

PUBLIC INQUIRY INTO THE DEATH OF JERMAINE BAKER

Note on behalf of the Independent Office for Police Conduct concerning “recommending” Management Action

Introduction

1. This note is submitted in response to the Chairman’s request for more information about the decision-making process following completion of an IOPC final investigation report, with reference to “management action”.
2. That request was made in respect of the *“the decision of the IOPC to take no action as far as Superintendent Turner was concerned¹”*. The Chairman later asked if it would be helpful if the IPCC’s informal power to suggest management action was given some teeth².

Superintendent Turner

3. As submitted by Mr Butt for the Metropolitan Police Service, the IPCC investigator, having considered the expert report received concerning Superintendent Turner’s role, she was not of the opinion there was any indication or case to answer, that he had breached the standards of professional behaviour or that his performance was unsatisfactory. The IOPC do not believe it is appropriate, at this stage, to express any view on whether, had she been in possession of the expert reports subsequently received by the inquiry, her opinions may have been different.

Management Action and the disciplinary regime 2015-2020

4. Management Action was not created or defined in regulations; it was part of the normal managerial responsibility of managers to supervise those they line manage. The Home Office Guidance 2015 (provided to the inquiry solicitor by email on 6 September 2021 16.08) states as follows

Management action

2.140. The purpose of management action is to:

¹Transcript 8 September page 56 lines 23-24.

² Transcript 8 September page 60, lines 20-22.

a. Deal with misconduct in a timely, proportionate and effective way that will command the confidence of staff, police officers, the police service and the public.

b. Identify any underlying causes or welfare considerations.

c. Improve conduct and to prevent a similar situation arising in the future.

2.141. When appropriate, managers in the police service are expected and encouraged to intervene at the earliest opportunity to prevent misconduct occurring and to deal with cases of misconduct in a proportionate and timely way through management action. Even if the police officer does not agree to the management action it can still be imposed by the manager providing such action is reasonable and proportionate.

2.142. Management action may include:

a. Pointing out how the behaviour fell short of the expectations set out in the Standards of Professional Behaviour

b. Identifying expectations for future conduct.

c. Establishing an improvement plan.

d. Addressing any underlying causes of misconduct.

2.143. The police officer may in some cases be advised that any future misconduct even if it is of the same type, could be dealt with by disciplinary action rather than management action.

2.144. The manager may draft an improvement plan with the police officer. This should include timescales for improvement in the conduct. A written record should be made of any improvement action and placed on the police officer's PDR or equivalent. Any such note should be agreed as an accurate record with the police officer concerned and copied to him or her. Where the police officer does not agree with the record then his or her comments will be recorded and kept with the record. Managers should ensure that any improvement plan recorded on the police officer's PDR (or equivalent) is regularly reviewed and comment made as to the improvement or otherwise of the police officer.

2.145. Management action is not a disciplinary outcome but is considered to be part of the normal managerial responsibility of managers in the police service. Management action is always available, including during or after the process of resolving a complaint using Local Resolution. Management action does not have to be revealed to the CPS as it does not constitute a disciplinary outcome.

2.146. Where an appropriate manager decides at the severity assessment that management action is the most appropriate and proportionate way to deal with an issue of misconduct, there will be no requirement to conduct a formal investigation and therefore no requirement to give a written notice to the police officer concerned in accordance with the provisions in the Conduct Regulations. Where at a later stage, either following the investigation or on withdrawal of the case (under regulation 20 of the Conduct Regulations or Regulation 10 of the Complaint Regulations), an appropriate manager decides to take management action, written notice of this will be given to the police officer as soon as possible.

2.147. Management action is not to be confused with management advice. Management advice is a disciplinary outcome that can only be imposed following a misconduct meeting or hearing.

5. The requirements at the time of the IPCC final report in this case required that it summarised the evidence, referred to or attached the relevant documents and gave the investigator's opinion on whether there was a case to answer for misconduct or gross misconduct³. There was no requirement to give an opinion on whether management action may be appropriate.
6. Although it was not required, investigators did in practice, sometimes *suggest*⁴ that less serious cases to answer could be dealt with by management action (see 2.146 above) and/or that failures that fell short of a case to answer could be dealt with in that way.
7. Following receipt of the final report from the investigator the IPCC commission delegate was required to send the report to the Appropriate Authority (AA) under paragraph 23 of Schedule 3 Police Reform Act 2002 (the schedule). The AA was then required to:
 - (6)
 - (a) in accordance with regulations under section 50 or 51 of the 1996 Act, determine—
 - (i) whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer, and
 - (ia) whether or not any such person's performance is unsatisfactory, and
 - (ii) what action (if any) the authority is required to, or will in its discretion, take in respect of the matters dealt with in the report, and
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8. These determinations were required to be set out in a memorandum. Under paragraph 27 of the schedule where the IPCC disagreed with the AA's determinations in the memorandum, it could recommend and ultimately direct the AA to bring disciplinary proceedings (as in the case of W80). Because management action did not amount to disciplinary proceedings⁵, the IPCC had no power to recommend or direct it.
9. Where an AA, disagreed with a *suggestion* that there should be management action or, as a result of a suggestion or otherwise, decided to arrange management action, it would be appropriate to include this in the memorandum (see 23(6) (a) (ii) and (b) above). In practice it would be rare for an investigator to record an opinion that they had considered management action but not suggested it or where no suggestion had been made, for an AA to record in a memorandum they had decided against it.

Current Position regarding Management Action

10. The statutory regime, since 2020, has replaced management action in the disciplinary regime with a *Reflective Practice Review Process*⁶. An officer may

³ Regulation 20 Police (Complaints and Misconduct) Regulations 2021 as then in force.

⁴ This word is used rather than "recommend" which has a technical meaning in the legislation.

⁵ Regulation 3 Police (Conduct) Regulations 2012

⁶ [Home Office Statutory Guidance 0502.pdf \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/90502/home-office-statutory-guidance-0502.pdf) section 4, p153

be referred into the review process, where it is determined that their practice requires improvement.

11. There are a number of gateways for referring an officer to the review process, which include, a determination by the IOPC, following an investigation of a conduct matter or public complaint, that the officer's practice requires improvement⁷. The IOPC wishes this power to be extended to practice requiring improvement which is identified during Death or Serious Injury Investigations, but this requires primary legislation⁸.

Danny Simpson

17 September 2021

⁷ Paragraph 23(5A)(c), Schedule 3 Police Reform Act 2002 and Regulation 65(3)(b)(ii) Police (Conduct) Regulations 2020, see also the [Statutory guidance on the police complaints system \(policeconduct.gov.uk\)](https://www.policeconduct.gov.uk) paragraph 17.66.

⁸ The IOPC's powers to investigate police relate to public complaints, conduct matters (an indication of misconduct or criminality) and Death or Serious Injury cases (where a person has been seriously injured or dies following contact with the police even though there has been no complaint and there is no indication of conduct). Paragraph 25 relates only to complaint and conduct matter investigations.