

# Criminal Justice Notes

In this month's edition of KLS Criminal Justice Notes:

- **The UK government's considered response to the recommendations of the Inquiry into the flawed police operation that resulted in the fatal shooting of Anthony Grainger was published last week. It seems a missed opportunity to implement concrete reforms making such shootings less likely to happen in the future.**
- **In a decision handed down a few weeks ago in *Commissioner of the Independent Commission of Investigations v Police Federation and Others (Jamaica)* [2020] UKPC 11, the Judicial Committee of the Privy Council offered some interesting insights on the legal status and limited powers of the independent police complaints body in Jamaica.**

---

## Police Firearms Operations in the UK

### Introduction

Fatal police shootings of civilians during pre-planned operations have been increasing in England over the past few decades. Although the total numbers are still remarkably small compared to some other jurisdiction, it is surprising how they reveal similar failings in planning, management and operational performance from time to time.

A few weeks ago, the government published its response to the recommendations of the Inquiry into the fatal police shooting of Anthony Grainger who was unarmed at the time. Even though the recommendations address basic matters that should already have been standard in the professional planning, management and execution of police operations involving the use of lethal force, the government's response seems to lack substance and clarity.

### Background

The fatal shooting occurred in the context of a police operation against organised crime in the Manchester region in March 2012. The victim and associates were under police surveillance with back up from a firearms unit. At one point, the police suspected that they might be planning an armed robbery, possibly involving a hostage operation. At the time of the critical incident, however, that was an unlikely prospect. The victim and associates were sitting in a stolen car in a carpark when police officers moved in to arrest them. One of the armed surveillance officers fired the fatal shot.

As often happens in such cases, the officer believed (from advance briefings) that the victim was likely to be armed, and he misinterpreted the victim's movements as reaching for a gun that was otherwise hidden from view. It transpired that the victim was unarmed and there were no firearms in the vehicle. It is also worth noting that the fatal shooting was followed

immediately by another officer detonating a CS gas canister inside the car.

The shooting was investigated by the Independent Police Complaints Commission (as it then was) which found a number of serious failings associated with the operation. Its report was sent to the DPP who decided not to prosecute the officer who fired the fatal shot, or any other individual officer. However, the DPP did institute proceedings against the Chief Constable under the Health and Safety legislation in respect of the Force's planning and conduct of the operation. In the event, the trial judge ruled that there could not be a fair trial without disclosure to the Chief Constable of material that was subject to a public interest immunity claim (presumably in respect of sensitive intelligence relating to the broader police investigation of organised crime in the region!). The DPP responded by offering no evidence, and so the case collapsed.

At the subsequent inquest, the coroner concluded that the inquest jury would not be able to ascertain the circumstances of the victim's death without access to the information that was being withheld from disclosure under public interest immunity. Accordingly, he recommended converting the inquest into a statutory inquiry which would be able to access and consider all relevant information. The Home Secretary acceded to that request and set up an Inquiry which reported in July 2019 (*The Anthony Grainger Inquiry*, HC 2354).

### **Inquiry Conclusions**

The Inquiry revealed several basic and disturbing failings in the police operation. The profile of the victim used by the police contained several significant inaccuracies which distorted and, in some respects, exaggerated the threat presented by him.

This was the result of their use of an old profile which they did not update for the purposes of the current operation.

Authorisation for the armed support to the police surveillance operation was given even though there was no intelligence that the targets were armed or had immediate access to firearms. The Inquiry concluded that that was the result of the authorising commanders taking an "unorthodox and fundamentally flawed" view of armed support for a surveillance operation.

The Inquiry found that the firearms commanders planned the operation incompetently and without keeping proper records of their decisions. The commanders proceeded on the basis that the authorisation for armed support was the continuation of a previous authorisation given in a different context. They had not taken account of changed circumstances which significantly reduced the nature and degree of threat anticipated. They even purported to authorise unnecessarily the carrying of an illicit munition, namely CS gas dispersal canisters. The Greater Manchester Police (GMP) had procured the CS dispersal canister in flagrant breach of the *Code of Practice on Police Use of Firearms and Less Lethal Weapons* and without the approval of the Home Secretary. The inquiry said that its use against targets inside a vehicle during an armed support surveillance operation was "both dangerous and counterproductive".

The Inquiry also found that the commanders' pre-deployment briefing for the firearms officers was seriously misleading. Among other things, they: relied on slides prepared for a previous deployment which presented a different threat; they failed to instruct that there was no current intelligence to suggest that the targets would be armed or have access to

arms; they overstated the victim's past criminal history in a manner that distorted and exaggerated the threat he presented; and they failed to brief the firearms officers of the extent to which their colleagues would be able to see inside the stolen car (this was believed to have contributed to the officer who fired the shot believing erroneously that his colleagues were vulnerable because they could not see the victim and associates within the car).

Despite the fact that it was an armed operation, the commanders failed to maintain any proper contemporaneous record of their decisions. Instead, they reconstructed their logs retrospectively in the light of after-acquired knowledge.

Turning to the officer who fired the fatal shot, the Inquiry found that he failed to distinguish adequately, or at all, between information briefed to him, and anecdotal information that he had gleaned from "unofficial and untested sources". He also failed to distinguish between information relating solely to the targets of the operation and information relating to other known criminals who were not at the time active associates of the targets. The combination of these and the inaccurate briefing that he had received gave the officer an exaggerated impression of the threat posed by the victim. This, in turn, made it more likely that he would misinterpret non-compliant action by the occupants of the car, and that he would be more predisposed to discharge his firearm than he otherwise would have been.

The officer who fired the fatal shot had been on duty continuously for the preceding 14 hours. The inquiry considered that excessive and it could not exclude the possibility that fatigue had degraded his

ability to make accurate decisions in a critical situation.

Remarkably, the Inquiry found that some of the officers who commanded or participated in the operation lacked the requisite level of professional competence. The tactical firearms commander had recently failed a specialist Police Service of Northern Ireland Joint Services training course. The operational firearms commander had not attended his mandatory annual refresher training, and he had recently failed a counter-terrorist specialist firearms officer course for the second time. He was not occupationally competent at the time of the operation and, on account of the second failure, was no longer eligible to participate in firearms support to a surveillance operation in any capacity. One of the firearms officers had recently failed a counter-terrorist specialist firearms officer course and so should have been suspended from armed duties pending remedial training at the time of the shooting. A tactical adviser had never been trained as a firearms officer in support of a surveillance operation and so was not occupationally competent to act as a tactical adviser to such an operation.

### **Government's response to Inquiry's recommendations**

The Inquiry made ten public recommendations based on its findings. In its response, the government addresses nine of these. The first is a call for the establishment of a national policing body to manage a national register of recommendations relating to armed policing and the response to such recommendations. This adverts to the fact that fatal police shootings in the UK have generated an extensive body of findings, reports and recommendations from bodies such as: inquest juries, the Independent

Office for Police Complaints (and its predecessor), inquiries and HM Inspectorate of Constabulary, among others. It does not seem, however, that they have fed into institutional learning in any coherent manner.

Unfortunately, the Inquiry does not proceed to give concrete detail on how a national register might be constructed and managed or, more importantly, how it should be used to make a substantive difference in practice. Even more disappointing is the government's response which hides behind soundbites and insider terminology which will do little to enlighten the layperson on what, if any, substantive difference it will make.

The government states that the "National Armed Policing Portfolio Lead" has introduced "a structured Organisational Learning Process" which incorporates "lessons identified" from the various reports etc. The Process "links to the Joint Emergency Services Interoperability Principles (JESIP) and Counter Terrorism Organisational Learning Processes". The government's response to the first recommendation goes on to say that revised guidance for "Armed Policing Strategic Threat and Risk Assessments" will include the requirement for Chief Officers to be accountable for organisational learning processes (for which, presumably, a chief officer would already have been responsible). It concludes by saying that the National Armed Policing Portfolio will be responsible for "continuing to embed and monitor this process."

This is surely an outstanding example of 'government-speak' calculated to convey the impression of action without offering anything concrete that could be used subsequently to test whether it is making any substantive difference. A less

charitable observation is that it would make suitable material for a satirical comedy sketch. The importance of the subject surely deserves better.

The Inquiry's second recommendation has potential to improve standards in the management and conduct of police firearms operations. In a nutshell, it calls for thematic inspections by HM Inspectorate of Constabulary, Fire and Rescue Services (HMICFRS) into the selection and training of officers at all levels of firearms operations, and compliance with the Code etc on the police use of firearms and less lethal weapons.

Disappointingly, the government's response states that the HMICFRS did not interpret the recommendation as prescriptive about the context of such inspections or their timing. Accordingly, it intends to integrate them into its regular inspections of effectiveness, efficiency and legitimacy. It is not entirely clear that that is any different to what currently prevails. Certainly, it conveys the impression that the police use of firearms is not going to receive the special attention that the Inquiry seems to have intended.

Recommendation 3 states that the Home Secretary should ensure that the new *Code of Practice on the Police Use of Firearms and Less Lethal Weapons* contains an express prohibition on the use of a weapons system until the approval process set out in the Code has been completed. It is surprising that such a recommendation should have to be made in the context of English policing in 2020. It relates to the fact that the Greater Manchester Police (GMP) were using CS dispersal canisters without formal approval. The government's response states that the recommendation has been implemented in the new Code; at least with respect to "less lethal weapons".

Recommendation 4 is essentially a specific application of recommendation 3 to the standard operating procedures of the GMP. The government's response states that the Force's operating procedure has been amended accordingly. What seems to have been studiously ignored is that the Force should never have been using unapproved weapons in the first place. It is not wholly clear how changing the wording of its standard operating procedure will be sufficient in itself to prevent a recurrence.

The remaining recommendations relate to specific failings in the management and conduct of the firearms operation that led to the death of Mr Grainger. They all seem straightforward and sensible recommendations designed to ensure that such operations are conducted on the basis of accurate intelligence by able officers with a contemporaneous record of relevant decisions and actions. Surprisingly, however, the government (and presumably the police chiefs advising them) seem reluctant to commit fully to them.

Recommendation 5 calls on the GMP to develop a written policy on the collection, analysis and dissemination of intelligence for planned police firearms operations. This seems an entirely rational and necessary recommendation given the intelligence failings that led to the tragic death of Mr Grainger. Surprisingly, perhaps, the government sees this as a complex recommendation with national implications and dependencies. It goes on to state that the National Police Chiefs Council (NPCC) will take the lead in reviewing current practice etc to ensure it is fit for purpose. It is not obvious, however, that this is intended to result in any significant change for the GMP or nationally.

Recommendation 6 calls for all relevant documents and training to draw a clear

distinction between the deployment of armed officers in support of a surveillance operation, and deployment for the purpose of intervention or interception of targets under surveillance. Also, the reasons for any strategic or tactical command decision in a firearms operation should be recorded at the time it is taken. Again, the government's response to these seemingly straightforward recommendations is that they are complex and that the NPCC will take the lead in responding to them, given the "important national implications and dependencies". It seems surprising that such matters are not already the subject of clear direction, and it is even more surprising that the government and police seem reluctant to make them so immediately.

Recommendation 7 says that in the proceedings following a police shooting, use should be made of the recordings of communications between the firearms commanders and the firearms officers. The same applies to video-recordings from body-worn video cameras of the firearms officers and those on the police vehicles involved. Again, the government's response is surprisingly non-committal. It ignores the communications aspect, and it merely states that the NPCC has issued guidance to encourage the use of body worn video cameras in armed support to surveillance operations. Even that does not extend to covert operations. Seemingly, unspecified logistical and legal complexities would have to be overcome before progress can be made on that front.

Recommendation 8 suggests that consideration should be given to whether some mechanism could be fitted to unmarked police vehicles involved in armed support to a surveillance operation to inform the targets that those confronting them are police officers. The government's

response states that there is already national guidance on this, and there are no plans to make specific mechanisms mandatory. Again, this is disappointing as it seems that the guidance did not result in Mr Grainger and his associates being alerted to the fact that they were confronted by police officers at the time when it mattered most.

Recommendation 9 calls for consideration of whether there should be a maximum period of time during which a firearms officer could be on continuous duty and, if so, whether that period should be specified in national guidance. This seems an unduly mild suggestion with respect to the vitally important objective of ensuring that armed police officers are not exposed to the risk of having to take a split-second decision to shoot someone dead at a time when they might be suffering fatigue from being on active, high stress, duty for an excessive period of time. Nevertheless, the government's response avoids any clear commitment to action on that front.

Reference is made to "significant operational implications" of adopting a maximum period. Instead, the NPCC "will seek independent expert advice to conduct a review of the necessity and practicality of introducing a time limit for the length of duty of authorised firearms officers" with a view to issuing further national guidance. In the meantime, forces are reminded that it is the responsibility of firearms officers and their management to ensure that the former are fit to perform their role on duty.

### **Confidential intelligence information**

A body of material considered by the Inquiry was not made public, seemingly because it comprised secret intelligence information which would not be in the public interest to reveal. The published

report was accompanied by a "closed report" which, presumably, drew on this confidential material. Such secrecy is always a concern when the subject of investigation is a flawed police operation that resulted in the fatal shooting of an unarmed civilian. Inevitably, there will be a suspicion that vital information is being withheld to protect the police and the State. This suspicion will be fuelled when the investigation results in a decision not to prosecute the officers involved, and the collapse of a prosecution under the Health and Safety legislation.

The Grainger Inquiry disclosed that its closed report made a number of further recommendations (which, of course, are not disclosed). Commendably, however, it did reveal one of them that has some importance to independent oversight of surveillance operations. It recommended that the independent Investigatory Powers Commissioner's role should be extended to include audit inspections of individual operations to assure compliance with processes for the assessment, handling and dissemination of sensitive intelligence. Incredibly, the government totally ignores this important recommendation in its response. That does not inspire confidence in the government's commitment to ensure that covert police surveillance operations involving the deployment of lethal force are conducted fully in accordance with the law and human rights standards.

### **Conclusion**

The recommendations of the Grainger Inquiry are hardly radical or ill-informed. For the most part, they are calling for basic, common-sense, processes and protections which one would have expected to be the norm already. Indeed, it is surprising that these lessons do not seem to have been learned from similar

tragic failures in the past. It is a real concern, therefore that the government (and by implication the police establishment) should be taking such a diversionary and non-committal approach to the implementation of the Inquiry's recommendations. Too much effort has been invested in hiding behind impenetrable terminology or the prospect of further consideration that might result in revised guidance. It may even be that the government and the police establishment are resistant to reform that would impose further procedural checks and accountability on the latter in this area. In the absence of meaningful reform, however, there is a real risk of more flawed police operations resulting in the deaths of civilians who were not presenting an armed threat.

## Prosecuting Police Complaints in Jamaica

### Introduction

In *Commissioner of the Independent Commission of Investigations v Police Federation and Others (Jamaica)* [2020] UKPC 11, the Judicial Committee of the Privy Council considered whether the independent police complaints body in Jamaica had the capacity to initiate prosecutions in respect of cases which they had investigated. Given the similarities between the Jamaican body and the independent police complaints procedures in the UK and Ireland, the decision has some relevance for our understanding of the latter. It also sheds light on the legal status of the Commission, and the concept of the private prosecutor at common law.

### The facts

Frederick Mikey Hill was shot dead during a police operation. The killing was investigated by the Independent Commission of Investigations (see below). In the course of the investigation, Commission investigators interviewed Corporal Reid. Subsequently, instead of waiting for the Director of Public Prosecutions (DPP) to make a decision on whether to prosecute Corporal Reid, they proceeded to arrest and charge him with murder. The key question in the case was whether the Commission investigators had the power to do that. The Act establishing the Commission did not confer an express power on it or its officers to prosecute for an offence that they had investigated. The investigators in this case claimed that they had been acting in their capacity as private citizens when they arrested and charged Corporal Reid.

Corporal Reid sought a judicial review of the decision to prosecute him; arguing that the Commission and its officers had exceeded their powers. He lost at first instance where the Jamaican Supreme Court held that the Commission and its officers had the power to arrest under both the common law and the Act. While they did not have the power to charge under the Act, the Court held that they could do so at common law. There was no legal requirement to wait for a decision by the DPP who, in any event, could always take over the prosecution or discontinue it.

The core issues for the Judicial Committee of the Privy Council, therefore, revolved around whether and, if so, to what extent, the Commission (and/or its officers) had the power to prosecute. Answering that question would require close examination of the legal status and powers of the Commission and its officers.

### Background to the Commission

Jamaica has long experienced a very high rate of fatal police shootings in controversial circumstances. In *Gayle v Jamaica* (Report No.92/05, 24 October 2005), the Inter-American Commission on Human Rights noted that:

“.. despite the high incidents (sic) of killings involving the security forces in Jamaica, these incidents rarely result in the prosecution or conviction of the officers involved. This, in turn, has led to the perception in Jamaica that the police are above the law and has adversely affected the relationship of trust that should exist between a population and the forces responsible for protecting them.”

In that case, Jamaica was found to be in breach of the American Convention on Human Rights partly because of the manner in which the State had handled the wrongful death of Mr. Gayle at the hands of the security forces. Echoing the position of the European Court of Human Rights on such matters, the Inter-American Commission considered that the killing should have been conducted from the outset by a body independent from the Jamaica Constabulary Force and the Jamaica Defence Force. That body would need to have the authority to investigate fully and effectively the role of these Forces in Mr Gayle’s wrongful death in a manner that would result in the criminal prosecution and punishment of those responsible.

The police complaints body at the time of Mr Gayle’s death, the Police Public Complaints Authority (PPCA), did not seem to have jurisdiction to investigate the conduct of members of the Jamaica Defence Force, and there was no

information to suggest that it had become involved in the investigation into the killing. Accordingly, the Inter-American Commission recommended that Jamaica adopt such legislative or other measures as may be necessary to undertake a thorough and impartial investigation into the killing with a view to identifying, prosecuting and punishing all those responsible for the human rights violations perpetrated against Mr Gayle. This resulted in the enactment of the Independent Commission of Investigations Act 2010 which replaced the PPCA with the Independent Commission of Investigations (ICI).

### The ICI

The ICI consists of a Commissioner who must have the qualifications to hold office as a judge of the Supreme Court of Jamaica. Its primary function is to conduct independent investigations concerning actions by members of the security forces (including the police), and other agents of the State that result in death, injury to persons or abuse of rights of persons. The ICI can decide the most appropriate form of investigation depending on the seriousness of the incident or matter in question. It can manage, supervise, direct and control an investigation by the Security Forces, and it has its own staff to conduct an investigation independently of them.

The ICI Commissioner and its investigators have all the powers, authorities and privileges of a constable. The establishing legislation expressly states that they can take charge of and preserve the scene relevant to a complaint. They can access all documents, information, items (including firearms) etc relevant to an investigation, and they can access any premises where they may be found. They have powers to obtain evidence and to secure the attendance and examination of witnesses,

and they require persons (including members of the security forces) to furnish information. The legislation makes it a summary offence to obstruct, give false statements to or fail to comply with the ICI in the discharge of its functions. In short, the Commissioner and staff can function very much like a police force investigating a crime.

Following an investigation, the ICI forms its own opinion on the matter in question and submits a report to the DPP, among others. Significantly, for the purposes of the instant case, the establishing legislation does not give it an express power to prosecute, or to initiate the prosecution, of any person for an offence arising from the subject matter of the investigation (eg. murder, manslaughter, wounding etc). It is established essentially as an investigative body. It is very similar (but not identical) in its powers and functions to the several independent police complaints bodies in the UK and Ireland.

### **Power to prosecute**

Consideration of whether the ICI has the power to prosecute must begin with its legal status. Does it have the status of a legal person, separate and distinct from its sole member (the Commissioner) and its investigative staff. The Judicial Committee of the Privy Council acknowledged that the Act does not establish it as a corporation (legal person), but does confer it with many of the characteristics of a corporation. So, for example, it has a perpetual existence in that it can employ staff whose contracts of employment carry on beyond the term of the individual Commissioner who hired them. Similarly, decisions taken, or investigations commenced, during the term of office of one Commissioner are valid, or continue automatically, under his or her successor.

The Judicial Committee concluded that the ICI is analogous to a statutory corporation sole. A statutory corporation, however, only has those powers conferred on it directly or indirectly by statute. The legislation clearly does not confer the ICI expressly with the power to prosecute. This omission cannot be circumvented by relying on the fact that the ICI consists of a sole person, namely the Commissioner, who could rely on his or her status as a natural person to prosecute on behalf of the ICI. As explained by the Judicial Committee, the public law powers of natural persons holding a statutory office are confined to those conferred upon them by statute. The Act, of course, did not confer a power to prosecute expressly on the Commissioner.

The question then was whether the Act indirectly confers the ICI with the power to prosecute. The ICI argued that the power to prosecute is necessary for, or reasonably incidental to or consequential upon the performance of its investigative functions. In other words, it would be hampered in an investigation if it was not able, where appropriate, to follow through with the arrest and charge of a police officer whom it was investigating for an offence.

The Judicial Committee was not persuaded by this argument. It acknowledged that in some regulatory schemes, the regulatory body in question has the power to prosecute for an offence that it investigates. That, however, tends to be confined to offences created by the regulatory scheme itself. There is no general principle that the investigative and prosecutorial functions should go hand and hand in that manner. Nor is it sufficient that the ICI may be in a particularly advantageous position to prosecute an offence which it has investigated. The Act clearly confines it to an investigative role,

with any consequent prosecution to be taken by the DPP.

It is a different matter when the offence or offences in question relate to the *conduct* (as distinct from the subject) of an ICI investigation. As noted above, the Act creates a number of summary offences related to obstructing an ICI investigation. The Judicial Committee accepted that the power to prosecute these is incidental to discharge of the ICI's investigative role. They are aimed at enhancing the ICI's capacity to investigate an offence. As such it is important that it can enforce them directly through prosecution.

### **Private prosecutions**

It was argued that the ICI's lack of an express power to prosecute the offences it investigates could be circumvented by the Commissioner and/or the investigators initiating a private prosecution. There are two possibilities here. The first is based on the fact that the Act confers them with the powers, authorities and privileges of a constable. A constable has the power at common law to arrest and charge a person with an offence. It was argued, therefore, that the Commissioner and/or investigators can use this power to initiate a prosecution against a police officer etc whom it has investigated. The Judicial Committee, however, rejected that argument on the basis that the Act confers them with the powers etc of a constable solely in respect of their investigative functions. Since the initiation of a prosecution only arises when the investigation is complete, their constable powers do not extend that far.

The second possibility is that the Commissioner and/or investigators can fall back on their status as natural persons, who have the power at common law to initiate a private prosecution in respect of an

offence that they have investigated. The Judicial Committee accepted the validity of this argument in theory. However, it went on to say that the Act makes such a prosecution a practical impossibility. The Act expressly requires them to keep confidential any documentation etc disclosed to them in the course of an investigation. There are a few express exceptions (such as the prosecution of obstruction etc), but the prosecution of the main offence investigated is not one of the exceptions. It follows that the Commissioner and investigators would not be able to give evidence in respect of the documents etc that had been disclosed to them. This, in turn, would render a prosecution impracticable.

### **Conclusion**

Superficially, this seems to be a case in which the Commission and its officers erred in their impatience to mount a prosecution for murder. Instead of waiting for the DPP to take a decision on prosecution, they purported to exercise powers they did not have in order to ensure that prosecution proceedings would be initiated, and Corporal Reid would be transferred in custody to the Resident Magistrate. At a deeper level, it raises some rarely addressed issues associated with the establishment of a police-like body to investigate criminal complaints against police officers independently of the police.

Previously, such complaints would be investigated by the police in common with similar complaints or suspicions against any other person. The police, however, have evolved as an integral part of the criminal justice process. Typically, in common law jurisdictions, they can arrest and charge a suspect, and bring him or her before a judge to be remanded in custody or bail. In the absence of statutory provision to the

contrary, they can even prosecute minor offences on behalf of the State. In more serious cases, they tend to work closely, and in confidence with, the DPP.

It is easy to understand why the handling of criminal complaints against police officers should be transferred out of the hands of the police and given to a body independent of the police. It is quite another matter, however, to ensure that that body can function as the equivalent of the police in other criminal matters.

Certainly, its officers can be given the investigative power and authority of a police officer within its limited remit. Equally, provision can be made for it to submit an investigation file to the DPP for a decision on prosecution. Nevertheless, that still falls short of replicating the special position of the police in the criminal process, even with respect to criminal complaints within the body's jurisdiction. Despite appearances, it is an awkward add on that has not been (and probably cannot be) integrated into the criminal process in the manner of the police.

None of this may matter much in practice in the UK and Ireland where the independent police complaints body can be assured that the police and the DPP will deal with their investigation reports professionally, with integrity and in accordance with law. That confidence may not always be there in every jurisdiction. It is quite possible, for example, that the ICI in Jamaica feared that the police would frustrate their intention that criminal proceedings should be initiated against Corporal Reid. Perhaps, their actions in overstepping their powers was an attempt to ensure that the criminal process would be initiated and that he would be placed in the custody of the court.

Support for that interpretation can be found in another case concerning the ICI, and decided by the Judicial Committee in conjunction with the case above. It also concerned a fatal shooting during a police operation. The ICI investigators called to the relevant police station to take possession of the weapons deployed during the operation with a view to having them tested. The officer in charge of the fatal shooting operation intervened to take the weapons back and had them tested himself. He was subsequently convicted of obstructing the ICI investigation in a prosecution brought by the ICI itself.

The conviction was subsequently overturned by the Jamaica Court of Appeal on the basis of a defence of superior orders and mistake of fact or law. The Judicial Committee held that it erred in doing so. Nevertheless, it is easy to see how the ICI might harbour doubts about its ability to rely on the police to take the necessary actions to ensure that police officers are made amenable to justice on foot of its recommendations.