

PUBLIC INQUIRY INTO THE DEATH OF JERMAINE BAKER

Note on behalf of the Independent Office for Police Conduct following the evidence of Catherine Hall

Introduction

1. This note is submitted on behalf of the Independent Office for Police Conduct (IOPC) and is intended to assist the Inquiry by addressing issues raised in connection with the evidence given Operations Manager Catherine Hall on 17 June 2021. It primarily concerns the applicable law and practice in IOPC investigations. The IOPC welcomes any guidance from the Chair and/or the Inquiry Legal Team about whether the contents should be supported with a witness statement and/or included in closing submissions.
2. It is not usually appropriate for IOPC investigators' opinions (no longer given) or the determinations of its decision makers to be adduced in evidence at an inquest¹. The position is, of course, different in a judge led inquiry but the IOPC supports the submissions of Counsel to the Inquiry² and for Mr Baker's family³, that findings concerning the reasonableness of force used by W80 and/or compliance with armed policing policy and guidance should be made by the Chairman without regard to IOPC decision making. Further that any findings of wrongdoing should not be expressed in terms of whether there has been a breach of the standards of professional behaviour. That is a matter for police misconduct proceedings, applying the legal tests from that jurisdiction which are not the same as in a public inquiry⁴. If following the Inquiry, it appears that IOPC decision making may have been flawed and/or there is new information which has a material impact on it, the IOPC may re-open the investigation and/or decision making⁵.
3. Prior to 2018 the IOPC was known as the Independent Police Complaint Commission but for simplicity "IOPC" is used throughout. References to legislation are to the law in force at the time of the investigation unless otherwise indicated.

¹ *R(Stanley) v HM Coroner for Inner North London* [2003] EWHC 1180 (Admin) and *Re Siberry (2)* [2008] NIQB 147 (Postscript [72])

² P102 lines 7-20

³ P13 lines 13-15

⁴ See paragraph 51 CTI's opening note referencing <https://www.judiciary.uk/wp-content/uploads/2020/10/R-W80-v-DIRECTOR-GENERAL-OF-THE-INDEPENDENT-OFFICE-FOR-POLICE-CONDUCT-judgment.pdf>

⁵ Section 13B PRA 2002 and IOPC Operations Manual: [Re-investigation of an IOPC investigation \(Section 13B\) | IOPC Operations Manual \(policeconduct.gov.uk\)](#)

4. Page (P) and line references in footnotes are to the transcript from 17 June 2021 unless the contrary is stated.

Attending interviews and answering questions

Criminal Suspects

5. The IOPC's powers and duties under the Police Reform Act 2002 (PRA 2002) include the investigation of misconduct and criminality by persons serving with the police.
6. The Lead Investigator and IOPC staff designated to assist them, have the powers of a constable⁶. The powers of arrest under Police and Criminal Evidence Act 1984 are therefore available if an interview is necessary for a prompt and effective investigation and a suspect will not attend voluntarily. A police officer suspect has the same rights as any other suspect including the "*right to remain silent*".

Subjects of misconduct investigation

7. A subject may be required to attend for an interview⁷. At interview the subject must be reminded of the misconduct caution that, "*whilst he does not have to say anything it may harm his case if he does not mention when interviewed or when providing any information under regulation 18 or regulation 22(2) or (3) of the Conduct Regulations (procedure on receipt of notice of referral to misconduct proceedings) something which he later relies on in any misconduct proceedings, special case hearing, an appeal meeting or appeal hearing.*"⁸

Witnesses

8. An IOPC investigator may require a serving officer who is a witness to attend at a date, time and place specified in a notice⁹. However, neither the regulations nor the "*Duties and Responsibilities*" standard of professional behaviour¹⁰ included an express duty or responsibility to answer questions in a dynamic witness interview. The standard was amended in 2020¹¹ to add the words in the second paragraph below:

Duties and Responsibilities

Police officers are diligent in the exercise of their duties and responsibilities.

Police officers have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer when identified as a witness.

⁶ Paragraph 19(4) Schedule 3 Police Reform Act 2002

⁷ Regulation 19 Police (Complaints and Misconduct) Regulations 2012

⁸ Regulation 16(1)(b) Police (Complaints and Misconduct Regulation) s2012

⁹ The Police (Complaints and Conduct) Regulations 2013

¹⁰ Schedule 2 Police (Conduct) Regulations 2012

¹¹ Schedule 2 Police (Conduct) Regulations 2020

9. It has not been tested whether officer witnesses who, as in this case, attend appointments, refuse to answer questions in a dynamic interview but then provide a written account, would be in breach of the amended standard. The IOPC welcomes any consideration given by the Chairman to whether acting in this way fails to promote public confidence in policing, as invited in Counsel to the Inquiry's opening note at paragraph 36.

DCI Williams' Retirement

The legal position

10. Policing is not a regulated profession which admits or removes constables from a register. Police disciplinary proceedings have their origin in the employer, employee relationship between a constable and their Chief Officer (the Appropriate Authority) with the ultimate sanction being dismissal, rather than removal from a register. However, that relationship has been overlaid incrementally by a statutory regime intended to promote public confidence.
11. Prior to 15 December 2017 disciplinary proceedings could not be brought against officers who had ceased serving with the police. However, officers could be prevented from retiring if they were suspended¹².
12. Although disciplinary proceedings could not be brought, a former officer's conduct could be investigated, and an opinion given in the final report on whether they had a case to answer for misconduct or gross misconduct or no misconduct. However, the Appropriate Authority (AA) was not required to (and should not) determine if there was a case to answer on receipt of the report¹³.
13. Where in the investigator's opinion there was a case to answer but the officer had retired before disciplinary proceedings could be brought, prior to 15 December 2017, there was no list giving this information which a potential future employer, whether police force or otherwise could consult. This gave rise to concerns¹⁴, similar to those expressed by the Chairman¹⁵. Since 15 December 2017, officers who retire may still be subject to misconduct proceedings if they have a case to answer for *gross misconduct* but not *misconduct*¹⁶. If they retire before such proceedings, they are placed on an advisory list and if subsequently dismissed (but not otherwise), they are placed on a barred list¹⁷.

DCI Williams becoming a subject of the investigation

14. Ms Hall said in her evidence "*From recollection, Mr Williams became a subject of our investigation following a report written by an expert [Chief Superintendent*

¹² R (oao Birks) v Commissioner of Police for the Metropolis 2014 EWHC 3041(Admin). Regulation 10A Police (Conduct) Regulations 2012, introduced in 2014 would have prevented his retirement without the necessity to suspend but did not apply in his case because he had given notice of retirement prior to receiving the notice of investigation.

¹³ Regulation 27 Police (Complaints and Misconduct) Regulations 2012 and see R Mark Gilmore v Police and Crime Commissioner for West Yorkshire [2017] EWHC 2867 (Admin).

¹⁴ [Death of Ian Tomlinson - Wikipedia](#)

¹⁵ P94 lines 11-17.

¹⁶ These provisions are now contained, primarily in schedule 1 Police (Conduct) Regulations 2012.

¹⁷ Police Advisory List and Police Barred List Regulations 2017.

*Hartley]*¹⁸. This recollection was incorrect as Chief Superintendent Hartley's Final Report was not in fact received until 10 October 2016¹⁹.

15. The rationale for making DCI Williams a subject was recorded on 21 July 2016 as being *"..due to the alleged failure to accurately disseminate accurate information to MPS officers/staff deployed during the operation; and that the method of dissemination may not have complied with national and local procedures and guidance in place."*²⁰ This may have been informed by discussions with Chief Superintendent Hartley whose terms of reference had been agreed on 16 May 2016²¹.

DCI Williams' retirement

16. DCI Williams was made a subject of the investigation by a notice dated 28 July 2016. He was not suspended and retired prior to the completion of the IOPC investigation. In the final report Ms Hall gave an opinion that he had a case to answer but, as above, no misconduct proceedings could be brought.²²
17. The IOPC and Mr Baker's family became aware of DCI Williams' intended date of retirement and made representations to the AA that he should be suspended to prevent it²³. The AA declined to suspend him, and Mr Baker's family issued judicial review proceedings seeking an order that it should do so. That application was refused²⁴.
18. The Chairman requested a chronology for DCI Williams' retirement²⁵ which is as follows²⁶:

11 May 2016: DCI Williams gave notice to the MPS he would retire on 27 September 2016 due to completing 30 years' service.

28 July 2016: notice of investigation served (amended 10 August 2016).

18 and 24 August 2016: interviews.

27 September 2016: retired²⁷.

23 November 2016: final report completed.

¹⁸ P75 lines 7-9

¹⁹ The report is undated but IOPC records show that it was sent by email on that date IPC0000630.

²⁰ IPCC D1 PL239 (I have not been able to find D1 on relativity but is listed on the IOPC schedules and we believe was reviewed by Ms Cartwright directly on the HOLMES account).

²¹ D1, PL197

²² Transcript 17/6/21 p86 line 12 -13

²³ The decision to suspend or not is a matter for the AA, although the IPCC were entitled to be consulted/make representations; regulation 10 Police (Conduct) Regulations 2012

²⁴**R. (on the application of AB) v Commissioner of Police of the Metropolis 2016] EWHC 2714 (Admin)**

²⁵ P88 line 21

²⁶ IPC0001059_2

²⁷ This is the intended date but following the application for judicial review, it was deferred until after the hearing for permission and interim relief had been heard on 4 October 2016; it is not known to the IOPC what the actual date of retirement was.

19. The Chairman explained that his interest in this issue was because retired officers may seek employment in connected areas²⁸. As explained above under the regime as it was then, there was no list which could be consulted by a potential employer which would reveal that DCI Williams had been under investigation for misconduct when he retired or that Ms Hall's opinion subsequently was that he had a case to answer. Since her opinion (and Ms Greens determination) was that he had a case to answer for misconduct only, that would also be the position now and it could only come to the attention of a potential employer through pre-employment checks (which would usually require consent) and/or security vetting procedures.

Whether DCI Williams was a criminal suspect

20. In her evidence Ms Hall could not remember if she had considered treating DCI Williams as a criminal suspect/subject for an offence of misconduct in a public office²⁹. The policy log³⁰ and the IOPC Final Report at paragraph 1142 confirms he was investigated for misconduct only.

Detective Superintendent Turner (Strategic Firearms Commander)

21. The Chairman asked why no notice of investigation had been served on Detective Superintendent Turner and for any rationale that may have been recorded in relation to it³¹.

22. A conduct matter should be recorded where³²:

there is an indication that a person serving with the police ("the person whose conduct is in question") may have—

(a) committed a criminal offence, or

(b) behaved in a manner which would justify the bringing of disciplinary proceedings,

23. Police officers are supervised by line managers similarly to any other employee. Poor performance, mistakes, and misjudgments (even those requiring compensation in tort) will usually be dealt with by supervisors, as "management action".

24. The legal requirement that before conduct is recorded, any breach of the standards of professional behaviour must *justify disciplinary proceedings* is interpreted to mean that at least a written warning would be the appropriate sanction if the breach is proved³³ and that it cannot appropriately be dealt with by management action or performance procedures. It follows that a breach of the Duties and Responsibilities standard of professional behavior³⁴ will not usually amount to misconduct "*justifying disciplinary action*" unless it is to some degree '*morally blameworthy and*

²⁸ P94 lines 11-17

²⁹ P77 Lines 12-13 17 June.

³⁰ D1 PL240, this does not appear to have been uploaded to Perito but is listed in IPC0000508_0001

³¹ P101, line 5 to P102 line 24

³² Paragraph 21A, Schedule 3, PRA 2002

³³ This was not explicit in the 2012 regulations but is made so in the 2020 regime, see amended paragraph 19A, Schedule 3, PRA 2002, and Regulation 16 Police (Complaints and Misconduct) Regulations 2020.

³⁴ Schedule 2 Police (Conduct) Regulations 2012

would convey a degree of opprobrium to the ordinary intelligent citizen”³⁵ or, to use the Chairman’s paraphrase of Ms Hall’s evidence, it was “poor but not that poor”³⁶.

25. Whether there is an indication of a breach sufficient to justify disciplinary proceedings is a matter kept under review throughout an investigation applying the relevant law and guidance³⁷. When such an indication becomes apparent, as for DCI Williams, the regulations require it to be recorded by the AA, for a severity assessment to be carried out³⁸ and a notice to investigation to served³⁹. There is no requirement to make or record rationales where the investigator does not believe there to be an indication. In answer to the Chairman’s request⁴⁰ there is no record of meetings at which whether there was an indication for Detective Superintendent Turner was discussed.

Policy about securing electronic data retention

26. Ms Kaufmann asked Ms Hall what steps she took to identify what relevant repositories of police information existed⁴¹ and if there was any policy within the IOPC about securing electronic data that is relevant to a particular operation⁴².

27. As Ms Hall explained⁴³ where a matter involving a Death or Serious Injury comes to the attention of the AA it is placed under a statutory duty to “secure that all such steps as are appropriate ... are taken, both initially and from time to time after that, for obtaining and preserving evidence relating to that matter”⁴⁴. The AA may also be subject to other legal duties to preserve evidence, for example by disclosure under the Criminal Procedure and Investigation Act 1996 and for coronial proceedings.

28. Where the matter is referred to the IOPC and it investigates, the AA is also under a duty to provide “all such assistance as the [investigator] may reasonably require for the purposes of, or in connection with, the carrying out the investigation”⁴⁵ and to provide all information, evidence and other things required for the purposes of an IOPC investigation⁴⁶. In MPS cases, the Commissioner’s duty to provide assistance and material is delegated to the Department of Professional Standards (DPS), which is independent from those being investigated.

29. Investigators and their supervisors working on MPS cases will have a general understanding of MPS information systems from their training and experience.

³⁵ *R (On the Application of Shaw) v General Osteopathic Council* [2015] EWHC 2721 (Admin), concerning an osteopath, at paragraph 47, approving *Spencer v General Osteopathic Council* [2012] EWHC 3147

³⁶ P101 lines 21-24

³⁷ Guidance included Home Office *Statutory Guidance on Professional Standards*, and the College of Policing’s Code of Ethics and now, its Guidance on Outcomes in Police Misconduct proceedings Performance and Integrity in Policing

³⁸ Paragraph 19B, Schedule 3, PRA 2002

³⁹ Regulation 16 Police (Complaints and Misconduct) Regulations 2012

⁴⁰ P102 lines 4-6

⁴¹ P107 lines 17-18

⁴² P108 13-17

⁴³ P107 lines 1-8

⁴⁴ Paragraph 14B, Schedule 3, PRA 2002.

⁴⁵ Section 15(4), PRA 2002.

⁴⁶ Section 17(2) PRA 2002

However, there is no policy document describing the MPS information systems' architecture, not least because this subject to constant change.

30. The IOPC has no direct access to any police force's information systems. Where the IOPC requires material from MPS information systems for an investigation, it notifies DPS. The IOPC describes the information required, for example, in the case of W80, as "*email and associated drives*". It does not specify the systems which should be searched. It is then for DPS to ensure *all* information systems are searched for the information requested, usually by arranging a search by the High Technology Crime Unit (HTCU)⁴⁷.
31. Reference was made during Ms Hall's evidence to email accounts for some of the officers involved in Operation Ankaa being deleted⁴⁸. The evidence is that these were deleted in accordance with standard MPS procedures as they not been specially demarked for preservation⁴⁹. It is correct that no request was made by the IOPC for the contents of or the preservation of those accounts (save insofar as they may have related to the FA documents⁵⁰). However, as set out above the duty to *preserve* relevant evidence operated on the AA by statute and did not require a request from the IOPC.
32. The duty on the AA to preserve evidence is absolute but the exercise of IOPC's powers to require material from the AA, particularly if it may contain personal data and/or private information, must be exercised reasonably and proportionately. The IOPC investigation did not request the deleted information as it did not believe it to be relevant for its investigation. It is, of course, a separate consideration whether it may be relevant to the inquest/inquiry. If there is an issue whether material may be relevant or not the AA can seek the views of the IOPC and/or coroner before deletion. In this case, officers were clearly aware of the necessity to preserve material for the inquest/inquiry⁵¹.
33. Ms Hall confirmed in her evidence that the material resulting from the searches of W80's email account and associated drives had been provided to the inquiry⁵². The results of the searches are produced as exhibits to Gary Hankey's statement dated 27 September 2016⁵³.

Examining Daybooks

34. It was put to Ms Hall by Ms Kauffman QC that "*the daybooks were actually reviewed by DCI Kinch and not by the IPCC*"⁵⁴. This question was in reference to

⁴⁷ See IPC0000318

⁴⁸ P108 lines 8-12

⁴⁹ MPS0003140_ Statement of Rob McPhee paragraph 13 and see MPS0003139 statement of Jamie Hewitt.

⁵⁰ P107 line 21

⁵¹ MPS0001613

⁵² P84 line 24

⁵³ IPC0001061, the exhibits do not appear to have been uploaded to relativity.

⁵⁴ P104 lines 23-25

an entry in the CRIS log at page 166⁵⁵. Ms Hall replied that she thought they were also reviewed by Ms Parsons but would clarify that.⁵⁶

35. Ms Parsons met DI Murray on 27 May 2016⁵⁷, when he had his day books with him and she examined his Operation Ankaa policy decisions. He agreed to make arrangements for the books to be retained after his retirement⁵⁸. Ms Parsons subsequently made a request on 25 August 2016 for copies of notes from the books (and those of CS Turner)⁵⁹. MPS provided copies on 30 August 2016 by email. The text in the CRIS log at page 166 which Ms Kauffman QC referred to in her question is pasted from that email. In other words, Ms Parsons attendance on DI Murray with his day books had in fact taken place before the request to the police to copy them.

36. Additionally, Alex Ives, disclosure officer, reviewed all Operation Ankaa material on 7 September 2016⁶⁰.

Body Maps

37. Ms Hall was asked about showing of photographs to W80 during his interview on 4 February 2016 and whether consideration had been given to using body diagrams to avoid unduly distressing W80⁶¹.

38. No body diagrams had been prepared at the time of the interview or since. W80 was represented by a highly experienced solicitor and an appropriate adult. Prior to showing the photographs the interviewers said:

AS. Okay. What I'm gonna do now, and then I'm gonna take a break straight after, is we've got some photos from erm, post mortem. Erm, I appreciate they erm, are, are gonna be quite graphic and they're not, they're not nice to look at and I apologise for that. But we're gonna show them to you now and then we're going to take a break and then we'll come back in after that. Okay.

Richard, do you want to go through these?

RC. Yeah.

RC. Okay. If, just again for health reasons, if you, if you want me to stop showing you these at the moment just tell me and I'll put them away.

39. No objections were made and W80 replied "*no comment*" to questions relating to the photographs.⁶²

⁵⁵ IPC0000502_166

⁵⁶ P110 L19-24

⁵⁷ Liz Parsons Workbook 9, D544 which is included on schedule IPC0000503_0070 but does not appear to have been uploaded to relativity.

⁵⁸ It is evidenced that he did so by reference to MPS0001613

⁵⁹ Email Liz Parsons to Jason Tunn 25 August 2016 13:59 which does not appear to have been uploaded to relativity.

⁶⁰ R30 which is included on schedule IPC0000513_0026 but does not appear to have been uploaded to relativity.

⁶¹ P69 line 5 to 71 line 18

⁶² IPC0000653_0018

40. The IOPC will consider using body diagrams where appropriate in future.

Danny Simpson

Dated: 22 June 2021