STRICTLY EMBARGOED UNTIL 12 NOON 16 JUNE 2004

INDEPENDENT POLICE COMPLAINTS COMMISSION
DECISION OF THE REVIEW PANEL
POLICE ACT 1996 – SECTION 76
SUPERINTENDENT ALI DIZAEI

The background to the review the panel has been appointed to undertake is that the Police Complaints Authority (PCA) recommended that the Metropolitan Police Service (MPS) should take disciplinary action against Superintendent Dizaei. The MPS resisted the recommendation. The PCA directed that the MPS should take disciplinary action pursuant to Section 76(3) of the Police Act 1996. On 1st April 2004 the MPS requested the Independent Police Complaints Commission (IPCC) to review the decision to make the direction and to exercise its powers under Section 76(6) of the Police Act 1996 and thereby withdraw the direction.

The IPCC decided that it was in the public interest for the PCA decision to direct disciplinary proceedings to be reviewed.

Our terms of reference for the review are 'to fully familiarise ourselves with the facts of the case and the history of how it arrived at the current position; to decide whether or not we agree with the PCA's conclusions and to decide whether or

not in our opinion we would recommend that the direction should be allowed to stand.'

In reaching our decisions we have been guided solely by the facts of the case, the law as it applies to those facts and what the public interest requires.

This has been a complex and protracted enquiry into allegations about the conduct of Superintendent Ali Dizaei. Supt Dizaei joined the MPS on promotion from Thames Valley Police on the 29th March 1999. He was employed as Staff Officer to Assistant Commissioner Ian Johnston before being transferred to the Royal Borough of Kensington and Chelsea on 17th May 1999. On 3rd April 2000 he became Supt in charge of Operations based at Kensington Police Station.

Some of the allegations made against Supt Dizaei were of a criminal nature and the investigation involved covert surveillance including private side intercepts. Supt Dizaei eventually faced criminal charges as a result, which were heard at the Old Bailey in April 2003. He was acquitted. A second criminal trial due to be held in September 2003 was dropped at the last moment by the CPS.

During the course of the covert surveillance potential misconduct matters also became apparent. In respect of these misconduct matters Supt Dizaei has never given an account either in the form of a written statement or recorded interview, whether by way of contemporaneous notes or taped recorded interview. He was offered the opportunity to give an account which he declined.

The misconduct allegations were investigated by Commander Hitchcock of the MPS who produced a report dated 11th November 2003. The Investigating Officer concluded that following his investigation nine misconduct allegations were capable of proof and six matters were not. Prior to the conclusion of this investigation, however, the MPS had taken the wholly unprecedented step of concluding a 'private & confidential' agreement with Supt. Dizaei, brokered by ACAS and with the Metropolitan Police Authority, the Police Superintendents Association and the Metropolitan and National Black Police Associations as parties to the agreement. We return to this agreement below; suffice to note here that we are satisfied that the MPS was well aware that its provisions relating to discipline were ultra vires, seeking as it did to circumvent the PCA's exercise of its powers under the 1996 Act concerning the police disciplinary system, and amounted, in the MPS' own words to 'a

wholesale departure from the rules'. We deplore this action by the authority responsible for upholding the integrity of the police disciplinary system. We also deplore the 'private & confidential' basis for such an agreement when the PCA was not included in either its negotiation or completion. And we deplore the covert manner in which the negotiations were conducted, and the MPS' subsequent prevarication in failing to secure the release of the full document to the PCA. These grievous errors of judgement were compounded by a letter from the MPS – sent by DAC House – to Supt Dizaei's legal advisors advising them that 'if...the PCA decide to recommend that the MPS bring such [disciplinary] proceedings, at the subsequent tribunal the MPS will confirm that it will offer no evidence.'

There is no doubt that this behaviour greatly adversely affected the prospects for the reconciliation of any legitimate differences of opinion arising between the MPS' view of the best way to proceed with the Dizaei misconduct review and that of the PCA.

The PCA endorsed the conclusions reached by the Investigating Officer on the evidence. The MPS also accepted that the matters mentioned were capable of proof. The PCA recommended Supt Dizaei receive Words of Advice or Strong

Advice from the MPS concerning his conduct in five allegations which were capable of proof. They further recommended his conduct be referred to a misconduct tribunal in respect of four remaining allegations that were capable of proof.

The MPS resisted this recommendation. The PCA exercised their powers to make a formal direction pursuant to section 76(3) Police Act that the conduct of Supt Dizaei be referred to a tribunal with regard to nine alleged breaches of the Police Code of Conduct.

We have fully familiarised ourselves with the facts of the case and wholly endorse the findings of the PCA[1] that the charges are capable of proof on evidential grounds. We do not propose to rehearse them here. We have next considered the public interest test to be applied in this case. Should the direction of the PCA be withdrawn on public interest grounds in this case? We have anxiously considered and sought to balance the factors for and against the direction to stand that Supt Dizaei should face a misconduct tribunal with great care.

We have considered the following public interest factors in favour of upholding the direction.

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[1] As set out in the PCA Deputy Chair's letter dated 12th March 2004.

Supt Dizaei is a senior police officer in a position of authority and trust. He is alleged to have misused his position in the commission of some of these offences which are matters that go to his honesty and integrity which is in itself a matter of public concern. There is a clear, and in the panel's view, vital public expectation that police officers and particularly those of senior rank should uphold the highest standards of integrity and honesty. Whilst we note that Supt Dizaei has accepted that his conduct fell far below the standards expected of a police officer in two areas, these were not isolated incidents but formed a pattern of behaviour in which Supt Dizaei sought to evade the rules or change them to suit his convenience.

The conduct complained of covers a period between 12 February 2000 and 6 January 2001 when the offences are alleged to have been committed and we have taken into account whether there are grounds for believing that the conduct is likely to be continued or repeated as there is a history of recurring conduct. We have concluded that the risk is a reasonably small one to take in the public interest.

The second consideration in favour of upholding the PCA direction is to protect the credibility of the disciplinary

procedure itself, which as we noted above has been abused in this case. However, it is the MPS and the judgement of its management in the overall handling of the Dizaei case that is to be rightly criticized here. It would not be appropriate and could perversely undermine the very principle it sought to uphold if an individual disciplinary case were to be mounted primarily to defend and demonstrate a general principle (the need to support the disciplinary system) whilst overriding other considerations of fairness and proportionality.

We have considered the following public interest factors against upholding the direction that Supt Dizaei face a misconduct tribunal.

It is our view that the tribunal, were it to find the disciplinary charges proven, would be likely to impose a modest penalty given the excessive and unjustifiable delay in bringing some of the misconduct complained of to account. The matters to be considered are now four years old.

The delay has been caused largely by the extent to which in this case it seems to us the criminal inquiries came to dominate the handling of the case inappropriately, with no clear overall strategic grasp of the case at senior level in the MPS evident.

The disproportionate resources given to the covert surveillance of Supt Dizaei and the many lines of investigation that were pursued to no avail have in our view been a contributory factor in the excessive delays that compromise this case as an example of justice throughout its history. The lessons and recommendations from the Lancet enquiry appear relevant here.

We consider that several of the misconduct allegations could and should have been investigated as such and prosecuted as such a good time ago, instead of which some of them were put inappropriately into a criminal case that was then abandoned late in the day, and others apparently left in the sidings until all of the criminal matters had been pursued. We consider this to be a typical weakness of the police complaints and misconduct system, reflecting the manner in which too many complaints and misconduct allegations against police officers fail to progress timeously.

Then there is the manner in which the MPS have handled the case latterly, undermining its own investigation procedure, and pre-empting its own Investigating Officer's timetable to submit his reports. This includes inter alia its relationship with the MPS Authority, the National Black Police Association and

the Metropolitan Black Police Association on the diversity issues the case has identified.

We have considered the likely risk of Supt Dizaei's conduct being continued or repeated and have decided that this is a reasonably low or minimal risk to take. As noted above, Supt Dizaei in a public statement jointly issued by the MPS and himself expressed his regret for two areas in which his conduct fell far below the standards expected of a police officer and acknowledged the lessons he has learnt. We are of the view that Supt Dizaei has paid sufficient penance in this case, bearing in mind the public arena in which much of this matter has been conducted, in itself a disproportionate and inappropriate context, singling him out compared to most other disciplinary cases of comparable kind. He had been suspended from the MPS for over two years. He has been acquitted of criminal charges at a full jury trial arising out of events due to feature again in some of the charges before a misconduct hearing.

We have also considered the agreement between the MPS and others dated 24 October 2004 and referred to above. The agreement sets out the terms to facilitate the reinstatement of Supt Dizaei within the MPS. As noted, this agreement is ultra vires and does not bind the PCA or the IPCC insofar as

parts of the agreement relate to the termination of misconduct proceedings against Supt Dizaei, a point conceded by the MPS. Whilst we note that the MPS has withdrawn the undertaking rashly given to Mr Dizaei's solicitors to offer no evidence at any misconduct tribunal, we are of the view that it can now be argued to be unfair to Supt Dizaei to proceed with a hearing. Mr Dizaei entered into the agreement with the benefit of legal advice, and he can, not unreasonably, seek to rely on the undertaking he was given by the MPS. In any other employment context such an agreement would stand. We have to weigh the public interest in upholding the special powers accorded the PCA/IPCC under the police disciplinary system with the application of the principles of justice applicable in any such individual case. As noted above, we consider subordinating the latter to the former risks frustrating the very objective sought.

The MPS has relied in its arguments for not proceeding with a disciplinary hearing primarily on broader public interest arguments concerned with the needs of the police service to recruit and retain more people from black and minority ethnic groups, and specifically its assessment that in this case to set aside the agreement reached with the Black Police Association would be to jeopardise its own strategy and plans

for such recruitment. We have given careful consideration to these arguments but dismiss them as matters that do not have sufficient pertinence to either the case in hand or to the specific public interest in upholding the police disciplinary system. They are essentially extraneous management concerns, legitimate and important in their own right but never sensible grounds for manipulating a disciplinary system. Indeed the failure of the MPS to keep the two separate has led to the confusion and poor judgements characterising this case.

We have considered all the factors aforementioned and are satisfied that the factors we have considered against upholding the direction outweigh the factors in favour. We attach particular weight to: the nominal penalty that the case is now realistically likely to attract; the reasonable expectation Supt Dizaei has that he can rely upon the agreement freely entered into by his employer; the fact that he had been suspended for over two years; the fact that the matters at stake refer to incidents going back several years now, with insufficient justification for such excessive delays when misconduct proceedings could and should have been investigated and pursued much earlier; and that Mr Dizaei has been tried before a jury at the Old Bailey and acquitted

on some of the more serious matters at stake in a misconduct hearing .

As noted, one of the factors weighing with us has been the agreement between Mr Dizaei and the MPS. The agreement recognises that 'the task of securing the confidence of his colleagues rests largely with [Mr Dizaei]...a development plan will be sharply focused and will be specific, measurable, achievable, relevant, time based and risk assessed.' A senior MPS officer as mentor was to be appointed (in the event, an external one, the Chief Constable of Nottinghamshire, was chosen). We welcome this approach, but would add the more specific injunction that Mr Dizaei must take responsibility for demonstrating his reformed behaviour.

It is the panel's firm opinion that as the agreement is to stand in lieu of the discipline system for Mr Dizaei on this one occasion, it is in the public interest that it should be capable of demonstrating comparable expectations of such a senior officer. In this context, whilst it is not a matter within our formal review powers or indeed any power available to the IPCC contained in the Police Act 1996, we wish to draw to the MPS' attention our strong view that it would be inappropriate for Supt Dizaei to be considered for promotion until at least 12 months' after his return to work. In the public statement

concerning the agreement Supt Dizaei 'acknowledges the lessons he has learnt'. We think a period of at least 12 months is appropriate for him to evince this learning through irreproachable conduct, but this is a matter for the Commissioner of the MPS.

We have determined that the direction of the PCA issued pursuant to section 76(3) Police Act be withdrawn. We exercise our powers to so withdraw the direction under section 76(6) of the Police Act 1990. The decision of the panel is a unanimous one.

We wish to make it clear the only reason why we are not proceeding with the direction is on the stated public interest grounds and not on evidential grounds. For this reason this decision should be placed on Supt Dizaei's record.

We are sending a copy of this decision to the Secretary of State with the request that it should in turn be copied to HM Inspector of Constabulary.

Signed this day of 2004

Amerdeep Somal **John Crawley** **Len Jackson**
Commissioners