



Press Summary

THE COURT ORDERED that no one shall publish or reveal the name or address of the Appellant who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the Appellant or of any member of their family in connection with these proceedings.

5 July 2023

R (on the application of Officer W80) (Appellant) v Director General of the Independent Office for Police Conduct and others (Respondents)

[2023] UKSC 24

On appeal from: [2020] EWCA Civ 1301

Justices: Lord Lloyd-Jones, Lord Sales, Lord Leggatt, Lord Burrows, Lord Stephens

Background to the Appeal

W80, an armed police officer, shot Jermaine Baker dead in a police operation. Mr Baker was implicated in a plot to snatch two individuals from custody. The police had intelligence that the plotters would be in possession of firearms. W80's account was that during the intervention, Mr Baker's hands moved quickly up to a shoulder bag on his chest. Fearing for his life and those of his colleagues, W80 fired one shot. No firearm was found in the bag, but an imitation firearm was in the rear of the car.

An investigation was conducted by the Independent Office for Police Conduct (the "IOPC")'s predecessor, the Independent Police Complaints Commission (the "IPCC"). The IPCC concluded that W80's belief that he was in imminent danger was honestly held, but unreasonable, and that W80 therefore had a case to answer for gross misconduct on the basis of the civil law test that any mistake of fact could only be relied upon if it was a reasonable mistake to have made. It sent the report and recommendation to the Metropolitan Police Service (the "MPS"), as the appropriate authority for misconduct proceedings against W80. The view of the MPS was that the IPCC had been incorrect as a matter of law in applying the civil law test (which looks to whether an honest but mistaken belief is *reasonable*) as opposed to the criminal law test of self-defence (which looks to whether the belief is *honestly held*). The IPCC became the IOPC in January 2018, by virtue of the Policing and Crime Act 2017. After the MPS indicated that it would not follow the (now) IOPC's recommendation to bring misconduct proceedings against W80, the IOPC directed the MPS to do so. It is that decision which is challenged in this judicial review.

The Divisional Court held that the criminal law test applies. The Court of Appeal held that neither the criminal law test nor the civil law test applies but that a tribunal in police disciplinary proceedings should simply apply the test contained in the wording of the use of force standard in Schedule 2 to the Police (Conduct) Regulations 2012 (“the 2012 Regulations”), namely whether the force used was *necessary, proportionate and reasonable in all the circumstances*.

Officer W80 appeals against the decision of the Court of Appeal, arguing that the criminal law test applies in police disciplinary proceedings, with which the Metropolitan Police Commissioner agreed. The issue before the Supreme Court was therefore whether it is open to a reasonable disciplinary panel to make a finding of misconduct if an officer’s honest, but mistaken, belief that his life was threatened was found to be unreasonable.

Judgment

The Supreme Court dismisses the appeal, unanimously finding that the test to be applied in disciplinary proceedings in relation to the use of force by a police officer in self-defence is the civil law test. Lord Lloyd-Jones and Lord Stephens give the judgment, with whom all the other Justices agree.

Reasons for the Judgment

The Standard of Professional Behaviour in the 2008 and 2012 Police (Conduct) Regulations does not expressly state whether the criminal law test or the civil law test applies in police disciplinary proceedings in relation to the use of force [93]. The Supreme Court concludes that the civil law test is the correct test, for several reasons:

1. The Standards of Professional Behaviour set out in the 2008 and 2012 Regulations are each framed as statements of objective fact. For instance, “officers ... act with integrity”. Accordingly, the standard in respect of the use of force should incorporate the degree of objectivity sought to be achieved under the Regulations, which cannot be achieved using the criminal test which includes a subjective element [94].
2. The word “knowingly” which had featured in the appropriate standard for police officers in relation to the use of force contained in the 1999 and 2004 Regulations was omitted from the 2008 Regulations and subsequent regulations. When the word “knowingly” was deliberately omitted in the 2008 Regulations, this was a strong textual indicator that the test to be applied thereafter was the objective civil law test [95].
3. The purpose of the disciplinary arrangements in the 2008 Regulations is not simply blame and punishment, but also achieving learning and development for the officer based on an employment model. This suggests that the civil test is more appropriate, so that the reasonableness of mistakes can be subject to a disciplinary process. [96-97]
4. Interpretation of the Standard of Professional Behaviour as to the use of force in the 2008 Regulations cannot be informed by the Code of Ethics published four years later by the College of Policing in 2012. The Code of Ethics in fact expressly provides that in misconduct proceedings “the formal wording of the [2012 Regulations] will be used” [101];
5. The Court of Appeal attempted to find coherence between the 2008 and 2012 Regulations, previous iterations of the Regulations, and paragraph 4.4 of the 2012 Code

of Ethics (which incorporates the criminal law test). The correct approach however is to interpret the 2008 and 2012 Regulations, acknowledging the fundamental shift brought about in the 2008 Regulations. Paragraph 4.4 of the Code of Ethics is wrong and misleading as it does not reflect the test in the 2008 and 2012 Regulations [102-103].

6. The obligation placed upon the IOPC Director General to have regard to the 2014 Guidance cannot mean that the Director General can disapply the 2012 Regulations or that he should be informed by para 4.4 of the Code of Ethics [104].
7. The test to be applied in England and Wales under the 2008 or 2012 Regulations is not informed by the different provisions governing police disciplinary proceedings in Northern Ireland and Scotland.[105].
8. The test to be applied in England and Wales under the 2008 or 2012 Regulations is not informed by Article 2 of the European Convention on Human Rights, which would not demand the application of the criminal standard in any case [109-111].

The test to be applied in disciplinary proceedings in relation to the use of force by a police officer in self-defence is the civil law test. The IOPC applied the correct test when directing the MPS to bring disciplinary proceedings against the appellant. Accordingly, the appeal should be dismissed [112].

References in square brackets are to paragraphs in the judgment

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)