

**IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020, AS
AMENDED BY THE POLICE (CONDUCT) (AMENDMENT) REGULATIONS 2024**

CONCERNING

POLICE CONSTABLE JAMES TAYLOR FOSBURY

OUTCOME REPORT

Introduction

1. The misconduct hearing for Police Constable James Taylor Fosbury ('the officer') was held in public from 13 April 2026 to 14 April 2026 and a Notice was published to that effect in accordance with the amended Police (Conduct) Regulations 2020 ('the amended 2020 Regulations').
2. The Regulation 30 Notice was issued pursuant to the amended 2020 Regulations. It was alleged that the officer had behaved in a manner which breached the Standards of Professional Behaviour (SPB) relating to 'Honesty and Integrity' and 'Duties and Responsibilities', and which amounted to Gross Misconduct.
3. As summarised by Counsel for the AA [paragraph 3 of the Opening Note]:

"Following the road traffic collision, [the officer] gave two written accounts and in each one he asserted that immediately prior to the fatal collision he had told the driver, PC Corker, to turn around as he had missed a turn;

Recordings of the incident show that [the officer] did not tell PC Corker to turn around; and

It is alleged that [the officer] lied in his two written accounts in an attempt to exculpate PC Corker. In the alternative it is alleged that PC Taylor-Fosbury was careless in providing inaccurate accounts”.

4. In particular, it was alleged by the AA that:

A. You were deliberately dishonest in stating in your Stage 3 and Stage 4 accounts that you had instructed PC Corker to turn back as set out in paragraph 2j above. Your intention in this dishonesty was to exculpate either PC Corker or yourself from responsibility for the collision in circumstances where:

- (a) You knew, or reasonably foresaw, that the collision would come under criminal investigation;**
- (b) You knew that PC Corker had steered right immediately prior to the collision and either knew or reasonably foresaw that PC Corker’s reasons for doing so would be investigated;**
- (c) You had shortly before this suggested that PC Corker turned right and you either knew or reasonably foresaw the relevance of this instruction to the subsequent collision would be investigated;**
- (d) At the time of writing your Stage 3 and Stage 4 accounts you were aware that the currently available internal audio from the car was incomplete.**

B. In the alternative you were careless and failed to exercise proper diligence in failing to accurately record events in your Stage 3 and Stage 4 accounts. You were careless in stating that you had instructed PC Corker to turn back as set out in paragraph 2j above.

The above allegations, jointly and separately, amount to gross misconduct and would justify your dismissal if proved.

Standards of Professional Behaviour

- **Honesty and Integrity: Police officers are honest, act with integrity and do not compromise or abuse their position.**

- **Duties and Responsibilities: Police officers are diligent in the exercise of their duties and responsibilities. Police officers have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer when identified as a witness.**

Regulation 31 Response

5. In his response pursuant to Regulation 31 of the amended 2020 Regulations, the officer denied being dishonest or careless in the preparation of his two accounts and disputed that his behaviour amounted to Misconduct or Gross Misconduct.
6. The officer maintained that any inaccuracies in his account arose from the unfamiliar process in which he was shown the Cleartone video footage before completing his statement, the stressful circumstances of a post incident procedure following a fatality, the fact that he believed that the missing audio would later be recovered, and his honestly held belief, at the time of writing that the words recorded in his statements were the words he had actually spoken.

Burden and Standard of Proof

7. The Panel reminded itself that the burden is on the AA to prove on the balance of probabilities that the officer behaved in the manner alleged and in doing so he breached the Standards of Professional Behaviour in relation to 'Honesty and Integrity' and 'Duties and Responsibilities'. Further, the AA must satisfy the Panel to the same standard that the manner of the breach is of such a nature or degree that it amounts to Misconduct or Gross Misconduct.
8. The Panel also reminded itself of the relevant guidance from the Home Office Guidance on Conduct, Efficiency and Effectiveness in respect of the balance of probabilities: *"Conduct will be proved on the balance of probabilities if the persons conducting the meeting or hearing are satisfied by the evidence that it is more likely than not that the conduct occurred. The balance of probabilities*

is a single unvarying standard (i.e. there is no sliding scale). The seriousness of the allegation of misconduct and/or the seriousness of the consequences for the officer do not require a different standard of proof, merely appropriate careful consideration by the panel before it is satisfied of the matter which has to be established. The inherent probability or improbability of the conduct occurring is itself a matter to be taken into account when deciding whether, on the balance of probabilities, the conduct occurred". [Paragraph 9.10]

9. The Panel reminded itself that it does not need to make a finding on every issue and need only make findings on those issues which it believes to be relevant and material to the allegations.
10. The Panel approached its task in the following stages:
 - i) Are any of the facts admitted?
 - ii) What facts have been proved by the AA on the balance of probabilities?
 - iii) Of the admitted or proved facts, has the AA satisfied the Panel on the balance of probabilities that the relevant Standards of Professional Behaviour have been breached?
 - iv) If so, has the AA satisfied the Panel on the balance of probabilities that it is Gross Misconduct, namely the breach is so serious as to justify dismissal?

Pre-Hearing

11. On 17 September 2025, the former Chair convened a pre-hearing (on Microsoft Teams) and issued a number of case management directions including specified timescales for the service of outstanding material.

Expert reports

12. On 20 January 2026, the officer's legal representatives made an application for Professor Fiona Gabbert's expert report of 17 November 2025 (on the reliability of memory) to be admitted into evidence. The AA did not oppose the application.

13. The former Chair permitted the admission of Professor Gabbert's expert report given its relevance to the central issues and on the basis that it would assist the Panel in its decision making.
14. The former Chair also permitted the AA to adduce its expert evidence in response by 31 March 2026, and the expert report of Dr Baljit Rana (also an expert on human memory) was served on the officer and his representatives within the specified timescales. The respective reports were admitted in evidence in writing and included in the updated hearing bundle.

Areas of agreement and disagreement

15. The Panel took into account the respective expert opinions as part of its wider assessment of the allegations.
16. Whilst there was a reasonable degree of common ground between Professor Gabbert and Dr Rana regarding the fallibility of human memory, the experts arrived at different conclusions. The Panel therefore had to form a view as to whose opinion it preferred.
17. In brief, Professor Gabbert stated that the officer's recollection that he told PC Corker to turn back may represent an honestly held, but inaccurate, memory. Based on relevant research, Professor Gabbert concluded that such an error is entirely plausible, as several features of the incident align with conditions known to give rise to reality-monitoring errors. This consisted of high cognitive load and divided attention, intention and internal rehearsal, similarity of imagined and real events, and lack of distinctive cues which would help to differentiate whether the instruction was spoken or merely thought [207].
18. Conversely, Dr Rana concluded that whilst the officer's error was theoretically possible, given the error related to a contested and incriminating aspect of the evidence, it raised significant doubt as to whether it was a genuine error.
19. The Panel noted Dr Rana's statement that *"....the pattern of PC Taylor Fosbury's denials is not readily explained by ordinary memory fallibility alone."*

Specifically, his rejection of particular statements that bear directly upon his culpability, when considered alongside the broader evidentiary context, is more consistent with a selective reconstruction of events.” [224].

20. The Panel was concerned that Dr Rana pointedly referred to the officer's 'denials or rejections' of statements, which was inaccurate as the allegations pertained to the inaccuracy of his statement and not about the officer's rejection of presented evidence or contrary statements. As Dr Rana's opinion appeared to be based on an incorrect premise, the Panel did not apportion weight to Dr Rana's opinion in respect of the officer offering a "*selective reconstruction of events*".
21. Having weighed the various expert reports, the Panel preferred Professor Gabbert's expert evidence and apportioned weight to the contents of her report.
22. Out of completeness, the Panel noted that Professor Gabbert did not have access to the full hearing bundle when she completed her report. Nonetheless, this in itself did not cause the Panel to apportion less weight to Professor Gabbert's report. The Panel considered that the material Professor Gabbert had access to (Regulation 17 notice, Regulation 30 notice and Regulation 31 response) to be sufficient given the detail set out in these documents.

The Proceedings

23. At the misconduct hearing, the AA was represented by Mr Stephen Morley of Counsel. The officer was represented by Mr James Lloyd of Counsel. The Panel was grateful to Counsel for their assistance. Ms Chiew Yin Jones, Legally Qualified Advisor, provided legal advice to the Panel.
24. In determining this matter, the Panel considered all the material placed before them including the hearing bundle and the media files (Cleartone video footage/transcript of the audio recording, the officer's body worn video footage, and HT81 footage).

Assessment of witnesses

25. In addition to the documentation placed before them, the Panel received oral evidence from Acting Superintendent Sarah Gillies and the officer during the course of the hearing.

26. Acting Superintendent Gillies: the Panel found Acting Superintendent Gillies to be a credible witness who gave clear evidence about her involvement in the post incident procedure (PIP) process, and apportioned significant weight to her evidence.

27. PC Taylor Fosbury: the Panel found the officer to be a credible witness who provided clear and consistent evidence. The Panel found the officer to be measured and balanced in his responses and apportioned significant weight to his evidence.

Character evidence

28. The Panel considered the bundle of character evidence which contained many references to the officer's integrity, kindness, and professionalism. References were also made to the officer's strong work ethic and firm morals, and his deep passion for protecting the public and doing so in a manner that would stand up to any scrutiny.

29. The Panel took these references into account when considering the officer's credibility and in respect of his propensity or otherwise to behave in the way alleged.

Legal test for dishonesty

30. The Panel reminded itself of the test set out in the case of *Ivey v Genting Casinos* [2017] UKSC 67 which in the context of the case is outlined as follows:

- a) What was the actual state of the officer's belief as to the facts?
- b) Was the officer's conduct dishonest by reference to the standard of ordinary decent people?

31. The Panel shall come to the application of this test later on in the judgment.

Background

32. The Panel first considered the background leading to the incident.

33. The officer joined Sussex Police in the summer of 2020 and was on a two week attachment to the Specialist Enforcement Unit (SEU) at the time of the incident on 30 April 2022.

34. Due to intelligence received, police officers from the SEU became involved in the pursuit of an Audi vehicle being driven by Mr Arthur Hoelscher-Ermert that evening.

35. Towards the conclusion of the police pursuit, Mr Arthur Hoelscher-Ermert ran from his vehicle across the road and was struck by a police vehicle driven by PC Corker and in which PC Taylor Fosbury was the front seat passenger. Sadly, Mr Arthur Hoelscher-Ermert died at the scene.

36. A formal post-incident procedure (PIP) was conducted immediately afterwards and the officer and other police officers involved in the case were given a non-conferring warning and brought to a PIP suite at Sussex Police HQ.

37. The officer provided his initial account (stage 3) in writing in the early hours of 1 May 2022 [139]. In his account, the officer stated "...I said that we would have to turn back and take the turning prior that we had just passed...."

38. The officer provided a more detailed account (stage 4) in a formal witness statement on 5 May 2022 after viewing his own body worn video recording and the Cleartone footage from the police vehicle. In his statement, the officer stated

“...I said words to the effect of: ‘We will not be able to turn up it (sic) sorry, we will have to turn and go back up the last junction’ to PC Corker.” [140].

39. When the audio recording was recovered, it became apparent that the officer’s account was incorrect as he did not mention having to turn around.

40. The officer was interviewed by IOPC on 8 March 2023 where he gave a ‘no comment’ interview [170].

Factual allegations

41. Against that backdrop, the Panel went on to consider the factual allegations.

Allegations A (a) and (d)

42. In his Regulation 31 response, the officer accepted that:

- i) he knew or reasonably foresaw, that the collision would come under criminal investigation [**allegation A (a)**]; and
- ii) at the time of writing his Stage 3 and Stage 4 accounts he was aware that the available internal audio from the car was incomplete [**allegation A (d)**].

43. At the outset of the hearing, the officer confirmed his admission of the aforementioned allegations, and the Panel found allegations A (a) and A (d) **proven** on the basis of his admissions.

Allegations A (b) and A (c)

44. The Panel moved on to consider the disputed allegations A (b) and A (c) which were (in essence) whether the officer lied in his stage 3 and stage 4 accounts in an attempt to exculpate PC Corker and/or himself from responsibility for the collision.

45. The Panel also considered (in the alternative) whether the officer was careless and failed to exercise proper diligence in failing to accurately record events in his Stage 3 and Stage 4 accounts.

Whether the officer lied in his stage 3 and stage 4 accounts

46. In accordance with the test set out in *Ivey v Genting* test, the Panel first considered the officer's honestly held belief as to the facts.

47. In assessing this matter, the Panel took into account the following factors:

- i) The officer's stage 3 and stage 4 accounts were consistent.
- ii) The Panel had apportioned significant weight to the officer's oral and written evidence, having regard to the character evidence which supported his credibility and gave no concern with respect to any propensity for dishonesty.
- iii) At the time of drafting his stage 3 account, the officer had not seen any of the media files. At the time, the officer knew that the radio channels were open and there were likely to be recordings of what had been said and what had happened, and these recordings might have inculpated him.
- iv) The Panel noted that the incorrect statement would potentially implicate the officer himself.
- v) The officer said that in the minutes before the collision he asked PC Corker to turn around but clearly got the timings wrong. For instance, the Panel observed that at 23:06:46 (a few minutes before the collision), the officer said *"Er, do a u-turn [unintelligible] because there's a round about at the end where you can do it"* [144].
- vi) The Panel noted the similarity in statements made by the officer throughout the pursuit and that made in his stage 3 and stage 4 accounts.
- vii) Acting Superintendent Gillies had issued the non-conferring notice to the officer and the other police officers.
- viii) There was no evidence of collusion between the officer and PC Corker nor the existence of a strong relationship between them.

- ix) At the time of writing, the officer was unaware what PC Corker might say about any instructions from the officer.
- x) The officer was an inexperienced police officer - it was his first police pursuit and first PIP process.
- xi) The Panel noted the expert evidence provided by Professor Gabbert and Dr Rana about the general fallibility of human memory.
- xii) The Panel noted Professor Gabbert's expert evidence that the officer's error (that he might not have vocalised his instruction to PC Corker) was entirely plausible **[207]**.
- xiii) The officer had just gone through a traumatic and stressful incident. In evidence, the officer said "*I was traumatised by the incident, that might have been the reason I said what I thought I did*". The Panel noted Acting Superintendent Gillies stated that the officer appeared to be emotional and exhausted. With reference to the expert evidence and Authorised Professional Practice (APP) on post-incident procedures following a death or serious injury (DSI), the Panel noted the impact of the circumstances on the officer and how it can affect his memory.

48. The Panel took into account that the relevant statement was the only error in an otherwise accurate account, and that the officer had signed his statement as a true recollection of the incident. The Panel also considered the AA's assertion that the officer might have been motivated to join the SEU or believed that it was necessary to protect another officer.

49. Nonetheless, on the basis of the identified factors, the Panel concluded that it was more likely than not that the officer honestly believed that his account was truthful and accurate.

50. Having established the officer's honestly held belief, the Panel went on to consider whether the officer's conduct was dishonest by reference to the standard of ordinary decent people.

51. The Panel took into account the fact that the written accounts were incorrect. Nonetheless, given the exceptional circumstances in which the officer gave

his stage 3 account which formed the basis for his subsequent stage 4 account, the Panel was satisfied that ordinary decent people would not have considered the officer's conduct to be dishonest having regard to Professor Gabbert's expert opinion.

52. In arriving at this conclusion, the Panel took into account Professor Gabbert's expert opinion, the context and impact of the incident itself, the lack of contradictory evidence available to the officer when he prepared his written accounts, and the fact that the PIP procedure was followed in accordance with the APP. In addition, the officer had fully complied with this process and instructions given. The Panel also took into account the character evidence on behalf of the officer which contained many references to the officer's integrity and professionalism.

53. Consequently, the Panel concluded on the balance of probabilities, having applied the legal test, that the officer's actions were not dishonest. Accordingly, the Panel found this allegation **not proven**.

Whether the officer was careless and failed to exercise proper diligence in failing to accurately record events in his Stage 3 and Stage 4 accounts

54. In determining the matter, the Panel first considered the APP on post-incident procedures following a death or serious injury (DSI).

55. The Panel noted the effects of trauma on perception and recall when providing witness accounts and took this into account when making an overall assessment. In particular, the Panel noted from the APP that: *"A person involved in a traumatic or life-threatening encounter may experience a range of responses that could affect their perception, memory and recall of key events. These perceptual distortions may then affect the person's ability, immediately after the incident, to recall what happened accurately, including what may be regarded as important details. Officers or members of staff who subsequently recall further information should record this in an additional account."* [74]

56. In determining this matter, the Panel took into account the following factors:

- i) The officer had followed the APP process, complied with all instructions given and fully participated in the process. The officer had also received legal, federation and welfare support from the outset.
- ii) The officer took his time to give his two accounts - in evidence, he said that it took him several hours to complete his stage 3 account, and a full day to complete his stage 4 account.
- iii) There were a number of references in the character evidence to the officer's diligence and professionalism.
- iv) The officer viewed the footage multiple times prior to making his stage 4 account.
- v) In evidence, Acting Superintendent Gillies stated that in order to maintain the integrity of the process, a stage 4 account may be revisited if new footage is received. The Panel noted that the officer had not been afforded the opportunity to give a subsequent account. In evidence, the officer said *"If I had been given the chance to amend my statement (after I listened to the audio recording), I would have done so"*.
- vi) The officer was an inexperienced officer and it was his first PIP process.
- vii) The Panel had taken into account Professor Gabbert's expert opinion that the officer's error was entirely plausible.

57. Having assessed the material placed before them, the Panel was not satisfied that the officer had been careless or failed to exercise proper diligence when he recorded his stage 3 and stage 4 accounts. On that basis, the Panel found this allegation **not proven** on the balance of probabilities.

Standards of Professional Behaviour

58. Having found the factual allegations not proven, it was evident to the Panel that the alleged Standards of Professional Behaviour, namely 'Honesty and Integrity' and 'Duties and Responsibilities', had not been breached.

59. Whilst the Panel had found allegations A (a) and A (d) proven on the basis of the officer's admission, the Panel considered that neither of the alleged

Standards had been breached as the officer had simply accepted that he was aware the collision would come under criminal investigation and that the internal audio from the car was incomplete.

Publication of the Outcome Report

60. The Chair directs publication of the outcome report pursuant to Regulation 43(6) of the amended 2020 Regulations.

Assistant Chief Constable Peter Gardner - Chair

Helen Race - Independent Panel Member

Adrian Lee - Independent Panel Member

[Date]