THE REVIEW OF THE INVESTIGATION AND PROSECUTION ARISING FROM THE MURDER OF DAMILOLA TAYLOR

Sir John Stevens QPM DL
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Dear Sir John Stevens —

On 26 April 2002, after consultation with the Home Secretary, the Chair of the Metropolitan Police Authority and the Mayor of London, you invited an Oversight Panel to review the investigation and prosecution arising from the murder of Damilola Taylor and to advise you and the Metropolitan Police Authority of lessons that may be learned by the police and the Criminal Justice System in future cases of a similar nature and to provide a link to the CPS review established by the Attorney General.

This Report sets out our unanimous advice based upon all the material and interviews made available to us during the process of the Review.

Yours ever,

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BISHOP FOR BIRMINGHAM

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HER MAJESTY’S INSPECTOR OF CONSTABULARY

MR PERRY NOVE QPM
FORMERLY COMMISSIONER OF POLICE FOR THE CITY OF LONDON
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EXECUTIVE SUMMARY

- Damilola Taylor, a 10-year-old schoolboy, was murdered on a South London housing estate in November 2000
- In April 2002, the trial of four local youths charged with his murder concluded at the Central Criminal Court without any convictions
- The Commissioner of the Metropolitan Police Service subsequently ordered an independent review of the investigation and prosecution of the case to establish what lessons could be learnt from the matter
- The review was conducted by an experienced senior investigator from another police service under the direction and control of an Oversight Panel, chaired by the Right Reverend Dr. John Sentamu, the Bishop for Birmingham
- This report sets out some primary issues of importance or concern arising from the case and explains how they may have had a pivotal effect on its outcome
- The case presented a number of difficult challenges for the investigators and for those prosecuting. The ages of the victim, the defendants and many of the witnesses were a particular problem
- A great deal of good practice was identified by the review process and the Oversight Panel believes that the case demonstrates how the Metropolitan Police Service has moved on since its unsatisfactory investigation of the murder of Stephen Lawrence in 1993
- The importance of the case was identified at the outset and the primary investigation was innovative, committed and well resourced
- A few aspects of the investigation could however have been handled better or more expeditiously, particularly after the suspects had been charged with the murder and were awaiting trial. Resource availability was an issue at this stage when time limits of course applied
- The Panel concludes however that these matters in themselves did not critically damage the prosecution of the case. The outcome was predicated in more complex ways
- The Panel believes that a scrutiny of the case, including its passage through the Courts, demonstrates how some of the current rules of evidence and procedure, properly intended to prevent miscarriages of justice, can have a damaging effect on the credibility of the criminal justice process
The Panel believes particularly that the ability of the criminal justice process to properly balance the interests of defendants and victims requires very careful consideration.

This report makes a total of 23 recommendations affecting the criminal justice process, the police service nationally, the Metropolitan Police and its murder investigation groups.

The Panel believes there is a significant inter-relationship between aspects of this case and a number of the issues already canvassed in the Government White Paper ‘Justice for All’ and urges the Government to consider this report carefully as part of its proposals for reform.
1.1 The Offence

1.1.1 At approximately 4.45pm on Monday 27th November 2000 Damilola Taylor, a 10 year old schoolboy, was murdered on the streets of a housing estate in Peckham, South London.

1.1.2 Damilola, his siblings and his mother had moved to London a short time before to support Damilola’s sister, a United Kingdom citizen who had returned to Nigeria with her family in the 1980’s. As a result of her worsening health, the family decided to return to the UK in the hope that she would receive better health care. Damilola was thus enrolled in a local primary school.

1.1.3 On the day of his murder he visited Peckham Library after school had finished for the day and at about 4.30pm he was seen leaving there and walking in a direction leading to his home address.

1.1.4 At approximately 4.45pm Damilola was found by a member of the public, collapsed in a stairwell of a block of flats in Blakes Road, Peckham.

1.1.5 He was taken to hospital where he died of his injuries. A subsequent post-mortem concluded that he had died from loss of blood caused by a single stab wound to his left leg.

1.1.6 The murder of Damilola Taylor was immediately a matter of great public concern and interest. It remains so to this day.

1.2 The Context

1.2.1 Peckham is situated within the London Borough of Southwark, one of 33 Boroughs within the Greater London Area.

1.2.2 In 1999 the Metropolitan Police Service re-aligned its own internal boundaries. The former Divisions of Peckham, Walworth and Southwark were amalgamated to form the Southwark Police Borough. The 25 Wards of Southwark are now co-terminus with 17 MPS Neighbourhood Policing areas.

1.2.3 The Borough covers an area of approximately 6 square miles. It borders the River Thames (and the City of London) to the north, the Borough of Lambeth to the west, Lewisham to the east and Bromley to the south. It is also in close proximity to Westminster, Greenwich and Croydon.

1.2.4 The latest population figures revealed by the 2001 Census show a total of 244,900 residents.
1.2.5 The 2001 census shows the residential population categorised as follows:

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- 66% 114%
- 32%
- 1%
- 16%
- 14%
- 13%
- 35%
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1.2.6 Workforce survey statistics indicate an economic activity rate of 70.7% compared to 64.8% for London overall. The unemployment rate is conversely indicated at 12.1% which is almost double the figure for London overall (6.9%).

1.2.7 8.5% of the population of Southwark are in receipt of income support or other form of unemployment benefit. This compares with figures of 4.7% for London overall and 3.9% for the United Kingdom. Poverty estimates show that of the 354 Local Authority areas in England, Southwark is the 12th poorest.

1.2.8 MPS crime figures for the (Financial) Year 2001 show that Southwark was one of the highest London Boroughs in terms of notifiable crimes, including murder and crimes of violence.

1.2.9 Southwark Police recorded 40,447 notifiable crimes that year, representing 4.1% of the total London wide.

1.2.10 Southwark Police also recorded 14 offences of murder, representing 8.2% of murders London wide (171 offences).

1.2.11 In the same year Southwark Police additionally recorded 10,034 offences of violent crime, representing 4.9% of offences London wide (204,856 offences).

1.2.12 Crime Figures for April 2001 to March 2002 show that Southwark’s relative position was similar to the previous year.

1.2.13 In the previous year notifiable offences within the Metropolitan Police District rose by 6.3%. The recorded increase in Southwark was 13%, this being the fourth largest increase within the London Boroughs.
1.2.14 Violent crime rose in Southwark by 12%, compared to an overall increase of 9.7% London wide. This was the third largest increase within the London Boroughs.

1.2.15 In the same year, murders in London rose by 11%. Southwark Police recorded a decrease however of 12%, recording 5.7% of the total murders in London (11 of 190 offences overall).

1.2.16 The increase in owner occupation and the rising cost of private housing during the 1980’s resulted in a significant increase in low-income families in Peckham becoming reliant on social housing.

1.2.17 Levels of public spending during the 1980’s had the effect of dramatically reducing much needed community and youth provisions in the Peckham area. The numbers of youth workers engaged with young people most in need of the support and facilities provided by youth services, diminished. The result was an increase in powerful peer group loyalties, to some extent supplanting traditional family and community ties.

1.3 The Police Response

1.3.1 The Metropolitan Police Service (MPS) attended the scene immediately. First aid was rendered by officers at the scene who also confirmed the request for an ambulance made by members of the public. The preliminary and immediate elements of a murder investigation began.

1.3.2 Although local officers commenced this process, very quickly the MPS South London Serious Crime Group (SCG) attended the scene and took responsibility for the investigation.

1.3.3 The primary investigation ran for 34 weeks until June 2001, when four local youths were charged with Damilola’s murder.

1.4 The Trial

1.4.1 The trial of these four youths began at the Central Criminal Court, Old Bailey on 23rd January 2002.

1.4.2 On 27th February 2002, following a development in the trial, The Crown Prosecution Service decided to offer no evidence against one of the defendants and he was discharged.

1.4.3 At the conclusion of the prosecution’s case, Counsel for the three remaining defendants made submissions to the Court that on the evidence considered there was no case to answer. One of these submissions succeeded and the Trial Judge discharged a second defendant at that point.

1.4.4 The case continued until the 25th April 2002 when the Jury found the two remaining defendants not guilty.

1.4.5 Following the conclusion of the criminal trial, the Commissioner of the Metropolitan Police Service, Sir John Stevens, gave directions for a Review to commence in order that lessons could be learnt in respect of both the police investigation and the prosecution of the case.
1.4.6 The Commissioner appointed a Deputy Assistant Commissioner who had not previously been involved with the case to take internal responsibility for a Review Team to work under the directions of an independent Oversight Panel. He also directed that the Review Team be led by an experienced Senior Investigating Officer from another police service, in order that public confidence in the outcome could be additionally enhanced.

1.5 The Oversight Panel

1.5.1 The Commissioner directed that an Oversight Panel (The Panel) be appointed to supervise and guide the work of the Review Team, to ensure that the review work was just, thorough and adhered scrupulously to the terms of reference. The Panel was tasked to produce a Report at the conclusion of the process.

1.5.2 The Right Reverend Dr. John Sentamu, then Bishop for Stepney and now Bishop for Birmingham, agreed to chair The Panel. Mr. David Blakey, Her Majesty’s Inspector of Constabulary and Mr. Perry Nove, former Commissioner of Police for the City of London were also appointed.

1.5.3 The Panel met regularly between May and November 2002 to consider the interim work of the Review Team and to request further work on new issues and matters where they required more detail.

1.5.4 The Terms of Reference of The Panel are set out at Appendix A.

1.5.5 The Director of Public Prosecutions also announced an internal Crown Prosecution Service (CPS) Review into aspects of their management of the prosecution process.

1.6 The Review Team

1.6.1 Terms of Reference for the Review Team were created and ratified by The Panel, in order that the work of the Review Team would have a meaningful focus. The Terms of Reference were constructed around a range of key issues that had become manifest during the investigation and the subsequent trial.

1.6.2 The terms of reference for the Review Team are a careful and thorough examination of what The Panel judged to be critical issues in this case.

1.6.3 The Terms of Reference given to the Review Team by The Panel are at Appendix B.
2 METHODOLOGY AND FOCUS OF THE REVIEW

2.1 The Review Team was quickly brought together under the direction and control of Detective Superintendent David Stevens of the Kent County Constabulary. A total of 12 personnel were seconded from both the Kent and Metropolitan Police to make up the team.

2.2 All of the personnel appointed to the Review Team were either serving police officers with significant investigative experience, or recently retired officers of similar experience, or were civilian support staff involved in related major investigation disciplines.

2.3 Twelve generic themes were identified as being particularly relevant to the critical success of the investigation and prosecution of the case. All of these themes have been looked at in depth.

2.4 As part of that process the Review Team and the Oversight Panel have had access to the following sources of information:

- witness statements
- records of interview (suspects etc)
- transcripts of witness testimony
- the working documents and administrative records of the investigation
- the records of the senior investigating officer’s decisions
- the records of the decisions made by the two oversight groups
- the records of the family liaison officers
- the 28-Day Progress Review of the initial investigation
- case conference minutes (CPS)
- written Advice(s) of Prosecuting Counsel
- other documents prepared by Counsel
- transcripts of rulings by the Trial Judge
- transcripts of the Judge’s Summing Up
- procedural and policy documents at the time extant
2.5 The Review Team considered relevant material contained in:

- The Stephen Lawrence Inquiry Report
- The Follow-Up Report of Her Majesty’s Inspector of Constabulary (published August 2001)
- The Auld Report
- The Government White Paper entitled ‘Justice for All’
- The Submission of the Association of Chief Police Officers (ACPO) to the Auld Report
- Statute and Common Law

2.6 The Review Team also interviewed a number people who were closely involved with the case, including members of the investigation and prosecution teams. A number of other people who were directly affected by the case were also seen.
3.1 **Initial Action**

3.1.1 Shortly after Damilola Taylor was found collapsed in the stairwell of a block of flats in Blakes Road, Peckham local officers went to the scene. They were followed quickly by members of an MPS Homicide Assessment Team (a quick response unit whose role is to secure crime scenes and seize evidence).

3.1.2 The initial preservation of the crime scene was put in place, albeit the place where Damilola was attacked could only be surmised at that point. A trail of blood enabled police to make a realistic assessment of the probable location, which in fact was very close to where Damilola had been found.

3.1.3 The Review Team did not scrutinise the initial crime scene actions because these were comprehensively examined by a 28-Day Progress Review that took place early in 2001. These Progress Reviews take place in all undetected murder investigations at an early stage to ensure adequate quality control measures are in place and that investigative opportunities (up to that point) have not been overlooked.

3.1.4 Staff from the MPS Murder Review Group (MRG) conducted the 28-Day Progress Review. The MRG acts independently in all cases and its recommendations progressed by an Action Group with an independent Chair. In this case the MRG made a total of 50 recommendations and the MPS appointed a Chief Officer (a very experienced Deputy Assistant Commissioner from the Racial and Violent Crimes Task Force) to ensure that the recommendations were actioned.

3.1.5 The Panel has examined the documentation of the 28-Day Progress Review and the subsequent actions and considers that the initial crime scene management was effective.

3.1.6 An unusual and unforeseen problem emerged at a later point in the investigation however. This concerned a minute particle of glass that was recovered from a pair of shoes belonging to one of the defendants which forensic scientists subsequently matched to the type of glass found at the scene of the attack. The particle of glass was exceptionally small and at present crime scene examiners and the Forensic Science Service have no really effective way of ensuring the integrity of the scene until every opportunity for the removal of particles and relevant material has been exhausted.

3.1.7 The preservation and management of crime scenes, which are in the open air and in a public place, presents many difficulties for investigators and technicians. An additional difficulty in this case was that rain fell shortly after Damilola’s murder. The MPS has taken action to determine what additional options are available to deal with the generic difficulties these situations present.
3.2 The Investigation Team

3.2.1 The arrangements for identifying and appointing a senior investigating officer, and the associated investigation team after a murder has been discovered, are necessarily complex.

3.2.2 The primary reason for this is that all senior investigating officers (SIOs) working within the three Serious Crime Groups (West, East and South) are available on an ‘on call’ rota basis for immediate deployment to the scene of an offence. Their pre-existing caseloads however may preclude them from being selected to take control of the case on a permanent basis.

3.2.3 The process for the selection of the permanent SIO at the time of Damilola’s murder was that senior management made a decision based upon the workload of the individual SIO and that of their team (a ‘next available’ SIO is identified on a weekly basis). It is therefore very rare for an SIO to be detached from the investigation team with which they normally work.

3.2.4 In this case, an on-call SIO and his investigation team attended the scene and ensured that all identified immediate action was commenced. Later in the evening a permanent SIO was appointed after an assessment of the case had been made by senior managers.

3.2.5 The Metropolitan Police Service correctly anticipated the sensitivity and potential scale, complexity, and importance of the case on the very first evening and designated the matter as being in the very highest category of murder offences.

3.2.6 The permanently appointed SIO was an experienced criminal investigator who had recently been appointed to the Serious Crime Group and had previously led a double murder investigation.

3.2.7 Training for Senior Investigating Officers, both nationally and within the Metropolitan Police Service, is designed to enable the officers to be effective in most murder cases ordinarily encountered. This training has both a standardised form and content.

3.2.8 The Panel suggest that in exceptional circumstances MPS managers should consider looking beyond immediately available staff before the appointment of an SIO and an investigation team is made. However The Panel recognises that there are very few experienced senior investigators within the police service who could easily manage challenges at this level and that it may be impractical to identify and train a dedicated investigation team that would only be deployed in exceptional circumstances.

3.2.9 The Panel was impressed by the manifest commitment of the SIO and the police and civil staff from the associated investigation team. They worked long hours in difficult circumstances and as the investigation developed they were faced with difficult decisions and some very complex issues not ordinarily encountered in most murder investigations.
3.3 Oversight and Support

3.3.1 The response at senior level to the murder was commensurate with its critical assessment. The Detective Superintendent (Deputy Head) of the Serious Crime Group (South Command) attended the scene that evening and the Detective Chief Superintendent was also personally briefed.

3.3.2 The on-call Chief Officer for South London (a Commander) also attended the scene and was briefed. The immediate involvement of a Chief Officer is consistent with recommendations set out in 'Policing London – Winning Consent'. The Chief Superintendent responsible for the Borough of Southwark was additionally briefed.

3.3.3 The MPS set up some exceptional arrangements to provide oversight and support for the murder investigation. Basically this consisted of two high level groups, named Gold and Silver respectively.

3.3.4 The Gold Group was chaired by a Chief Officer (Commander) with territorial responsibility for that part of South London which includes the Borough of Southwark. Its primary purpose was to strategically contribute to the investigation. Its role and responsibilities included all community, family liaison and media issues. These were clearly set out in Terms of Reference.

3.3.5 Membership of the Gold Group included Independent Community Advisors, senior managers from the Serious Crime Group, press officers and ad hoc attendees including the Deputy Chair from the MPS Independent Advisory Group. The decisions of this Group were comprehensively documented.

3.3.6 The Panel considers that the existence of this Group and in particular the advice and help it received from its Independent Advisors was materially beneficial to the progress of the investigation. This positive response is one of a number of reforms introduced (as a consequence of the Stephen Lawrence Inquiry Recommendations) by the Racial and Violent Crimes Task Force.

3.3.7 The Group did not however have direct oversight of the investigation itself, that responsibility being part of the terms of reference of the Silver Group. This separation of responsibilities requires understanding, because the role and responsibilities of the two Groups in this case represents a departure from the command and control conventions most commonly described by the Gold, Silver and Bronze nomenclature.

3.3.8 In essence the convention sets out that Gold (or a Group acting in the same capacity) defines the overall objectives and detail of a formal strategy. Silver devises the tactics and support necessary to give effect to the strategy and secures the necessary resources. Bronze is responsible for implementing those tactics in the operational arena. The convention can be applied to the command and control of any major incident, including serious crimes.

3.3.9 It should be stressed that although Independent Community Advisors played a vital and positive role in the work of the Gold Group they had no decision making responsibility nor could they be expected to identify emerging difficulties in the management of the investigation at the practical level.
The Silver Group was established a few weeks into the investigation. Its primary role was to support the SIO with advice on operational issues and to facilitate the provision of resources. This Group was chaired by the Head of the Serious Crime Group (a Detective Chief Superintendent) and included the Gold Group chair, senior officers from the SCG, technical specialists in covert operations and staff from the MPS Racial and Violent Crimes Task Force.

The chairmanship of this Group changed at the end of March 2001 and the group’s final documented meeting was held late in June 2001. The records of this Group are less comprehensive than those of the Gold Group and are recorded in a different way.

The Deputy Assistant Commissioner, responsible for investigative policy and the oversight of all murder investigation in London, also played an active role in the case – particularly in its early stages and when the case finally came to trial. His personal involvement is an indication of the exceptional arrangements the MPS put into place because of the circumstances of this case.

The Panel considers that the MPS should be commended for recognising the complexities and significance of Damilola Taylor’s murder and for resourcing the primary investigation in an effective way. However, the structure of the oversight and support arrangements and the direct involvement of very senior staff with different roles and responsibilities did lead to a lack of clarity on occasions about where ultimate accountability for the case as a whole lay.

The Panel (also) considers that the comprehensive nature of these arrangements and the involvement of so many senior staff may have created a false sense of reassurance about the progress of the investigation. This became unhelpful when new problems were encountered in the secondary stage of the investigation after the suspects had been sent for trial.

The Panel consider the work undertaken by the Gold Group in respect of community impact, family liaison and media issues was of the highest order. The comprehensive work done by this Group in dealing with ethical issues was also exemplary, as were its records. The Panel recommends that the MPS and the police nationally incorporate this positive experience into future training for Chief Officers and SIO’s.

The Panel considers that the MPS should be commended for the scope and scale of Chief Officer involvement and that national guidelines for the investigation of murder and other relevant cases should be amended to suggest this should be mandatory.

The MPS devised and implemented a number of leading edge initiatives designed to acquire intelligence and evidence by covert means, but it is not in the public interest to describe the detail of this work. The Panel considers that these efforts were innovative and commendable, albeit they produced no tangible results despite being well resourced.

An ethical Oversight Group was set up, chaired by an independent Deputy Assistant Commissioner, to ensure that all proposed covert activity was very carefully considered, proportionate and justifiable in the context of the case.
3.4 Community Involvement

3.4.1 The investigation benefited in a number of ways from the active involvement of Independent Community Advisors who were familiar with local issues and with diversity issues more generally.

3.4.2 Linda Bellos (co-chair of the Lesbian, Gay, Bi-sexual and Transgender Advisory Group, one of the centrally based MPS Independent Advisory Groups), Althea Smith and Debbie Welsh were the Independent Community Advisors who joined the Gold Group at an early stage. All three were local Advisors.

3.4.3 The Advisors received briefings and had the necessary freedom to contribute meaningfully. They were successful in ensuring that community tensions were both minimised and managed, and in creating a climate where confidence and trust in the investigation was enhanced. Their involvement created opportunities for information to be acquired from apprehensive members of the public, including those affected by local crime and gang activity.

3.4.4 The Advisors have made a number of helpful suggestions about how this vital form of contribution can be refined in future cases and how their own independence can be ensured. These include the prior identification of suitable individuals and the provision of independent training to ensure they can operate as speedily and as effectively as possible.

3.4.5 MPS staff at all levels were very appreciative of the help the Advisors gave, recognising that the knowledge, advice and wisdom given throughout the case derived from a perspective and experience not commonly found within the police service itself.

3.4.6 The Panel considers that the use of Independent Advisors in this case was a model of best practice. They were appointed swiftly, well briefed and included in a range of activity, including police activity in relation to the arrest of suspects, without their independence being compromised. Their direct involvement with the media undoubtedly assisted the enquiry and enhanced community confidence in the actions of the MPS.

3.4.7 The Panel also consider that the involvement of the MPS Cultural Resource Unit (a dedicated team of minority ethnic officers) in making local enquiries supported and complimented the work of the Independent Advisors. This was an innovative approach to seeking information and engaging community involvement.

3.5 Identification of Suspects

3.5.1 As the investigation began, police intelligence data was trawled for useful information and considered in the light of information being provided by the public, including from persons who were close to possible suspects.

3.5.2 This process led to the identification of a number of youths who potentially could have been involved in the murder.
On 2nd December 2000 two local youths were arrested on suspicion of the murder. No evidence was found or accrued to link them to the crime and they were released from custody. Their association with other youths as part of a street gang was however apparent and work was undertaken to identify and locate all the others.

On 14th December 2000, 18 days after Damilola died, a total of 11 youths were arrested on suspicion of murder. This group included the four individuals who, at a much later point, were charged with Damilola’s murder. All of these youths were subsequently released on police bail.

As part of the police operation the homes of these suspects were systematically searched and a range of items of potential evidential value were seized. These included a great deal of footwear (86 shoes/trainers), a number of mobile telephones (32) and seven SIM cards. Some of these items later acquired a particular relevance during the criminal trial.

Some days later a 12-year-old local girl contacted police with information about the case. She was interviewed on a number of occasions and in January 2001 she made a written statement in which she said she had witnessed the attack on Damilola. She identified four local youths as being responsible.

As a critical witness, she was afforded witness protection and given a pseudonym (Bromley) although at a later point in judicial proceedings it became impossible to conceal her identity. Prosecution Counsel advised that as Bromley was known to the defendants and was going to give evidence that she had been at the scene, it was not possible to invite the court to conceal her identity from the defendants. This advice was accepted.

The four youths named in her statement were re-arrested (they had been amongst the 11 suspects arrested on 14th December 2000) and either denied involvement in the matter or refused to co-operate with the investigation.

All four were subsequently released pending completion of the police enquiry, albeit three of these individuals remained in Youth Custody on other unrelated matters.

Consultation with the Crown Prosecution Service

Consultation with the Crown Prosecution Service (CPS) commenced at an early stage of the police investigation.

A number of complex legal issues were apparent early on, including the exceptional circumstances of the witness ‘Bromley’ who was a vulnerable young person and who had given inconsistent accounts of the events.

The CPS appointed an experienced senior prosecutor who at the time was the Head of the Youth Trials Unit within Central Casework. He was selected for his experience with youth offenders and witnesses. He remained with the case from initial involvement through to trial.
3.6.4 CPS advice was sought and given on a number of issues during the investigation, including advice on how ‘Bromley’ could be interviewed and her evidence obtained.

3.6.5 The CPS also advised on the possibilities of giving immunity from prosecution for any individual(s) who might have been at the scene of the murder but who may have been inactively or less actively involved.

3.6.6 In June 2001, when police investigators considered that the acquisition of further evidence was likely to prove very difficult, the CPS were asked to advise on whether sufficient evidence existed to warrant a prosecution.

3.6.7 At that point, the CPS briefed Treasury Counsel who, in an advice dated 24th June 2001, opined that there was sufficient evidence to pass the evidential test set out in the CPS Code. (A summary of the Code can be found at Appendix C.) That same advice also identified a number of difficulties that were likely to arise during the prosecution and the consequent implications and uncertainties for the case.

3.6.8 Following the receipt of this advice the four defendants were re-arrested and charged.

3.7 The Vulnerable Witness

3.7.1 The only alleged eyewitness who claimed to have seen the murder occur, and who was traced and interviewed, was the 12-year-old girl who was given the pseudonym ‘Bromley’.

3.7.2 ‘Bromley’ knew some of the suspects by name and by sight because she had lived in the locality.

3.7.3 Although over a period of time she gave inconsistent accounts of what she allegedly saw, police investigators continued to believe that in essence she was truthful about the fact that she had come upon the attack on Damilola in the street.

3.7.4 As a young person she would now qualify to be treated as a vulnerable witness and would benefit from the special measures set out in the Youth Justice and Criminal Evidence Act 2001.

3.7.5 Interviewing her, obtaining her evidence and dealing with her special circumstances presented complex challenges to the police investigation.

3.7.6 The police and the Crown Prosecution Service knew that the final account given by Bromley was vulnerable to attack at trial but despite extensive and painstaking enquiries they were not able to find any confirmatory evidence to support her version of events. Although the police understood that her account was crucial to the prosecution case there was and is no mechanism within the Criminal Justice System that would allow her evidence to be tested in advance.
3.8 Evidential Opportunities

3.8.1 In all criminal investigations evidential opportunities fall into a number of generic areas. These include eyewitness accounts of the offence, witness accounts of ancillary matters which may support or undermine other evidence, the recovery of any forensic evidence, the recovery of stolen property (in acquisitive crimes) or weapons (in assault cases) and the records of interview of suspects where they have elected to answer questions.

3.8.2 Admissions of suspects outside of the interview process are another potential source of evidence and these are sometimes obtained by intelligence led operations or from close associates of a suspect, or any person who has been in contact with them.

3.8.3 The preservation of crime scenes is critical, but not all crime scenes present the same evidential opportunities. Forensic evidence may derive from a victim, a suspect or the environment or items that can be attributed to a defendant.

3.8.4 New technologies have presented new evidential opportunities, some of which are susceptible to forensic scientific analysis and some of which sometimes provide additional investigative leads.

3.8.5 In this case, eyewitness evidence was solitary and admissions in interview (in those cases where suspects chose to answer questions put to them) did not occur. Confessional evidence to others (also in custody) did allegedly occur and did become the subject of scrutiny and challenge at trial.

3.8.6 Footwear and mobile telephone use also became features of the case during trial.

3.8.7 Exhibit acquisition, preservation, analysis and provenance are an important part of criminal investigations and the progress of exhibits through any necessary analytical processes has to be managed in a deliberate way. National Major Incident Room Standard Administrative Procedures include a structured process intended for the prioritisation, reconciliation and audit of all exhibits (whatever their form) and dedicated exhibit officers are invariably appointed in major cases.

3.8.8 Some forms of forensic scientific analysis can be lengthy and for scientific reasons have to be dealt with in both a hierarchical and sequential way.

3.8.9 The Panel considers that the evidential opportunities that presented themselves during the investigation were correctly identified and acted upon.

3.8.10 One potential source of evidence (the mobile telephones) however was not properly pursued through the analytical process in a timely way and the acquisition of potential evidence deriving from the footwear of one suspect was similarly delayed.
3.9 **Family Liaison**

3.9.1 The importance of effective family liaison arrangements in the aftermath of murder or other very serious crimes cannot be overstated. The process extends well beyond the duration of a criminal investigation and certainly through any criminal trial and any appeal. In some cases the families or partners of victims cannot achieve closure of their own experience for long periods of time and sometimes it does not occur at all.

3.9.2 Dedicated family liaison officers are a critical part of the necessary support process. Although trained, it is often only their personal qualities, their sensitivity and their (so called) emotional intelligence which enable them to acquire the confidence and trust of the individuals they are assigned to support. They provide information and advice and attempt to deal with the questions, concerns and apprehension of their principals in the best possible ways.

3.9.3 In this case, a clear family liaison strategy was set out ab initio and dedicated liaison officers were appointed. The officers were effectively supported and supervised and comprehensive contact records were maintained.

3.9.4 The family liaison arrangements included invitations to Mr and Mrs Taylor to attend and participate in some group meetings, which they did. The Panel believes that Mr and Mrs Taylor found the arrangements to be both appropriate and helpful and that the work of the officers involved, including their skills and commitment, should be held up as a model of good practice.

3.9.5 The Panel considers that the nature and quality of the family liaison arrangements in this case present clear evidence that the Metropolitan Police Service has put into proper effect the relevant recommendations in the Stephen Lawrence Inquiry Report both in policy and practice. The work of the MPS Racial and Violent Crimes Task Force has played a key role in this.

3.10 **Media Liaison**

3.10.1 The activities of the press and broadcast media can have a profound effect on the success of any criminal investigation and any subsequent prosecution. They will inevitably seek contact with victims, witnesses and investigators and can be of great help to an investigation where they are operating in thoughtful, helpful and complementary ways.

3.10.2 There is no inevitability about this. The pressures on the media, the police and the prosecutor are different. Some past cases have demonstrated that on occasion a minority of the media have created problems for the police and prosecutor (within the prosecutorial process) when they have acted in a pre-emptive or ill-considered way.

3.10.3 Payments to witnesses (usually for ‘exclusive’ accounts) can present legal difficulties at trial and the unilateral creation of rewards, although designed to encourage witnesses and informants to come forward, can potentially make any subsequent testimony acquired open to vigorous challenge, including in cases where motivation was not actually questionable.
3.10.4 In this case, the extraordinary circumstances of Damilola’s murder and the general circumstances extant created the very highest levels of media interest from the very beginning. This was amplified when politicians became involved in some of the issues and continued throughout the criminal trial in 2002.

3.10.5 The case remains one of legitimate public interest and media attention continues to this day.

3.10.6 The Gold Group devised a media strategy and managed it through a number of changing circumstances. A dedicated media team were brought together and a senior police officer was identified to deal with the media ‘up front’ in order to ensure that the senior investigating officer could focus on the investigation.

3.10.7 The media strategy was flexible and incorporated a comprehensive review process. It was generally judged to have been a success.

3.10.8 The assistance of the Independent Advisors in helping to devise and manage the media strategy was exceptional. They introduced innovative ideas, provided insight and experience and involved themselves in interviews and broadcasts with good effect.

3.10.9 Two issues did however arise during the investigation. The first concerned the announcement of a reward by a national newspaper. The Gold Group discussed the possible endorsement of this by the investigation. Benefits and difficulties were identified, not least the desirability of witnesses emerging as a matter of principle rather than recompense. In the event the existence of the reward was endorsed but some unease also remained about its potential effects.

3.10.10 The reward issue arose again when investigators acquired a number of accounts of alleged confessions made by some of the suspects whilst they were in custody. Many of these were allegedly made to prison inmates whose honesty and motivation would inevitably be challenged through the judicial process. Classically, the existence of the reward created uncertainty about motivation in some of the instances that were reported.

3.10.11 The second issue concerned the unauthorised disclosure of one piece of critical evidence found during the post-mortem examination of Damilola. This concerned an object (possibly) lodged in Damilola’s windpipe.

3.10.12 In most murder investigations some unique evidential feature is deliberately held back from the media and the police service in general. The purpose of this is to test the veracity of any confession brought forward either by a perpetrator or by any other individual purporting to be the perpetrator.

3.10.13 In this case, confessional evidence allegedly existed which included a mention of the particular fact that had been withheld. Ordinarily any confession that included such a detail would constitute compelling evidence. However, because the detail had been published in a tabloid newspaper before a statement was taken from the witness to whom the confession was allegedly made, the prosecution were unable to demonstrate that the information could only have been acquired from the particular suspect.
3.10.14 The tabloid newspaper had acquired this information some time earlier and had been asked by the MPS not to publish it. At that point it did not. However it did publish the detail after the suspects were charged and evidential difficulties arose as a result.

3.10.15 Very incisive internal MPS action to trace the source of the newspaper’s information was taken, but the evidential results were insufficient to enable the matter to be pursued further. It is possible that the leak did in fact come from within the police service. Whatever the explanation, the leak had a damaging effect on the case.

3.11 The 28 Day Progress Review

3.11.1 In major investigations where crime remains undetected one month after an investigation has commenced, a 28-Day Progress Review is held in the manner previously described in paragraph 3.1.3.

3.11.2 The Panel has considered the 50 recommendations made by the 28-Day Progress Review, has audited them and is satisfied that they were all adequately actioned. The great majority of these recommendations were actioned in a timely way. One or two of the recommendations were not actioned however, but only because the rationale for those actions was overtaken by developments in the investigation and the actions became redundant.

3.12 The Report of Her Majesty's Inspector of Constabulary

3.12.1 In 2000, following the publication of the Stephen Lawrence Inquiry Report, the Home Secretary instructed Her Majesty's Inspector of Constabulary to conduct a review of the arrangements for community relations and the investigation of murder cases within the Metropolitan Police District. That review, published as “Policing London – Winning Consent”, made a number of recommendations.

3.12.2 The Panel has audited the investigation of Damilola Taylor’s murder against those recommendations to see whether the MPS had acted upon them in an effective way.

3.12.3 Twelve of the recommendations of the HM I’s Review were identified which had a relevance to aspects of this case. Generally, the relevant recommendations had been followed.

3.12.4 However, there are underlying problems concerning the resourcing of murder investigations in London because of their nature, frequency and complexity. The MPS response to murder remains a significant challenge for MPS policy makers and the associated resource allocation process, not least because of finite resources and the many competing priorities (including the additional work on counter-terrorism post September 2001).
4.1 Preparation for Trial

4.1.1 In many cases a great deal of work is necessary to prepare a case for criminal trial. It extends beyond organising the evidence available when the decision to charge is made. It will usually include further statement taking to amplify or explain detail in existing statements and the production of material (often documents) which are referred to in statements or which form part of the administrative records of the investigation or judicial process.

4.1.2 In this case, Treasury Counsel responsible for the conduct of the case identified and requested a significant amount of additional work to be done.

4.1.3 Disclosure was another problem. In all criminal cases brought before the Courts, it is necessary to discharge the duty of disclosure to the defence. The underlying principle of this is that the defence should have available to it all material in the hands of the prosecution that may undermine the prosecution case or assist the defence case.

4.1.4 The duty of disclosure falls to the Prosecutor. In simple terms, all potentially relevant material must be identified in good time and either disclosed to the defence via an administrative process or alternatively brought before the Court for consideration and directions.

4.1.5 In the latter case, the Prosecutor has the opportunity to argue that the arbitrary disclosure of specific material is not in the public interest. A typical example might be information supplied by an informant or a member of the public who will be placed at risk if disclosure were to occur.

4.1.6 The Court has discretion to order that material should not be disclosed to the defence, but has to make a very careful judgement as to where the interests of justice best lie. Any information that would be materially relevant to the defence case would usually fall to be disclosed.

4.1.7 The first element of the disclosure process involves the investigation team identifying and categorising all the material acquired during the life of the case for the information of the Prosecutor. This is an ongoing process, which necessarily continues as new material comes to light including during the period leading up to the trial and throughout the trial itself.

4.1.8 The resourcing of the duty of disclosure is a heavy burden on any police investigation. The Panel considers that the Damilola Taylor investigation had insufficient resources to progress this aspect of the case in an effective way.

4.1.9 At a much later point in time, managerial intervention did remedy this situation but the delays could not be reversed.
4.2 Additional Investigation

4.2.1 It is always open to the police to continue with existing lines of enquiry and to create new ones if they are likely to prove beneficial to the case, including to the extent that evidence accrued might cast doubt on existing prosecution evidence.

4.2.2 The criminal justice process imposes time limits on the prosecution of offenders and, in cases likely to reach trial relatively quickly, there are often incomplete or unresolved lines of enquiry at the time of charge.

4.2.3 The forensic scientific analysis of exhibits (previously described) may not be available within the same time frames, either because the work is still underway or because it has been delayed. Work of this sort has to be progressed and the results made available to both the prosecution and defence before trial.

4.2.4 The analysis of mobile telephone use can be made available to investigators and to the Courts in cases of serious crime. Analysis can go beyond what calls were made or received at specific times by specific handsets and can identify the probable geographic area that a handset was within when a call was made. This latter analytical capability is known as ‘cell site analysis’.

4.2.5 In this investigation, a number of lines of enquiry were incomplete at the time the defendants were charged. These included the examination of 86 shoes and trainers seized from suspects during the original arrest operation and the analysis of mobile telephone use, where telephones could potentially be attributed to some of the suspects.

4.3 Evidence of Confession

4.3.1 From time to time, suspects who are in custody before trial become involved in conversations about their case with other prison inmates with whom they may have no other connection. These conversations usually derive either from a desire to talk about the suspect’s own case or from the curiosity and inquisitiveness of other inmates. This activity is acknowledged to be part of prison culture.

4.3.2 Prisoners will often ask each other if they are guilty as charged, but there are no conventions around the truthfulness of an answer, if any answer is given. Guilty prisoners will often assert they are innocent. Some prisoners will imply that they may be guilty and that they played a major role in a particular crime, even if they did not. This latter phenomenon is connected with status and is known within prison culture as ‘bigging up’.

4.3.3 The ambiguous nature and effect of this aspect of prison culture makes testing the veracity of any alleged admission very difficult.
4.3.4 The acquisition and presentation of confessional evidence that occurs whilst defendants are in custody is particularly difficult not least because, where the witness is a fellow prisoner, the truthfulness and motivation behind any assertion requires the most careful scrutiny at both the investigative stage and during the trial process.

4.3.5 So called ‘cell confessions’ to other inmates are not always reported promptly to the authorities in any event. Often a prisoner will agonise over the decision to report because of the pariah status that will result if the existence of the report becomes known or suspected within the institution. This is exacerbated in those cases where investigators invite someone who has given information to become a witness, because the consequent statement will inevitably become part of the evidence during the trial.

4.3.6 It is also the case that those who do decide to give information whilst in custody rarely have either the opportunity or desire to make any contemporaneous note of an alleged confession, and thus at a criminal trial some time later have only their memories upon which to rely.

4.3.7 It would be wrong for the victims of crime to be denied justice where evidence derives from so called ‘cell confessions’, however the defence has a duty to incisively probe and test what is being alleged. Doubt may be cast on a fellow prisoner’s account, either because there are obvious motivational issues or because the accuracy of an account can be called into question.

4.3.8 In some cases it is possible that a particular confession is true, even though doubt has been legitimately established.

4.3.9 In order to minimise the risk of truthful confessions failing to pass the test of reliability, it is very important that confessional evidence of those in custody is obtained in the most careful way. Ensuring that no witness is led, dealing with motivation and establishing all possible detail of time, location and the presence of others is essential, as are the consequent enquiries and interviews necessary to identify and adduce any corroborative evidence should it exist.

4.3.10 Crimes which are judged by most criminals to be reprehensible are more likely to lead to reports of confessions whilst the suspect is in custody.

4.3.11 In this case, the general circumstances of Damilola’s murder, including his age, led to a significant number of allegedly relevant conversations being reported to police. As a consequence a deliberate strategy was put into place on 9th April 2002 to enquire if those in custody alongside some of the suspects had any information to give.

4.3.12 Over a period of time a total of 175 inmates were spoken to in connection with this case. Thirty-seven of these individuals eventually made witness statements and fifteen of them went on to give evidence at court. One additional statement was read to the Court. Ten HM Prison Service employees also made statements and four of them gave evidence at court.
4.3.13 One consequence of this strategy was that a great deal of additional work became necessary and this quickly caused resource difficulties for those remaining members of the investigative team who were still assigned to the case post-charge. The availability of staff with the exceptional skills and experience necessary to obtain this type of evidence also became a problem.

4.3.14 Other problems arose because the expectations of some of the co-operating prisoners were unnecessarily raised, especially over anonymity and the potential availability of financial rewards and ‘texts’. (A ‘text’ is the covert formal document used by a Prosecutor to inform a Trial Judge that a particular witness or defendant has been of material assistance to an investigation. The information derives from the investigators in most cases, but requires the verification and support of a Chief Police Officer before it can be forwarded to the Crown Prosecution Service for use at Court. It is the legal right of a defendant to be provided with a ‘text’ where they have provided such material assistance).

4.3.15 The Panel considers that, although the ‘cell confession’ evidence strategy was innovative and tenacious, it was inadequately resourced and lacked overall direction and control. Insufficient detail was gleaned from prison records as part of the process, leaving some of the material vulnerable to avoidable challenge.

4.4 Evidence Relating to Telephone Use

4.4.1 Thirty-two mobile phones and seven SIM cards were seized during the enquiry. Information subsequently emerged that a number of the suspects had access to these mobile telephones (and their associated SIM cards) and that these assets were shared around the group from time to time in an ad hoc way.

4.4.2 Network records provide details of call time access but do not extend to the recording of conversations. Thus it can be very difficult to adduce evidence of who made what call(s). Ordinarily this would only come from admissions, from a third party witness or from a demonstrable assumption that it was unlikely anyone else could have been using a particular telephone.

4.4.3 For these reasons, investigators did not believe that the analysis of what had been seized would necessarily provide significant evidential opportunities. The importance of pursuing such enquiries however derives from the fact that the results of analysis can potentially distance a suspect from a crime scene, in the same way that it might provide evidence that an offender was there.

4.4.4 A ‘cell site footprint’ is the geographic area covered by a specific aerial array, from which an individual call made to or from a mobile telephone is transmitted or received.

4.4.5 In this particular investigation there were two dimensions to the evidential possibilities. The first was that two calls were made from one of the telephones, from within an identified cell site footprint, at a distance of 1.2 miles from the crime scene and at a point in time some minutes after the probable time of the attack.
4.4.6 The second dimension was the variety of routes and methods of transport available to any suspect travelling between the two points and into the specific footprint area.

4.4.7 The suspects in this particular case could be shown to have been present at the second location some time after the attack. However because there was no evidence of who might have been in possession of which telephone, neither the investigation nor prosecution sought to introduce the information deriving from the telephone use in evidence.

4.4.8 It was also the case that assumptions had been made about the method and minimum time it would take to get from one location to the other. These assumptions were generous and at a much later time (during the trial itself) it was possible to demonstrate that the minimum time could be much shorter. No additional evidence of these variations was available to the Court during the trial and as a consequence the original assumptions were the only ones subject to the Court’s consideration when the defence led evidence on the issue.

4.4.9 The significance of the unattributed telephone calls was their potential to provide an alibi for particular defendants, yet neither the prosecution nor defence were able to evidence who had made the calls. Importantly, one call was made only minutes after Damilola was found collapsed. Investigators believed that this telephone was used from time to time by one of the defendants but it was questionable that it was physically in his possession at the time of the call.

4.4.10 The first call was one of three made from this particular (pay as you go) telephone. Two of the calls (including the first one) were merely automated credit checks or credit top-ups. A third call was to another mobile telephone that was registered in the name of the mother of an associate of two of the defendants.

4.4.11 This woman was eventually seen by police (very late in the investigation) but denied all knowledge of owning a telephone with that number. She also stated that she never lent her own mobile telephone to her son. It remains unclear to this day who was in possession of which telephone at the various material times. Investigators believe that the possible explanations are at the very least ambiguous.

4.4.12 During the trial, cell site analysis assumed an importance not recognised in the earlier stages of the investigation. This was not least because investigators were unable to attribute particular handsets and calls to specific suspects and therefore believed that the evidence would have little probative value.

4.4.13 The Panel considers that, despite the initially unidentified importance of the material, the analytical work that was commissioned at an early stage in the enquiry could have been progressed in a more timely and effective way.
4.4.14 The Panel is cognisant that this analytical work is currently contracted out by the police to independent companies and consultants and that the scale of the demand for these services is almost unlimited in modern criminal investigation. As a consequence the Association of Chief Police Officers has necessarily agreed protocols to limit the demand. The interests of justice may however necessitate that these protocols are revisited.

4.5 Resource Issues

4.5.1 The MPS Serious Crime Group operates a weekly review of resource allocation to ensure that its available resources are being used as effectively as possible and that individual investigations have what they need wherever that is possible. This process involves senior managers having to make very difficult decisions about which cases get what. At times of greater pressure, the reality is that most investigations have to contribute to the balancing process in some way or another.

4.5.2 Requests for additional work from Treasury Counsel and the CPS came at a time when the MPS Serious Crime Group (South) had acquired a large number of new murder investigations. Pressure on resources was intense. As a consequence, most of the inquiry team were re-deployed to meet the demands of these new murder investigations.

4.5.3 The Panel considers that the nature and scale of the preparatory work post-charge was not wholly understood by senior managers who had the responsibility for resourcing this and other cases. The coincidental increase in the volume of new cases led to a situation where insufficient resources were available to those who were managing the post-charge work.

4.5.4 In October 2001 the permanent SIO was promoted to Detective Superintendent. He remained within the SCG but acquired significant additional responsibilities. He did however retain responsibility for this case.

4.5.5 At the same time, the transfer of some key staff and certain managers diminished the capability of the investigation further. The limitations on the responsibilities and scope of the (police) Gold role, and the gradual reduction of the Silver Group’s active involvement, contributed to this adverse situation not being identified earlier.

4.5.6 At one point Treasury Counsel became concerned about resourcing and a meeting with very senior officers was requested. As a consequence, new resources were then re-applied to the case.

4.5.7 The Panel acknowledges the difficulties faced by the MPS, both in general and at this particular point in time. However the transfer of resources to other pressing cases left the Damilola Taylor investigation with insufficient staff to rapidly progress the additional work requested in a timely and effective way.
5 THE TRIAL

5.1 Proceedings

5.1.1 The trial of the four defendants commenced at the Central Criminal Court, Old Bailey on 23rd January 2002 and concluded on 25th April 2002.

5.1.2 On 27th February 2002, following developments in the trial, the Crown Prosecution Service decided to offer no evidence against one of the defendants and he was discharged.

5.1.3 At the conclusion of the prosecution case, the three remaining defendants made submissions to the Court that on the evidence considered there was no case to answer. One of these submissions succeeded and a second defendant was discharged at that point.

5.1.4 The trial of the remaining two defendants did however continue until the 22nd of April when the jury were invited to consider their verdicts. On the 25th of April the Jury returned after three days and gave unanimous not guilty verdicts in respect of all of the counts on the indictment in respect of each defendant.

5.2 Excluded Evidence

5.2.1 It is not widely understood, outside of those routinely involved in the criminal justice process, that before the commencement of a criminal trial and at any time during it’s progress, the Court may be invited to consider that certain evidence should be excluded.

5.2.2 The rationale for doing so may be a challenge to its provenance, its propriety, the methods by which the evidence was obtained or the extent to which the Jury may be able to rely on the evidence as part of their own deliberations.

5.2.3 Some submissions canvass the question of whether the prejudicial effect of evidence, that can be shown to be potentially unreliable, may be so great that its prejudice will outweigh its probative value.

5.2.4 Part of the function of the Trial Judge, carried out in the absence of the Jury, is to rule on legal submissions and decide upon the evidence that the Jury can hear.

5.2.5 The prosecution has no right of appeal against the Judges rulings (nor indeed does the defence during the currency of a trial). The Government White Paper ‘Justice for All’ does however consider if (limited) reforms are necessary in this element of the judicial process.
The Panel has studied with care the various legal submissions to exclude evidence that were made in the trial and consider that the rulings had a pivotal effect on the outcome of the trial. It is not however clear to The Panel whether prosecution counsel, the CPS or the police could reasonably have anticipated that a major part of their crucial evidence might be excluded from the Jury's consideration.

The first of these rulings concerned remarks allegedly made by one of the defendants, whilst he was detained in a Young Offenders Institution, to an outreach worker and to other remarks made separately (on the same day) by a second defendant to the same outreach worker. These latter remarks by the second defendant were allegedly tantamount to a confession of involvement in the crime.

As part of his consideration the Judge asked the outreach worker if she thought the confession by the second defendant could be safely relied upon. She replied that in her opinion it could not. After legal argument, the Judge excluded the alleged confession by the second defendant but allowed the earlier remarks by the other defendant to be presented in evidence. It is not clear to The Panel what evidential status the lay opinion of the outreach worker had.

The Panel understands that those who had responsibility for the prosecution of the case believed very firmly that the Jury should have had the benefit of being able to assess this particular evidence for themselves together with all the points that challenged or underpinned its reliability.

It is probable that the prosecution would have given the most serious consideration to appeal against this ruling had this been possible in law. (A prosecution right of appeal as far reaching as this is not currently proposed within the Government White Paper ‘Justice for All’.)

The second ruling concerned the exclusion of evidence of a remark allegedly made by a third defendant to a fellow inmate whilst in custody. This alleged remark included an admission that the defendant was present and involved in the assault on Damilola, but a denial that he was personally responsible for the stabbing injury (the cause of Damilola’s death). The alleged remark also included comment that the assailants had left the scene of the attack in a motor vehicle.

There were a number of difficult issues surrounding this piece of evidence. The witness was a very young person who only came forward during the trial. The conversation had allegedly occurred some considerable time before: when the witness was originally approached as part of the investigative strategy he had stated there was no evidence he could give. It was also the case that the method used to obtain his evidence was a departure from the conventions for interviewing and obtaining evidence from young persons, in particular that no audio-visual interview by a specially trained officer took place.

This ruling illuminates the intrinsic vulnerability of cell confession evidence to being excluded for quite legitimate reasons, but without a jury having the opportunity to reach their own conclusions about its reliability after all the arguments have been rehearsed.
5.2.14 The third piece of excluded evidence considered by The Panel concerns a minute particle of glass that was found on a pair of training shoes belonging to one of the defendants.

5.2.15 The significance of this was that the Forensic Science Service had previously reconstructed a number of glass fragments found at the scene to form an almost complete beer bottle. One of these fragments was a shard of glass that was almost certainly the weapon used to stab Damilola, indeed traces of his blood and trouser fabric were recovered from the glass. The minute particle of glass found on the shoe was found to have the same chemical composition and refractive index as that of the glass found at the scene.

5.2.16 This evidence clearly had the potential to place the defendant at the scene of the attack, but it was established that the defendant had visited the scene two days after the attack. His visit to the crime scene was corroborated by local officers who were there at the same time, albeit those officers were unable to recall what footwear he was wearing at the time.

5.2.17 Counsel for the particular defendant submitted that the evidence had no probative value because the prosecution could not show that the glass could only have become affixed to the shoe at the time of the attack. The defence did not adduce any evidence to support the likelihood of this explanation and the defendant did not give any evidence on his own behalf. Under the current rules of evidence and procedure neither is obliged to do so. The Judge subsequently ruled that this evidence should be excluded.

5.2.18 It remains the case that the glass might indeed have become embedded in the suspect’s shoe subsequent to the murder, however the Jury had no opportunity to consider if they found this possible explanation persuasive.

5.2.19 This particular defendant was the same one whose alleged confession to being present at the scene was also excluded by virtue of a Judge’s ruling. Each ruling can be explained in isolation, but the cumulative effect illustrates how the rules of the Court can sometimes prevent critical issues being examined by the Jury.

5.2.20 The exclusion of this particular alleged confession had another implication because the account of the alleged conversation also included information that the suspects had left the scene of the murder in a motor vehicle.

5.2.21 At a later point in the trial, the duration of travel between the scene of the murder and the cell site footprint in which the two telephone calls were made became a critical issue.

5.2.22 The Panel believes that the current rules of evidence and procedure had a significant effect on the trial of those accused of Damilola’s murder, in that the rulings made in favour of the defence not only eroded essential parts of the prosecution case but provided the defence with an opportunity to develop what might have been untenable arguments had the evidence remained available for the Jury to consider.
5.2.23 The Panel accepts that judicial rulings are difficult and entirely a matter for the Trial Judge, but considers that the exclusionary rules of evidence may have the effect of preventing critical evidence reaching the Jury, thereby inhibiting its ability to make sound decisions in circumstances where neither the victims of crime nor those responsible for the prosecution of offenders have any remedy.

5.2.24 The Panel also believe that the absence of a prosecution right of appeal in trials where evidence qualifies to be considered for exclusion, in some cases, has the effect of affording inferior rights to victims compared to those of an accused.

5.3 Expert Witnesses

5.3.1 In criminal trials it is not possible to introduce evidence of opinion unless the opinion falls to be considered as ‘expert evidence of opinion’. The most common forms of expert evidence admitted by Courts includes the testimony of forensic scientists, fingerprint experts and pathologists.

5.3.2 In this particular case, an experienced and accredited Home Office Pathologist conducted a post-mortem examination (on 28th November 2000) on the Coroner’s behalf, and also on behalf of the police.

5.3.3 The pathologist concluded that Damilola had died as a result of a single stab wound to the inner aspect of his left thigh and that the wound had passed from front to back in a downward direction.

5.3.4 At a later point in the investigation the pathologist was asked to consider the reconstructed beer bottle that had been the subject of the work of the forensic science service, including the particular shard of glass that was believed to have been the murder weapon.

5.3.5 The pathologist’s opinion was that the shard could have been responsible for the infliction of the fatal injury and that the appearance of the wound was in keeping with some degree of a twisting movement occurring prior to the weapon being withdrawn from the wound.

5.3.6 The pathologist was also asked shortly before the trial commenced if the wound might have been caused by the victim falling onto a shard of glass or an intact bottle. The pathologist concluded that the location of the wound and the direction of its associated track were not consistent with such an explanation. Critically, the pathologist considered that a thrust of considerable force would have been required for such an implement to penetrate Damilola’s leg and this would not have occurred during an accidental injury.

5.3.7 The expert evidence of opinion given by this pathologist during the trial was consistent with her work, her conclusions and the consequent formal statements she gave to the investigation.

5.3.8 It is common for a second independent post-mortem examination to be held after a murder has been discovered and for the Coroner to give authority for this to occur. In order to allow Damilola’s family to make funeral arrangements, the Coroner asked another very experienced Home Office pathologist to carry out a second post-mortem examination on behalf of any future defendant(s). This is prescribed under The Coroners Rules 1984. The police were aware that a second post-mortem examination had taken place.
5.3.9 The Coroner rightly takes the view that the second post-mortem examination is carried out on behalf of a prospective defendant, and will become the property of that defendant and/or their advisors in the event that a charge is brought and the matter proceeds to trial.

5.3.10 In this case, the report of the second post-mortem examination was given to the defendants’ solicitors and was not copied to the police or CPS. The reason for not disclosing it to anyone other than the defendant is because its primary purpose is to safeguard that person’s interests.

5.3.11 The Panel believes that if the defendants had been charged soon after Damilola’s death, the defence would have been able to commission the services of the pathologist who carried out the second post-mortem directly.

5.3.12 In this case, as in others, there is a continuing murder investigation although a criminal trial has been concluded. The Coroner therefore must preserve the findings of the second post-mortem examination for possible use in the future. The Panel has not sought to obtain access to the report by a request to defence solicitors because of this. The findings therefore remain a matter of speculation.

5.3.13 Prior to the trial, defence solicitors requested an eminent Consultant to consider the cause and mechanism of Damilola’s death. This consultant was an experienced trauma specialist whose experience included 20 years working in the Accident and Emergency Department of a major London teaching hospital.

5.3.14 He did not have the opportunity to examine Damilola’s body and worked from photographs alone. He subsequently compiled a report in which he expressed his opinion that Damilola’s injury could have been caused by a fall onto broken glass and that the critical haemorrhage occurred from exertion when Damilola climbed the stairs afterwards.

5.3.15 In evidence the Consultant affirmed that he believed the cause of death to have been an accidental injury followed by substantial bleeding.

5.3.16 In his summing up the Trial Judge referred the Jury to the fact that one expert had seen the body and the other had not. He also pointed out a number of matters upon which the experts were agreed. However, the technical conflicts in their evidence may well have left the Jury in a poor position to distinguish between the merits of their professional views, not least because of the differences in their respective skills and experience.

5.3.17 In this case further evidence existed and although it might have been possible for the prosecution to have made an application to another Court before the trial started, it is unlikely that it would have been granted. An alternative would be to call the witness without prior knowledge of what the evidence might be, but the prosecution would be hostage to fortune in these circumstances. The evidence was unavailable to the Court and to the Jury because under current rules the defence is not required to disclose to the prosecutor evidence that they have acquired during their investigations but which they do not propose to use as part of their case. Judges do however have discretion to call a witness themselves, but interventions of this sort are rare.
5.3.18 The Panel believes that relevant evidence should not be unavailable to a jury merely because the
defence has acquired it. On the contrary, the principle of fairness that underpins the concept of
disclosure should apply equally on both sides in order to assist the Court and the Jury to establish
the truth. In Civil Court proceedings a principle of reciprocity has always applied. This rationale is
clearly set out in the Government’s White Paper ‘Justice for All’.

5.3.19 The Panel is cognisant that the current disclosure rules, practice and procedure are intended to
prevent miscarriages of justice. However because they generally apply for the benefit of defendants
in criminal cases, serious issues are raised about the rights of victims and the overall fairness of the
criminal trial process.

5.4 **Vulnerable Witnesses**

5.4.1 As previously described the only person who was traced and interviewed who claimed to have been
an eyewitness to the murder was the 12-year-old local girl who was given the pseudonym ‘Bromley’.

5.4.2 The Panel does not propose to rehearse the details of her personal circumstances in a public
document. Suffice to say that the investigators assessed Bromley to be a vulnerable child witness
and The Panel agrees with that assessment.

5.4.3 Interviewing children is unquestionably a difficult task. Interviews should be conducted in a
particular style, designed to obtain a truthful account from a child, in a way that is fair, in the
child’s interests, and acceptable to the court. Video recordings of properly conducted interviews
can be used as evidence in chief, as long as evidence presented in this manner is not contrary to
the interests of justice. The protocol that previously dealt with these issues is entitled ‘The
Memorandum of Good Practice’ and was published by the Home Office in 1992. It has now been
replaced with ‘Achieving Best Evidence in Criminal Proceedings’.

5.4.4 The experience of police dealing with major crime, in circumstances where apprehension exists
amongst local people, is that where confidence and trust can be developed, information can
sometimes be elicited from persons who are close to the suspects in the crime. It is much rarer
however for persons who give information in these circumstances to volunteer or agree to become
a witness in a criminal trial.

5.4.5 Bromley initially contacted police anonymously, but after her probable identity had been
established, for a number of reasons she was discreetly approached at her school.

5.4.6 In her initial telephone contact she had stated that she had critical information to give, claiming
that it derived from information that she had received from others. It was only later that she alleged
to police that she had witnessed the attack on Damilola.

5.4.7 The initial approach to Bromley was done sensitively and did not need to accord with the
Memorandum then extant. This was because the Memorandum only applied once a decision to
conduct an interview had been made, and in the initial stages Bromley appeared to be giving
information only.
5.4.8 Adherence to ‘The Memorandum of Good Practice’ by police was not compulsory, but the guidance should have been followed wherever practicable. Specially trained interviewers conduct these interviews within a structured framework using special techniques and skills based upon academically recognised principles.

5.4.9 On the second occasion Bromley was interviewed by a specially trained child protection officer using ‘Memorandum’ protocols and standards. This officer inevitably had a less detailed knowledge of the case and the evidence that already existed, because the officer came from a pool of trained personnel who were available to deal with all matters where their skills and experience were required.

5.4.10 A third interview was needed to develop more detail and after careful deliberation an officer was chosen who had already established a rapport with Bromley. This officer was not ‘Memorandum’ trained but did have considerable experience of dealing with vulnerable victims.

5.4.11 The CPS were consulted about the arrangements for the third interview and advised that non-conformity to the protocols was neither a contravention of the law nor would it result in Bromley’s evidence being declared inadmissible. They did however point out that evidence obtained outside of the Memorandum protocols would prevent any video of the interview being used as evidence in chief and that the witness would have to give her evidence in Court.

5.4.12 In all Bromley was interviewed on six occasions. The last interview sought to obtain clarification of earlier points and to seek an explanation about why she had changed her story.

5.4.13 The inconsistencies in her various accounts made her direct evidence essential. Further inconsistencies arose during her evidence and she eventually admitted to the Court that not all of her accounts or her evidence had been truthful.

5.4.14 There were other vulnerabilities concerning her evidence, including her possible motivation and her understanding of the pressures she would face as the sole eyewitness in such a high profile investigation.

5.4.15 She was also taken to the crime scene to describe in detail what she had allegedly seen, and was mistakenly shown a map that had already been marked in connection with the facts as then known. This had the effect of further weakening her account, albeit the circumstances were beyond her control.

5.4.16 Bromley gave her evidence over a period of six days, including time set aside for deliberate breaks. She was cross-examined by four different Barristers. That cross-examination was both vigorous and probing, as indeed it had to be in all the circumstances.

5.4.17 After her cross-examination had been concluded, the Trial Judge heard submissions and then ruled that her evidence could not be relied upon.
5.4.18 At this point Treasury Council, the CPS, the SIO and senior MPS officers conferred to discuss the rationale for continuing with the case. In the event the trial proceeded, unusually with the same jury that had heard Bromley's evidence.

5.4.19 A scrutiny of Bromley's live evidence, including her evidence in chief and cross-examination at Court reveals the very marked difference between the way the judicial process at Court treats vulnerable young witnesses as distinct from vulnerable young defendants or victims of crime.

5.4.20 The Panel welcomes the reforms introduced by the recent Youth Justice and Criminal Evidence Act 2001, which requires special measures to be considered and taken when dealing with young, vulnerable or intimidated witnesses. The Panel is concerned that the resource implications of this legislative change have not yet emerged and that difficulties will arise in the future when insufficient resources are available.

5.4.21 The inconsistencies in Bromley's statements made testing cross-examination inevitable. Her subsequent admissions during the evidence she gave exacerbated this need and the process was rigorous. Critically however, she could not have been treated in the same way if she had been a defendant or a victim because of the proper constraints set out in the Police and Criminal Evidence Act, 1984 and the Codes of Practice.

5.4.22 The importance of only asking vulnerable witnesses, victims or defendants open questions, which invite them to provide their own account of events, is clearly set out in Achieving Best Evidence in Criminal Proceedings. Leading questions that imply the answer the interviewer wishes to hear are rightly held to be capable of introducing inferior or dubious evidence into subsequent proceedings. The virtue of the rationale for treating vulnerable persons in this way is based, inter alia, on sound psychological theory, which applies equally to the cross-examination of witnesses in Court.

5.4.23 It is a matter of speculation what effect the trial had on the vulnerable witness Bromley, her family and those who are close to her. Many judicial commentators subscribe to the view that her treatment at court was necessary to expose her mendacity and prevent either a wrongful or an unsafe conviction. However a great deal of academic evidence is available to demonstrate that assertive behaviour by adults in authority situations is highly unlikely to produce unsolicited statements of truth from vulnerable young people. On the contrary, it is more likely to create acquiescence to the position being developed by the person in authority.

5.4.24 The Panel believes that Courts owe the same duty of care to vulnerable witnesses as they do to defendants and victims, and that any necessary challenges to their evidence should reflect this. Repetitive and persistent challenges to the truthfulness of a witness can have a marked and deleterious effect on a person's willpower and resistance, a fact acknowledged in R V Paris and Others (LCJ Taylor 97 Ct. App. R.99).
5.4.25 The overriding objective in the examination of witnesses at Court should be to establish the truth. All parties involved in a criminal trial need to take great care to ensure that witnesses are not manipulated as part of that process. Questioning which involves creating possible scenarios and themes which a vulnerable witness is invited to adopt can have just such an effect.

5.4.26 Care should also be taken by Courts to ensure that the rigour and incisiveness of establishing the truth of any evidence (including through cross-examination) does not infringe the rights of individuals, including witnesses, which are now enshrined in Articles 3 and 8 of the European Convention on Human Rights.

5.4.27 Alternative methods of considering the evidence of vulnerable persons are already available to the Courts and a recent Appeal Court case has demonstrated that the rights of defendants, including under the Human Rights Act, are not necessarily compromised when a vulnerable person is unavailable to be cross-examined personally.

5.4.28 The particular case (R v D, EWCA Crim 990) involved the challenged admission of a video interview of a vulnerable person, which the defence had argued at trial contained answers which were possibly unreliable. The trial had however proceeded on the basis of the video and the vulnerable person had not been called to give evidence in person.

5.4.29 In reaching its decision, the Appeal Court ruled that the rights of witnesses and victims had to be balanced with those of the defendant and that no absolute right existed to compel a witness to attend. The duty of the Court was to ensure that the trial process was fair. The rights of the defendant had not been removed in all the circumstances because the defence had been able to challenge the reliability of the video evidence and indeed did.

5.4.30 The Panel has reason to believe that Bromley and her family found her treatment at Court to be profoundly disturbing. At one point in her testimony Bromley was manifestly distraught by the arbitrary disclosure of the detail of her father’s address, information which had no evidential value to the case. The Panel believes that Courts should take great care in the treatment of vulnerable young witnesses and that the truthfulness of a witness’s testimony can be established in a range of ways.

5.4.31 The Panel consider that it is essential that the judicial process at Court should treat vulnerable young persons in all three categories (witness, victim and defendant) with the same care and according to the protocols that now exist as a consequence of the reforms introduced by the Youth Justice and Criminal Evidence Act. The Panel believes that where necessary advocates and the judiciary should be specifically briefed and/or trained as part of their own roles and responsibilities and need to remain aware of the psychological vulnerabilities of young people.

5.4.32 The Panel believes that the underlying culture of the judicial process has yet to fully recognise and take account of the emotional and psychological consequences that potentially follow from the experience of a vulnerable witness at court, including the additional trauma that can accrue.
5.4.33 The developing use of video recording during investigations has demonstrated that both process and behaviour can be improved by the transparency that is created. The Panel believes that similar benefits would accrue if the medium were routinely used during the process of a trial.

5.5 Evidence of Telephone Use

5.5.1 During the trial, Counsel for one of the defendants asserted that the telephone which was used to make a call some minutes after Damilola was murdered was in the possession of a particular defendant at the material time, but no evidence was adduced to provide any proof of this. In particular, the defendant did not give any evidence on his own behalf, and in law no defendant can be compelled to do so.

5.5.2 The Trial Judge (in his summing-up) cautioned the Jury about speculating who might have been in possession of which telephone and also about the means by which any suspect could have got from the scene of the murder to the cell-site area and the commensurate time that would take. He also gave a direction in law that (on the evidence the Jury had heard) whoever had made the particular call could not get from the first location to the second within the relevant times that had been evidenced in Court.

5.5.3 The Trial Judge also directed that the Jury could not convict a particular defendant unless they could be sure that defendant was not using the particular telephone. The Panel believes that the facts of the telephone use remain unclear and that neither of the competing explanations had sufficient probative value to have a proper effect on the establishment of innocence or guilt. Indeed following the arrests of the suspects, one SIM card was handed to police by an individual who later attempted to provide a false alibi on behalf of three of the four defendants and speculation arose about the reason that the SIM card was handed to police.
6 CONCLUSIONS

6.1 The Panel does not set out to comment on all the matters that the scrutiny of the case considered. Much of the detail was technical and did not illuminate any significant issues of concern. In general, where The Panel has not commented on specifics, there is little to advance the quality of the processes followed by the police service, including where they interface with the Crown Prosecution Service.

6.2 The Panel considers that the great majority of the MPS efforts and actions in connection with this case revealed a level of professionalism, commitment and application to the investigation and its commensurate difficulties that should be commended.

6.3 The Panel also considers that overall, the MPS response to Damilola Taylor’s murder is a manifest example of how the MPS has moved on since its unsatisfactory investigation of the murder of Stephen Lawrence in 1993.

6.4 The Panel believes that it is important that this is acknowledged. The MPS commitment to improving the investigation and detection of offences of murder is illustrated in many aspects of this case.

6.5 The Panel also believes that there are demonstrable differences between the police handling of the investigation of this case and that of Stephen Lawrence. In particular, the commitment and effort of those who responded to the incident and those involved in the investigation, the provision of early and sustained family liaison and the commitment and involvement of senior officers which will enable the MPS and its community stakeholders to work towards developing higher levels of confidence and trust in the ability of the MPS to understand and respond to crimes of major concern.

6.6 The Panel’s report, conclusions and recommendations have been informed by the thoroughness of the Review Team’s work and the extensive material made available to it by the Review Team’s scrutiny process: difficult issues were identified and brought forward for consideration during the scrutiny. The Panel found many examples of excellent and innovative work and is also aware that in hindsight the MPS might have acted in a different way in some instances. The following conclusions have been reached:-

6.7 The initial attendance and management at the crime scene was good. The seriousness and difficulties of the case were identified at the outset. The Senior Investigating Officer and the Investigation Team were committed and resourceful. The oversight arrangements for both high level guidance and support were very good.

6.8 The involvement of Independent Community Advisors was innovative and effective. Their contributions and advice greatly benefited the investigation and their help was appreciated by all.
6.9 The personal involvement of very senior officers (of Chief Officer rank) was commensurate with the circumstances of the case.

6.10 The post-charge phase of the investigation and the associated work necessary in preparing the case for trial was less well managed. The oversight arrangements were less effective and the adequacy of the resources available to the investigation in this stage (a consequence of other investigations commencing) was neither identified nor addressed in a timely way.

6.11 The recommendations identified by the initial 28-Day Review of the investigation (in January 2001) were either implemented or overtaken by events.

6.12 The various suspects in the case were arrested promptly and effectively.

6.13 The Crown Prosecution Service and those advising them made the difficult decision to authorise the consequent criminal charges, despite the challenges created by the availability of the evidence extant. The difficulties of the case were identified at the time.

6.14 The MPS went to considerable lengths (purposely not described in this Report) to acquire additional information and evidence by innovative covert means. There was a considered ethical approach to those efforts.

6.15 Dealing with the circumstances of the vulnerable child witness ‘Bromley’ and her evidence presented significant challenges to the investigation. In hindsight Bromley should have been interviewed in better ways.

6.16 The absence of any process to test the veracity of Bromley’s testimony before trial left the prosecution of the case vulnerable to problems.

6.17 The Panel considers that the treatment of vulnerable child witnesses throughout the investigative and prosecutorial processes, and through the trial process itself, needs the same special arrangements and care as that afforded to vulnerable defendants and/or the victims of crime. The relevant issues relating to witnesses are set out in the ‘Special Measures’ of the Youth Justice and Criminal Evidence Act 2001 and are referred to in the Government White Paper ‘Justice for All’.

6.18 The apparent differences between the way the Courts treat vulnerable young persons who are witnesses, rather than victims or defendants, requires further attention. The reforms introduced by the Youth Justice and Criminal Evidence Act 2001 are welcomed by The Panel.

6.19 The strategy of establishing if the defendants had made incriminating remarks whilst in custody was innovative but poorly resourced. The lack of guidelines, skills and training in this difficult area left some of the evidence subsequently obtained unnecessarily vulnerable to challenge.

6.20 Investigative work relating to the possible use of mobile telephones by the defendants was not progressed in a timely way. Its potential significance was not pursued because (to some extent) the investigators did not believe it could acquire real probative value (calls and handsets could not be attributed to specific defendants).
6.21 More work should have been done to identify and evidence all the options available to the perpetrators of the crime, travelling from the scene to a particular location (where the defendants in the case were known to have been shortly after).

6.22 The forensic examination of footwear was not progressed in a timely way. Delays in reconciling earlier investigative actions to have the footwear forensically examined were not adequately identified prior to trial and this compounded other delays created by the volume of work within the Forensic Science Service generally.

6.23 The deliberations of juries rightly remain confidential and because of this the reasons upon which they base their verdicts are not known. The Panel believes, however, that some of the evidence excluded from the Jury in this case (under the evidential rules and precedents extant) probably had a significant effect on the outcome of the trial. Greater trust in juries to objectively consider all the evidence that is potentially available in a trial is an issue which merits serious consideration by Government when considering their proposed reforms.

6.24 The Panel cannot speculate about the extent to which the Jury was exercised by the possibility that Damilola’s death was an accident. However the differences of opinion expressed by two professional experts with dissimilar qualifications is likely to have proved a challenge for them. Evidence of a third professional opinion existed and might have materially helped but it was not put before the Court because it was only available to the defence and was unused. No reciprocity of the disclosure of unused material currently exists.

6.25 Relationships with the media throughout the investigative stage were generally good. The extent of media activity during the trial presented a number of problems. The unauthorised disclosure to, and publication by a newspaper, of one piece of critical evidence seriously damaged the potential weight of an alleged confession.

6.26 The MPS has mostly acted upon the Recommendations of Her Majesty’s Inspector of Constabulary set out in the Report entitled ‘Policing London’ and published in August 2000. The nature and frequency of murders in London continue to present significant challenges for MPS policy makers and their associated resource allocation decisions.

6.27 The Panel considers that some unsatisfactory aspects of the police investigation, which are now described in this Report, did not critically or solely influence elements of the trial process in such a way that substantially predicated it’s eventual result. The Panel believes that the outcome of the case was influenced in more complex ways.

6.28 However there were instances where the nature or circumstances of the evidence obtained by the investigators left the prosecution vulnerable to avoidable challenges under the existing rules of evidence.
CHAPTER 7  RECOMMENDATIONS

7.1  General

7.1.1  The work of The Panel and the Review Team has identified a number of areas where improvements to police procedure and investigative policy are possible.

7.1.2  Minor recommendations about police procedure, investigative policy and the Criminal Justice System, including technical and administrative issues, have not been included in this Report, but The Panel have ensured that the Metropolitan Police Service (and where relevant, the Police Service nationally) consider these carefully as part of developmental work. Her Majesty’s Inspectors of Constabulary should be asked to monitor progress in these areas.

7.1.3  This Review does however consider that a number of issues were identified which are of a significant nature. These either influenced the investigation of the case, the trial process, or were potentially capable of influencing the case had the issues been identified and acted upon at the time.

7.1.4  The Criminal Justice System can only operate on the evidence which is available in a case. In this particular murder enquiry, the evidential opportunities were severely limited, despite a number of initiatives introduced by police to acquire intelligence and identify sources of information.

7.2  Categories

7.2.1  The Recommendations of this Review deriving from the issues identified fall into five categories:

- those which concern the Criminal Justice System as a whole
- those which concern the Police Service nationally
- those which concern the Metropolitan Police Service as an organisation
- those which concern those parts of the MPS which deal with murder investigations
- those which concern Her Majesty’s Prison Service

7.3  Recommendations concerning the Criminal Justice System

7.3.1  The Panel is encouraged that possible reforms to the criminal justice process are already to some extent canvassed in the current White Paper. The Panel believes that a number of aspects of the judicial process in the case of those accused of Damilola Taylor’s murder, provide further examples of the need to consider reform.
The Panel also believes that aspects of the rules of evidence and procedure extant, which are properly and necessarily intended to ensure a fair trial for defendants, arguably serve the interests of the victims of crime, relatives and witnesses less well.

This Panel considers that aspects of this case demonstrate that a perceived and actual imbalance exists in the trial process, which undermines public confidence in the Criminal Justice System and supports the importance of Government giving the most careful consideration to the possible reforms discussed in the White Paper ‘Justice for All’.

**Recommendation 1**

The Panel believes that the exclusionary rules of evidence extant would benefit from radical reform and that a better balance between the rights of defendants and the victims of crime can be found.

The exclusionary rules of evidence would be fairer if the overarching objective was to ensure that a jury was able to hear and assess as much of the available evidence as possible, in order to assist it to reach its decision.

Unreliability should only form the basis for the exclusion of evidence where unreliability is actually manifest, for specific reasons that are clearly demonstrated. This would be a departure from seeking exclusion in circumstances where it is possible to demonstrate that evidence could potentially be unreliable. Instead it would be necessary to demonstrate to the Jury that it actually was.

**Recommendation 2**

The Panel recommends that the Government give the most careful consideration to the exclusionary rules of evidence when considering its proposed reforms.

**Recommendation 3**

The Panel believes that the treatment and handling of vulnerable witnesses requires great care throughout the criminal justice process. Clear guidelines, including an agreed child and vulnerable witness assessment process (involving psychologists or other suitable qualified professionals) should exist and apply from investigation through to trial. Videotaping of such evidence should take place as soon after any event that a witness is competent to comment upon.
Recommendation 4

7.3.11 The Panel believes that a prosecution right of appeal should extend to all matters of evidence and procedure. The opportunity for appeal should generally be pre-trial, subsequent to a preparatory hearing at which all matters of law are determined, given that it would generally be undesirable to interrupt a trial or to appeal an acquittal.

7.3.12 Pre-trial hearings should consider all expert evidence of opinion and decide which witnesses can be properly presented to a jury in that capacity. Pre-trial collaboration of expert witnesses should be encouraged. Conclusions based on a professional exchange of views should be made available to the Court in pre-trial hearings.

7.3.13 The Panel recommends that the Government give the most careful consideration to extending the prosecution right of appeal to all matters of evidence and procedure when considering its proposed reforms.

Recommendation 5

7.4.1 The Panel considers that the involvement of Independent Community Advisors in difficult cases is highly desirable and that the national guidelines for murder investigation (the ACPO Murder Manual) and the associated procedural document (The Major Incident Room Standard Administrative Procedures Manual) should be amended to include this.

7.4.2 The two documents should also be amended to include comprehensive guidance and advice on witness interview strategy and the selection and training for officers who may be asked to deal with either child, vulnerable or intimidated witnesses. The training for senior investigating officers should also include these matters.

7.4.3 The Panel recommends that the Association of Chief Police Officers (ACPO) ensure that the ACPO Murder Manual and the Major Incident Room Standard Administrative Procedures Manual are amended accordingly.
Recommendation 6

7.4.4 The Panel recommends that Advice Files forwarded to the Crown Prosecution Service should include professional assessments of the reliability of the evidence to be given by a child or vulnerable witness (especially in cases where no independent corroboration of the evidence exists) and the ability of the witness to understand the court process.

Recommendation 7

7.4.5 The Panel recommends that ACPO take the lead to bring together the Judiciary, Counsel, the Crown Prosecution Service and Police to co-operate to identify the necessary procedures and safeguards which might be applied to the management, acquisition and presentation of ‘Cell Confession’ evidence (at Court) which would minimise its intrinsic vulnerability to exclusion.

Recommendation 8

7.4.6 The Panel recommends that (ACPO) National Guidelines for the management and acquisition of such evidence should be subsequently produced and incorporated in the Manuals (above).

Recommendation 9

7.4.7 The Panel recommends that ACPO ensure that the Murder Manual and other relevant guidance documents be amended to include advice on the evidential opportunities presented by new technologies (particularly mobile telephones) and how information can be gathered and made available to a Court, including in cases where at first sight there appears to be little probative value.

Recommendation 10

7.4.8 The Panel welcomes the special measures now set out in the Youth Justice and Criminal Evidence Act 2001 (under ‘Achieving Best Evidence’) but is concerned that the resource implications for the police service have not yet been recognised.

7.4.9 The Panel recommends that ACPO and police services nationally make an early assessment of the resource implications of implementing ‘Achieving Best Evidence’.
Recommendation 11

7.4.10 The Panel considers that victims, their communities and police investigators can, in some circumstances, be placed in complex and ambiguous situations when either the Press or Broadcast media have unilaterally created and announced a reward.

7.4.11 The Panel recommends that in every case where the media or other organisations are considering the issue of a reward, police investigators should work to ensure they are consulted and a holistic assessment made of the opportunities and threats that the existence of a reward might create. (The Panel is cognisant that consultation did occur in this case.)

Recommendation 12

7.4.12 The scale of mobile telephone ownership and use is presenting new challenges for criminal investigation and the presentation of evidence at Court. Protocols exist between ACPO and the Network Providers that are intended to limit and prioritise the occasions when information and evidence is sought.

7.4.13 The criminal justice process has a requirement for best evidence whenever that is achievable. The demands of the Courts and the practical difficulties faced by police investigators therefore conflict.

7.4.14 The Panel recommends that ACPO revisit the protocols that it has with the Telephone Network Providers to establish if they are still fit for purpose given the developing needs of the criminal courts.

7.5 Recommendations concerning the MPS (at Service level)

Recommendation 13

7.5.1 The Panel believes that although the initial resourcing of this murder investigation was appropriate, the resourcing of murder investigations within the Metropolitan Police District remains a serious problem. The Panel also believes that the MPS should consider the need to include the investigation and suppression of murder offences as part of its Annual Policing Plan for 2003/2004.

7.5.2 The Panel recommends that the existing decision of the MPS Management Board to enhance the resources available to the Serious Crime Groups be progressed as quickly as possible.
Recommendation 14

7.5.3

The Panel recommends that a Group of local Independent Community Advisors be created and made available within each London Borough. The existing Central Independent Advisory Group should be involved in that process, and the work of these Groups should be complementary. (The Panel is cognisant that a number of arrangements do already exist).

Recommendation 15

7.5.4

The Panel recommends that the MPS assist these Groups to identify and acquire proper selection procedures, familiarisation and (where necessary) training for members, being careful to ensure that the independence of the Groups and their members is not compromised.

Recommendation 16

7.5.5

The Panel recommends that the MPS continue with its policy of involving its most senior officers (Chief Officers) in relevant cases, ensuring that roles and responsibilities are clearly set out and that accountability is established.

Recommendation 17

7.5.6

The Panel recommends that the use of Gold, Silver and other support groups in difficult cases be continued, but their nomenclature, purpose and accountability should be clear, as should the records of their activities and decisions.

Recommendation 18

7.5.7

The Panel recommends that where a Gold Group exists it should have responsibility, inter alia, for the oversight of the investigation and the provision of resources, which are capable of making it effective. Records of decisions should be systematically kept.

Recommendation 19

7.5.8

Trained family liaison officers should be available to Borough commanders and to the Serious Crime Groups in numbers which are commensurate with the frequency of murders and other fatal incidents within the command responsibility. (It is appreciated that national disasters and international terrorism involving UK subjects abroad make this difficult to assess and manage.)
Recommendation 20

The Panel recommends that, in those cases of greatest difficulty, action is taken beyond the SCG level to identify the most experienced and relevant senior investigating officer and the associated investigative team that could be made available.

Recommendation 21

The Panel recommends that, after appointment, neither the SIO nor the resources available to the investigation team should be reassigned until a post-charge assessment of the outstanding and predicted work is available. Case preparation and disclosure activity should be carefully assessed.

Recommendation 22

The Panel recommends that any need for a post-charge strategy should be identified and agreed in major cases as a matter of good practice, and that the assessment and re-prioritisation of outstanding enquiry lines (including forensic analysis) should be critically reviewed. Adequate resources (if available) should be assigned to the predicted work.

Recommendation 23

The Panel has found that considerable difficulties exist in auditing the exact location and movement of prisoners within HM Prison Service establishments. This became an issue during the investigation when investigators were unable to show in evidence that a conversation could have occurred at the specific time and place (stated by a witness) because of the absence of prison records detailing custody and cell location movements of detainees.

The Panel recommends that HM Prison Service review the extent to which their internal information systems are able to support the identification of the best evidence opportunities.
The Oversight Panel

Terms of Reference

To review the investigation and prosecution arising from the murder of Damilola Taylor and advise the Commissioner of the Metropolitan Police Service and the Metropolitan Police Authority as to what lessons may be learned by the police and the Criminal Justice System in future cases of a similar nature.

A review and assessment of lessons to be learnt following the investigation and prosecution arising from the murder of Damilola Taylor

David Blakey
Her Majesty’s Inspector of Constabulary

Chair
Bishop John Sentamu

Perry Nove
Commissioner of Police for the City of London

DAC Stephen House
MPS
Statement by Sir John Stevens, Commissioner of the Metropolitan Police

The lack of justice for Mr and Mrs Taylor, their family and friends is a matter of deep regret both for me personally and the Metropolitan Police Service as a whole.

The investigative and prosecution team worked tirelessly in pursuit of their son’s attackers and they are as saddened as anyone that there has been no conviction for his murder.

Interviewing a 12 year old child in traumatic and challenging circumstances is not easy. We need to find a better way of dealing with such vulnerable young witnesses and offenders.

Three weeks ago I set in train an internal review of how such individuals are handled. Now that the trial is over this work can make a formal start but it needs an independent viewpoint from beyond the police service.

After consultation with the Home Secretary, the Chair of the Metropolitan Police Authority and the Mayor of London I have invited the Bishop of Stepney, John Sentamu, to chair an Oversight Panel.

The other members of The Panel will be David Blakey, HM Inspector of Constabulary, and Perry Nove, the retiring Commissioner of the City of London Police. The Panel will advise me and the Metropolitan Police Authority as to what lessons may be learnt by the police, and the Criminal Justice System generally, in future cases of a similar nature. They will also provide a link to the CPS Review established by the Attorney General.

Crimes involving young victims and young offenders with young witnesses are among the most difficult of cases to solve. Any opportunity to help improve the delivery of justice must be grasped with both hands.

Terms of Reference

To review the investigation and prosecution arising from the murder of Damilola Taylor and advise the Commissioner of the Metropolitan Police Service and the Metropolitan Police Authority as to what lessons may be learnt by the police and the Criminal Justice System in future cases of a similar nature.

Issued: 26 April 2002.
APPENDIX B

The Review Team

Terms of Reference

“To review the prosecution and evidential factors arising from the murder of Damilola Taylor, and to advise the Commissioner of the Metropolitan Police Service and the Metropolitan Police Authority as to the lessons that may be learned by the police and the Criminal Justice System in future cases of a similar nature.”

To be achieved by review of the following:

- The identification and treatment of the witness “BROMLEY”, including the acquisition and presentation of her evidence, and the examination of key events that took place during the trial
- Post arrest activity in relation to the defendants including their interviewing and the provision of their alibi’s
- Evidence excluded both before and during the trial
- Impact of the media on the case, particularly regarding the offering of rewards
- The identification and use of prison witnesses, both inmates and staff
- The use of telephony during the investigation and its use evidentially
- The role of expert witnesses both before and during the trial
- The role of the Family Liaison Officer
- The role of the Independent Advisory Group
- The management of the case, including pre-trial interface with the Crown Prosecution Service and Counsel, and issues that occurred during the trial
- Examination of the recommendations from the Metropolitan Police Service 28-day review of the investigation into the murder of Damilola Taylor, ensuring they have been actioned
- Review of the recommendations contained within the HMIC Inspection Report of the MPS (“Policing London – Winning Consent”) to ensure compliance with those recommendations that are applicable to Murder Investigation.
The Code for Crown Prosecutors

The Code for Crown Prosecutors sets out the basic principles Crown Prosecutors should follow when they make case decisions.

The Code is also designed to make sure that everyone knows the principles that the Crown Prosecution Service applies when carrying out its work. By applying the same principles, everyone involved in the system is helping to treat victims fairly and to prosecute fairly but effectively.

There are two stages in the decision to prosecute, the evidential test and the public interest test. If the case does not pass the evidential test, it must not go ahead. If the case does meet the evidential test, Crown Prosecutors must decide if a prosecution is needed in the public interest.

The general principles are set out in full below along with a précis of the requirements for “the evidential test”.

2. General Principles

2.1 Each case is unique and must be considered on its own facts and merits. However, there are general principles that apply to the way in which Crown Prosecutors must approach every case.

2.2 Crown Prosecutors must be fair, independent and objective. They must not let any personal views about ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim or witness influence their decisions. They must not be affected by improper or undue pressure from any source.

2.3 It is the duty of Crown Prosecutors to make sure that the right person is prosecuted for the right offence. In doing so, Crown Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.

2.4 It is the duty of Crown Prosecutors to review, advise on and prosecute cases, ensuring that the law is properly applied, that all relevant evidence is put before the court and that obligations of disclosure are complied with, in accordance with the principles set out in this Code.

2.5 The CPS is a public authority for the purposes of the Human Rights Act 1998. Crown Prosecutors must apply the principles of the European Convention on Human Rights in accordance with the Act.
The Evidential Test

Crown Prosecutors must be satisfied that there is enough evidence to provide a ‘realistic prospect of conviction’ against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.

A realistic prospect of conviction is an objective test. It means that a properly directed jury, is more likely than not to convict the defendant of the charge alleged.

When deciding whether there is enough evidence to prosecute, Crown Prosecutors must consider whether the evidence can be used and is reliable. Crown Prosecutors must ask themselves the following questions:

Can the evidence be used in court?

- Is it likely that the evidence will be excluded by the court?

Is the evidence reliable?

- Is there evidence which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant’s age, intelligence or level of understanding?

- What explanation has the defendant given? Is a court likely to find it credible in the light of the evidence as a whole?

- If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?

- Is the witness’s background likely to weaken the prosecution case? For example, does the witness have any motive that may affect his or her attitude to the case, or a relevant previous conviction?

- Are there concerns over the accuracy or credibility of a witness? Are these concerns based on evidence or simply information with nothing to support it? Is there further evidence which the police should be asked to seek out which may support or detract from the account of the witness?

Crown Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.