Mr. R. A. Bell,
Thanet Against Live Exports,
4S Station Road,
Westgate on Sea,
Kent.
CT8 8QY

Tel and Fax: 01843 832427
Email: regbell45@hotmail.co.uk

14th November, 2014

Chief Constable Alan Pughsley,
Kent Police Headquarters,
Sutton Road,
Maidstone,
Kent,
ME15 9BZ

Dear Mr Pughsley,

I have received the letter from yourself with regard to the imposition of Section 14 of the Public Order Act, relevant to future Anti-Live Exports protests at Port Ramsgate.

I would be most grateful if you could find the time to discuss the situation with myself and my colleague from Kent Action Against Live Exports, Mr Ian Birchall at your earliest convenience and at a place of your choosing.

We feel that there are issues to be raised which can only be discussed with yourself or possibly your assistant Mr Brandon.

Yours faithfully,

Reginald A Bell
Dear Mr Bell

Your Appeal

I write regarding your appeal made to the IPCC dated 29th May and received on 30th May.

Please accept my apologies for the delay there has been in reaching a conclusion on your appeal; this was due to a general backlog of which meant that your case was not allocated to me until late August and also because it took some time for a privileged legal document (being the advice of the Force Solicitor regarding the use of section 14) to be disclosed to me. The case also required me to peruse a substantial amount of documentation.

I have today decided to uphold your appeal on the first head of complaint only. I agree that it seems that there was insufficient evidence for the former Chief Constable to have possessed a reasonable belief that it was the purpose of the organisers to intimidate others with a view to compelling them not to do a lawful act.

I have not upheld the appeal on the second ground regarding undue bias in the former Chief Constable’s report to the Kent Police and Crime Commissioner on the basis that I found it to be a reasonably fair reflection of the policing of the protests.

Please see overleaf for the full rationale for these decisions.

As you know, Ian Learmonth retired earlier this year and so the practical outcomes that can follow this upheld appeal are limited. Had Mr Learmonth still been serving I have found that he would have had a case to answer for misconduct for potential breaches of the Standards of Professional Behaviour. Given his retirement and that no action in respect of Mr Learmonth personally is possible, I have asked the Kent Police and Crime Commissioner to raise the issue of the use of s14 orders with the
appropriate person in the Kent Police so that the problems identified in this case are addressed.

Please do not hesitate to contact me if you have any questions about this decision.

Kind regards,

Matthew Johnson
Casework Manager
Independent Police Complaints Commission (IPCC)
Email: Matthew.Johnson@ipcc.gsi.gov.uk Tel: 020 7166 3969
IPCC Assessment of Investigation Appeal

DETAILS OF APPEAL

<table>
<thead>
<tr>
<th>IPCC Reference:</th>
<th>2013/009152</th>
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<tr>
<td>Name of complainant:</td>
<td>Mr Reginald Bell</td>
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<tr>
<td>Name of force:</td>
<td>Kent Police and Crime Commissioner</td>
</tr>
<tr>
<td>Date of complaint:</td>
<td>9 May 2013</td>
</tr>
<tr>
<td>Date of force decision:</td>
<td>8 May 2014</td>
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<td>30 May 2014</td>
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<td>11 November 2014</td>
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<td>Caseworker:</td>
<td>Matthew Johnson</td>
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BACKGROUND TO THE APPEAL

1. The complaint:

Mr Bell's complaint against the former Chief Constable of the Kent Police is on two major grounds; firstly that the Chief Constable did not have reasonable belief to impose the section 14 orders and secondly that his report into the policing of the live exports in Ramsgate was unbalanced.

2. The appeal (grounds given for the appeal):

Mr Bell says that the report written for the Kent Police and Crime Commissioner by the Investigating Officer (IO) is materially inaccurate, biased, and omits salient points made in his complaint. Furthermore that the IO accepts without question allegations made by the Chief Constable which are not supported by independent verification and that the IO has focussed on facts which support his conclusion and ignored those which ought to have led him to uphold the complaint.

APPEAL ASSESSMENT

1. Are the findings of the appropriate authority investigation appropriate/ proportionate to the complaint?

The Kent Police and Crime Commissioner has not upheld either part of Mr Bell's complaint and found that the Chief Constable possessed the reasonable belief necessary to impose the section 14 orders and that his report to the Kent Police and Crime Commissioner 'Operation Wizard - Report on the Policing of the Live Exports at Ramsgate Port by Kent Police'
dated 7th January 2013 was fair and impartial.

In deciding whether the Kent Police and Crime Commissioner was correct not to uphold Mr Bell’s allegations I will assess their merit on the civil standard of proof, that is on the balance of probabilities or, simply put, whether it is more likely or not that the conduct alleged occurred.

In order to make this decision I have familiarised myself with all the documentation collated and considered by the Investigating Officer.

I should say that because Ian Learmonth retired at the start of this year and is no longer Chief Constable, and therefore no misconduct outcomes can possibly follow, I will carry out a succinct assessment designed to effectively answer whether Mr Bell’s complaint should have been upheld and the hypothetical question whether, if the Chief Constable was still serving, he would have a case to answer for either misconduct of gross misconduct (see section two below).

1) Did the former Chief Constable have the reasonable belief necessary to impose the section 14 orders?

The Law

Section 14(1)(b) of the Public Order Act 1986 says that the Chief Constable may impose conditions on a public assembly if having regard to the time or place at which and the circumstances in which it is intended to be held, he reasonably believes that the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do.

I take note that the threshold for reasonable belief is higher than that for reasonable suspicion.

The Evidence

Multitudinous background papers and supporting documents have been provided and considered including the Police reports which detail the incidents at the protests, (specifically those at the sailings in late October prior to the issuing of the s14 notice on the 6th November 2012), the opinions of Stephen Sweetlove (public order trainer and use of force expert), dated 27th January and 20th February 2014, the advice of the Force Solicitor given to Chief Inspector Whittaker, Ian Learmonth’s witness statement dated 4th April 2013 and letter responding to the complaint dated 2nd April 2014 and finally the report on Operation Wizard written by Ian Learmonth for the Kent Police and Crime Commissioner dated 7 January 2013.

Analysis

The protest on the 19th October, when live exports resumed from the port of
Ramsgate following a successful court challenge to the council’s ban, appears to have caused the police concern. According to the police report there had been some minor public order incidents involving some of the 40-45 protestors in attendance, a projectile had been thrown at the cab of one of the lorries and two officers had sustained injuries.

The same day legal advice was provided regarding imposing an order under s14. Because this advice is privileged and has been provided to me in confidence only in order that I may better make my assessment I will comment on it no further than the IO has done; that is to say the legal opinion supported the use of s14(1)(b).

I will however make comment regarding to the timing of the legal advice; it was given on 19th October following the incidents of that morning which is 18 days before the 6th November when the former Chief Constable signed the s14 order. Between these dates there were two further protests on the 22nd and 23rd October both of which were noted as being more peaceful and during which no significant public order incidents occurred, and the second of which involved significantly fewer protestors attending and no arrests being made.

Hence when the Chief Constable was briefed by Chief Inspector Whittaker on the 6th November the legal advice was already somewhat out of date.

Further, I have read with interest Stephen Sweetlove’s opinions and see that he was not convinced that there was sufficient evidence to support the imposition of orders under s14(1)(b). Having reviewed the police reports of the protests preceding the 6th November I tend to agree with this view.

Without becoming embroiled in legal detail, s14(1)(b) imposes a number of hurdles; not only must there be reasonable belief, which is more than halfway to certainty, but that belief must be that the purpose of the organisers is to intimidate others with a view to compelling them not to do an act they have a right to do.

As Stephen Sweetlove succinctly puts it:

"I have not found any evidence to show the intention of the organisers was to intimidate others, I have not seen any literature or intelligence to support the fact the organisers were trying to organise the protest in order to intimidate others. In fact the organisers had shown some cooperation with the police by meeting with them to discuss the protest"

In short, whilst there may have been instances of intimidation there is no evidence that it was the purpose of the organisers to intimidate; indeed the available evidence indicates the contrary because it suggests that:

- The protests were largely peaceful
- There was no intelligence of direct action being planned by the
protestor groups
• Relations between the police and the lead protestors were civil
• There were open lines of communication between police and the lead protestors

Turning to Ian Learmonth's response to the complaint it can be seen that his rationale for imposing the s14 order is wanting. I say this because whilst it lists a number of more or less serious incidents that occurred on the 19th October some of which may be considered to amount to intimidation, (for instance the throwing of a projectile which damaged the window of a vehicle), none of these go any way to demonstrating that it was purpose of the organisers to intimidate. When this lack of evidence from the protest on the 19th October is coupled with the fact that two further protests passed off without any significant incident and that relations between the police and the organisers were not altogether uncooperative, (for instance a 'no surprises' approach to policing the protests had been adopted which involved the police forewarning the protestor groups of intended sailings), it is not possible to conclude otherwise than that the former Chief Constable's belief was ill-founded. I say this because it was based only on previous incidents of intimidation and while these may go some way to evidencing a reasonable belief that there will be future acts of intimidation, on their own they simply do not address the other requirements of the section, (that intimidation was the purpose of the organisers).

Decision

Having taken into account all the relevant evidence I find that, on balance, there were not grounds for imposing conditions on the assemblies, at least not under s14(1)(b), and that the former Chief Constable arguably lacked a reasonable belief that it was the purpose of the organisers to intimidate. I therefore uphold this appeal on the first point.

2) The Chief Constable's report into the policing of the live exports in Ramsgate was unbalanced

Whilst I can understand why Mr Bell objects to elements of the report, there is an inevitable risk of the report not appearing entirely impartial given its purpose is to explain the policing of the protests. Further, the Chief Constable had decided to impose restrictions under s14 and it would be unnatural were he not to repeat his rationale for doing so in his report to the Police and Crime Commissioner.

As an independent reader I do not consider that the report is biased in any significant way; the list of acts of intimidation are repeated but again do not persuade that there was in fact any intent to intimidate on the part of the organisers. The report makes a significant mention of the police engagement with the protest groups and this speaks as much to the reasonableness of the organisers as to the efforts of the police.
In short, I find the report reads fairly and I am not upholding the second part of the appeal.

Summary appeal assessment

1) Reasonable belief to impose restrictions under s14(1)(b)
   Upheld
2) Unbalanced report
   Not Upheld

2. Is the decision that the appropriate authority has made about whether an officer has a case to answer for misconduct or gross misconduct, or if any person’s performance is unsatisfactory, appropriate?

As mentioned above, this is a purely hypothetical question because Ian Learmonth has now retired.

The Kent Police and Crime Commissioner did not uphold the complaint and found no case to answer.

Whilst I recognise that the former Chief Constable issued the orders having been briefed and after receiving advice from the Force Solicitor that restrictions under s14(1)(b) were permissible – and that the demands on a Chief Constable’s time are surely exceedingly onerous – I nevertheless uphold this appeal insofar as I consider that there would have been a case to answer for misconduct.

Insufficient attention was given as to whether there really was evidence that the purpose of the organisers was to intimidate. In the view of this writer, insufficient thought was given to whether each element of s14(1)(b) was supported. I say this because the former Chief Constable and his advisors appear to have been satisfied that the restrictions could be imposed based only on previous incidents of intimidation and it is clear from the wording of the section that the requirements are significantly more stringent than that.

Therefore my answer to this hypothetical question is that the former Chief Constable would have had a case to answer for misconduct for breaches of the Standards of Professional Behaviour namely those of Orders and Instructions (being the giving of lawful orders) and Duties and Responsibilities (being diligence in the exercise of duties).

Upheld

3. Are the appropriate authority’s proposed actions following the
investigation adequate?

No disciplinary actions have been proposed and I agree that this is adequate given that Ian Learmonth has now retired.

That said there is sufficient evidence, on the balance of probabilities, to conclude that there has been a failure both by the former Chief Constable and his advisors to adequately direct their minds to the demands of s14(1)(b) and, in order to ensure that any future restrictions on protests are properly imposed, the IPCC requests the Kent Police and Crime Commissioner raises this with a suitable person responsible for public order in Kent Police.

Not Applicable

4. Has the investigation been referred to the Crown Prosecution Service (CPS)? If not, is this decision appropriate?

There is no indication that a criminal offence has been committed and therefore the decision not to refer to the CPS was appropriate.

Not Upheld

5. Has adequate information been provided to the complainant following the investigation of their complaint?

Whilst the IO’s report was informative it did not refer to important material which undermined its finding – such as the opinions of Stephen Sweetlove – and therefore I consider that inadequate information was provided.

Upheld

6. Did the complainant raise any points in their appeal which were outside the remit of the IPCC?

No.

Not Applicable

On the basis of this assessment I have decided uphold the appeal

Actions

The IPCC requests that the Kent Police and Crime Commissioner raises the issue of the use of s14(1)(b) with a suitable person responsible for public order in Kent Police in order to ensure that any future restrictions on protests are properly imposed.