, I have concluded that there is not a realistic prospect of a conviction against Mr Green for aiding and abetting Mr Galley's conduct or for conspiring with Mr Galley for him to commit the offence of misconduct.

Conclusion

36. For the reasons set out above, I have concluded that there is no realistic prospect of a conviction against either Mr Galley or Mr Green for the offences alleged against them. Accordingly I have decided that charges should not be brought against either Mr Galley or Mr Green for those alleged offences.

37. My conclusion should not be misunderstood. The unauthorised leaking of restricted and/or confidential information is not beyond the reach of the criminal law. The fact that the overall evidence of damage or potential damage in this case is not such that the offence of misconduct in public office is made out should not be taken to mean that the absence of sufficient damage actual or potential will always lead to a decision not to prosecute. Where the threshold identified in the case of *AG's Reference No.3 of 2003* is met, a criminal prosecution would be justified. Each case will have to be carefully considered on its facts. My conclusion is simply that, on the particular facts of this case, there is no realistic prospect of a conviction against either Mr Galley or Mr Green.

38. In coming to a conclusion in this case, it has not been necessary for me to resolve the question of the legality of the searches of Mr Galley's home address and Mr Green's home address, his Constituency offices and at his Parliamentary office. I do not propose to do so. However, as noted above, once the pattern of leaks was established in this case it was inevitable that a police investigation would follow. There has been a thorough investigation and, without it, I would not have been able to reach a conclusion on the particular facts of this case.

39. The conclusion that charges should not be brought against either Mr Galley or Mr Green in respect of the six leaks investigated by the Metropolitan Police Service is mine. I have been assisted by Gavin Millar QC (a leading media law specialist), James Lewis QC (on various matters relating to Parliamentary privilege), and by senior and experienced lawyers at the Crown Prosecution Service. However, I have not been asked to consult, nor have I consulted, any Minister before coming to my conclusion.

Keir Starmer QC, Director of Public Prosecutions, 16 April 2009