DECISION

DISCIPLINARY PROCEEDINGS

INSPECTOR CHAMBERLAIN
PC WILLS

2 November 2017

A. Introduction

1. The events that have led to the disciplinary hearing now before us took place on 8 July 2009. On that day, police officers – PC Rogers and PC Wills were involved in a high speed pursuit of a car driven by Liam Albert. PC Rogers was the driver of the police car, PC Wills was his passenger. The pursuit lasted a short period of time. It started within the area of the MPS, but ended in Surrey near Claygate. The pursuit ended when Liam Albert crashed the car he was driving. He was very seriously injured in that crash and shortly after, tragically died from those injuries. Mr. Albert was just 17 years old.

2. Both officers who now face disciplinary charges – PC Wills, the passenger in the pursuit car, and Inspector Chamberlain who arrived at the scene of the crash shortly after it had happened – submit that, given the passage of time between 8 July 2009 and this hearing, a little over 8 years later, it would be unfair for the disciplinary charges to be determined on their merits. They contend we should bring these disciplinary proceedings to an end without any substantive determination of the complaints, on the basis that no fair hearing of the disciplinary charges is now possible.

3. The officers contend, and it is not seriously disputed by the Appropriate Authority, that it is unprecedented for disciplinary

hearings to be pursued so long after the events that are said to give rise to them.

4. To put this into context, I will summarise the sequence of events. Following 8 July 2009, Surrey police undertook an investigation into the pursuit and the crash, under direction and control of the IPCC. That investigation was completed in February 2010. The outcome of that investigation – which was accepted by the IPCC – was that no formal disciplinary action was to be taken against any officer. The investigation had considered the role of PC Wills, but it had not extended to consider any criticism of the actions of Inspector Chamberlain.

5. The IPCC informed Liam Albert's parents of the outcome of the investigation in June 2010. In July 2010 Liam Albert's parents (Mr Albert and Ms John) made complaints to the IPCC against PC Rogers, PC Wills and Inspector Chamberlain. The IPCC appointed an investigator a week or so later, and by that time had already identified the complaints as ones which contained allegations amounting to gross misconduct. However, the investigation into the complaints was held up, pending the Inquest into Liam Albert's death. This decision was taken by the IPCC appointed investigator.

6. The Inquest took place between November and December 2011 (i.e. some 16 months or so after the complaint made by Liam Albert's parents). Following the coroner's verdict, the parents took a short period of time to reformulate their complaints, to take account of information that had emerged during the Inquest. They provided that information to the investigation by January 2012.

7. The IPCC investigation then commenced. But shortly after, in March 2012, the Metropolitan Police (on behalf of the investigator) sought permission from the IPCC to discontinue the investigation on the ground that the matters complained of had already been the subject of the investigation undertaken by Surrey Police in 2009 – 2010. That application was allowed by the IPCC in July 2012 – on the basis that the investigation was repetitious of the work already undertaken by Surrey Police.

8. The family challenged that decision in judicial review proceedings. They issued proceedings in October 2012, and in January 2013 the IPCC conceded the legal claim. The upshot of this was that the IPCC's July decision was quashed, and had to be reconsidered by the IPCC. This took place in February 2013, and the decision this time was that the investigation should continue.

9. In May 2013 the IPCC decided that the complaint made by Mr Albert and Ms John (of July 2010, as reformulated in January 2012) should be the subject of an independent investigation. The IPCC appointed a new investigator. But little progress was made. We are told that this was because the person appointed as investigator was, shortly after that appointment, seconded to the Hillsborough investigation. A new investigator was appointed in October 2013. The investigation then continued until June 2015 – a period of some 20 months.

10. During this time, both officers received Regulation 14A notices in January 2014, and each was interviewed – Inspector Chamberlain in September 2014, and PC Wills in October 2014. As we understand matters the Regulation 14A notice served on Inspector Chamberlain in January 2014 was the first time she was made formally aware that her conduct on 8 July 2009 was under scrutiny.

11. The investigation report was completed by June 2015. It concluded that there were cases to answer of gross misconduct against PC Wills, Inspector Chamberlain and PC Rogers. We note that no disciplinary procedure was pursued against PC Rogers. We have been told that this was because he had retired before he was served with notice of the disciplinary hearing. In accordance with the usual requirements, the report was provided to the MPS for consideration by it of what action to take. That consideration was undertaken by a Detective Chief Inspector. In January 2016 he concluded that gross misconduct proceedings were not warranted, and that instead the matters raised in the report should be addressed by different action. The IPCC disagreed, and in April 2016 directed that a misconduct hearing take place to consider the matters raised in the Investigation report, as matters of gross misconduct.

12. This is that hearing. However, it has taken a further 18 months to get to this hearing. During that period some time has been spent addressing the type of logistical points that always arise – such as dates for a hearing that are suitable for parties and their witnesses. But in addition to this, significant periods of time have passed because of disagreement between the MPS and the IPCC as to whether the latter had provided proper disclosure of the investigation material, and because of time taken by the IPCC to decide whether or not this hearing should take place in public.

13. This then, is a very compressed version of the history of events since July 2009.

B. The application made by the Officers

14. Against this background the officers contend that a fair hearing of the disciplinary charges is not now possible, and that we should therefore dismiss the charges without determining them on their merits.

15. In support of this application, the officers advance three linked propositions. The *first* is that the overall period of time between July 2009 and now, is simply so long that it is unfair to continue with these gross misconduct proceedings. The *second* point (which in substance is an aspect of the first) is that the proceedings have not been conducted in accordance with the general requirement under Regulation 9 of the 2008 Regulations that disciplinary proceedings under the Regulations should ordinarily *"proceed without delay"*, and that there was a failure to comply with the specific requirement under §19B of Schedule 3 to the Police Reform Act to undertake *"as soon as possible"* a severity assessment of conduct is considered by an investigator to warrant disciplinary action, and following that assessment to serve on the officer in question a notice meeting the requirements of Regulation 14A. In each case here, the Regulation 14A notice was not served until January 2014 (some two years after Mr. Albert's parents had reformulated their complaints, following the Inquest verdict). Each of these first two matters goes to what has been described to us as "inherent prejudice" arising from material delay for which there is no satisfactory explanation.

16. The *third* point advanced by the officers is that if this hearing continues each officer will suffer specific prejudice in that the quality of the evidence that each will be able to give will be impaired because of the passage of time. Each officer makes various submissions in support of this part of the case. But one point made on behalf of each officer is that the passage of time – some 8 years since July 2009 is such that neither

now has any reliable specific memory of events that is distinct from statements made by each, at the time. To take the circumstances of PC Wills as an example: there is a tape recording of the commentary he gave during the pursuit; there are copies of the statements he gave to the Surrey Police; and there is a transcript of the evidence he gave to the coroner. All of those documents are available. But, at this remove, any evidence he gave to us in this disciplinary hearing could be no more than by way of repetition of matters contained in those documents. On that basis, it is contended, this hearing has become an artificial exercise.

C. The legal standard

17. The propositions of law that are relevant to the application now before us, are not the subject of any material dispute. All parties agree that this Panel has the power to dismiss these proceedings without a determination on the merits, if as a result of delay a fair hearing is not possible.

18. As to the application of that general power, the parties referred the Panel to judgments in a range of cases contained in the bundle of authorities provided to us. We draw the following points from those cases.

19. *First*, any decision to dismiss proceedings without a determination on the merits is a serious step. The public interest that disciplinary proceedings against police officers should be determined on their merits is a very important public interest, which is not easily displaced. It will only be displaced in very exceptional circumstances.

20. *Second*, any argument that a merits determination should not take place on grounds of delay must rest on a conclusion that to continue with the proceedings would give rise to very serious prejudice to the persons facing the disciplinary charges. The prejudice that is relevant can include, what has been described to us as inherent prejudice – that is to say the prejudice that can be an inherent consequence of long periods of delay, for which no adequate explanation has been given. One matter that is relevant to this is whether or not the proceedings have been conducted in accordance with the relevant disciplinary rules – in this case the requirements of the Police Regulations 2008. The relevant prejudice also includes what has been described as "specific prejudice" – meaning in the case before us that because of the passage of time each officer has been put at a disadvantage in terms of his/her ability to give evidence in response to the disciplinary allegations. All relevant prejudice is to be considered in the round, and the proper question for the panel is whether the delay has been such that a fair hearing of the disciplinary charges is no longer possible.

21. *Third*, that even in cases where serious prejudice is demonstrated that is capable of outweighing the strong public interest in favour of merits determinations, a decision to stop disciplinary proceedings should be regarded as a decision of last resort. If there are other measures, short of stopping the proceedings, that the panel could take that would mitigate the prejudice and permit a fair hearing to take place, those measures should be taken.

D. The cases before the Panel

22. I will first consider inherent prejudice. The Panel's conclusion is that the relevant starting date is July 2010, the date on which Liam Albert's parents first raised their complaints. We select this date as the starting

point, rather than July 2009 when the high speed pursuit took place, because it is the parents' complaints that are the direct cause of the present disciplinary hearing. Prior to those complaints, the events of 8 July 2009 had been investigated by the Surrey police, and that investigation had concluded and had been accepted by the IPCC. Without the complaint by Liam Albert's parents in July 2010, the investigation that has led to this disciplinary hearing would not have taken place at all. That said, even though we have identified July 2010 as the correct starting point, it must be recognised that by that time it was almost 1 year since the events of 8 July 2009. That itself was good reason why, once the complaint was made in July 2010, there was a need to investigate and address that complaint promptly. Moreover, the complaints all concern events that took place over a short period of time on 9 July 2009, and so far as concerns PC Wills, events that took place in very pressurised circumstances. This too only goes to underline the importance, in this case, of the need for a prompt and effective investigation.

23. We do conclude that two periods of delay since July 2010 have been properly explained and justified.

24. The first is the time between July 2010 and the conclusion of the Inquest at the end of 2011. With the benefit of hindsight it might be said that putting the investigation on hold pending the Inquest was unduly cautious. But we accept that that decision was one that was sensibly open to the investigator. No doubt it was a decision taken out of an abundance of caution to guard against the possibility that any investigation might be wrong-footed by information arising out of the inquest, or the risk (likely to be much more remote, we think on the facts of this case) that the investigation might itself somehow come to impede the Coroner's proceedings. In fact, as events turned out, after

the Inquest and in light of the conclusions reached by the Coroner, Liam Albert's parents did significantly re-formulate the complaints they wanted investigated. Thus we accept that an appropriate explanation has been given for the period up to the beginning of 2013.

25. The other period of delay we think is the subject of appropriate explanation is the short period (between August 2013 and January 2014) when the judicial review proceedings were on-foot, challenging the decision of the IPCC to discontinue the investigation into the parents' complaints. Absent that challenge, the investigation would have been at an end.

26. But if matters are looked at in the round, these periods where appropriate explanation has been provided do not come anywhere close to covering the whole of the period from July 2010 up to the date of this hearing. In particular we are gravely concerned by the time taken between May 2013 (when the IPCC agreed to investigate again following the successful judicial review) and June 2015 when the investigation report was completed; and we are also gravely concerned by the time taken between June 2015 and the date of this hearing.

27. As to the first of these periods we have seen witness statements from Emma Yoxall, the person responsible for the investigation that concluded in June 2015. She explains her own role in matters (from her appointment in October 2013), and also provides some information about events between June to October 2013. Her evidence does not suggest that the investigation was pursued with any sense of urgency at all. Even though by 2013 it was over 4 years since the events of July 2009 there is no indication in her statement that any consideration was given to prioritising this investigation; there is no sense that anyone ever made any attempt to get a hold of the proceedings and drive them

forward. That is what should have happened. By 2013 a long time had already passed. That was a compelling reason to expedite the investigation. But that simply did not happen. Rather, the steps that were taken appear to have been taken without reference to any particular plan of action, and there was, so far as we can see, no attempt at all by the investigation to force the pace.

28. As to the period after June 2015, the same general observations apply. We accept that it will always be the case that some time is taken to make the arrangements for a hearing. But that does not come close to explaining over 2 years of further delay. In this period too, we cannot see that there was any sense of urgency, or any real attention paid at all to the fact that what was being proposed was gross misconduct hearings in respect of matters that had taken place over 6 years earlier.

29. I have had over ten years experience of dealing with disciplinary hearings either as a panel member or as a Chair of panels. In all that time I have not seen a case which comes close to this case in terms of the length of time to investigate and pursue disciplinary complaints. Nor am I or any other member of the Panel aware of any other case which has extended over so long a period of time.

30. So far as the Panel is concerned, the length of time taken in this case is even more striking when regard is had to what was actually entailed in the investigation that took place between May 2013 to June 2015. For the most part, that investigation comprised further consideration of material gathered by Surrey police in the course of its investigation in 2009 – 2010. Information arising from the Coroner's proceedings also had to be considered. But these tasks do not come close to explaining the duration of the investigation, or to explaining why it was that the Regulation 14A notices were only served in January 2014, why

Inspector Chamberlain was not interviewed until September 2014, or why PC Wills was not interviewed until October 2014.

31. Drawing these matters together, these are cases in which there is unexplained delay over extensive periods. Even accounting for the periods of time which we consider have been properly explained, and allowing the period of time that would have been appropriate to investigate these complaints and convene a hearing to address them, the period of unexplained delay runs to at least three and possibly to four years. I will return later to what we consider must be the consequences of this.

32. I now turn to specific prejudice. I first consider the position of PC Wills. He is subject to three disciplinary charges. Two concern the video recording system in the car on 8 July 2009. It is said that he failed to install a fresh tape in the car on that day, and it is further said that after the pursuit he removed a video tape from the vehicle (which did not contain any information about the pursuit). The third charge is that during the pursuit (which as I have said, lasted only a short period of time), he failed to provide an appropriately detailed commentary.

33. In relation to this last charge in particular, PC Wills contends that the delay in these proceedings will cause specific prejudice. He accepts that there is a transcript of the commentary he gave during the pursuit. He also accepts that relatively contemporaneous records of his evidence exist in the form of statements he gave to the Surrey police, and the evidence he gave at the Inquest. But the point PC Wills makes is that now, some 8 years after the event he has little or no recollection of the detail of the pursuit that is independent of the statements he has already made. We accept that point. The pursuit took place over a very short period of time, and since then a very long period of time has

passed. The fact that there are written records of his evidence does mean that this disciplinary hearing is not without relevant material. But that does not detract from the point PC Wills makes that we think is important. If he is questioned now, at this hearing, on (for example) why he made comment on one matter, but did not mention another, or why he did not raise a matter sooner in the commentary (and any of these matters would be entirely legitimate lines of questioning given the substance of the complaint about the commentary), PC Wills will not be in a position to do anything other than refer to answers he gave to the Surrey police or at the Inquest. If he tries to go further, he might be challenged on the basis he had not given the answer previously, and it may be put to him that his recollection now could not be better than his recollection years before. This might be a valid point if an answer given in evidence in these proceedings was entirely at odds to an answer given to the same question years ago. But that is unlikely to be what happens. Much more likely is that the questions now asked will cover matters or will be put in ways that are not precisely the same as points put to PC Wills either by the Surrey Police, or at the Inquest. If that is what happens it is obvious to us that because of the passage of time PC Wills will be placed at a very serious disadvantage. Moreover, the likelihood that at this remove, PC Wills may be able to do little more in evidence than to rely on the documents from 2009, 2010 and 2011, only serves to highlight the fact that the extended period of delay before this hearing will mean that there is a real risk that the evidential part of this hearing itself will be a largely artificial exercise. Rather than being an opportunity for the evidence to be tested and probed, it risks being little more than an opportunity for evidence stated a long time ago to be repeated. So far as concerns the complaint against PC Wills relating to his commentary on the pursuit, we conclude that the delay that has occurred will result in serious prejudice to him.

34. So far as concerns the other two complaints (relating to the car video equipment), the position is different. The specific acts/omissions relied on are not disputed. But to the extent that it will be for this hearing to assess the quality of what PC Wills did and failed to do – why he did what he did; why he failed to do the things he should have done, things which must be a significant part of the process given that each matter is identified as a matter of gross misconduct – we have concluded that there is a very strong prospect that the delay will be a cause of prejudice to him.

35. I now consider Inspector Chamberlain's case. The Panel accepts that the disciplinary complaints that she faces involve less in the way of likely factual dispute. Rather, the questioning she is likely to face at this hearing would probably be directed to the reasons why she acted in the way she did so far as concerns the complaints made against her. Those complaints relate to her actions at the scene of the crash. It is alleged that she instructed PC Rogers to delete photographs of the crash he had taken on his own mobile phone. Inspector Chamberlain accepts that she gave this instruction, but says that in doing so she did no more than repeat an instruction already given to PC Rogers by Surrey police. It is next contended that Inspector Chamberlain declined to require PC Rogers to comply with a request made to him by Surrey police to hand over that mobile phone (by that time, the photographs on the phone had been deleted). She accepts that her decision was that PC Rogers should not do this. She further accepts that when the same request was later repeated at Esher police station, she maintained that he should not hand over the phone.

36. Nevertheless, the Panel accepts that the delay that has happened is likely to be the cause of some specific prejudice to Inspector Chamberlain. In particular, she was not served with a Regulation 14A

notice until January 2014. Since she had had no involvement in the Inquest, it was not until January 2014 that Inspector Chamberlain was aware that her conduct on 8 July 2009 had been called into question. This denied her the opportunity to consider and record, when matters were likely to be fresh in her mind, the reasons for the decisions that are now called into question, and any matters of context that may be material. Again, it is true that her contemporaneous Decision Log has been retained. However, that is not an entire substitute for the chance for Inspector Chamberlain to consider matters, nearer the time, in the knowledge that her decisions had been called into question.

E. Conclusions

37. I now come to the assessment of matters.

38. The Panel's first conclusion is that this is a case in which the delay that has occurred means there is very significant inherent prejudice to both officers. The premise of disciplinary proceedings under the 2008 Regulations is that in the ordinary course of events they are pursued promptly. It is in the public interest that this happens so that any misconduct that has occurred is promptly identified and penalised. This maintains both public confidence in the complaints and disciplinary processes, and it also maintains the confidence of police officers in those processes. In the cases now before us there has been unprecedented and unexplained delay. The delay in these cases has been of such an order that, considered objectively, continuing these proceedings now would bring the disciplinary process into disrepute.

39. We have not reached this conclusion lightly. We have had well in mind the very powerful public interest that disciplinary charges against

police officers should be determined on their merits. It could be said that this interest carries particular force in the present case because the events of 8 July 2009 resulted in Liam Albert's death. But in this regard we also note, and take account of the fact that neither the disciplinary charges against PC Wills, nor those against Inspector Chamberlain address matters that go directly to the cause of the injuries that led to Mr. Albert's death. As I have explained already, two of the charges against PC Wills concern his failure to install a tape into the car video system, and his removal of an old tape, which did not record information about the pursuit on 8 July 2009. The other charge against him is to the effect that he provided inadequate commentary on events during the pursuit. The charges against Inspector Chamberlain relate only to her actions after the crash. We consider that the matters to which the charges are directed is material in this case to assessing the weight of the public interest in merits determination of the disciplinary charges. We also consider that the gravity of the misconduct alleged is also a matter that informs the level of importance attaching to this public interest. Each of the charges against each officer has been characterised as gross misconduct. Even assuming that the complaints as charged were proved, we have difficulty with the characterisation of these matters as gross misconduct. Overall, the Panel does accept that great weight attaches to the public interest in a merits determination. The only point we make is that on the facts of this case that public interest is slightly tempered by the matters we have referred to.

40. In addition to the inherent prejudice, the Panel also concludes that in these cases the delay that has occurred has resulted in specific prejudice for each officer. I have already explained the Panel's decisions on this matter. It is fair to say, for the reasons I have already explained, that the specific prejudice is greater in the case of PC Wills and the charge against him relating to the quality of the commentary

he provided. But, again for the reasons I have already explained we accept that there is an element of specific prejudice that attaches to each of the other disciplinary charges against PC Wills, and also to the disciplinary charges against Inspector Chamberlain.

41. Drawing these matters together, the Panel has concluded that the overall prejudice, both inherent and specific is such that it is not now possible for there to be a fair determination of these disciplinary charges.

42. We have specifically considered whether there are steps that could be taken in the course of a disciplinary hearing that would address the unfairness we have described. In the course of the legal argument we put this point to the Appropriate Authority and asked what measures it thought could be applied. The response provided was to the effect that so far as concerns specific prejudice (that is to say the difficulty the officers would now face in having any recollection of relevant events independent of their previous statements), the Panel could where necessary "give the officer the benefit of the doubt". I have to say that the Panel does not understand how this might work in practice. The starting point must be the fact that some 8 years after the event, the officer in question would have no specific recollection of events beyond the contents of his or her previous statements. If that is the starting point, and the officer's response to a question put in this hearing was to the effect "I cannot now remember", we cannot see what giving the benefit of the doubt would mean in practice. Having considered the Appropriate Authority's response, and having ourselves tried to think of measures that could now be taken to mitigate the prejudice, we do not think that the present case is one in which such measures, which would address the unfairness we have identified, could be devised.

43. In these circumstances, the conclusion we reach is that the disciplinary charges should be dismissed on the basis that it is not now possible for there to be a fair hearing of them. We have reached this conclusion only after the most careful consideration.

44. Finally the Panel wishes to make short general observations arising from the events we have considered. The conduct of the investigation into the complaints made by Liam Albert's parents was entirely unsatisfactory, and completely unacceptable. I am not aware of any situation in which anything like this has occurred before. It must not be allowed to happen again. Situations such as this do nothing but harm public confidence in police disciplinary proceedings. They also cause serious damage to the confidence of police officers that the disciplinary process will produce fair and proper outcomes. Moreover, in this case the delay that has occurred has betrayed the trust of Liam Albert's parents that their complaints would be properly and promptly considered. I have said already that the disciplinary complaints made against PC Wills and Inspector Chamberlain do not go directly to the cause of the crash which led to the injuries which caused Liam's tragic death. But that is not the point. The complaints that they raised should have been investigated promptly.

Chair – Ivan Balhatchet (MPS)

Assessor – Tony Josephs (MPS)

Assessor – Yvonne Tapper (MOPAC)