



JUDICIARY OF
ENGLAND AND WALES

9th October 2020

**THE QUEEN (on the application of OFFICER W80)
v.
DIRECTOR GENERAL OF THE INDEPENDENT OFFICE FOR POLICE
CONDUCT**

JUDGMENT SUMMARY

Important note for press and public: this summary forms no part of the court's decision. It is provided so as to assist the press and the public to understand what the court decided.

Introduction

1. On 11 December 2015, Armed Police Officer W80 shot Mr Jermaine Baker dead in circumstances described in the judgment.
2. The Independent Office for Police Conduct (IOPC) investigated Mr Baker's death and recommended that disciplinary proceedings for gross misconduct in using excessive force should be brought against W80.
3. The IOPC concluded that a misconduct hearing would be likely to find that W80's belief that he was in imminent danger was honestly held. The IOPC thought, however, that the

panel at a misconduct hearing could determine that his honest, but mistaken, belief that his life was threatened was unreasonable.

4. The Commissioner of Police of the Metropolis (the Commissioner) disagreed with the legal premise on which the IOPC had based its conclusion, and decided not to follow the IOPC's recommendation.
5. The IOPC then directed the Commissioner to bring disciplinary proceedings against W80. W80 brought this case for judicial review of that decision by the Divisional Court.
6. 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.
7. The Court of Appeal decided, after a 3-day hearing that the question depended on the proper meaning of the applicable statutory conduct standard and the Code of Ethics published by the College of Policing.
8. That conduct standard was that officers should only use force to the extent that it was necessary, proportionate and reasonable in all the circumstances.
9. The Code of Ethics provided that officers had to "account for any use of force, in other words justify it based upon [their] honestly held belief at the time that [they] used the force".

10. The IOPC and Ms Demetrio, representing Mr Baker's family, contended that the words of the conduct standard and the Code of Ethics were clear. If officers held an honest, but mistaken, belief as to the danger faced, a misconduct hearing would only find them to be guilty of misconduct if their mistaken belief was unreasonable in all the circumstances, and the Code merely explained that officers must, after force has been used, account for or justify its use based upon their honestly held belief at the time.

11. W80, the Commissioner, the National Police Chiefs' Council and the Divisional Court all took a different view. They regarded the Code of Ethics as providing a clear pointer to the application of the criminal law test for self-defence. They submitted that an officer would only be guilty of misconduct in the circumstances of this case if his belief that he was in imminent danger was not an honestly held one, or if he had used more than the minimum amount of force necessary. They argued that, once it was determined that the officer held an honest belief that he was in imminent danger, there could be no inquiry in misconduct proceedings as to whether that belief was a reasonable one to have held in all the circumstances. Thus, they argued that, once the Director of Public Prosecutions had decided (as he had) not to prosecute W80, there was no possibility of misconduct proceedings being successful.

12. The Court of Appeal, therefore, had to decide whether the Divisional Court was right to quash the IOPC's decision. The question was whether or not the IOPC was justified in concluding that, on the basis of the applicable conduct standard and the provisions of the Code, it was open to a reasonable panel at a misconduct hearing to make a finding of misconduct if W80's honest, but mistaken, belief that his life was threatened was found to be unreasonable. The IOPC submitted that this conclusion was soundly based in law. W80 submitted that it was not.

Decision

13. The standards of professional behaviour required of police officers are statutory. That standard is elaborated upon and explained by the Code, but the Code cannot alter the standard itself. The question was not whether the standard, as explained by the Code, was more consistent with either the civil or the criminal test for self-defence. The meaning of the standard was not to be judged by specific reference to the facts of this case. There were a multitude of situations to which the standard applied, such as, where force of any kind was used, for example in arresting citizens, restraining them and taking them into custody.
14. It was wrong to say that there could be no misconduct wherever an officer used proportionate force based on an honest belief that he was in danger. If the officer made an honest mistake, the disciplinary panel must still determine whether the use of force was reasonable in all the circumstances. In many cases, an honest mistake is also likely to be found to have been reasonable in all the circumstances, but there will be some cases where it will not. It was not the Court of Appeal's task to speculate on the numerous different situations that might occur.
15. The Code of Ethics itself was deliberately written in plain language and was specifically intended for the use of police officers, staff, contractors and the public. It would be wrong to introduce a technical meaning which was not apparent on the face of the Code. Neither the relevant Regulations, the Home Office Guidance nor the Code of Ethics made express reference to the criminal test for self-defence. It would, therefore, be inappropriate to read such a test into a simply drafted and readily comprehensible

standard, without clear words. The public would reasonably expect the standards of conduct to apply without any gloss.

16. Moreover, W80's submissions would prevent public scrutiny of the serious situation that arose in this case. The investigation by the IOPC had been privately undertaken, whereas a misconduct hearing would be conducted in public.
17. The suggestion that the conclusion was unfair because W80's training had been conducted on the basis that the criminal test for self-defence would apply in misconduct hearings could be made in mitigation if that became necessary.

Conclusions

18. The Court of Appeal concluded that the Divisional Court was wrong to quash the IOPC's decision. The IOPC was justified in concluding that it was open to a reasonable misconduct panel to make a finding of misconduct if W80's honest, but mistaken, belief that his life was threatened was found to be unreasonable. That conclusion was soundly based in law on the proper and plain meaning of the relevant Regulations and the Code of Ethics.
19. Accordingly, the appeal was allowed and the IOPC's decision to direct the Commissioner to bring disciplinary proceedings against W80 would stand.