



Neutral Citation Number: [2020] EWHC 2859 (Admin)

Case No: CO/1500/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/10/2020

Before:

MR JUSTICE CHAMBERLAIN

Between:

The Queen on the application of

JULIAN WATSON

Claimant

- and -

**INDEPENDENT OFFICE FOR POLICE
CONDUCT**

Defendant

Julian Watson, in person

Neil Moloney (instructed by IOPC) for the Independent Office for Police Conduct

Hearing date: 14 October 2020

Approved Judgment

Mr Justice Chamberlain:

Introduction

- 1 By this claim, Julian Watson challenges a decision of the Independent Office for Police Conduct (“IOPC”) communicated by letter of 17 December 2017. The IOPC was considering an appeal by Mr Watson under paragraph 25 of Schedule 3 to the Police Reform Act 2002 against a decision of the Hertfordshire Constabulary (“HC”). Mr Watson had complained about two of HC’s officers. HC had decided that one of them, Police Constable Lobendhan, should face disciplinary proceedings, but the other, Police Sergeant Solankee, had no case to answer. The IOPC decided not to uphold the appeal against the decision in respect of PS Solankee.
- 2 Permission to apply for judicial review was granted by Clive Sheldon QC, sitting as a Deputy High Court Judge, on 10 July 2019.

The facts

- 3 In the early hours of 24 December 2013, PC Lobendhan and PS Solankee went to Mr Watson’s home in Milton Keynes to conduct a search authorised under s. 18 of the Police and Criminal Evidence Act 1984. Mr Watson did not want to let them in. There was a scuffle at the door. PS Solankee discharged PAVA incapacitant spray. The officers then entered and arrested Mr Watson for obstructing a constable in the execution of his duty. They handcuffed him in what is known as the “front stack position”, i.e. with his hands in front of his body. Two officers from Thames Valley Police (“TVP”), Police Constable Morgan-Russell and Special Police Constable Badshah, came to assist. A search of the house was conducted. A small quantity of cannabis was found. Mr Watson was arrested on suspicion of possession of a class B drug with intent to supply.
- 4 PC Lobendhan and SPC Morgan-Russell took Mr Watson to the police car and then on to Milton Keynes police station. The other two officers also came. The custody suite was in a temporary building accessed by external metal steps with a sharp non-slip coating. Mr Watson suffers from sciatica and trapped nerves, having fractured five vertebrae in a fall. He told the officers that he could not get up the steps with his hands cuffed in front of him. PC Lobendhan and SPC Morgan Russell dragged him up the steps by his arms. He was facing down the steps in a semi-seated position. He suffered cuts and scratches on his way up. PS Solankee observed what was going on and did not intervene. Mr Watson was then booked into a cell.
- 5 Mr Watson was never convicted of any offence arising out of the search and arrest. The only charge proceeded with was one of obstructing a police officer in the execution of his duty. That charge was dismissed.
- 6 In the meantime, on 31 December 2013, Mr Watson had made a written complaint about the conduct of the officers who arrested him. The complaint covered several aspects of his treatment on 24 December 2013. It is not necessary to set them all out. The one that matters for present purposes was “[t]he unnecessary brutality and injuries sustained in dragging me up steel nonslip sharp jagged steps to the Custody Office”. Mr Watson described what happened as follows:

“At the entrance to the Custody Office I told the police officers that my mobility disabilities would prevent me from being able to get up the 10? flights [sic] of steps with only one handrail and with handcuffs on. They refused to remove my handcuffs even though they were at least four officers present and instead one of them said ‘if you don’t get up those steps we will drop you and drag you up and it will not be a pretty sight’. I again said that I could not negotiate the steps with the handcuffs on and that having told them of my disability is it was their responsibility to take care of that and act in an appropriate manner.

The next thing I was aware of was being pushed backwards onto the steps and something (probably a foot or leg) put behind my legs making the trip over backwards and land heavily on the first few runs of the steps. My dressing gown belt became undone so the front part of my body was exposed. They then proceeded to lift my arms above my head and pull on the handcuff central connector and drag me up the steps backwards. The steps are steel and finished on the step and nosing with very sharp gravel type non-slip finish.

I was in considerable pain when I was dragged into the front desk area of custody, and after lashing out at their attempts to pull me to my feet, I was eventually allowed to kneel and pull myself up using a bench and wall. I notified the custody sergeant again of my disabilities and medication for it. I also asked for medical attention to my injuries that hurt very badly, but that I could not see as they were mostly to the back of my legs. During this time my dressing gown belt became loose and I was unable to gather the sides together and secure the belt with handcuffs on, so much to my embarrassment everyone was sniggering my immodest exposure.”

- 7 The complaint was considered by an investigating officer at TVP, Mick Osborne. He considered Mr Watson’s account, alongside those of PC Morgan-Russell, PS Solankee and PC Lobendhan. SPC Badshah had by that time left TVP and it was not considered practical to obtain a statement from her. Mr Osborne also considered the custody record and viewed CCTV footage of the custody suite at the time when Mr Watson was brought into it. Mr Osborne produced a report on the basis of which a decision-maker in TVP decided that neither of the two TVP officers had a case to answer.
- 8 Mr Watson exercised his right under paragraph 25 of Schedule 3 to the Police Reform Act 2002 to appeal against that decision. The appeal lay to the IOPC. On 29 March 2018, Philip Harrison, a Casework Manager at the IOPC, upheld the appeal. The letter containing his reasons included the following passage:

“...there is available CCTV which does show the top of the custody suite stairs, as well as the entry area of the custody suite. It is clear from this footage that you were dragged up the stairs and then into the custody suite. I have also reviewed photographs of the injuries he sustained while being dragged by the officers.

The witness statement made by PC Morgan-Russell, following your arrest, confirms that he, along with PC Lobendhan, dragged you into the custody

suite. However, as PC Lobendhan is not a TVP officer I cannot consider his actions or the outcome of the investigation into him as part of this appeal.

PC Morgan Russell does not appear to have provided any rationale or justification as to why he considered dragging you up and exterior set of stairs, while you were only dressed in a dressing gown, was the most appropriate use of force. There is no available evidence to demonstrate that he considered any other options, such as supporting you as you climbed the stairs or physically carrying you into the custody suite. There is also no evidence to suggest any consideration was given as to whether there were other more suitable access points that could be used.

I have noted the comments the officers have made about your demeanour during this incident. While it is asserted you were aggressive at the outset in that you refused entry to the Hertfordshire offices and used force to keep the door closed, it does not appear that this behaviour continued after entry was gained. After this point your behaviour is only described as abusive and uncooperative. I am also mindful that PC Morgan-Russell describes your resistance outside the custody suite as passive. In my opinion, these circumstances do not demonstrate a clear need to drag you backwards, rather than carry or support to you in another manner.

In light of the lack of provided rational explanation as to why dragging you up the stairs was the most appropriate course of action, and the injuries he sustained while being dragged up the stairs, it is my view that there is sufficient evidence on which a reasonable tribunal properly directed, could find, on the balance of probabilities, misconduct in relation to PC Morgan-Russell's use of force.

The Police Standards of Professional Behaviour state under Equality and Diversity that 'Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly'. Home Office guidance further clarifies that 'Police officers pay due regard to the need to eliminate unlawful discrimination and promote equality of opportunity and good relations between persons of different groups.'

PC Morgan-Russell records in his statement that you made him aware you were disabled prior to you leaving your home. PC Morgan-Russell further details that you stated you were unable to climb the custody stairs and would need to be carried up them. In light of this, and for the same reasons provided earlier in relation to PC Morgan-Russell's use of force, I consider there is sufficient evidence on which a reasonable tribunal properly directed, could find, on the balance of probabilities, PC Morgan-Russell [sic] actions were discriminatory."

- 9 Mr Harrison went on to say that the allegation that PC Morgan-Russell used excessive force would, if proven, be a breach of the standards of professional behaviour in respect of use of force and equality and diversity. The breach would not be so serious as to amount to gross misconduct (conduct warranting dismissal), but could justify a finding of misconduct. The appeal was therefore upheld and a recommendation made that PC

Morgan-Russell be required to attend a misconduct meeting. The meeting took place and PC Morgan-Russell was found to have committed misconduct. The sanction imposed was “management advice”.

- 10 Separately, Mr Osborne’s report was sent to HC for a decision on whether either of the two HC officers had a case to answer. It was referred to Detective Chief Inspector Beeby. She decided on 26 July 2018 that PC Lobendhan would have had a case to answer for dragging Mr Watson up the steps to the custody suite. As he had left the force in 2016, however, there was no further action that could be taken. The remainder of the allegations against PC Lobendhan and PS Solankee were not upheld. No reason was given for the latter conclusion.
- 11 Mr Watson appealed to the IOPC against HC’s decision. There were two parts to the complaint. The first concerned what Mr Watson said was the excessive use of force at his home. The second concerned the use of force to drag him up the steps to the custody suite.
- 12 The appeal was determined by Claire Parsons, a Casework Manager. In a letter dated 17 December 2019, she explained her reasons for not upholding the appeal. Ms Parsons made clear that she had considered a range of information: statements provided by PC Lobendhan, Inspector Solankee (who by this time had been promoted), PC Morgan-Russell and SPC Badshah; contemporaneous records; the result of the misconduct meeting relating to PC Morgan-Russell; and CCTV footage. In relation to the allegation of excessive use of force in dragging Mr Watson up the steps to the custody suite, Ms Parsons said this:

“In relation to the second part of your complaint where you state that having got out of the police vehicle at Milton Keynes Police Station, you were dragged by the officers from the car park up a flight of stairs into the custody office. I note that PS Solankee confirms in his account that when you all arrived at Milton Keynes custody office you refused to exit the police vehicle, and informed the officers that you could not move. PS Solankee states that you were laughing as you were saying this and as a result the officers removed you from the vehicle by force. PS Solankee describes you as passively resisting as you began to walk up the stairs towards the custody office, and then you began to fall to the floor, telling the officers that you were disabled so they would have to carry you up the stairs. PS Solankee confirms that force was used to get you into the custody suite. I have also reviewed the two statements submitted by PC Lobendhan in December 2013 and 19 July 2015. I note that PC Lobendhan states that you had thrown yourself to the ground whilst leaving your property to enter the police vehicle, and had to be physically helped to the car. PC Lobendhan also states that when you all arrived at Milton Keynes custody office and exited the police vehicle you fell to the floor ‘in a controlled manner’ and then refused to get up, informing the officers that you could not walk. PC Lobendhan States that as a result of this he and PC Morgan Russell carried you up the stairs ‘causing minor scrapes and scratches to the DP’. However, it is of note that PC Lobendhan has not provided any rationale in regards to his decision to drag you up an exterior set of metal stairs with another officer, whilst you were only in your dressing gown. PC Lobendhan has also not provided an

explanation as to whether or not he considered other potential options to get you into the custody office, such as using an entrance that is specifically designed for disabled individuals, or arranging for more officers to assist with actually carrying you up the stairs in a safe and more dignified manner.

I have reviewed the CCTV footage which covers the top of the stairs to the custody office, as well as the corridor which leads to the entrance of the custody office. The footage clearly shows PC Lobendhan and PC Morgan Russell dragging you up the stairs by your arms, as you were in a seated position being pulled backwards. Both officers continued to drag you along the floor of the short corridor and then into the custody suite. In my view, you do not appear to be physically resisting the officers whilst they are doing this. I also note from the CCTV footage that the female officer from Thames Valley police walked in front of you being pulled up the stairs by PC Lobendhan and PC Morgan Russell and PS Solankee was then seen to be walking up behind you, but does not physically touch you. I have also considered the photographs of the injuries you sustained as a result of the officers dragging you up the metal stairs to the custody office.”

- 13 Ms Parsons then recorded and endorsed the investigating officer’s conclusion in relation to PC Lobendhan, before continuing as follows:

“In relation to PS Solankee, in my view, there is insufficient evidence that he used excessive force against you. However, I do acknowledge that he witnessed PC Lobendhan and PC Morgan-Russell dragging you up the stairs. Therefore, it is my opinion that it would have been good practice for PS Solankee to have intervened, and made an attempt to establish if there was an alternative entrance to use in order to access the custody block. However, I find that this does not constitute misconduct, but this observation should be relayed to PS Solankee as a learning point for any potential situations of this nature that may arise in the future. As a result, I concur with the findings of the IO and accordingly this aspect of your appeal is not upheld.”

- 14 This is the conclusion that Mr Watson now challenges. Ms Parsons also said she was unable to comment or reach a decision on the part of Mr Watson’s complaint dealing with his treatment in custody at Milton Keynes Police Station, because that was for TVP to investigate. That conclusion is not challenged in these proceedings.

The law

- 15 The 2002 Act contains the legal regime governing the complaints against police officers. Its essential elements, insofar as relevant to this claim, were at the relevant time as follows:
- (a) By s. 29, “the appropriate authority” in relation to any complaint, conduct matter or investigation relating to the conduct of a person serving with the police (other than the chief officer or acting chief officer) is the chief officer under whose direction and control he is. In this case, the appropriate authority was the Chief Constable of HC.

- (b) By para. 16(3) of Sch. 3, the Chief Constable was required to appoint a person serving with the police or a National Crime Agency officer to investigate the complaint. In this case, that was Detective Chief Inspector Beeby.
 - (c) By para. 22 of Sch. 3, the investigating officer was required to submit a copy of his or her report to the appropriate authority.
 - (d) By para. 24(6) of Sch. 3, on receipt of the report, the appropriate authority was required to determine (inter alia) whether any person to whose conduct the investigation related has a case to answer in respect of gross misconduct or misconduct or had no case to answer.
 - (e) By para. 25 of Sch. 3, the complainant had a right to appeal to the IOPC against that determination.
- 16 The authorities governing the principles to be applied on judicial review of a decision of the IOPC were helpfully drawn together by Stephen Morris QC, sitting as a Deputy High Court Judge, in *R (Ramsden) v Independent Police Complaints Commission* [2013] EWHC 3969 (Admin), at [21]:

“A number of authorities on the above legislative framework have been drawn to my attention: *R (Dennis) v IPCC* EWHC [2008] 1158, *R (Crosby) v IPCC* [2009] EWHC 2515 (Admin) (in particular §§5, 39–42), *Muldoon v IPCC* [2009] EWHC 3633 (Admin) (in particular at §§18, 19, 24 and 40) and *R (Erenbilge) v IPCC* [2013] EWHC 1397 (Admin), from which the following principles can be stated in summary form:

- (1) The question for the police investigation is whether the allegations made in the complaints have been established on the balance of probabilities, taking account of proportionality: *Muldoon* §18 and *Crosby* (cited in *Muldoon*) at §41.
- (2) The IPCC's appeal procedure is by way of review; in considering the question under paragraph 25(5)(b) of Schedule 3, the IPCC's task is to ensure that, following a proportionate investigation, an appropriate conclusion has been reached by the police investigation: *Muldoon* §§18, 24. Was the conclusion in the police investigation one which was fair and reasonable?
- (3) An IPCC appeal decision is not expected to be “tightly argued” — nevertheless the conclusion should be clear and the reasons readily understandable: *Dennis* §20.
- (4) The function of the Court on an application for judicial review of an IPCC appeal decision is confined to the question whether the IPCC has reached a decision which was fairly and reasonably open to it, even if the court might have reached a different conclusion. IPCC decisions involve matters of judgment and the court will allow the IPCC a discretionary area of judgment: *Muldoon* §§19, 40.

(5) Where the IPCC upholds the decision of the police investigation, the question for the Court involves an element of “double rationality”: was the decision of the IPCC that the decision of the police investigation was fair and reasonable itself fair and reasonable? The question is not whether the Court would necessarily have reached the same conclusion as the police or the IPCC, nor whether it can be seen with hindsight that an error may have been made (*Muldoon* §§24, 34).”

- 17 During the hearing, Neil Moloney, for the IOPC, drew my attention to the decision of this Court in *R (Chief Constable of Northumbria Police) Independent Office for Police Conduct* [2019] EWHC 3169 (Admin). At [54]-[56], Judge Kramer, sitting as a Judge of the High Court, relied on the decision of the Visitors of the Inns of Court in *Walker v Bar Standards Board* (19 September 2013), which considered the meaning of the word “misconduct”. In that case, a barrister prosecuting in a criminal case had been disciplined for asking an improper question imputing dishonesty on the part of a defence expert. Giving the judgment of the visitors, Sir Anthony May said at [16] that “the concept of professional misconduct carries resounding overtones of seriousness, reprehensible conduct which cannot extend to the trivial”. At [32], he asked the question whether the conduct in issue was “sufficiently serious to be characterised as professional misconduct”. This required him to ask whether it was “particularly grave”. The visitors said at [37] that the barrister’s conduct was far from trivial, but was nonetheless “a momentary uncharacteristic lapse which did not cross the line of seriousness which, in the end, was a matter of judgment”.
- 18 In the *Northumbria* case, Judge Kramer applied this in the context of police misconduct, holding at [55] that “for behaviour to amount to misconduct it must fall below a recognised standard of probity or competence relating to the task in respect of which the misconduct is said to arise. If it does not, it cannot be characterised as particularly great. For an error judgement to amount to misconduct it must be the result of actions which fall below those standards.”

The parties’ submissions

- 19 Mr Watson’s case can be very simply put. Mr Harrison had found that PC Morgan-Russell had a case to answer for dragging Mr Watson up the steps to the custody suite. PC Morgan-Russell was later found guilty of misconduct by using excessive force. HC had itself found that there would have been a case to answer against PC Lobendhan had he still been serving. There was evidence to show that the two had used force to drag Mr Watson up the steps into the custody suite when there were other ways of getting Mr Watson there. PS Solankee was senior in rank to the other officers. He saw what was happening and did not intervene to prevent it. This means that he participated in the unjustified use of force or, at least, may have been guilty of misconduct by failing to intervene. Ms Parsons’ conclusion that there was no case to answer was not properly open to her in the circumstances.
- 20 Mr Watson also complained that the IOPC had been late in providing the CCTV footage it had to the court. He said that it appeared that some of it had not been disclosed.
- 21 For the IOPC, Mr Moloney submitted that Ms Parsons gave a reason why there was no misconduct on the part of PS Solankee: the CCTV footage did not show that he had

himself used force. As to the other officers, it was important to note that no criminal proceedings had been brought against any officer. PC Morgan-Russell was found guilty of misconduct and PC Lobendhan would have had a case to answer had he still been serving. However, the conduct of each officer had to be considered separately; and that is what Ms Parsons did.

- 22 In his skeleton argument, Mr Moloney submitted that Ms Parsons' conclusion was properly reasoned:

“Having criticised PS Solankee to the extent that she inferred that it would have been good practice for him to have intervened, she explained why this criticism did not meet the threshold for a case to answer for misconduct.”

- 23 When I pressed Mr Moloney about where the explanation was to be found, he pointed to the passage I have cited in [13] above and submitted that, when read in context of the rest of the decision, Ms Parsons should be understood to have concluded, in line with the approach in *Walker* and the *Northumbria* case, that PS Solankee was guilty of a minor lapse which, even if not trivial, did not reach the threshold for misconduct. In any event, Mr Moloney submitted, there was no reason to assume that Ms Parsons' conclusion was based on the legally erroneous conclusion that PS Solankee could not be guilty of misconduct unless he had personally participated in the excessive use of force.

Discussion and conclusion

- 24 I have approached my analysis of Ms Parsons' decision by reading her reasons as a whole, bearing in mind that she is not a lawyer or a judge. Ms Parsons was dealing with complaints about two aspects of the conduct of the officers who arrested Mr Watson on 24 December 2013 (the use of force in the initial arrest and the use of force in dragging Mr Watson up the stairs to the custody suite). She was considering the position of both PC Lobendhan and Insp Solankee. There is no basis for disagreeing with her description of the evidence. Having viewed the CCTV footage myself, it shows no more and no less than she describes. There is no evidence that any other relevant CCTV footage ever existed.
- 25 The central part of Mr Watson's challenge is not to Ms Parson's description of the evidence, but to her conclusion that PS Solankee had no case to answer on the footing that he had failed to intervene to prevent the other officers from dragging Mr Watson up the stairs to the custody suite. Mr Watson framed his challenge as one based on rationality, but in public law, rationality and adequacy of reasons are often overlapping grounds of review. In a case where the decision-maker has a duty to give reasons, and no adequate reason is given for a conclusion, the decision will be unlawful, at least in a case where the failure to give proper reasons gives rise to prejudice: see e.g. *South Buckinghamshire District Council v Porter (No. 2)* [2004] 1 WLR 1953, at [36]. Mr Moloney did not suggest the contrary. He submitted that the passage quoted in [13] above did convey an adequate reason, or that one could be inferred.
- 26 I have read that passage carefully. There is no legal error in Ms Parsons' conclusion that “there is insufficient evidence that [PS Solankee] used excessive force against [Mr Watson]”. It is the next part that causes the difficulty. Ms Parsons' conclusion that PS Soalnkee's failure to intervene “does not constitute misconduct” is simply that: a

conclusion. Contrary to Mr Moloney's submission quoted at [22] above, no reason at all is given for it. The absence of a reason might not be fatal in a case where the reason could be inferred, but I do not accept that it is possible safely to infer the reason in this case.

- 27 Ms Parsons had concluded that PS Solankee's failure to intervene was contrary to "best practice". But this does not show that she had formed the view that PS Solankee's conduct failed to meet the threshold for misconduct, still less that she had in mind the legal test enunciated in *Walker* and the *Northumbria* case. The difficulty with this inference which Mr Moloney invites me to draw is that it is not the only one that could be drawn. Another is that Ms Parsons thought (wrongly) that, if the officer himself neither uses force nor instruct another to use force, evidence of his failure to prevent an excessive use of force by another officer could never be grounds for misconduct. In the absence of any expressed reason for the conclusion that there was no case to answer, it is not possible to know which of these two approaches (one permissible if properly reasoned, the other unlawful) was being adopted.
- 28 If, as Mr Moloney suggests, Ms Parsons was expressing a conclusion that PS Solankee's conduct, though contrary to "best practice", was not serious enough to meet the threshold for misconduct, that conclusion called for a justification. Mr Moloney said that it may have all happened too quickly for PS Solankee to intervene. If that is so, it is unclear why PS Solankee was criticised at all. Mr Moloney next suggested that PS Solankee, an officer of HC rather than TVP, did not know Milton Keynes Police Station and so could not be expected to know about other ways of accessing the custody suite. There is, however, no trace of that explanation in Ms Parsons' reasons; and in any event, it would not make sense, given that she appears to have endorsed the conclusion of the investigating officer that the conduct of PC Lobendhan (also from HC) would have given rise to a case to answer had he still been serving.
- 29 Having considered both the decision itself and Mr Moloney's submissions about it, I have reached the conclusion that the decision that PS Solankee had no case to answer was inadequately reasoned and is, on that basis, unlawful.
- 30 Ordinarily, the remedy that follows from a finding that a decision is unlawful is a quashing order. Section 31(2A) of the Senior Courts Act 1981 requires the court to refuse relief if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred. Mr Moloney did not contend that this high test was met in this case. In the light of my conclusions, he was right not to do so: it is not clear whether, if proper reasons had been given, the IOPC would have found that there was a case to answer. I will therefore quash the challenged decision that PS Solankee had no case to answer. That will have to be reconsidered afresh by a different decision-maker.
- 31 Mr Watson's claim has therefore succeeded. I make clear, however, that nothing in this judgment should be taken to suggest that the IOPC is obliged to find that Insp. Solankee has a case to answer, far less that he is guilty of any misconduct. The IOPC will have to consider the first of these issues. The second issue will fall to be decided only if the IOPC decides the first in the affirmative and misconduct proceedings are begun.