

PUBLIC INQUIRY INTO THE DEATH OF JERMAINE BAKER

Witness Statement of Richard Martin

1. I have been asked to respond to a Rule 9 request for a witness statement concerning W80's return to work following his suspension as a result of the shooting of Jermaine Baker on 11 December 2015.
2. Between December 2016 and February 2019, I was the Deputy Assistant Commissioner with charge of the Directorate of Professional Standards (DPS) within the Metropolitan Police Service (MPS). As a result, I was involved in the decision-making process around W80's continued suspension and ultimately his return to work under restrictions. I retired from the MPS altogether on 31 December 2020.
3. Below, I set out the dates on which relevant decisions were made and refer to underlying documentation where appropriate and where this is available. It will be appreciated that the MPS retention policy is such that not all electronic material relating to W80's suspension and return is still available at this point in time (emails are automatically deleted after 3 years unless put into litigation hold otherwise preserved).

W80's suspension between December 2015 and June 2017:

4. The decision to suspend W80 was authorised on 13 December 2015 by my predecessor in the role, DAC Fiona Taylor. The central reason for the suspension was straightforward – W80 was to be investigated by the IPCC for the criminal offence of murder. DAC Taylor's rationale was recorded in writing the following day [RM/1]:

Options of alternatives to suspension considered

It is considered that in view of the serious nature of the allegation that it is appropriate that W80 be suspended from duty.

It is necessary and in the public interest to remove from normal duty because:

There is no role the officer could perform while subject to such a serious allegation.

It is not appropriate to remove the officer from normal duty because:

N/A

Conditions to be imposed on the officer and rationale

On 11th December 2015, a police operation was conducted in which W80 was deployed as a firearms officer. During this operation, W80 fatally shot a male subject. The matter was declared an IPCC independent investigation. The IPCC currently believe that a criminal offence, namely murder, may have been committed by W80.

I have carefully considered whether the officer could be redeployed to an alternative role within the MPS whilst subject to this allegation. I am satisfied that there is no role the officer could perform in these circumstances. Due to the gravity of the offence alleged and the potential impact on community confidence, I am satisfied that it is in the public interest for the officer to be suspended at this time.

It is therefore directed that W80 be suspended from duty.

The BOCU are reminded to ensure that a named designated welfare officer is appointed and that a fully documented robust and proactive welfare support plan is in place for the officer.

The decision to suspend W80 will be reviewed as the investigation progresses or on receipt of any further significant update.

5. In all cases where an officer is suspended, the decision must be reviewed every 28 days. Until December 2016, when I took over the post, these monthly reviews were conducted by DAC Taylor. From January 2017 onwards I had responsibility for these reviews.
6. For the first eighteen months of W80's suspension, these monthly reviews were conducted primarily by reference to existing papers in the case, although DPS would also receive periodic updates as to W80's welfare and views. The balancing exercise during that time produced the same result – the overwhelming factor being that W80 remained under investigation for murder throughout that period.

Suspension lifted in June 2017

7. On 14 June 2017, the Director of Public Prosecutions decided not to charge W80 with murder (or any other offence). The CPS issued a statement concluding that the evidential threshold set out in the Code for Crown Prosecutors was not met in this case, and that no charges would be brought against W80.
8. This decision marked a clear change in circumstances. I initiated a substantive review of W80's suspension.
9. I invited the IPCC to indicate their position on W80's continued suspension, which the IPCC then communicated by way of a letter from Commissioner Cindy Butts dated 19 June 2017 [RM/2]. This stated:

Thank you for your letter dated 14 June seeking my representations in light of the impending review of W80s suspension by T/DAC

Martin in accordance with regulation 10(8)(c) of the Police (Conduct) Regulations 2012. I agree that the circumstances pertaining to W80s suspension have changed in light of the CPS decision to not prosecute W80. However I am conscious of the fact that Mr Baker's family have chosen to exercise their right to a review of this decision in accordance with the Victims Right of Review (VRR) scheme. In light of this I am of the view that W80s suspension remains in the public interest on account of the fact that the VRR process is still ongoing and as such there is the prospect of W80 being charged with an offence of homicide. I therefore refer you to the most recent representation I have made pertaining to the public interest in this regard which I have enclosed for ease of reference with this letter.

Suspension matters are clearly a matter for the appropriate authority and therefore I suggest that if you were not minded to await the decision of the VRR process then I would suggest placing W80 on restricted duties would be appropriate in the circumstances. In my view the conditions that ought to be imposed would include the following:

- That W80 should have no direct contact with the public
- W80 should not be permitted to resume firearms duties
- W80 should not lead or participate in any training provided to firearms officers

I look forward to hearing from you regarding your deliberations pertaining to your decision.

10. The IPCC letter did not indicate whether they had consulted the family of Jermaine Baker. I wrote back to the IPCC to request that this consultation take place [RM/3].
11. The family's views were provided to me in a letter from their solicitors dated 22 June 2017 [RM/4]. The letter stated:

The family understand that you are currently reviewing the suspension of W80 and that on 21 June 2017 you wrote to the IPCC Commissioner, Ms Butts, inviting the family to make any representations in that regard.

It is the strong view of the family that W80 should remain suspended. The family have exercised their right to request a review of the decision not to prosecute and, bearing in mind the content of the IPCC report, there is plainly a real prospect that the review in this case will lead to prosecution. Moreover, even leaving side the question of any criminal prosecution, the IPCC has found that W80 has a case to answer for gross misconduct in respect of the circumstances in which he fired the shot that led to Jermaine's death; that being so, it would be of grave concern to the family, and to the public at large, if W80 were permitted to return to work.

12. I also requested and received an update from a suitable officer within the firearms command as to W80's current wishes and wellbeing. A Briefing Note on the Current status of officer W80 written by Superintendent Chris Nelson, dated 20 June 2017 [RM/5]. It outlined the ongoing detrimental impact on W80 of his lengthy continued suspension; including his sense of professional loss at being unable to pursue his career, the difficulties resulting from his lack of opportunity to earn overtime pay; his sense of isolation due to the necessary separation from his colleagues and friends; together with the considerable impact on his family life. Due to his bail conditions, W80 had, for instance, been unable to travel to Australia to visit a gravely ill family member before her death. Superintendent Nelson reported that W80's wellbeing had undergone a stark improvement following the decision of the CPS to take no further action, and that he continued to attend counselling with occupational health ('OH') advisors and to have the support of a dedicated welfare officer. Superintendent Nelson confirmed he had spoken with W80 who expressed a desire to return to work within the firearms command.
13. The briefing note also raised issues regarding the retention of firearms officers, and the impact of W80's suspension on this point.
14. I convened a "Gold Group" meeting on 21 June 2017 to discuss the suspension review and to establish what further information should be sought. This was attended by members of the senior leadership team from relevant commands, including myself and Gary Randall from the DPS; Commander Matt Twist (whose portfolio included Armed Policing); and DAC Peter Terry (whose portfolio included the Specialist Firearms Command).
15. Following the meeting, I invited representations in writing from Commander Twist [RM/6], whom I also knew had personally spoken with W80 regarding W80's wishes and wellbeing on previous occasions. Commander Twist wrote the following:

My professional view is that following the announcement of the CPS decision not to prosecute W80 the circumstances have changed significantly. This is reinforced as it is reasonable to assume that Treasury Counsel has reviewed this case. When W80 was arrested there was significant concern about the impact this would have on recruitment and retention of firearms officers. However it is fair to say that the majority of the impact, although not all, as Chris has described in his helpful report, was mitigated and over time officers came to accept the position. In terms of how this was managed, as W80 was on bail for murder, it was very easy on one level to rationalise the suspension to firearms officers, who whilst fundamentally and passionately disagreeing that the arrest could ever have met the lawful and necessity test, did understand the position that it would be extremely difficult not to suspend someone on bail for murder.

The change in the circumstances and the fact that W80 is no longer on police bail changes things significantly in my view. Officers, and in particular firearms officers (especially his CTSFO colleagues) are now closely looking at what the MPS does. It would now not be possible for managers to say that bringing him back wasn't possible, and I

believe that there would be an overwhelming feeling, were he not to be brought back to restricted duties, that the MPS was not supporting a firearms officer, who was deployed on an authorised operation, where we placed him in harm's way and asked him to make a very difficult split second decision.

I think that a decision not to return W80 to restricted duties could have a significant impact on the recruitment and retention of firearms officers at this most challenging time. It would be seen as clear evidence by AFO's that the organisation does not support what they do, and as a result the risks of being a AFO for some would be too great. This is especially the case as we are able to clearly evidence a role within the Specialist Firearms Command that would meet the IPCC suggestions re restrictions, and where W80's experience and training would be invaluable.

Further the risk to W80's health and wellbeing if he were not brought back to work should not be underestimated. He has currently been suspended for approximately 18 months, and whilst accepting of the VRR process, his outlook is now positive and a major hurdle has been passed. This would be fundamentally damaged were he not to return to work. I believe this could lead so a much greater sense of frustration and helplessness and it is clear that instead of the IPCC, the MPS would be the ones considered as being unsupportive of firearms officers across the board.

All firearms officers accept the need for an independent investigation following the use of any lethal or potentially lethal force, however they urge, and continue to urge that this is fair and timely for the benefit of all parties. There is a very real sense that in this case the IPCC investigation has been neither of those things. There is an opportunity now for W80 to be returned to work, with significant restrictions as the VRR process is ongoing, which will be clearly considered as the right and fair thing to do in the circumstances. Not to take action now I believe would significantly harm my ability to recruit and retain firearms officers both now and in the future.

16. I also received written legal advice on the subject of W80's suspension and the change in circumstance represented by the CPS decision not to charge him with any offence, from both the MPS's directorate of legal services and from external independent counsel (on 20 June 2017 and 23 June 2017 respectively).
17. I carefully considered all the relevant factors, submissions, and advice received as set above. On 26 June 2017, I concluded that W80's suspension should be lifted, with W80 afforded the opportunity to return to work albeit under restrictions.
18. I recorded my rationale and the restrictions to be applied to W80 as follows [RM/7]:

On 11th December 2015, a police operation was conducted in which W80 was deployed as a firearms officer. During this operation, W80 fatally shot a male subject. The matter was declared an IPCC independent investigation.

The IPCC report was completed and was approved by the IPCC Commissioner. The report was reviewed and considered by the CPS where on 14th June 2017 their decision was for no further action and no charges to be taken against W80.

I am therefore satisfied that in light of this decision circumstances relevant to the suspension conditions have changed. That is because at the time of the original suspension W80 was on bail for an offence of murder. This was a significant factor in the decision to suspend. However, the CPS has now decided not to prosecute. I note that the IPCC agree that the circumstances have changed. I therefore consider that I am obliged by reg 10(8)(c)(i) to review the suspension conditions.

The first suspension condition

The first suspension condition is satisfied where, having considered temporary redeployment to alternative duties or an alternative location as an alternative to suspension, the appropriate authority has determined that such redeployment is not appropriate in all the circumstances of the case. The IPCC suggested the following restrictions (in the event that suspension was not maintained):

- That W80 should have no direct contact with the public
- W80 should not be permitted to resume firearms duties
- W80 should not lead or participate in any training provided to firearms officers.

I have considered a more rigorous package of suspension measures:

- To have no contact with the public.
- To be removed from the evidential chain.
- Not to be involved in the operational use of firearms.
- Not to lead or participate in the planning or training of tactical firearms operations.

As matters stand W80 has been suspended, on full pay, for more than 18 months. That has a significant impact on MPS resources (in that it is having to pay the salary of the officer, without being able to use his services in any way). It also has a significant impact on the officer himself. The CPS has now decided not to prosecute W80. In advance of the CPS decision the IPCC recognised that it would be appropriate to review the question of suspension once that decision had been made. I consider that the decision not to prosecute W80 marks a significant change. I have regard to the representations made by the IPCC and by Mr Baker's family. In particular, I have regard to the impact that ceasing suspension will have on the family and on public confidence. In particular, I recognise the possibility that (having regard to the Victim's Right of Review) it is still possible that a decision to prosecute might be made. However, I consider that, in all the circumstances, redeployment on the alternative duties I have set out above is appropriate. That is because of the length of time for which W80 has been suspended, the ongoing cost to the MPS and impact on W80, the lack of any definite end-point, the change in circumstances brought about by the CPS decision, and the fact that the restrictions set out

above represent a proportionate balance between, on the one hand, the need to avoid putting W80 in any role that might have a significant impact on public confidence, and, on the other hand, maintaining suspension indefinitely at considerable cost to W80 and the MPS. If the CPS make a decision to prosecute then that would represent a further change in circumstances which could lead to reconsideration of the question of suspension.

I therefore do not consider that the first suspension condition continues to be satisfied.

The second suspension condition

There is no question of the investigation being prejudiced unless W80 is suspended. The investigation is effectively complete. Neither the IPCC nor Mr Baker's family suggest that the investigation would be prejudiced if the suspension is lifted.

Having regard to the nature of the allegation and all other relevant considerations, I consider that the public interest does not require that W80 be suspended. My reasons are effectively the same as the reasons why I consider that redeployment on alternative duties is now appropriate: that is a more proportionate approach in the light of the change of circumstances and is such that the public interest does not require continued suspension.

It follows that I direct, pursuant to reg 10(10)(a) that W80 shall not continue to be suspended.

It is therefore directed that W80 be placed on restricted duty subject to the following conditions:

- To have no contact with the public.
- To be removed from the evidential chain.
- Not to be involved in the operational use of firearms.
- Not to lead or participate in the planning or training of tactical firearms operations.

The OCU are reminded to ensure that W80's welfare is appropriately managed and that a fully documented and proactive welfare support plan is in place for the officer.

The decision to restrict W80's duties will be reviewed on receipt of any further significant update.

19. This decision permitted W80 to return to work with immediate effect, which I understand is what happened. The restrictions on W80's permitted duties set out above were then in place for nearly a year.

Subsequent amendments to restrictions

20. On 17 May 2018, DPS received representations from Chief Inspector Andy Walker from the firearms command, seeking the amendment of W80's restrictions so as to permit him a more substantive role, in line with his skillset and experience, namely

by bringing him out of a 'back-room' role supporting operations and training, in order to participate in firearms training.

21. Chief Inspector Walker submitted the following (which is recorded in my subsequent written rationale [RM/7]):

The officer W80 has been non-operational since December 2015 as a result of Op Astrid where he was suspended from duty throughout the IPCC investigation. DAC Martin lifted the officer's suspension on 26th June 2017 following a decision to take No Further Action by the CPS. Since that date the officer has been effectively employed within SCO19, supporting operations and training, without any access to firearms. Officer W80 is an experienced firearms instructor and operator with additional skill sets above a standard CTSFO. Within the last month, officer W80 has completed the Post Incident Support Programme (albeit over 2 years since the incident) with input from firearms instructors and OH. It is my submission (supported by OH) that he is now in a position to return to handling a firearm in a controlled environment alongside other instructors and AFOs.

My request is for the officer to be permitted to use a firearm only in a training role which would allow him to retain his skills and deliver firearms training in support of CTSFO operations. This would be particularly focussed on maritime and continuation training. It is worth noting that officer W80 would be subject to a skills loss as a CTSFO and firearms instructor if he is unable to train with a firearm by December 2018. This would have a significant impact on his future career as it would require completion of a full CTSFO and instructors course to maintain a career within CTSFO operations or training. This has a potentially detrimental effect on the operational capability of the MPS in the long-term, as well as the officer's perception of the value that is placed on him by the MPS.

If this request is permitted the officer would be issued with a 'white card' authority for firearms training.

We have discussed this with the officer and he is keen to have this restriction lifted so that he can maintain his skills and deliver training to the benefit of the MPS. The officer is aware that he now faces a gross misconduct hearing and he has responded in a stoical and pragmatic way, which supports my view that he is mentally and physically able to have access to firearms in a training environment.

22. I was aware that the IPCC had by this point recently directed (on 15 May 2018) that W80 should be subject to gross misconduct proceedings. I was also aware that the IPCC's decision was to be challenged by W80's representatives, and that this issue was unlikely to be resolved in the near future.
23. The Victims' Right to Review process had been completed two months prior to the request from Chief Inspector Walker. On 19 March 2018, the CPS had confirmed that their decision not to prosecute W80 was unchanged.

24. I did not consider that I would be assisted by additional submissions from the family or the IPCC, given the opposition that had been expressed to W80 returning to duties of any kind.
25. My view was that the amendment sought was proportionate for the reasons given in Chief Inspector Walker's submissions. I took account of the matters which I had considered in June 2017. I also took account of the fact that another year had gone by, and W80's qualifications for the roles he had previously occupied would soon lapse due to his non-activity. The scope of the amendment sought was relatively limited, W80 was not seeking to use firearms in an operational context, but wished to take on a more substantive role exercising his existing skillset, which would allow him to maintain certain competencies and the MPS to make better use of his skills. By this stage, W80 had been at work within the firearms command for just under a year without issue. No concerns were expressed about W80's mental health. On the contrary, he had completed the Post Incident Support Programme ('PISP') facilitated by the firearms command and occupational health. I was aware that the PISP included assessments to establish that W80 was mentally and physically well enough to access firearms, without which a 'white card' would not be issued even for the limited purposes sought in this instance. I further took account of the fact that the firearms command had demonstrated insight into the fact that certain training roles were likely to be more appropriate than others, Chief Inspector Walker having acknowledged this in stating that W80's involvement would focus on maritime and continuation training. I am aware that W80 has not participated in firearms training on vehicle tactics for this reason.
26. My professional judgment was that the removal of the fourth restriction (*'Not to lead or participate in the planning or training of tactical firearms operations'*) was appropriate and proportionate in the prevailing circumstances, and I authorised this on 21 May 2018. This would have taken immediate effect.
27. I left the command in February 2019.
28. I am aware that, since 14 August 2019, W80 has not been subject to formal restrictions of any kind. The decision to remove restrictions was taken by Commander Catherine Roper, following the decision of the Divisional Court to quash the IPCC's decision to direct misconduct proceedings against W80.

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.



..... (sign)

Signed:

Dated: 27th September 2021