

PUBLIC INQUIRY INTO THE DEATH OF JERMAINE BAKER

Witness Statement of Ian Balbi

I, Ian Balbi, will say as follows:-

1. I am the Head of Police Discipline Policy at the Home Office. My role includes responsibility for policy relating to police disciplinary proceedings including for former officers where applicable.
2. This statement is in response to a request from the solicitors to the Inquiry dated 30 July 2021 for information covering:

a. changes since 2015 to Police Regulations insofar as those changes affect the resignation and/or retirement of police officers in respect of whom there may be disciplinary proceedings;

b. the position in December 2015 in respect of the same; and

c. whether any further changes are currently being considered in respect of the same and if so, broadly what they are and the likely timeframe for their implementation.

Legislative background

3. The position as to whether (and, if so, which) disciplinary processes apply to former police officers depends on the date on which an allegation came to the attention of the local policing body or a chief officer of police (known as the Appropriate Authority). Whilst the Police (Conduct) Regulations 2020 (SI 2020/4) ("the 2020 Regulations") revoke earlier conduct regulations, they contain saving provisions for the Police (Conduct) Regulations 2012 (SI 2012/2632) ("the 2012 Regulations"), the Police (Conduct) (Amendment) Regulations 2014 (SI 2014/3347) ("the 2014 Regulations"), the Police (Conduct) (Amendment) Regulations 2015 (SI 2015/626) ("the 2015 Regulations"), and specific provisions of the Police (Conduct, Complaints and Misconduct and Appeal Tribunal) (Amendment) Regulations 2017 (SI 2017/1134) ("the 2017 Regulations").

Position in 2015

4. At the beginning of 2015, disciplinary proceedings were governed by the 2012 Regulations. Police officers were able to resign or retire during investigations or

proceedings. Disciplinary proceedings were unable to commence or continue against an officer should they decide to resign or retire.

5. On 12 January 2015, the law changed. The 2014 Regulations inserted regulation 10A into the 2012 Regulations from 12 January 2015. In short, this prevented police officers under investigation from resigning or retiring without prior consent of the Appropriate Authority. This applied where an officer was subject to investigation for misconduct or gross misconduct and until such time as either:
 - a. it was assessed that the conduct, if proved, would not amount to misconduct or gross misconduct;
 - b. it was assessed that the conduct, if proved, would amount to misconduct (but not gross misconduct) and the officer did not have a final written warning in place,
 - c. it was decided not to refer the case to a misconduct hearing; or
 - d. the proceedings were concluded.

The Regulations allowed for consent to be given by the Appropriate Authority where either the officer was medically unfit to continue to be subject to proceedings or whether other exceptional circumstances applied.

6. On 13 March 2015, regulation 4 of the 2015 Regulations amended an oversight in regulation 10A of the 2012 Regulations (as inserted by the 2014 Regulations) by inserting a new paragraph (2A) into regulation 10A. This set out that regulation 10A did not apply where the allegation against the officer came to the attention of the Appropriate Authority before 12 January 2015 (the date on which the 2014 Regulations came into force).
7. These changes to the Regulations were introduced in order to increase public confidence, ensuring that where former officers were assessed as having a case to answer for gross misconduct (or misconduct where they had a final written warning in place at the time of the conduct assessment), they could still be subject to a misconduct hearing, notwithstanding their departure from the force. However, the consequence of regulation 10A was that the officer in question could not leave the force, and so remained 'employed' and was therefore entitled to be paid pending the outcome of any disciplinary proceedings. There could be delays, particularly if other investigations were ongoing. Accordingly, further amendments were made in 2017.

Position as of 2017 (and Barred & Advisory Lists)

8. Amendments to sections 50 and 51 of the Police Act 1996 (under which conduct regulations are made) were made by section 29 of the Policing and Crime Act 2017. This allowed regulations to be made providing for disciplinary proceedings to be brought against former members of police forces and former special constables in certain circumstances. The 2017 Regulations were made in reliance of these new powers and came into force on 15 December 2017. These Regulations amended the 2012 Regulations, revoking regulation 10A (as inserted by the 2014 Regulations and amended by the 2015 Regulations, as explained above) and providing that disciplinary proceedings may be brought against an officer who has resigned or retired in certain

circumstances. Those circumstances are within what is allowed by the primary legislation, and are set out below in paragraph 13. These provisions only applied to persons who ceased to be a member of a police force or a special constable on or after 15 December 2017¹.

9. Section 30 of, and Schedule 8 to, the Policing and Crime Act 2017 inserted a new Part 4A of the Police Act 1996. This, and the Police Barred List and Police Advisory List Regulations 2017 (SI 2017/1135), introduced, with effect from 15 December 2017, the Police Barred List and Police Advisory List. The Police Barred List prevents any individual dismissed (under either the conduct regulations or performance regulations) from re-joining a police force or specified law enforcement agencies in the future. All individuals who have resigned or retired during an investigation are placed on the Advisory List until that investigation has concluded. In addition, all officers who have left a force and an allegation against them, which could have led to their dismissal, later comes to light, are also placed on the Advisory List until the investigation is complete. In both cases, where the individual subsequently receives a finding that they would have been dismissed had they not left the force, they are placed on the Police Barred List.
10. These lists were introduced as part of the Government's commitment to improving police integrity, as well as increasing the accountability of those dismissed from policing. They were also intended to increase the transparency of the police discipline system by requiring publication of these individuals' details, unless subject to an exemption from publication in limited circumstances, in order to raise public confidence in the police. Individuals remain on the list indefinitely, unless they successfully appeal against their dismissal or make a successful review application. Reviews cannot be requested for a minimum of five years for conduct matters.

Situation as of 2020

11. The 2020 Regulations, along with the Police (Complaints and Misconduct) Regulations 2020, the Police (Performance) Regulations 2020 and the Police Appeals Tribunal Rules 2020, were the final part of widescale reforms to the police complaints and discipline systems, which began with the Policing and Crime Act 2017² and concluded with four sets of 2012 regulations being replaced³. Changes to the system included (i) giving local policing bodies a role in the handling of police complaints, (ii) the introduction of the Reflective Practice Review Process, (iii) a redefined threshold for what constitutes misconduct and (iv) additional powers for the IOPC. The 2020 Regulations did not change the position in respect of when misconduct proceedings could be brought against a former officer. The 2020 Regulations apply to misconduct allegations coming to the attention of the Appropriate Authority on or after 1 February 2020.
12. The saved regulations and provisions mentioned above at paragraph 3 continue to have effect in relation to (i) allegations against a police officer which came to the attention of the Appropriate Authority before 1 February 2020 (a "pre-commencement allegation"),

¹ Section 29(7)(a) of the Policing and Crime Act 2017

² Part 2 of, including Schedules 4-9 to, the Policing and Crime Act 2017

³ Police (Complaints and Misconduct) Regulations 2012, Police (Conduct) Regulations 2012, Police (Performance) Regulations 2012 and Police Appeals Tribunals Rules 2012

and (ii) allegations against a police officer which come/came to the attention of the Appropriate Authority on or after 1 February 2020 and which relate to a matter in respect of which a pre-commencement allegation was made, if that earlier allegation is still being handled in accordance with the earlier regulations or provisions or Part 2 of the Police Reform Act 2002 (complaints and misconduct).

13. The 2020 Regulations have the same effect in respect of misconduct proceedings against a former officer as the 2017 Regulations. Accordingly, since 15 December 2017, the circumstances in which disciplinary proceedings may be brought against an officer who has resigned or retired are as follows.

a. First, an allegation must have come to the attention of the Independent Office for Police Conduct (IOPC), a local policing body or a chief officer of police (“a relevant body”) which indicates that the conduct of a person who at the time of the alleged conduct was a police officer may amount to **gross misconduct**.

b. Second, either condition A, B or C must be satisfied:

Condition A is that the person ceased to be a police officer after the allegation first came to the attention of a relevant body. OR

Condition B is that (i) the person ceased to be a police officer before the allegation first came to the attention of a relevant body, and (ii) the period between those events did not exceed 12 months. OR

Condition C is that (i) the person ceased to be a police officer before the allegation first came to the attention of a relevant body, (ii) the period between those events exceeded 12 months, and (iii) the Director General of the IOPC has made a special determination under Part 1A of the 2012/2020 Regulations that taking disciplinary proceedings against the person in respect of the alleged gross misconduct would be reasonable and proportionate.

Other

14. Since December 2017, under the circumstances set out above, the legislation purposefully only allows disciplinary proceedings to be brought against former officers in respect of **gross misconduct** – and not **misconduct**. The ability to bring proceedings in this circumstance coincides with the introduction of the Police Barred List in December 2017. The bringing of proceedings for gross misconduct plays a specific purpose, in that those who are dismissed (or would have been dismissed had they not left a force) are placed on the Barred List preventing them from re-joining a police force.

15. For a serving officer found to have committed misconduct, the maximum sanction is a final written warning which remains on the officer’s personnel file for a period of two years. If further instances of misconduct by that officer take place during the lifetime of the warning, then action can be taken by the relevant police force including dismissal, because the officer is already subject to a final written warning. If there are no further instances of misconduct, the warning lapses at the end of the relevant period.

16. However, in the case of a former officer, forces are unable to issue such a sanction where that officer no longer holds the office of constable and has no employment status with that force.
17. The purpose of the police misconduct regime is threefold⁴:
 - maintain public confidence in and the reputation of the police service;
 - uphold high standards in policing and deter misconduct; and
 - protect the public.

The bringing of disciplinary proceedings for misconduct in respect of former officers is unlikely to achieve any of these criteria when sanctions cannot be imposed. Post-employment disciplinary proceedings are therefore purposefully focussed on matters which amount to gross misconduct.

18. However, for cases handled under Schedule 3 to the Police Reform Act 2002 and the Police (Complaints and Misconduct) Regulations 2020, where the initial assessment is that the conduct does not amount to gross misconduct, the investigation under that Act and those regulations will continue, even though the case will be unable to lead to disciplinary proceedings (unless the final determination is one of gross misconduct). For both these cases, and those handled under the 2020 Regulations, where an investigation has begun and, during that investigation the assessment is subsequently changed from gross misconduct to misconduct, the force or IOPC, will have discretion as to whether to continue that investigation.
19. There are no legislative changes currently being considered in respect of disciplinary procedures for former police officers.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Signed: Ian Balbi

Dated: 03/09/2021

⁴ College of Policing: Guidance on outcomes in police misconduct proceedings