

PUBLIC INQUIRY INTO THE DEATH OF JERMAINE BAKER

RULING ON APPLICATION ON BEHALF OF THE INDEPENDENT OFFICE FOR POLICE CONDUCT TO ATTEND CLOSED HEARINGS

11 JUNE 2021

Introduction

1. By letter dated 19 May 2021 (“First Letter”), the Independent Office for Police Conduct (“IOPC”), which is a Core Participant (“CP”) in this Public Inquiry, applies for permission to attend CLOSED hearings which I will hold between June and September of this year. The mechanism proposed by this application is that I should amend restriction orders which I have previously granted so as to redefine “closed hearing” such that it permits the IOPC’s attendance.
2. By correspondence, upon receipt of the application, the Solicitor to the Inquiry sought confirmation of whether the IOPC intends its application to relate only to attendance at the CLOSED hearings, or whether the IOPC also seeks access to CLOSED material which will be disclosed and/or produced by the Inquiry. The IOPC confirmed by response that its intention is the latter, although this is not clear on the face of its First Letter.
3. In written submissions dated 27 May 2021, Neil Sheldon QC on behalf of the National Crime Agency (“NCA”) confirms that the NCA objects to the IOPC’s attendance at CLOSED hearings. Daniel Futter, a barrister employed by the Metropolitan Police Service (“MPS”) Directorate of Legal Services (“DLS”) adopts the submissions of Mr Sheldon.
4. I gave the IOPC a right of reply. It exercised that right by letter dated 3 June 2021 (“Second Letter”), written by its solicitor Danny Simpson.

The Application and Responses

5. The application is that three staff of the IOPC should be able to attend the CLOSED hearings in this Public Inquiry, that they should have access to material provided as CLOSED disclosure, that they should receive transcripts of the CLOSED hearings and finally that they should have sight of any CLOSED section of my report.
6. The IOPC said in its First Letter that “there may still be issues concerning the accuracy of the summary and analysis of the material” which the IOPC including in its final report published in November 2016. However, the IOPC confirmed at §2 of its Second Letter that it believes that report and opinions in it are accurate.
7. It believes that attending the CLOSED hearings and having the access it seeks would be conducive to and/or incidental to its statutory functions under section 10(6) Police Reform Act 2002.
8. In relation to whether the IOPC may receive disclosure of CLOSED material from the Inquiry, the NCA states that there is a particular reason of law that this could not happen. Mr Sheldon does not elaborate on this in his submissions, saying at §2 that he could not do so in an OPEN document. Mr Simpson writes in his Second Letter that he disagrees but takes the pragmatic approach that I need not determine this issue if I am not granting the IOPC permission to attend the hearings.
9. The IOPC wishes to attend all CLOSED hearings for all witnesses, both of the NCA and the MPS. It says that although it has had access to all material which it needed to see when carrying out its investigation, the material which appears relevant “can change as a result of Inquiry/Inquest procedures”.
10. Reliance is placed by the IOPC on the fact that it is seeking to discharge the state’s procedural duty under Article 2 ECHR, and therefore that it says its work complements that of the Inquiry.

Discussion

11. I am not persuaded that the IOPC should be permitted to attend CLOSED hearings and I therefore refuse the application. However, for reasons I shall explain, that is not to say that

the IOPC will be prevented entirely from knowing the evidence that is given in CLOSED sessions. I make that decision for these reasons:

- a. First, the IOPC, NCA and MPS agree that I have a discretion as to whether to permit the IOPC staff to attend the CLOSED hearings. The attendance of those staff is not prohibited by statute.
- b. Secondly, the IOPC does not currently have an open investigation. Notwithstanding that I accept the submission on behalf of the IOPC, in its Second Letter at §14, that it may continue to do anything which is incidental, conducive and/or facilitates its functions, I do consider that its purpose in seeking to attend the CLOSED hearings is no more than speculative. The IOPC confirms at §2 of its Second Letter that it “believes its report and the opinions in it are accurate”; if it had further investigations to carry out, that factor would weigh in the balance and may lead to a different conclusion.
- c. Thirdly, the IOPC accepts that it had all relevant material at the time its investigation was open. Had it wished to conduct further enquiries at the time, it could (and no doubt would) have done so. The Director General of the IOPC has a statutory power to reopen an investigation under s13B Police Reform Act 2002 where “satisfied that there are compelling reasons for doing so”. Not one specific reason has been given on behalf of the IOPC which would even give a suspicion that the Director General may wish to re-investigate the matters surrounding Jermaine Baker’s death. I do not need to decide whether this would constitute “investigation” in its own right, so as to be unlawful, and do not do so.
- d. Fourthly, in making the restriction orders which the IOPC asks that I vary, I recognised the sensitivity of the evidence which I will hear in CLOSED session. Although I recognise that the IOPC does regularly have access to such material, and I have no doubt that any information would be handled by the IOPC with the utmost appropriate professionalism, I consider that there is a public interest in keeping the attendees at such a hearing to the smallest number that is necessary for the Inquiry to fulfil its terms of reference.
- e. Fifthly, the Inquiry will strive to gist, or make OPEN, as much of its CLOSED evidence, report and recommendations as possible. This would of course be so even

were it not for the application of the IOPC. However, happily in this instance, it means that the IOPC may consider after the CLOSED hearings whether there is likely to be anything in those hearings which it would wish to take into account in any newly opened investigation. At that time, the IOPC would be able to make a targeted application on a reasoned basis, rather than the necessarily speculative application which it makes now.

- f. Sixthly, the CLOSED hearings will be transcribed (albeit the verbatim transcripts will be held securely and will not be circulated to CPs in the same way as OPEN transcripts). I shall permit the IOPC to renew its application, upon receipt of those gists and on such an informed basis, for access to the CLOSED transcripts. Since the IOPC confirms at §3 of its Second Letter that, were the application granted, it is not intending to suggest questions for the witnesses, there is no prejudice to the IOPC in adopting this staged approach.
- g. Seventhly, I do not accept the submission made on behalf of the NCA that Witness C may not give her best evidence to the Inquiry if she knows that the IOPC is in the hearing room reviewing her evidence so as to assess whether anything she might say will “incriminate” others. I expect that Witness C, and all witnesses giving their evidence in CLOSED or OPEN session will do their utmost to assist the Inquiry. I would share the surprise of the IOPC if any witness were any less candid should its staff be present. However, that is not a positive reason why I should permit the IOPC to be present.
- h. Finally, the IOPC was in attendance at the OPEN hearings in March 2021 in which the MPS and NCA sought restriction orders such that some evidence would be heard in CLOSED hearings. No objection was raised at the time. At §20 of its Second Letter the IOPC apologises for the delay in making the application and submits that there does not appear to be prejudice to any party in making the application late. I disagree. The application has come at a time when CPs, and the Inquiry Team, are under significant pressures to complete final preparations for the Inquiry’s evidential hearings which commence on Monday 14 June 2021. For this application to be made more than two months after the terms of the restriction orders were argued and determined puts the public to further expense and puts an unnecessary pressure on teams which I understand are already working at full capacity.

12. For all these reasons, the application is refused. The IOPC has liberty to renew the application upon the conclusion of the evidence hearings, which is likely to be in August 2021, at which time it may consider the OPEN gists and apply for the transcripts of CLOSED hearings if so advised.

HH Clement Goldstone QC

Chairman, Jermaine Baker Inquiry

11 June 2021