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Dear Mark,

POLICING AND CRIME ACT 2017: AMENDMENT OF THE PHRASE "INSUFFICIENT EVIDENCE" FOR CASES NOT PROCEEDING TO CHARGE

Further to our meeting yesterday and my letter of 1 December 2016, I am writing to update you on progress concerning the notification for cases where no further action is required. In moving the amendment on 2 November 2016 during Committee Stage of the Policing and Crime Bill, you expressed concerns that the phrase "insufficient evidence" implies that there was some evidence and that the former suspect would not be regarded by the general public and the media as completely innocent.

As indicated in my previous correspondence, I agreed to consult on this issue with all relevant parties, including taking note of the proposal by Sir Richard Henriques in his report on the *Metropolitan Police Service's handling of non-recent sexual offence investigations* published on October 2016, that the phrase "the case failed to meet the evidential test" should be used when communicating decisions not to charge. Following consultation with the police, Crown Prosecution Service, Attorney General's Office and others, I am now in a position to inform you that we propose to use a form of words for use based on the Henriques' wording.

When providing notification that there will be no further action, for all types of offences, the police will choose from one of two options depending on the circumstances of each case:

- The evidence did not meet the evidential stage of the full code test set out in the Code for Crown Prosecutors; or
- Further action is not in the public interest

The latter phrase will be used in cases where the CPS considers that there is sufficient evidence to meet the evidential test set out in the Code for Crown

Prosecutors, but where it is determined that it would not be in the public interest to pursue a prosecution in all the circumstances of the case.

I understand that you would like the phrase "lack of evidence" to be used when providing notification. You have previously made the point that there has been some comment in the media, in the light of high-profile cases being dropped due to "insufficient evidence", that could leave an outside observer thinking that there must have been something there. As I raised in the House, this reflects the reality of policing, in that that there has to be sufficient evidence to justify an arrest – that is, reasonable grounds to suspect that an offence has been committed. However, the investigative process in such cases will often end up with insufficient evidence – or, a "lack of evidence" – that could still mean there was some evidence, but not sufficient to charge. I appreciate that this is a small semantic difference, but it is an important distinction to make.

The pre-charge bail provisions of the Act have been in effect since 3 April. The wording of the notification will be circulated to all police forces imminently for implementation.

I am copying this letter to Lord Hailsham, Lord Dear, Lord Paddick, Lord Blair, Lord Condon, Baron Stevens of Kirkwhelpington, Lord Campbell of Pittenweem, Lord Wilson of Tillyorn, Lord Elystan-Morgan, Lord Inglewood, Lord Kennedy of Southwark and Baroness Boothroyd, who took part in the debate in Committee. I am also copying the letter to Yvette Cooper, Chair of the Home Affairs Select Committee, Diane Abbott, Lyn Brown and Lord Armstrong of Ilminster and placing a copy in the House library.

Baroness Williams of Trafford