

Statement made on behalf of: The Commissioner of Police of the Metropolis
Witness: John Macdonald
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The Leveson Inquiry into the Culture Practices and Ethics of the Press

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Introduction

1. Operation Weeting has been asked by the Leveson Inquiry for an update as to the current status of the investigation into the hacking of Milly Dowler's voicemail.
2. This is a complex enquiry which is taking some considerable time to complete. To hope to reach a position of clarity, the MPS have had to carry out an hour by hour inquiry into the events of the 24th March 2002, when Mrs Dowler was able to leave a message on Milly's answer phone, and into the events surrounding a saved message left on 26th March 2002.
3. I have summarised these inquiries below.

The Original Request from the Inquiry

4. In her statement to the Leveson Inquiry, Mrs Dowler describes a “false hope moment”, when she heard Milly’s voicemail message and believed that meant that Milly was alive. She dated this to April or May 2002.
5. The MPS were asked by the Inquiry to carry out further inquiries with a view to explaining how the family had been able to leave a message and how the deletion of previous messages might have allowed this to happen.
6. The MPS commenced an investigation into how a message had been able to be left, whether space had been freed up due to deletion of previous messages and why the automated voicemail greeting that was played when her mailbox became full might have reverted back to Milly’s personal voice message.
7. This report into the findings of the MPS investigation does not go into detail about Milly’s phone being hacked. It is public knowledge that this is the case and I can confirm that there is evidence to support the fact that it happened. I would not wish to go into further detail because this is an on-going investigation which could be undermined by the release of additional information.

The Evidence

The Dowler’s account

8. Mr and Mrs Dowler's first account is set out in their Inquiry statement. As noted above, they dated the false hope moment to April or May 2002.
9. The MPS's investigations caused them to doubt whether that date, or the interpretation of events provided by the Guardian Newspaper, could be accurate. They sought to meet the Dowlers to discuss their concerns. At the time Mrs Dowler was unwell and was not able to meet the police.
10. MPS counsel made a statement on the subject to the Inquiry and it is understood that this caused Mr and Mrs Dowler considerable distress. Accordingly the MPS arranged to speak to the Dowlers at their solicitor's office. During the course of that conversation Mr Dowler queried the date of the visit to the Birdseye Building and the MPS undertook to check the available material to seek clarity on that point.

The Family Liaison Officer's Logs

11. The MPS reviewed the Surrey Police FLO's daily log. The log dated 24th March 2002 has the following entries:
 - After 18:00 hrs on 24th March 2002 Mr and Mrs Dowler attended the Birdseye Building to view CCTV recorded at 16:21 hrs on 21st March 2002.
 - At 18:55 hrs Mr and Mrs Dowler confirmed that the girl seen on 21st March 2002 CCTV footage was not Milly.

- 19:10 hrs Mr and Mrs Dowler were taken home by the FLO. Whilst at home Mrs Dowler rang Milly's mobile. The log records that Mrs Dowler "Became distressed as Milly's voicemail was now on the recorded message whereas previously there was a recorded voicemail message (automated)". This call was from Mrs Dowler's mobile number (These timings are from Surrey's FLO log). It is not known what time the FLO notes were made, and the timing in those notes does contradict the call data which indicates that the call Mrs Dowler made was at 18.32hrs. It is believed more likely that the call data is accurate and the notes were possibly completed retrospectively. The call data shows that there was an additional call from Mrs Dowler to Milly's phone at 20.32hrs, however the FLO had left the family home by that stage.

12. There is no other documentation in the possession of Surrey Police that would suggest that Mr and Mrs Dowler visited the Birdseye Building on any other occasion.

News International

13. There is no evidence at present to support a suggestion that any journalist attempted to hack into Milly's phone prior to 26th March 2002.

Mercury one2one (now T-Mobile)

14. On the 26th March 2002 there was a voicemail platform migration by Mercury one2one. That migration included Milly Dowler's voicemail box. It would have had the effect of resetting Milly's personal voicemail

greeting to an automated generic voicemail message. That automated message would have remained until changed by the owner of the phone. It should be noted, however, that this voicemail migration occurred after the 24th March (when Mrs Dowler called Milly's phone and was able to leave a message) and therefore had no impact on the 'false hope moment'.

Call data

15. There is complete call data covering a period up to 23:59 on 24th March 2002. We say this because the call data appears extensive and likely to reflect the amount of calls made when Milly went missing. Thereafter the call data is far less in volume, and does not reflect calls that are known to have actually been made. For instance, a message left on Milly's phone at 14.10hrs on 26th is not shown on the call data and neither is the call made by Surrey Police on that date to facilitate a recording of Milly's voicemail. Of the voicemail messages recorded by Surrey Police on 17th April, a number of the corresponding calls are not shown in the call data.

16. The following two points should be noted about the call data:
 - It would appear that the call duration would have to be over 16 seconds in length in order to be able to get past the greeting and to leave a message. Therefore any call duration greater than this has been researched.
 - The phone provider states that there was a purge point at an unknown time during each day when groups of messages over 72

hours old were deleted. However phone analysts from Op Weeting believe that the data appears to indicate there was in fact an automatic deletion of individual voicemails once 72 hours had been reached. If the latter explanation is correct this would support the explanation as to why Mrs Dowler got access to Milly's personal message. There needs to be an awareness that this interpretation about the automatic 72 hour deletion of voicemail is by officers from Op Weeting. The phone provider's explanation is different and does not appear to fit smoothly with the call data.

17. Bearing that in mind the Call data shows the following:
 - The last time Milly called her voicemail is shown at 17.07hrs on 20th March. An assessment of the call data indicates that at that time there was only one call in the recent history that could have resulted in a voicemail being left and this call was at 16.40hrs on 20th.
 - At 19:46 hrs on 21st March 2002 there is a call into Milly's voicemail from a friend's phone that lasts 24 seconds. That suggests a voicemail message was left. The phone provider has confirmed that the voicemail system allows a maximum of 10 messages to be left, before reaching capacity. Once 10 messages are left, the mailbox becomes full and a generic message would be played to the caller advising that no new messages can be left (rather than a personal greeting). Op Weeting have reviewed Milly's call data for the days leading up to that time, and it would appear that this call is the 10th voicemail

message left over the period 16.40hrs 20th March - 19.46hrs 21st March, therefore her voicemail would be full at that stage and an automated message would be activated.

- At 18:32 hrs on 24th March 2002 there is a call from Mrs Dowler's mobile number that lasts for 28 seconds which suggests a voicemail message has been left again.
- These events support the suggestion that the voicemail box was full with the 10 messages that could be left, and that on 24th March, some 72 hrs after Millys last sighting, messages could be left again. Mrs Dowler's call is likely to have been made when one of the previous messages from 21st March had been automatically deleted.
- The Phone provider has also confirmed that when the voicemail box was full the automated message would be heard, and once messages had started to drop off the personal voicemail greeting that Mrs Dowler heard would again have come into effect.

The Saved Message of the 26th March

18. It was noted that there was one saved message present on Milly's voicemail on the 26th March 2002 when Surrey Police, under Production Order, first accessed Milly's voicemail and recorded any content.
19. A voicemail message is marked as being 'saved' even if it has only been listened to and not manually saved. It is important to note that a message must be played in its entirety in order to be marked as saved.

Terminating a call midway through retrieving a message will still show the message as being 'new' as opposed to 'saved'. Any messages which have not been listened to would be marked as being 'new'.

20. The fact that this message was marked as 'saved' could mean that someone had listened to Milly's voicemail after her disappearance and prior to police obtaining access to her voicemail facility later on the 26th March 2002.

21. The following chronology has been evidenced:

25th March 2002

- At 16:02 hrs on 25th March a Notice of production order was served on Mercury one2one.
- Voicemails would have been preserved at this point and the number of messages able to be left would have increased from 10 to 50. It is noted however that the records available up until 17th April indicate that at no stage were this amount of messages ever stored.

26th March 2002

On 26th March Mercury one2one were in the process of changing the voicemail platforms used to store messages. Platform 19 (Milly's platform) was being shut down, and Platform 51 was to be her new one. As part of the voicemail platform migration, any existing messages on the voicemail account could not be moved to the new platform. These messages were not deleted. They were still available to be listened to

on the old platform by exercising an option 'to listen to your old messages' when accessing the mailbox. This connected the customer back to the old voicemail platform. It would also change the voicemail greeting to factory automated settings (rather than Milly's personal voicemail greeting).

- At about 09:45 hrs on 26th March a Special Procedure Production Order applied for by DC John.
- DC John says he liaised with DC Bonilla about downloading of Voicemails.
- 10:47 hrs the Production Order was faxed to Mercury one2one.
- 10:57 hrs Voicemail pin reset by Mercury one2one.
- 14:10 hrs Voicemail message left on Milly's mobile telephone.
- 15:19 hrs Voicemail pin reset by Mercury one2one.
- 15:25 hrs Voicemail download conducted by DC Bonilla.
- Surrey Police records indicate that at some point on 26th March an independent company specialising in forensic analysis of phone data was commissioned to download Milly's messages. Their attempt to do so is documented as being unsuccessful. The MPS have made contact with the head of a private telecommunications company who recollects being called by Surrey Police and asked whether they would record some voicemails. He cannot remember whether this was in relation to the Milly Dowler case or the year it occurred, however he recollects it occurred late one evening. He states that no follow up call was made in any event, and so no action taken.

22. DC Bonilla downloaded one saved voicemail message and exhibited the download. The phone provider has suggested that had DC Bonilla listened to the complete options he could have downloaded messages on the old platform (if they existed) using option 8 ('listen to your old messages') when accessing the mailbox. This was not done; however it is believed that Surrey Police were not aware of the voicemail platform migration or the fact that any messages left up to that point in time were still available to be listened to on the old platform using option 8. Further to this, the Surrey Police verbatim transcripts of their voicemail download does not record that option being available (and neither does their later download on 17th April). It should be noted that the recording on 26th March is terminated before all the options are relayed to the caller.
23. The phone provider has confirmed that the reason for the option to listen to old messages not being available when Surrey Police conducted their download on 17th April is that this option was automatically removed 21 days after mailboxes were migrated to the new platforms. This applied to all customers mailboxes as part of the migration. Milly's mailbox was migrated on 26th March, so the option to listen to old messages (i.e. on the old platform) would have been removed on 16th April.
24. In line with One2One's own procedures, they would have expected to have conducted the download themselves, as they do for all law

enforcement agencies, and then provide the recording to Surrey Police. Had they done this, they say they are likely to have been able to recover any messages that existed. Surrey Police's position is that Technical Support Unit specialist officers did perform mobile phone voicemail downloads in-house pursuant to Production Orders in 2002 and that to this day Surrey Police continue to do so with respect to voicemail accounts of customers of two other major mobile phone network providers who do not download voicemail messages themselves for law enforcement agencies.

MPS Analysis in respect of the saved call

25. We have considered why, when Surrey downloaded Milly's phone at 15.25 hrs on the 26th March 2002 the voicemail message left at 14:10 hrs was found as a saved message. It appears to indicate that in the 1hr 15 minutes between those two events, someone has accessed Milly's voicemail and listened to it.

- The MPS cannot rule out that someone has illegally accessed Milly's voicemail on the 26th March 2002. However the call data for 26th March is incomplete and we are therefore unable to conclusively establish the accuracy of this theory.
- The Information we now have about the activities carried out on 26th March 2002 do not help to give a clear picture of what has happened that day in relation to Milly's phone.
- There were a number of technical matters being carried out on that day. The Voicemail Platform migration was underway, but T-Mobile has confirmed that this migration would have had no

impact on why the message was marked as 'saved' or on the 'false hope moment'. There were two pin resets to Milly's phone; it is believed this was in order to ensure the police could get access to the voicemails, although it is not clear why the second one was required. There was the independent phone company commissioned by Surrey Police who the police say made an attempt to download whereas the company says they took no action (therefore retain no records).

26. There are some further enquiries being undertaken in order to try and seek as full an explanation as possible as to what else occurred on that day that could have affected the data on Milly's phone, specifically the 'saved message' issue. However it should be made clear that it is currently the assessment of the Inquiry team that no further clarity is likely to be provided, and that primarily because of the lack of a full set of call data and the fact that 10 years have elapsed since that time, we will not be able to obtain a definite explanation as to why the message at 14.10hrs was shown as saved.

Manual Voicemail deletions

27. The whole issue of whether any voicemails were manually deleted (rather than being deleted automatically) has been considered. In summary we cannot conclusively say whether any voicemails were or were not manually deleted; however there do appear to have been 2 messages missing that should have been present when Surrey Police carried out their second recorded download on 17th April. It is not

known why that happened and it will not now be possible to provide an explanation.

28. It must be remembered that Milly's voicemail was placed into a preserved state on 25th March, thus preventing any automatic deletion of messages. It was still in that preserved state when Surrey Police accessed Milly's voicemail for the second time under a Production Order on 17th April.
29. The saved message of 26th March, left at 14.10hrs, was no longer present when Surrey Police performed its second download on 17th April. Neither was a message that the investigation team believe was left on 1st April at 14.16hrs.
30. There are limitations in interpreting the data, as previously set out in this report i.e. the call data appears to be incomplete. It is not anticipated that any further clarity will be obtained on this issue.
31. It should be noted that the Guardian Newspaper's 16 July 2011 story and the Dowlers' witness evidence to the Leveson Inquiry were not the only occasions during which the issue of manual voicemail deletions was raised. A note of 23 April 2002 of DC John Lyndon (during the original investigation into Milly's disappearance) records his suspicion as follows:

“As per previous report, the reason why there was no voicemail present is unknown. I have liaised with [redacted] at Mercury Police Liaison and they are unable to explain why this is the case. In light of the News of the World revelation that they or a third party has accessed the voicemail it is possible that the messages had previously been listened to by unknown persons and deleted.”

32. This note was disclosed by Surrey Police to the MPS in 2011 when Operation Weeting asked Surrey Police for the original Operation Ruby documents and (in redacted form, and on a confidential basis) on 8 December 2011 to the parties in the *Mobile Phone Voicemail Interception Litigation* pursuant to the Order of Mr Justice Vos dated 18 November 2011.

33. Furthermore the possibility of manual deletion being the cause of the false hope moment was speculated upon during meetings between the Dowlers and the police in 2011. On 1 April 2011, following an explanation of the hacking of Milly’s phone by MPS, Mr and Mrs Dowler described Mrs Dowler’s “false hope moment” and wondered whether this could have been attributed to manual deletion. The MPS also explained to the Dowlers how a victim of voicemail hacking may learn of the fact that they had been hacked by messages being moved from “new” to “saved” or by way of deletion. However, there was nothing in the possession of the MPS which suggested any deletions had taken place in respect of Milly’s phone. Mr and Mrs Dowler’s concerns were discussed further. Because the MPS did not know precisely what had

happened to Milly's phone, they did not attempt to proffer alternative views or seek to dissuade Mr and Mrs Dowler from their belief that Milly's voicemail messages could have been deleted. At no time during this meeting did MPS police officers tell Mr and Mrs Dowler that messages had been deleted from Milly's phone. This was not something of which the MPS police officers were aware (either from their own investigation or from information provided by SP).

34. On 21 July 2011 in a meeting between Surrey Police and the Dowlers there was also a discussion about whether voicemails were deleted. Surrey Police did not (and was not even in a position to) confirm whether Milly's voicemails had been deleted or not. However, it was noted that Mrs Dowler was: -

“reassured that her thoughts that messages were being deleted were completely reasonable and absolutely possible given that she was able to leave messages one day but not the previous day. [The MPS SIO] had told them that it was a technique used by NOTW to delete messages they had listened to so that the owner of the phone did not know they had been listened to. So again, she was justified in her view that they could have done this, but they did not delete the recruitment agency message – or we have no evidence that supports that they did or did not delete messages from Milly's voicemail”.

Conclusions

35. The MPS are now able to say with some confidence that Mrs Dowler's "false hope moment" occurred on 24/03/2002.
36. The primary basis for this conclusion is that the FLO logs show the meeting at the Birdseye Building, as mentioned in Mrs Dowler's statement, occurred on the 24/03/2002. It is logged there that Mrs Dowler had got through to her daughter's voicemail and heard her voice.
37. Furthermore, call data shows that at 18:32 hrs on 24/03/2002 Mrs Dowler's mobile phone made a call lasting 28 seconds. This call is of a duration that supports the assertion that Mrs Dowler had got through to the voicemail of Milly. She made a further call to Milly's phone at 20.32hrs and that call lasted 27 seconds. It would appear that the reason she was able to do this is because voicemails previously left, that had hitherto filled up Milly's message storage facility, had started to drop off after 72 hours.
38. It is not possible to state why the message left at 14.10hrs on 26th March was shown as a saved message when Surrey Police listened to it at 15.25hrs. One possibility is that it was subject to an illegal intercept in that 75 minute period. However we should also consider the lack of a complete set of call data for that time when trying to interpret what happened.

39. Taking all the relevant information into account it is not possible to state with any certainty whether Milly's voicemails were or were not deleted. When Surrey Police conducted a download of her messages on 17th April there are believed to have been 2 messages that were missing. As previously stated, when trying to interpret the evidence and establish what did or didn't occur, it is necessary to consider the lack of a complete set of call data. Given this situation, whilst a reasonable understanding of the issues and events has been developed as a result of the MPS investigation, reaching a definitive conclusion is not, and may never be possible.

I believe the facts stated in this witness statement are true

Signed.....

Dated.....
