

Following the decision of the Court of Appeal on 9<sup>th</sup> October 2020 and pending the ongoing public inquiry into the death of Jermaine Baker, I have decided whether to reimpose restrictions upon W80. In order to aid my decision making, I have considered the timeline of events and documents containing all of the decision making to date in relation to suspension/restriction of W80.

On 11<sup>th</sup> 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 (now IOPC) independent investigation. The IPCC made a decision that there was an indication of conduct and that W80 would be the subject of a criminal investigation (murder). As a result his suspension was considered by DAC Fiona Taylor who made a decision to suspend W80 from duty.

The decision was verbally authorised on 13<sup>th</sup> December 2015 and formalised in writing on 14<sup>th</sup> December 2015.

Regular suspension reviews were undertaken by DAC Fiona Taylor and subsequently DAC Richard Martin until 14<sup>th</sup> June 2017 when the CPS made a decision that there would be no further action and no charges would be taken against W80.

Upon this decision, DAC Martin reviewed the suspension under reg 10(8)(c)(i). He directed under reg 10(10)(a) that suspension could be lifted and then directed that W80 be placed on restricted duties 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.

This decision was made on 26<sup>th</sup> June 2017. As part of the decision making, DAC Martin consulted with the IOPC and the family (via Bhatt Murphy solicitors).

On 19<sup>th</sup> March 2018, the CPS decision following a Victims Right to Review (VRR) was that the decision not to prosecute would remain unchanged.

On 15<sup>th</sup> May 2018, the IOPC directed the MPS to hold a gross misconduct hearing.

On 21<sup>st</sup> May 2018, DAC Martin reviewed the restrictions and approved the removal of the restriction 'not to lead or participate in the planning or training of tactical firearms operations.' This allowed W80 to take part in training and to carry a weapon for this purpose.

On 10<sup>th</sup> July 2019, The Divisional Court quashed the IOPC's decision, holding that "in applying the objective civil law test in determining that there was a case to answer, the IOPC applied the wrong test. It should have applied the criminal law test". When the judgment was handed down on 14<sup>th</sup> August 2019, the IOPC were refused permission to appeal.

On the same day, 14<sup>th</sup> August 2019, Commander Catherine Roper made a decision to reinstate W80 to normal duties as the ruling meant that the IOPC direction was no longer valid and W80 was no longer facing gross misconduct proceedings.

The IOPC were granted permission to appeal by the Court of Appeal on 7<sup>th</sup> July 2020 and on 9<sup>th</sup> October 2020, the Court of Appeal upheld the appeal. W80's legal team lodged an application with the Supreme Court for permission to appeal and this is now awaited.

I am conscious that it is now 12 months since the Court of Appeal's ruling and that therefore I am considering whether to reimpose restrictions some time after that event. The decision to review the position in respect of whether restrictions should be re-imposed was made during a Gold Group meeting shortly after the ruling in October 2020, at which time, Commander Paul Betts was responsible for all restriction and suspension decisions in his role of Commander Professional Standards. However, it is apparent that Commander Betts was not actually asked to carry out the review which was an oversight. At the current time, it now falls to me to decide whether an officer should be the subject of restrictions, as OCU Commander Professional Standards. Suspension decisions still remain at Commander level.

As a result of the Court of Appeal ruling, the decision of the IOPC to direct gross misconduct proceedings against W80 still stands until such time that any appeal to the Supreme Court is upheld. In view of an order of Swift J of 7<sup>th</sup> March 2019, the AA is not taking any action to progress the misconduct hearing at this time (as all parties to the judicial review are aware).

I have considered the rationale of DAC Martin on 26<sup>th</sup> June 2017 which followed the CPS decision not to charge W80 with any criminal offence. On that date, W80 faced gross misconduct proceedings up until 14<sup>th</sup> August 2019 and was subject to restrictions which allowed him to perform a training role but he was to have no contact with the public, was removed from the evidential chain and was not to carry a firearm in an operational role. I am aware that he has remained in the same role for just over 2 years and he has no desire to work in an operational role. I consider this relevant in making a decision now as I consider that he is already in a role where risk to the public is minimal and it mirrors that which he performed whilst subject to formal restrictions.

The purpose of placing an officer on restrictions during an investigation or whilst they await misconduct proceedings is to properly manage any potential risks posed by an officer to the public, to colleagues, to public confidence in the MPS (which includes the confidence of the family), the criminal justice system generally and the officer themselves. I have considered whether I need to consult with the IOPC or with the family, as DAC Martin did upon lifting the suspension of W80. I am not required to consult with the family or the IOPC but I have read the views of the IOPC and the family within the documentation recorded by the MPS in relation to this case. The family were of the view that only suspension was appropriate. The IOPC were also of this view in light of the pending VRR decision. However, the IOPC also stated that if the AA were minded to await the decision of the VRR process then the following restrictions would be appropriate:

- 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

This case involves the death of a young man following police actions and risks to public confidence must be managed. However, W80 has performed a non-operational role for over 2 years (14 months of this was prior to the Court of appeal ruling) and remains in that role. He has remained in the role despite there being no proceedings against him between 14<sup>th</sup> August 2019 and 9<sup>th</sup> October 2020 and having recently given evidence at a public inquiry in public. It is my view that any risks to the public and public confidence in the MPS (and also the criminal justice system more generally) are managed whilst he remains in that role prior to any proceedings and I do not believe that the application of any formal restrictions now will serve any purpose in this regard. In addition, there are no known risks to the officer themselves that require restrictions to be imposed. I have considered that W80 is free to request that he is transferred to an operational role in the future but at this time he expresses no desire to do so. This was communicated in the Gold Group dated 13<sup>th</sup> October 2020 and 12 months later he has still not

requested to transfer to an operational role despite not being on any restrictions. I request that I be informed by W80's SLT should the officer request a transfer to an operational role so that I can review my decision.

**DCS Donna Smith (OCU Commander - Directorate Professional Standards)**

**15<sup>th</sup> October 2021**