

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Before :

THE HONOURABLE MR. JUSTICE SAUNDERS

Between :

R (on the application of Nicola Dennis)	<u>Claimant</u>
- and -	
Independent Police Complaints Commission	<u>Defendant</u>

DRAFT JUDGMENT FOR THE PURPOSE OF READING OUT IN COURT

NOT TO BE TREATED AS AN APPROVED JUDGMENT

The Honourable Mr. Justice Saunders:

1. This is an application to quash the decision of the Defendant made on 19th July 2007 on a complaint by Nicola Dennis.
2. It is necessary for me to briefly set out the factual background. I will hope to do that in as un-contentious a way as possible as there are disputes of facts between the parties which may have to be determined in a civil court. I do not wish it to be thought that in carrying out this review I have been able, or sought, to form any concluded view on the facts.

3. Just before 12 midday on 19th November 2005, Nicola Dennis was at her home in 2 De Havilland Drive, Cambridge Row in London. A friend of hers, Gemma Fisher, was also at the house. Fortunately, Nicola Dennis' 2 children were not there. There was a knock at the door. Gemma Fisher opened it. She could not see anyone there. Nicola Dennis also went to see if she could see anyone. Later police enquiries revealed that it was a friend of Nicola Dennis who had knocked to see if her children wanted to go to the park.
4. Almost immediately Nicola Dennis was faced with members of the police armed response unit. A gun was pointed at her and she was told to put her hands up and to move away from the house.
5. She was taken hold of and moved quickly to the communal bin area. She was asking what was happening and was told to keep quiet. She was made to lie on the floor; her hands were tied behind her back with plastic cuffs; all of this at gun point. She was aware that the safety catch was off.
6. She was made to go to another area; people who had been apprehended were placed by her on the ground. She was terrified that she was going to be shot; she was crying and shaking. Her ordeal may have gone on for 15 minutes before she was released. She had suffered injuries, fortunately minor, to her knees and thumbs.
7. The effect on her had been significant. In her statement dated 6th January 2006 she says: "The police and in particular that one officer put me through a terrifying ordeal when on a number of occasions I feared that I would be shot and killed. I don't have any idea why the police did what they did to me. I am very upset about what has happened, it has affected me and how I feel about

where I live a lot. I don't want to live in my home any more." It was apparent in Court that the memory of these events still upsets her.

8. I should make clear that Nicola Dennis was not involved in any form of criminal activity. She was a wholly innocent member of the public going about her normal business.
9. Part of the explanation for what happened was given to Nicola Dennis at the time, and part emerged later during the police enquiry. The reason for what happened was this. The day before, Police Constable Sharon Beshenivsky had been shot dead in the Bradford area. It was an event which shocked the nation. The police investigating that crime, were able to connect the killers to a RAV 4 vehicle. That vehicle was seen in the London area and was followed by a covert surveillance team. To effect arrests it was necessary to deploy a firearms team.
10. The firearms team was directed by the covert surveillance team and followed the RAV 4 into De Havilland Drive. The firearms team found the RAV 4 empty parked outside number 2. The door was open and Nicola Dennis was standing in the doorway. She was grabbed, removed and treated as she was because at least one officer believed that the suspects had gone into her house.
11. In fact the suspects had gone through a door into an adjoining flat where they were arrested by armed police. After their arrest an officer went through Nicola Dennis' house into the back yard in case there were others who might try to escape from the adjoining flat through that yard.
12. Nicola Dennis made a complaint to the Defendant alleging;

- 1) unauthorised entry into her premises
 - 2) unlawful arrest, if she was arrested
 - 3) unauthorised use of force to detain her
 - 4) failure to treat her with courtesy
13. The statutory framework for the investigation of complaints against the police is the Police Reform Act 2002 and Regulations and Guidance made pursuant to that Act. Schedule 3 deals with the handling of complaints. The Defendant decided in accordance with paragraph 15(4)(b) that the investigation of this complaint should be conducted by the Police supervised by the Defendant.
14. The investigation was conducted by a Police Inspector and Sergeant. Statements were taken from Nicola Dennis and other members of the public. Notebooks of police officers were collected and examined and the two relevant officers were interviewed under caution. They were Police Constables Pilbury and Callan. The Investigating Team produced a detailed report of their findings. (pp76 – 87).
15. Their conclusions were that, so far as both the criminal allegations and misconduct allegations were concerned, there was no case for any police officer to answer.
16. The investigation found that it was PC Pilsbury who first went to the house and removed Nicola Dennis at gun point. He did that in the belief that the suspects had gone into Nicola Dennis' house. He believed that the suspects may well be armed; that they may shoot to kill to evade arrest; they had after

all done so before. Any member of the public caught up in the arrest could be in danger and might unintentionally impede it. PC Pilsbury therefore believed Nicola Dennis had to be removed from the scene rapidly for her own safety. PC Pilsbury also regarded her as an 'unknown risk'. As he believed that the suspects had gone into her house, it may be that she was part of the gang. Having got Nicola Dennis away from the scene and onto the ground, PC Callan took over while PC Pilsbury went back to help search for and arrest the suspects. PC Callan put on the plasti-cuffs in order to search Ms. Dennis for any firearm. He said he did a pat down search, found nothing but kept the plasti-cuffs on so that a more thorough search could be conducted later. PC Pilsbury it was who had entered Ms. Dennis' premises later. He said he went through into the back yard in case any of the suspects or their associates tried to escape through there.

17. The Investigating Team found the use of force by PC Pilsbury to remove Ms. Dennis from the premises was lawful by virtue of s.3(1) of the Criminal Law Act 1967 which states, 'A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large'. It is common ground that includes a power to use force to remove an innocent 3rd party from the scene of a potentially violent arrest where guns might be fired. The Officers concluded that in the exceptional circumstances pertaining at the time, the amount of force used was reasonable.
18. The conclusion of the investigation was that PC Callan was entitled to search Ms. Dennis under s.47 of the Firearms Act 1968 and that it was reasonable to

use plasti-cuffs for that purpose. It also concluded that PC Callan was entitled to continue to detain Ms. Dennis until a more thorough search could be carried out.

19. In effecting the search and detaining for the purpose of search, the police would only be entitled to use reasonable force. The Investigating Officers concluded that the actions of PC Callan and the degree of force used were reasonable.
20. In relation to the entry by PC Pilsbury into the house, PC Pilsbury had said in his interview that he believed Ms. Dennis would have given consent had she known the circumstances. The Officers concluded that the entry was a reasonable and proportional response to the situation PC Pilsbury was facing.
21. Ms. Dennis exercised her right to appeal these findings to the Defendant. Under paras. 25(2)(b) and (c) of Schedule 3 of the Police Reform Act 2002 she was entitled to appeal against the findings of the investigation and the decision not to take action in respect of any matter dealt with in the report. Ms. Dennis' solicitor supplied details of her complaints about the investigation.
22. The appeal procedure is by way of review. It was carried out on behalf of the Defendant by a Caseworker. She had, for the purposes of review, the decision of the investigations and, at least, the statements of the witnesses.
23. The conclusion of the review was the appeal was partially successful. The Caseworker did not find that any criminal allegations or misconduct allegations had been made out but concluded that some action was required, namely, 'Management words of advice to be given to PC Pilsbury in relation

to the treatment of Ms. Dennis, i.e. cuffing Ms. Dennis and placing her on the floor. It might be of use to compare this with the treatment of Ms. Fisher which was reasonable, less traumatic and inevitably brought about the same conclusion'.

24. The Claimant says that the appeal decision is irrational and should be quashed. The Defendant and the Interested Party accept that the reasoning and language of the decision can properly be criticised but argue that because the ultimate conclusion is right, I should not quash the decision.
25. It is right that I should not expect or look in the Appeal decision for the sort of tightly argued judgment that might be expected of a Chancery Judge. What is important is that the conclusions should be clear and the reasons for those conclusions can be readily understood by the Complainant, the Police Officers concerned and the relevant Police Authority who may need to review their procedures in the light of the decision.
26. Unhappily, the Caseworker has been led into error because she has misunderstood important findings of fact made by the Investigating Officers. She acted under the misconception that PC Pilsbury dealt with Ms. Dennis all the time whereas the Officers found, surely correctly, that PC Pilsbury got her away from the 'danger area' required her to lie on the ground then handed her over to PC Callan. It was PC Callan who handcuffed her. She has ended up therefore considering PC Pilsbury's behaviour on an incorrect basis. As a result she concluded that he should receive management advice for, inter alia, cuffing her which he did not do.

27. The justification for handcuffing her was said by PC Callan to be in order to search Ms. Dennis under the Firearms Act. The Caseworker never considered that as a possible justification. PC Callan's justification for keeping her in handcuffs was said to be to carry out a thorough search later. That also was never considered by the caseworker. She says that it was never part of the original complaint, but in reality the whole of the detention was complained of and was dealt with by the Investigating Officers. They clearly considered it to be part of their remit.
28. Central to the complaint was whether the use of force to move and detain Ms. Dennis was reasonable. If it was not, the police had exceeded their powers, if it was, then there was no case to answer.
29. I think that this fundamental mistake of fact on its own vitiates the appeal decision because the Caseworker was not reviewing the case on the appropriate factual basis. The Defendant points out that Ms. Dennis had made the same error. She also believed that one officer dealt with her throughout. I do not believe it is doubted that that was an understandable mistake on her part in the circumstances.
30. Whatever was the reason for her mistake, the caseworker should have dealt with the Appeal on the basis of the facts found by the Investigating Officers, namely that two officers were involved.
31. Maybe as a result of this error, the Caseworker's reasoning is confusing. On the one hand she says, 'she feels PC Pilsbury was somewhat over zealous in his actions' and 'I do not understand the vast differences in their (Nicola Dennis and Gemma Fisher) treatment and conclude that PC Pilsbury should be

given management words of advice regarding this.' This resulted in the Caseworker concluding that action by way of giving advice should be taken in relation to PC Pilsbury.

32. Ms. Dennis argues that those remarks are inconsistent with a finding that PC Pilsbury only used reasonable force. Such a finding is never explicitly set out but it is implicit in the result of the appeal.
33. The Defendant and Interested Parties argue that the criticisms made in the Appeal decision could be perfectly valid but the amount of force used could still be reasonable, i.e. that there is a range of reasonable force and although a lesser degree of force may have been preferable, nevertheless the greater degree of force was still reasonable.
34. There is some merit in that argument but those observations by the Caseworker clearly raise a question as to whether PC Pilsbury used only reasonable force. To understand the decision a clear statement would be required saying in terms that, despite these reservations, the force used by PC Pilsbury was reasonable in all the circumstances.
35. It is argued by both the Defendant and the Interested Party that in any event a comparison between the way Ms. Dennis and Ms. Fisher were treated may be misconceived as not comparing like with like. The officer who took Ms. Fisher from the house has never been identified, so what matters affected his mind at the time cannot be identified. It may be that he was not cautious enough in his treatment of her or he was acting on the basis of a different factual situation, either perceived or actual.

36. Again there is merit in this argument and I have sympathy with it, but it involves a review of the merits rather than the procedure which is my principle concern.
37. In relation to the detention the Caseworker says as follows (p.71) 'As stated above the manner of the detention was not wholly appropriate and could have been handled better but the detention itself was legal. I do not find it correct to suggest that PC Pilsbury abandoned Ms. Dennis and simply 'hung around' the main entrance. The evidence would suggest that as a firearms officer his presence at that doorway was both necessary and vital as part of an operation to detain possibly armed and dangerous suspects. Unfortunately as a result Ms. Dennis' detention was somewhat prolonged, however, I cannot see that there was another option given the circumstances'.
38. Again the Caseworker has misunderstood the factual findings made by the Investigating Officers. The reason for the prolonged detention of Ms. Dennis was for the purpose of searching her not so that PC Pilsbury could go off and do other things.
39. It seems to me that these misunderstandings go to the very heart of the review that the Caseworker had to conduct.
40. There is a further criticism of the Caseworker's conclusion in relation to the passing through the premises to go into the backyard without permission. Although she identifies the wrong part of the section to justify the entry, I am quite satisfied that the power existed under s.17(1)(e) of the Police and Criminal Evidence Act 1984 and under the Common Law power to enter to prevent a breach of the peace.

41. I am satisfied that taken as a whole this appeal decision is fatally flawed and is irrational in that it is based on a misunderstanding of the facts and lack of clarity in reasoning which renders the decision difficult to understand. It also includes criticisms of a police officer which are unjustified.
42. I have been urged by the Defendant and the Interested Party to allow the decision to stand because the end result is correct. The end result is certainly not correct in so far as the criticism of PC Pilsbury is concerned but as has been pointed out he is not appealing.
43. I take the view, having seen all the material the Caseworker did, and having had the benefit of reasoned submissions, that the criticism she has made of the police arise substantially from her misunderstandings of the facts, and that on a proper understanding it may well have been that the Appeal would have been dismissed rather than allowed in part. I am however reminded that it is not for me to review the decisions of the Officers who investigated the complaint. That was the function of the person conducting the appeal. She has not considered an important area of the case as to whether it was reasonable for PC Callan to handcuff and then detain Ms. Dennis in order to carry out a further search. This all formed part of the detention. Part of the complaint was that it was not lawful and that has been considered by the Investigating Officers. The Caseworker refused to review this, partly, no doubt, because of her mistaken view of the facts. That refusal was not justified in my judgment.
44. Ms. Dennis is entitled to have a proper review. It is important that the functions of the Defendant are carried out properly to maintain public

confidence in the system and the police force and to ensure that if there are lessons to be learnt that that happens.

45. The Interested Parties argue that I should not quash the decision because, if the matter is further reviewed on appeal, it could theoretically result in criminal charges and/or disciplinary charges against the officers. If that were the case, then it is argued, the officers would be able to mount a successful abuse argument to prevent any prosecution proceeding.
46. That may or may not be the case, but it does not seem to me to present any obstacle to a proper appeal review being carried out. Any question of abuse would be for a Court or disciplinary tribunal to determine.
47. I have been supplied with and have considered further written submissions as to remedy. Having considered those submissions together with my findings, I am satisfied that the appeal decision must be quashed.
48. A further matter arose for argument which is not directly relevant to my decision but I am asked to consider it. After the decision on the appeal was made and promulgated, Ms. Dennis asked the Defendant to re-consider its decision. The Defendant declined saying that it had no power re-open its decision.
49. The Defendant argues that it has no express power to re-consider its own decision, nor, it argues, should such a power be implied. This is a quasi-judicial power that they are exercising and their decisions should not be subject to further argument save in the Administrative Court. It is desirable

that there be finality in decisions, particularly where their decisions affect the careers of police officers.

50. Ms. Dennis relies on the decision of Gage J. in the case of R(Wilkinson) -v- PCA [2004] EWHC 678. In that case, under previous legislation, where a complaint was to be investigated by the Merseyside Police, they obtained permission from the Police Complaints Authority to dispense with the investigation. The complainant had gone missing and therefore it could not be investigated.
51. Shortly after that decision was taken, the complainant turned up and his solicitors asked the PCA to re-open the investigation. The PCA agreed to the matter coming before the Administrative Court and agreed an Order quashing the decision to dispense with the complaint.
52. The Police argued that the PCA could not agree to its Order being quashed. Gage J. disagreed. He said at para.13, "It seems to me on general principles, that if the 1st Defendant has made a dispensation under the appropriate regulations; there must be power in it to review that dispensation and having reviewed it to revoke it".
53. Gage J then quashed the dispensation. He was not having to decide whether the decision to dispense could be revoked without recourse to the Administrative Court. However in so far as he seems to say that the PCA could change its decision as to dispensation by agreement without recourse to the Court, his decision may run contrary to the decision of Brooke J. in R -v- PCA ex parte Hanratty decided on 25th July 1995. At p.28C Brooke J. said, "Each of these cases turns on the particular statutory background (I

leave open for another day) the question whether in any conceivable circumstances the PCA might be able to re-open a decision. I am quite clear, however, on the facts of this case, bearing in mind the statutory framework and the effect of a decision to grant a dispensation from the requirement of the regulations, which was communicated to the Police and to the Applicants in accordance with the PCA's duties, that there is no room in that statutory framework for the PCA then to reconsider their decision in the light of new submissions made to them by the Applicants".

54. Gage J. was not referred to this authority. Much may depend on the type of decision it is and the effect it has on the rights of the parties. While not wishing to express any concluded view as to the power to change a decision on dispensing with an investigation, I am satisfied that where an appeal decision has been made and promulgated, there is no power to vary it by reason of further representations. To rule in any other way would lead to uncertainty. Should there be a time limit on representations? When would the Police and the Complainant be entitled to view the decision as final subject to an appeal on law to this Court?
55. If there were to be such a power, I would expect it to be statutory where regulations could prescribe the procedure to be followed.