

PUBLIC INQUIRY INTO THE DEATH OF JERMAINE BAKER

RULING ON APPLICATIONS BY THE COMMISSIONER OF POLICE OF THE METROPOLIS AND THE INDEPENDENT OFFICE FOR POLICE CONDUCT FOR RELEASE FROM CONFIDENTIALITY UNDERTAKINGS

17 OCTOBER 2022

1. This is a short ruling by which I partially release the Commissioner of Police of the Metropolis (“Commissioner”) and the Director General of the Independent Office for Police Conduct (“IOPC”) from undertakings which their officers and staff gave to the Jermaine Baker Inquiry (“Inquiry”) prior to receipt of documents.
2. By written application dated 8 September 2022 the Commissioner seeks to be released from the confidentiality undertaking which his officers and staff signed on various dates during the course of the Inquiry (“Undertaking”), and subject to which the Inquiry disclosed documents (“Inquiry Materials”) to the Commissioner and other Core Participants (“CPs”).
3. The variation and release which the Commissioner seeks is so as to use Inquiry Materials for the purposes of any misconduct hearing against W80, the officer who shot and killed Jermaine Baker.
4. The Commissioner’s application was circulated to CPs, and I invited responsive submissions. Written submissions were made on behalf of the IOPC (21 September 2022) and the National Crime Agency (“NCA”) (16 September 2022). No other CP made submissions. The Commissioner has had sight of those written submissions but has not provided anything substantive in reply.
5. In its submissions, the IOPC made a parallel application to the Commissioner, at paragraph 6, so that it too could fulfil its obligations in the same misconduct proceedings.

The Applications

6. In the aftermath of Jermaine Baker's death, the IOPC directed that the appropriate authority ("AA") for the Metropolitan Police Service ("MPS") should prosecute W80 at a misconduct hearing. Pending a challenge by W80 by way of judicial review, the appeal of which is due to be heard by the Supreme Court in March 2023, that misconduct hearing was and is stayed. The application is put on the basis that in order to have a fair misconduct hearing, and in light of the statutory scheme provided by the Police Conduct Regulations 2012, the AA "*is obliged to seek to retain/secure and review potentially relevant documents it is aware of*".
7. The Commissioner sets out in paragraphs 15 and 16 of the application the "*safeguards*" pursuant to which the application is made:
 - “15. A number of important points can and should be made about what would be intended by way of the review of Relativity:
 - (a) It is not the AA's intention to do a wholesale or untargeted review of Relativity or to seek access to material the MPS does not already have access to on Relativity as a core participant;
 - (b) The review would be focussed on identifying material that relates specifically to W80's conduct and not, for example, personal background information about Jermaine Baker that W80 would not have been aware of;
 - (c) Those performing the review would liaise with the legal team that represented the MPS Commissioner in connection with the JBI to identify material that is relevant and with W80's legal team to ascertain their views on what material is relevant.
 16. It should also be made clear that in terms of disclosure to W80 a confidentiality undertaking could be sought, and of course appropriate redaction would be made including to comply with data protection legislation before onward disclosure to the misconduct hearing panel.”
8. The Commissioner notes, at paragraph 12, that the documents to which he seeks access may either be supportive of the case against W80 or may undermine that case and assist his defence. This is not an application which is made solely for one purpose.
9. The IOPC supports the application and, at paragraph 6, makes a co-extensive application.

10. The IOPC also requests that the Commissioner team performing a review of Relativity liaises with its legal team. That final point is not a matter in which I shall get involved.

Discussion

11. I grant the two applications, subject to the modifications proposed by the NCA.
12. The majority of the documents which were disclosed to the Inquiry, and in due course were disclosed by the Inquiry to Core Participants, came from the IOPC and the Commissioner; the applicants do not need the Inquiry's release from the Undertaking in order to make use of those documents in a misconduct hearing. However, a smaller number of documents were disclosed to the Inquiry by other CPs, or were obtained directly from witnesses and experts by the Inquiry. It is those documents in respect which this application is made.
13. In support of his application, the Commissioner cites the statutory obligation pursuant to which the AA must provide the investigation report and "*any other relevant document gathered during the course of the investigation*" to the accused officer (Regulation 21, Police Conduct Regulations 2012). The Commissioner further relies upon the obligation in Regulation 27 to put before the misconduct panel "*any other documents that, in the opinion of the appropriate authority, should be considered*".
14. In support of its parasitic application, the IOPC relies upon its statutory role in assisting the AA to fulfil its disclosure obligations.
15. The NCA made submissions in respect of the application, emphasising that it understood that any release from the Undertaking would apply only to OPEN material, in contrast to material which was CLOSED on account of a Restriction Order. The Commissioner has not responded to say that the NCA misunderstands the application. I share the understanding of the NCA.
16. Furthermore, the NCA asks that if OPEN material is to be used in misconduct proceedings, the Commissioner and/or any party deploying that material should liaise with the NCA because it is material "*in which the NCA has equity*". I accept that submission, which should not put an onerous obligation on parties to the misconduct litigation and which seeks to protect the public interest in an appropriate manner.

17. I do not consider that the Police Conduct Regulations 2012 oblige me to grant the applications, but rather they oblige the AA to seek to retain and/or secure and review potentially relevant documents. Accordingly, the application to the Inquiry is properly made.
18. In deciding to grant the applications, I note that the parties to the misconduct proceedings were all involved in the Inquiry, albeit some with different legal teams. Granting the application does not mean that the Inquiry Material is to be circulated any more widely than it has been already, save for it being shown to the misconduct panel and if it is deployed in open misconduct proceedings.
19. No Core Participant has made submissions that I should not grant the applications. The family of Jermaine Baker and W80 have had opportunity to do so. It is they who will be most affected by the decision I am making.
20. I have considered the fact that by granting the applications I will be allowing documents, such as expert witness evidence, to be used in a forum which was not in the mind of the person who prepared the document. This factor, which has the potential to affect the willingness of witnesses to assist other public inquiries in the future, weighs against the applications being granted.
21. However, on the other hand, I have given weight to the desirability of a fair misconduct hearing, proceeding on a fully informed basis. This is clearly in the interests of the parties to that hearing, the interests of justice and the public interest more generally.
22. On balance I determine that both applications fall to be granted. I order that the Undertaking given to the Inquiry on various dates by officers and staff of the Metropolitan Police Service and the Independent Office for Police Conduct (“Recipients of Confidential Information”) are varied to the limited extent set out below. Save as set in these sub-paragraphs, the Undertakings continue in force.
 - a. The Recipients of Confidential Information are released from the Undertaking insofar as is necessary to enable the Commissioner and the IOPC to discharge their statutory roles in respect of misconduct proceedings concerning W80, arising out of the death of Jermaine Baker.

- b. This release only applies to Inquiry Material which during the course of the Inquiry was OPEN. “OPEN” means that it was not subject to a Restriction Order, pursuant to s19 Inquiries Act 2005.
- c. Both the Commissioner and the IOPC shall comply with the safeguards which are set out in the Commissioner’s application at paragraphs 15 and 16 and which I have repeated above at paragraph 7.
- d. The Inquiry Material was provided to Core Participants in confidence, subject to the Undertaking. The Inquiry now permits the use of the Inquiry Material in the Misconduct Proceedings subject to the following condition. Prior to deploying any Inquiry Material, which but for this Order was subject to an Undertaking, any party to the Misconduct Proceedings wishing to do so must consult with the National Crime Agency. Such consultation must take place a reasonable time before the material is intended to be deployed.
- e. The Commissioner and the IOPC, if disclosing any Inquiry Material into the misconduct proceedings, must make the parties and the misconduct panel aware of the above conditions on its use, insofar as those individuals will have control of the Inquiry Material.

HH Clement Goldstone KC

Chairman, Jermaine Baker Inquiry

17 October 2022