

IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2012

SUSSEX POLICE

A MATTER CONCERNING

FORMER PC LOUIE WELFARE

**NOTICE OF OUTCOME OF POLICE MISCONDUCT HEARING
(REGULATION 36(1) POLICE (CONDUCT) REGULATIONS 2012)**

Officer concerned: Former PC Louie Wellfare (“the officer”)

Appropriate Authority: Chief Constable of Sussex Police (“AA”)

Date of hearing: 8-10th July 2024

Panel members: Bryan McAlley (IPM), T/Chief Superintendent Adam Hays (PPM) and Francesca Anderson (LQC) (“the panel”)

Relevant regulations: The Police (Conduct) Regulations 2012 (“2012 Regulations”)

SUMMARY OF THE HEARING

Former Police Constable Louie Wellfare faced allegations related to his driving on 17th July 2019 which resulted in a collision with a taxi, damage to a low wall and a railing, and caused injuries to a pedestrian, the officer’s crewmate and the officer himself. The panel did not find that the officer’s conduct breached the Standards of Professional Behaviour: ‘Duties and Responsibilities’ and ‘Discreditable Conduct’ and dismissed the allegations as not proven or abandoned.

REPRESENTATION

1. Throughout the misconduct proceedings and hearing, the AA was represented by Andrew Waters (counsel). The officer was represented by Denis Barry (counsel) and his Federation Representative, Chief Inspector Chris Thompson, was in attendance. A representative from the IOPC was also present.

THE ALLEGATIONS

2. The panel was referred to a Regulation 21 notice wherein it was alleged that on 17th July 2019 the officer *“broke the code of professional conduct as follows:-*
 - i. *He drove at excessive speeds on Bear Road.*
 - ii. *He did not carry out proper observations when overtaking Ms Ni’s vehicle.*

- iii. *He failed to heed the fact that Mr Marchant's vehicle was turning right into Riley Road and take appropriate action.*
 - iv. *He failed to complete his overtaking manoeuvre well before the junction with Riley Road.*
 - v. *The manner of his driving as described at paragraph i to iv above was a) Careless and/or b) Dangerous.*
 - vi. *The manner of his driving as described at paragraphs i to iv was a breach of the relevant policies and training as set out...*
 - vii. *His careless and/or dangerous driving caused or contributed to the accident which injured Mr Gunn, PC Bothwell and himself."*
3. The AA contended that the aforesaid conduct breached the following Standards of Professional Behaviour (Sch. 2 2012 Regulations):
- i. 'Duties and Responsibilities': Police officers are diligent in the exercise of their duties and responsibilities.
 - ii. 'Discreditable Conduct': Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty. ...
4. The AA alleged that the conduct *"individually and/or collectively amount to gross misconduct, namely a breach of the Standards of Professional Behaviour that, if proved, would [be] so serious as to justify dismissal were you still a serving police officer."*

PRELIMINARY ISSUES

- 5. During the misconduct pre-hearing on 2nd November 2023, the then LQC (Harry Ireland) directed that Nigel Marchant, Bao Ni and Richard Moller were required to give live evidence at the hearing. Given the importance of having Mr Barry represent the officer, and taking into account the availability of counsel, the 100-day timeframe for misconduct hearings was extended in the interests of justice.
- 6. On 12th June 2024, the AA applied for special measures for the witness, Nigel Marchant, so that he could attend the hearing and give evidence by way of a video link. The application was not objected to by the officer. Within a written ruling dated 12th June 2024 (amended on 18th June 2024), the application was granted.

EVIDENCE

- 7. The panel had fully considered all of the evidence provided: a bundle of documentary evidence consisting of 498 pages, transcripts from the Crown Court proceedings consisting of 137 pages, agreed facts (4 pages), seven videos consisting of CCTV footage from the police vehicle, Mr

Marchant's taxi, Ms Ni's taxi and a compilation video, the officer's character bundle (23 pages) and the officer's written submissions (5 pages).

8. The panel heard live evidence from four witnesses – Mr Marchant, Ms Ni, PC Moller and the officer.

Background

9. The parties agreed the following factual circumstances:

- 1) *At about 07:39 am on Wednesday 17th July 2019, a Vauxhall Astra police vehicle...was occupied by two police officers, PC WELLFARE, who was driving and PC BOTHWELL, a front seat passenger. They were travelling westbound on Bear Road, Brighton, whilst responding to an incident with their emergency blue warning lights activated. Travelling along Bear Road, they approached vehicles from behind. The Vauxhall moved out from the westbound lane, into the eastbound lane, whereupon it overtook the first vehicle, a slowing Toyota Auris being used as a taxi and driven by Ms Ni.*
- 2) *The Vauxhall then continued and attempted to overtake the second vehicle, a Citroen Berlingo, driven by Mr MARCHANT, also being used as a Taxi... As the Vauxhall approached the Citroen, the Citroen turned right into the junction with Riley Road, crossing the white central hazard warning lines. The offside of the Citroen and the nearside of the Vauxhall have impacted, before the Vauxhall mounted the pavement to the west side of the junction.*
- 3) *Mr GUNN, was a pedestrian standing on the pavement at this location when he was struck by the Vauxhall, before it impacted with a brick wall behind him and came to rest. As a result of the collision, Mr GUNN and PC WELLFARE received serious injuries, PC BOTHWELL received slight injuries and Mr MARCHANT and his passenger were uninjured.*

10. Mr Gunn, PC Bothwell and the officer were transported to hospital.

11. Sussex PSD were informed and the matter was referred to the IOPC who conducted the investigation.

12. The officer was later charged with causing serious injury by dangerous driving contrary to s.1A(1) of the Road Traffic Act 1988 (Count 1). During a trial in March 2022 at the Crown Court (sitting at Brighton Magistrates' Court), the jury were directed to return a not guilty verdict following a successful submission of no case to answer. Her Honour Judge Barnes concluded that:

...“the 5 second decision as seen in the evidence does not come close to the very high threshold necessary for a jury properly directed to convict this defendant... Mr Marchant on the evidence did not look or see the obvious police car and hit Mr Wellfare's car and but for that Mr Wellfare would have safely returned to the correct carriageway and made his way to the SFI awaiting him.”

Summary of witness evidence

Chief Inspector Mark James Evans

13. The panel was provided with the statement of Chief Inspector Mark Evans' statement dated 1st July 2020 which was adopted as his evidence. He explained that "CR106 was a divisional unarmed response vehicle" which had been assigned to the incident – this was the vehicle used by PC Bothwell and the officer.
14. A transcript of CI Evans' evidence during the Crown Court proceedings on 1st March 2022 was provided to the panel. The parties agreed the following:
 - i. *At the relevant time he was the Force Critical Incident Manager. He had been a police officer since 2003, and he was trained in firearms deployment. He was responsible for the deployment of resources around firearms incidents, pursuits and crimes in action. A 999 call was made at 6.30 in the morning regarding the recent theft of a motorbike during which the person reporting it said he had been attacked with sledgehammers and a knife. The informant had gone on to say in the 999 call that he was following the suspects and they had attempted to ram his car off the road.*
 - ii. *CI Evans declared the matter to be a spontaneous firearms incident. The criteria had been met because the caller had said he was being threaten by knives and sledgehammers, and because officers would therefore have to protect themselves from someone who is armed and dangerous.*
 - iii. *PC Wellfare and his colleague were assigned to locate the suspect and get sight of the vehicle. The relevant CAD indicates that the victim updated the police that he had pulled up behind the suspect vehicle and it had made off down Meadow view Road and was potentially heading towards a wooded area. PC Wellfare and his colleagues were sent to that wooded area to act as professional eyes.*
 - iv. *Their role was described in the relevant document as follows:*
 - a) *"It is the role of unarmed officers to provide initial support, fast time intelligence and to direct and disperse public away from danger in line with the safe principles of Sell, Tell, Act ..."*
 - v. *The decision to deploy armed officers is based on the National Decision Model. That model is designed to focus on whether the level of risk that is being taken in a particular set of circumstances is acceptable or not. This was a Grade 1 incident because of the seriousness (where there is a 4 stage grading process). As part of the operation:*
 - a) *Tyre deflation systems were put on the road (sometimes known as 'stingers') on the basis that the suspect/s would not stop;*
 - b) *Pre-emptive boxing was also authorised, which is where three police vehicles bring a vehicle to a stop;*
 - c) *The National Air Police service were deployed so that the aerial position of the helicopter would show where the suspects were going.*
 - vi. *CI Evans explained that a pursuit would be undesirable because that would indicate that the police had lost control of the situation to a certain extent. He explained that the above steps had resource implications and he was therefore obliged to consider whether the incident was 'serious enough to justify the steps' being taken.*

- vii. *He explained that police officers were train[ed] to use a combination of lights and sirens and that there may be times where sirens were not appropriate. He agreed that there may be times where lights would be used but not the siren so that [a] suspect was not aware of a police presence.*
- viii. *The Airwaves at page 198 of the bundle sets out the conversations that took place between the Control room and Mr Wellfare. CR 106 was Mr Wellfare.*

15. The panel considered the four CAD reports, STORM incident report and Airwave document.

PC Tom Bothwell

16. The panel was provided with the statement of PC Tom Bothwell dated 25th November 2019 (but it may have been drafted on 15th August 2019) which was adopted as part his evidence. He stated:

- i. His statement was made after viewing the footage from the police vehicle.
- ii. On 17th July 2019, he was crewed with the officer. They were tasked with locating a van, the occupants of which had stolen motorbikes and threatened the owner(s) with weapons. The officer drove as he held an amber permit and was trained as a police response driver. PC Bothwell had been the passenger of the officer previously and never had any concerns with his driving.
- iii. They were diverted to meet the victim at a petrol station but the victim could not be located. Following information that the suspects and van were outside the victim's address, PC Bothwell and the officer were tasked to search the area and locate the van. The incident had been declared a SFI (spontaneous firearms incident) and required firearms teams to be deployed.
- iv. They were tasked to attend the Bevendean area to prevent the suspects from escaping through the woodland area. They ended up on Bear Road which was a 20mph two-way road. There were 2-3 cars in front of them. The officer manoeuvred the police vehicle into the right-hand lane to overtake the vehicle on the offside. He noted that the lane ahead was clear. Roughly halfway through passing the second vehicle, that vehicle turned right without any indication or warning and he believed it made contact with the police vehicle. That caused the police vehicle to alter course and collide with a wall. He was unsure if the male pedestrian standing nearby had managed to move before the collision.
- v. PC Bothwell was diagnosed with whiplash injuries to his neck and back, and bruising to his liver. He was hospitalised overnight and discharged the next day.

17. The panel was provided with a further statement of PC Bothwell dated 25th November 2019 which was adopted as part his evidence. He stated:

- i. Blue flashing lights and sirens were activated by the officer as the police vehicle turned onto Bear Road. This caused vehicles to stop and alerted drivers to the police vehicle's presence. He did not know if the siren and blue lights were de-activated and then re-activated. He did not know the speed the police vehicle was travelling at.
- ii. He had discussed with the officer the effectiveness of TASER against the knives and sledgehammers the suspects were said to be in possession of.

18. A transcript of PC Bothwell's evidence during the Crown Court proceedings on 1st March 2022 was provided to the panel. He had his notes available and was permitted to refer to them. His evidence at trial was similar to the content of his statement. He had observed that the oncoming lane was clear for the overtaking manoeuvre to be completed. He could not recall the Citroen taxi indicating. From memory, he did not think the siren was activated but could not remember 100%. The airbags in the police vehicle deployed during the collision. Firearm units were regularly deployed if weapons were mentioned for the safety of officers. A Taser would have been effective against knives and sledgehammers; police officers were trained to use it in such scenarios.

Matthew Otto Jones

19. A transcript of Matthew Jones' evidence during the Crown Court proceedings on 1st March 2022 was provided to the panel. His evidence related to the police vehicle prior to the collision. Mr Jones was driving his grey Vauxhall Astra on Bear Road, turning onto Bevendean Road which had a slightly a blind corner. He saw the police vehicle travelling from Bevendean Road onto Bear Road. The police vehicle was on the wrong side of the road with its blue lights activated, no siren and was "moving at a fair pace" so he was required to do "a sort of emergency stop" but there was enough time for him to put the brakes on. The police vehicle then went around him onto Bear Road. If the siren was on, it would have made a difference to his preparedness. The speed of the police vehicle reduced from 25mph to 16mph by the time it passed Mr Jones' vehicle.

Nigel Marchant

20. The panel was provided with a statement of Nigel Marchant dated 17th July 2019 which was adopted as part of his evidence. He stated that he was the driver of a taxi which was a grey Citroen Berlingo vehicle. He was transporting a child to school who he had collected at around 7.30am. His route involved him driving on Bear Road, which he stated had a speed limit of 30mph "and that would have been the speed I was travelling at." He glanced in his mirror, indicated and noted that the other lane was empty. He had slowed his speed and was about to turn right onto Riley Road when "out of nowhere there was a cop car, hurtling down at massive speed, on the inside of me. Bear Road is quite steep. To pick speed up like they were doing, is quite easy." There was a crash which was a shock. He stated "there was 100% no siren" and he did not remember seeing any lights. He stopped and the officer alighted the police vehicle. He was at the scene for 2 hours. His vehicle was fitted with CCTV, which was subsequently provided. He also drew a sketch of the position of the vehicles.

21. A copy of Mr Marchant's CCTV footage was provided to the panel which provided angles that were rear facing (on the left of the screen) and forward facing (on the right of the screen). It showed Mr Marchant's taxi drop back from a vehicle in front, his taxi turned to the right and the collision with the police vehicle occurred.

22. A transcript of Mr Marchant's evidence during the Crown Court proceedings on 1st March 2022 was provided to the panel. He stated that he had previously driven on Bear Road on multiple

occasions. Just before the collision, he had slowed his speed down, glanced in his offside mirror, signalled to turn right onto Riley Road, where there was no traffic in front of or behind him and as he turned the accident occurred. He could not remember if the police vehicle had its blue lights on but he was 100% sure that he did not hear a siren. His radio was on but it did not distract him. He agreed that he drove into the police vehicle overtaking him. He agreed that part of the rear window was blocked by the bag but he could still see out of the rest of the window. He did glance in his mirrors and did not need to move his whole body or whole head to do so. There was nothing there when he initially looked in his mirror. He indicated before he turned right. The CCTV footage from his vehicle was played to him.

23. On 8th July 2024, Mr Marchant gave oral evidence via video link that:

- i. He knew the area “reasonably well” and had “done that journey many times.” Bear Road was steep and was “not a road you speed on.”
- ii. It was agreed that the indicator stalk in his vehicle was on the left-hand side.
- iii. The passenger was sat in the rear of his vehicle behind the passenger seat. He was not distracted by the passenger or radio within his vehicle.
- iv. On the right-hand side of his parcel shelf, Mr Marchant had his gym bag. He did not agree that the bag obscured his vision stating that it was “not taking up a quarter of the window” and he could see out of his back window enough.
- v. He was wearing dark glasses as it was a sunny day. There was not a lot he could do about the camera not being able to pick up his eye movements.
- vi. He accepted the CCTV footage was the most objective evidence available.
- vii. He accepted that from the CCTV footage it did look like he was driving with only one hand on the steering wheel but that it did not show his hands. His right hand could have been at the bottom of the wheel, but he could not say. His left hand was on the wheel.
- viii. He accepted that the movement of his left hand (at 09.02.09 of his rear facing CCTV footage) was him changing gear.
- ix. He accepted that his head remained almost stationary throughout his rear facing CCTV footage, but he did not need to move his head to look in his mirrors. He would glance in the mirrors by moving his eyes.
- x. Whilst approaching the junction with Riley Road, he slowed his speed. He looked and/or glanced in his right-hand mirror and his middle mirror. He did not see any vehicle. There was no vehicle in the oncoming lane and so the road ahead was clear in the oncoming lane. He activated his indicator “like I always do.” He was coming “to a standstill” as he was “doing a right hand turn on a hill” and went to do the manoeuvre when “out of nowhere he was just there.”
- xi. He agreed the Highway Code stated to look in your mirrors before doing a right-hand turn, which was what he did.
- xii. In accordance with the Highway Code, he stated that he did indicate well before turning right. “I know I indicated 100%.” He stated that it may have been lazy, but he used his finger to flick the indicator with his left hand which could not be seen on the CCTV footage. He did not use his whole arm. He denied only indicating as he was actually steering right.
- xiii. In respect of his indicator, upon viewing the CCTV footage from Ms Ni’s vehicle, he stated “that looks like it is lit up” well before the turning. He disagreed that it was

affected by the sunlight as it was not apparent on the other indicator. To him, it looked like the indicator was flashing.

- xiv. Prior to the collision, he did not notice any police flashing lights.
- xv. Prior to the collision, he did not hear any police siren – “you hear a police siren when you hear a police siren...you hear it and you move out of the way.” He wished the police vehicle had its siren on.
- xvi. If he had seen the police vehicle, he would not have turned right as he agreed it would have been inevitable that there would have been a crash. When he looked in his mirrors, there was nothing there. It was not his fault, if the police vehicle travelled at excess speed. The police vehicle was not there, and then it was.
- xvii. He had been driving many years and had never had an accident.

Bao Ni

24. The panel was provided with a statement of Bao Ni dated 24th July 2019 which was adopted as part of her evidence. She stated that:

- i. She was the driver of a taxi which was a grey Toyota Auris. On 17th July 2019, at around 7.35am, she was driving a male customer along Bear Road between 27-30mph. There was a taxi in front of her (Mr Marchant). As she neared the end of that road, she saw in her offside mirror a police vehicle “behind me quite suddenly.” She regularly checked her mirrors and did not see the police vehicle previously. She noted that it was a marked police vehicle with the blue light flashing on top and it had activated its police sirens as it approached her, “it was not on beforehand.” She described the police vehicle “as driving fast and very close” when she first saw it. She slowed down a tiny bit as she was worried about the police car hitting her and she wished to keep a safe distance to the taxi in front of her. She considered mounting the kerb.
- ii. When she became aware of the police vehicle, she noticed the taxi driver in front of her had indicated right, and she was sure of that even though it did not appear in her CCTV footage due to the police lights. The taxi in front of her had slowed down and so did she. The police vehicle drove onto the other side of the road and overtook her taxi on the offside. At that point, the taxi in front began crossing the lane to turn right. She considered using her vehicle’s horn “but the police alarm was very loud and clear.” The police vehicle did not look like it was going to slow down. The front passenger side of the police vehicle collided with the front offside of the taxi and there was a big bang. The force of the crash changed the direction of the taxi in front of her so that it was back onto Bear Road. The police vehicle mounted the pavement and hit a pedestrian who had been standing by a wall and was thrown over the fence into some gardens.

25. A copy of Ms Ni’s CCTV footage was provided to the panel which provided a forward facing view from her vehicle. It showed the police vehicle overtake her taxi and the subsequent collision between Mr Marchant’s vehicle and the police vehicle.

26. A transcript of Ms Ni’s evidence during the Crown Court proceedings on 1st March 2022 was provided to the panel. She had driven down Bear Road on many occasions. The speed limit was 30mph on Bear Road which changed to 20mph when you went into Riley Road. Toward the end of Bear Road, a police vehicle approached behind her in the same lane as her. She saw the police vehicle as she regularly checked her mirrors. It had blue lights activated and there

was a siren but she was unsure if this was why she was alerted to the police vehicle. It was initially 200m (stated in examination in chief) or 200 yards (stated in cross examination) behind. She slowed down and moved to the side of the road to give the police vehicle more space. The taxi in front of her also slowed down and indicated to turn right for a quite a long time before the junction with Riley Road as it began indicating when passing Ewhurst Road. She stated that “the taxi indicator was very clear to my vision. I remember that very clear” and she questioned why the driver had not cancelled the indicator given the presence of the police vehicle. The police vehicle overtook her in the empty lane. She did not think the taxi in front of her saw the police vehicle. The taxi turned into the junction and the taxi and police vehicle “bumped together.” She accepted the taxi turned right into police vehicle. A man standing on the corner was hit by the police vehicle and was thrown over the wall. She believed the sunlight and police blue lights had affected her CCTV camera making it seem that the indicator light on the taxi in front of her did not appear in her CCTV footage.

27. On 8th July 2024, Ms Ni gave oral evidence during the misconduct hearing that:

- i. In July 2019, she was a new taxi driver, having been in the role for 3-4 months. She was travelling downhill on Bear Road, at around 25-30mph, and had planned to head straight on.
- ii. The taxi ahead of her (Mr Marchant’s vehicle) was indicating to turn right. It began indicating on Ewhurst Road. The CCTV footage from her vehicle began after they had passed Ewhurst Road (timing showed 07.37.35). She stated that the taxi ahead had been indicating for few a seconds and still was not going, she believed, because it had seen the police vehicle, and slowed its speed. As it was a really sunny day, the sun was not helping the indicator be visible on the CCTV from her vehicle. Her recollection was that the indicator was on. She remembered the taxi’s indicator clearly because it had been indicating for a while and it had bothered her. She personally would have indicated closer to the junction.
- iii. She checked her mirrors and saw a marked police vehicle. It had its emergency lights on, which she saw first, and then she heard a police siren, loud and clear, coming from the vehicle. (In cross-examination, she was not sure if it was the blue lights or the siren which caught her attention first.) She slowed down and moved very slight to the left to let the police vehicle overtake her. There was not much she could do – there was only one lane going down, she could not cross to the other side, there were lots of parked cars on the other side, there was no space for her to park up, the kerb was high and at that speed it was not safe to suddenly pull up onto the kerb.
- iv. She saw the taxi ahead slow down and start to cross into the oncoming lane to turn into Riley Road. She thought about using her horn, and would have done so if she had the experience she does now. At the time, she thought the police siren was loud and clear.
- v. Upon viewing the CCTV footage from Mr Marchant’s rear facing camera, she agreed there was no indication of movement from his left arm however, for her personally, her arm did not have to move for her to indicate which she would click with a finger.

Andrew Gunn

28. The panel was provided with the account of Andrew Gunn dated 5th September 2019. The interview was conducted by the IOPC. Present was Mr Gunn's brother-in-law. He stated that that at 7.40-7.45am, he was walking on Bear Road when he saw the police vehicle "haring down" on the wrong side of the road. The vehicle had its blue lights flashing but no sirens. As he reached the corner, the police vehicle "clipped" the front of a taxi, which he stated was trying to move out of the way and he did not know if the taxi was indicating. The police vehicle swerved, mounted the pavement and hit his leg as he attempted to get out of the way. This caused Mr Gunn to fall over a nearby wall and he was wedged between two small walls. He feared his leg required amputation. He was subsequently assisted by police officers. He blacked out and awoke in hospital.

Amanda James

29. The panel was provided with the statement of Amanda James dated 24th July 2019 which was adopted as her evidence. She stated that on 17th July 2019 she had spoken to Andy Gunn, a family friend, as she dropped her daughter off at nursery. She did not witness the collision but heard a deep thud and Andy screaming "help me" and "what have you done to my fucking leg?" She saw Andy lying on his back and the injury to his leg. She saw a silver taxi, which had no damage and nobody inside, and a marked police vehicle, which had its blue light on top but she did not hear any sirens at any point. The police vehicle was almost entirely on the pavement and had crashed into the wall outside the nursery. An officer who stated he was the driver of the police vehicle was lying completely flat, appeared pale and had bruising to his right arm. He stated to her that "a taxi driver pulled out on them coming out of Riley Road...he had to swerve round it." Ms James took photographs of the scene at 7.46am.

Jason Moore

30. The panel was provided with the statement of Jason Moore dated 22nd July 2019 which was adopted as his evidence. He was driving his van on Eastbourne Road and indicated to turn right onto Bear Road. A police vehicle overtook him on the offside and turned right onto Bear Road. The police vehicle was not driving fast and had its blue lights on but no sirens. He stated that Bear Road was a 30mph road but changed to 20mph at some point. He was around a minute behind the police vehicle and did not witness the collision. He noticed the scene of the accident and saw a taxi in the middle of the road and the police vehicle looked like it had pulled up to park. Its blue lights were still activated and he heard sirens but was unsure whether it came from the crashed police vehicle or another police vehicle. He tended to the passenger officer (PC Tom Bothwell). He was not 100% sure, but noted that the passenger officer explained that "they came down [B]ear [R]oad, went to go around a taxi, then they glanced off the taxi and hit the wall."

Natasha Stenning

31. The panel was provided with the statement of Natasha Stenning dated 2nd August 2019 which was adopted as her evidence. She stated that she had her back to the collision but heard a

loud crash from less than 100m away. She saw that a police vehicle had gone into the railings of the nurse and later realised the police vehicle had collided with a pedestrian she had previously passed by. She called 999. She did not hear police sirens, brakes screech or the sounds of a speeding car.

Hannah Harbottle

32. The panel was provided with the statement of Hannah Harbottle dated 1st August 2019 which was adopted as her evidence. She stated the crash happened behind her and she heard a loud bang and crunch sound followed by a man screaming. She was 5-6m away. She saw that the nursery railings had fallen forward and that a police vehicle had struck into the corner wall of the nursery. The front end of the vehicle was crumpled. She asked the nurse to call for an ambulance. She did not hear sirens and remembered seeing blue lights on the crashed police vehicle.

Jose Reina

33. The panel was provided with the statement of Jose Reina dated 1st September 2019 which was adopted as part his evidence. This witness did not see the collision but heard the crash and went to see what had happened. The witness did not hear any police sirens.

Malcolm Kemp

34. The panel was provided with the statement of Malcolm Kemp dated 10th October 2019 which was adopted as his evidence. He did not witness the collision but heard a banging sound "like metal on metal. I then heard sirens" but was unable to differentiate between different kinds of sirens. He was wearing his hearing aids at the time.

PC Richard Moller

35. The panel was provided with a Forensic Reconstruction Report IOPC memo (undated) by PC Richard Moller. He was a forensic collision investigator. He had been informed the taxi and police vehicle had no apparent defects that contributed to the collision. Neither driver was impaired by alcohol. The police vehicle drove at an average speed of between 44-47mph prior to the collision (twice the speed limit) and moved into the opposing lane approximately five seconds before the collision.

36. The panel was provided with the statement of PC Moller dated 21st October 2020. He stated that he attended the scene of the collision at 8.32am and took photographs of the scene. He also conducted skid tests. He had prepared a scale plan of the collision scene and a collision investigation report dated 21st October 2020. He opined that it "was ultimately an avoidable collision from the perspective of both drivers. If PC WELFARE had been driving within the speed limit for the road and he had not embarked on overtaking a vehicle at a junction. Or, if Mr MARCHANT had observed the approaching Vauxhall, before commencing the right turn manoeuvre, this collision could have been avoided."

37. A transcript of PC Moller's expert evidence during the Crown Court proceedings on 2nd March 2022 was provided to the panel. The parties agreed that his evidence included the following:

- a) *that he was unable to determine whether the indicators were on prior to the impact;*
- b) *that a bag in the back of Mr Marchant's vehicle would have obscured the view to the offside rear of the vehicle from the central mirror;*
- c) *there was video evidence to support the contention that Mr Marchant was using one hand to drive;*
- d) *there was no clear footage of Mr Marchant moving his hand to use his indicator.*
- e) *that there was a movement where the flashing blue light can be seen over the back through the back window of the vehicle;*
- f) *that if Mr Marchant had carried out appropriate mirror checks confirming it was clear behind before he commenced the manoeuvre he may have seen the approaching Vauxhall and had time to react;*
- g) *that if the collision had not take[n] place the police vehicle would have [been] able to continue along the road and there was nothing immediately in front of it;*
- h) *that there are no discernible head movements from Mr Marchant until the moment when the accident happen[ed];*
- i) *that the police vehicle driven by Mr Wellfare was in the middle of the road for 5 seconds before the relevant impact.*

38. PC Moller also stated that:

- i. There was an unbroken line of sight from Mr Marchant back to the police vehicle but his view may have been affected by the sun's glare.
- ii. As there was a bag obscuring Mr Marchant's view to the offside rear of his vehicle, he would have been more reliant upon his offside door mirror.
- iii. The taxi turned into the path of the police vehicle. If the taxi had not turned, the police vehicle could have passed.
- iv. The first time PC Moller definitely saw the taxi's right indicator illuminated was after the collision had occurred.

39. On 8th July 2024, PC Moller gave oral evidence in accordance with the above evidence. He also explained that:

- i. The 999 button activated, and deactivated, the emergency warning lights. A push of the horn on the steering wheel would have activated the siren. Single pushes to the steering wheel would change the tone of the siren. A double push to the steering wheel would have turned off the siren.
- ii. A white van, not properly parked, obstructed the view of emerging vehicles from Riley Road.
- iii. If Mr Marchant carried out appropriate mirror checks, he might have seen the police vehicle.
- iv. As part of the examination, PC Moller physically sat in Mr Marchant's taxi and stated that the bag was noticeable given its size, and it would have obscured the view.
- v. Buildings and vehicles had cast a shadow on the road. The clock shown at the top of the CCTV footage from Ms Ni's vehicle was untested so could not be used for timing purposes. When the shadow counteracted the sun's glare, he could see a light from

the rear lights of Mr Marchant's taxi but could not say if it was a brake light or the indicator.

- vi. There was no signage on Bear Road to indicate the side roads. It was noted that Bear Road was the main thoroughfare so emerging vehicle from side roads (like Riley Road) would be required to make sure it was clear before joining Bear Road.

Geoffrey Alan Burgess

40. The panel was provided with statements of Geoffrey Burgess dated 4th August 2020 and 13th October 2021 which was adopted as his evidence. He was the supervisor of Surrey Police Driving School. He provided the following record of the officer's driver training.

- i. On 14th January 2016, the officer passed the basic car authorisation.
- ii. On 23rd September 2016, the officer completed the standard car response course. He was accredited until 22nd September 2017.
- iii. On 16th August 2017, he completed the initial phase pursuit and stinger course. He was accredited until 16th August 2019.

41. The officer's driving record held by Surrey Police's Driving School included:

- i. Ref 1336: On 24th February 2017 at 2215, when responding to an incident, the officer reached speeds of 61mph in a 30mph zone. He submitted an incomplete exemption application form. On 22nd September 2017, it was decided that the exemption was granted and words of advice were provided regarding speed camera thresholds and the completion of the relevant forms.
- ii. Ref 1509: On 22nd August 2017 at 0041, the officer pursued a third party vehicle over rough ground and hit a pot hole activating the incident data recorder. He did not report this incident. Damage was later discovered on the underside of the police vehicle and he was identified as the driver at the time. On 9th October 2017 the officer was suspended from driving police vehicles until further notice. On 7th November 2017, it was recommended he receive three risk points for the off road driving, and for a driving assessment to be conducted. On 5th January 2018, following an assessment, he was reinstated to response grade driving duties with conditions that he complete a further driving assessment within six months, that he was monitored by his line managers for six months and that he was not eligible to apply for any additional driving courses until authorised.
- iii. Ref 1505: On 17th September 2017 at 0720, when responding to an incident, the officer had been travelling too fast for the road conditions and clipped a traffic island causing damage to the police vehicle. On 7th November 2017, he received two risk points for kerbing.
- iv. Ref 1508: On 30th September 2017 at 2035, whilst driving a police van through an underpass, the roof light bar on the police vehicle collided with the underpass causing damage. On 6th October 2017, his driving accreditation was reduced to basic plus

stopping (grade 5+ and/or Basic+). On 7th November 2017, he received one risk point for judgement.

42. A transcript of Mr Burgess' evidence during the Crown Court proceedings on 2nd March 2022 was provided to the panel.

- i. He explained that the College of Policing prescribed three levels that police officers could drive at: basic (less than a day's training), standard/response (three-week course) and advanced (use of a more advanced performance vehicle).
- ii. The officer's Surrey driving authorisation was transferred to Sussex, but each Force had its own local policies.
- iii. Emergency warning equipment was to warn other road users, it did no more than that.
- iv. Whenever a police driver claimed an exemption, they needed to justify why they had exceeded the speed limit, which must have been proportionate to what they were trying to achieve. If the officer drove in excess of the speed threshold the Force had set, they would need to additionally justify to the Police Vehicle Incidents Department why they were going above the threshold. The speed threshold was not a limit but was designed to make driver reconsider what they were doing and why.
- v. Extracts from police driver driving training documentation included:
 - a. *"Noble cause risk-taking: never justify risk-taking by telling yourself that the risk is for a noble cause, to help someone else, for instance, or to catch a person suspected of a crime. If you're tempted to take risks in an emergency, stop. Think about the consequences for yourself and other people if you crash and fail to arrive. You are no help to the people in need. If you injure yourself or someone else on the way you will have turned an emergency into two emergencies and a possible tragedy and you will have to live with the consequences of what you have done."*
 - b. *"Think carefully before activating your sirens if you're close to other road users, particularly cyclists, pedestrians or animals. If, in the light of your risk assessment, you decide not to use your emergency warning equipment, a silent approach take extra care because other road users may be less aware of your vehicle's presence."*
 - c. *"Assess when and where to activate your emergency equipment. In normal circumstances you should activate your emergency lights before using your sirens."* It was explained that the rationale for the lights to be used before the siren was to prevent startling other road users. Activation of the lights first gave other traffic a moment to possibly recognise that an emergency service vehicle was behind or in front with the lights on, and then the siren was a step to make people aware rather than turning everything on without thought. It was a matter for the police driver to assess whether there would have been an adverse reaction from another road user if all equipment was suddenly activated.
 - d. *"Police drivers can use statutory exemptions from speed limits but you must be able to stop safely within the distance you can see to be clear on your*

own side of the road. During an emergency response never compromise safety in order to save time. It is far better to arrive later than not at all."

- e. *"Vehicles ahead: When approaching traffic travelling in the same direction travel at a speed and following position that allows you to respond to heavy or sudden braking by the vehicles ahead. Seek evidence that the drivers ahead are aware of your presence before you attempt to pass them. Look for the nearside indicator operating or vehicle movement into the nearside or offside. Observe the driver's head and body movements. Never assume that other drivers have seen and/or have heard your vehicle."*
- vi. Road layout was an important part of the risk assessment when overtaking. A particular hazard to consider was when a vehicle did not anticipate that another vehicle might turn into a side road without warning.
- vii. When exercising the legal exemption in respect of speed, it was for the police driver to ensure that they had made the relevant assessment and that they were accurate.
- viii. Other road users had an obligation to indicate what they were doing under the Highway Code.

T/Inspector Marcus Adam Stuart

- 43. The panel was provided with the statement of T/Inspector Marcus Stuart dated 23rd December 2019 which was adopted as part his evidence. He was an expert in police driver and pursuit training. He noted the issues with the quality and accuracy of the vehicle's data system (TRT Pro).

The officer's account

- 44. Four clips from the police vehicle's CCTV footage was provided to the panel showing angles that were forward, rear, right and left facing. This showed the police vehicle overtake Ms Ni's taxi. Mr Marchant's taxi could be seen in front of the police vehicle which moved to the right and there was a collision with the police vehicle.
- 45. A record of the officer's criminal and misconduct interview dated 8th August 2019 was provided to the panel. The interview was conducted by IOPC officers. The officer was represented by a solicitor and his Federation Representative was also present. The officer provided a prepared statement denying that he had committed any offences and that he had not been provided with any disclosure so was unaware of the actions that amounted to careless or dangerous driving. He did not answer any further questions. The footage from the police vehicle was subsequently disclosed and the interview was paused. When the interview re-started, the officer did not provide any further account. The misconduct interview followed thereafter and the officer did not answer the questions asked.
- 46. As part of the misconduct proceedings the officer provided a Regulation 22 response. The officer denied the allegations, that he had breached the Standards of Professional Behaviour

and that his behaviour amounted to misconduct or gross misconduct. He provided the following account:

- i. *At the age of 19 I decided I wanted to be a police officer so I enrolled on an evening course at college and completed my Certificate & Knowledge in Policing (CKP). I did this whilst working full-time as a car salesman. Once I completed my CKP, Sussex Police were not recruiting police officers. I was determined to realise my dream job, so I joined Surrey Police instead, aged 21. My joining date was 06.10.15 and I completed 12 weeks training in Guildford.*
- ii. *It is noted that in April 2018, the officer transferred to Sussex Police.*
- iii. *A Grade One is not just a call which has a target time of fifteen minutes. During the trial the jury heard evidence that I was asked to attend a wooded area so that I would be able to provide speedy intelligence, and if necessary subdue suspect/s believed to be armed with knives and sledgehammers. The supervising officer had already decided that the facts required air support, the assistance of armed police officers, and the use of 'stingers' to stop a vehicle which was unlikely to stop for police officers. The operation was plainly time sensitive. It was declared a firearms incident by Inspector Evans:
 - a) *"as he had reason to suppose the officers may have to protect themselves or others from a person who he believed to be so dangerous that the deployment of armed officers were considered appropriate."**
- iv. *In respect of 17th July 2019, "My tour of duty was 0700hours – 1530hours and I was working with B Section Brighton NRT. At roughly 0645hours I was tasked by PS Groombridge to assist PC Savil and PC Dart who were already out at a job. I was told to crew up with PC Tom Bothwell. We left John Street Police station in a marked police vehicle on blues and twos. I was driving The briefing of the job I received was that it was a robbery involving knives and baseball bats, and that the victim had been threatened with a knife and his motorbike stolen and driven off in the back of a white transit van.*
- v. *Whilst driving towards the destination (Bevendean Road, Brighton) I took the Lewes Road. I remember at a set of traffic lights, a vehicle came from the left as I was passing through the lights causing me to brake. I drove up Bear Road and into Bevendean Road where I was told by the Controller, Oscar 1 to hold on the junction of Bevendean Road and Meadowview. PC Savill and PC Dart were also on Meadowview speaking with the victim of the robbery.*
- vi. *Oscar 1 said over the police radio that he was now making this matter an SFI (Spontaneous Firearms Incident) and that if the vehicle was sighted we should not attempt to stop it. Oscar 1 took command of the SFI. An SFI, or spontaneous firearms incident is only declared when Oscar One (the Inspector in the Control Room) is satisfied that officers may need to protect themselves from a life threatening scenario.*
- vii. *As such firearms officers are relocated to the scene to take the lead in apprehending the suspect. Local units may also assist however the lead and instruction on the ground will come from the firearms officers. In operations the command goes from local supervision to the central Oscar One. This only happens for SFI's.*

- viii. *The van drove to the top of Meadowview, saw police and took a right turn down Bevedean Road (away from Police) and towards Eastbourne Road. PC Savill called up to update Oscar 1. Oscar 1 said that there was a large amount of forestry at the end of Willingdon Road and that the suspects could try and get away there.*
- ix. *Due to this I was directed by Oscar 1 to relocate from Bevedean Road to the far side of this wooded area. I drove down Bevedean Road activating my blue lights as I did so. I honestly cannot remember if I activated my sirens or not. I usually do automatically however I may have taken the decision not to, so that I did not alert the suspect's to my presence. This is in training known as a 'silent run' and you are taught how to drive on blue lights without a siren on. This is an often used and regularly taught driving tactic.*
- x. *As I approached the junction with Bear Road, a vehicle pulled into Bevedean Road too quickly and I had to brake to avoid it. I then turned right onto Bear Road and began driving to the bottom. It was heavy traffic travelling east (my side) but hardly any travelling west. I had a good, clear and unobstructed view of the road all the way to the bottom of the hill. I could see several vehicles in front of me who were queuing, reacting to my lights, indicating left and pulling in so I could get past. Some vehicles stopped stationary again so I could pass. Due to the long line of stationary traffic I drove down Bear Road on the offside.*
- xi. *As I approached Bear Road junction with Riley Road I could see a taxi that was stationary. Further in front of me was another queue of stationary traffic. I could not see any indication from any vehicle so my understanding was the vehicles had stopped to allow me to pass. With the long queue of traffic on my side of the road and the empty road on the offside, the safest and direct route to drive down the road would be on the offside away from the traffic.*
- xii. *My side of the road was completely blocked and as such if I wanted to progress through the traffic which I believed had stopped to let me overtake I would have to drive on the offside of the road. To not make such a movement would have been confusing for the stationary drivers and they would not have known [whether] to start moving again or not. I was aware that firearms would shortly be coming in the opposite direction (up the hill) and as such I needed to make sure the manoeuvre was safe and swift, to ensure no possibility of a blue on blue collision.*
- xiii. *I was aware of the junctions on the roads and could not see any vehicles waiting to turn out or into them, there was minimal to no foot traffic. Visibility was very good of the whole road and the road conditions were very good. It was a bright sunny day. I had no obstructions when I moved to the offside of the road. I was aware the matter was time pressing as the suspects could be making off through the woods and if I did not get there in time they would escape.*
- xiv. *Bear Road is an extremely steep hill. As per my training when I approached the junction (Riley Road) I accelerated through the hazard.*
- xv. *I had been taught to do this in driver training. It is the most dangerous point of the drive and as such you want to pass through it quickly and with purpose. My thought process was that the taxi which collided with me had stopped to let me pass, as the others behind it had. I did not see any indication from the taxi and neither did my colleague and as such I risk assessed it as safe to pass.*
- xvi. *As I passed the taxi on the offside I heard Tom (Bothwell) shout and felt a large bang to the passenger side rear of my vehicle. This pushed my vehicle across the road and*

into a spin. I tried to counter the steering however my vehicle collided with a brick wall on Riley Road, deploying the air bags.

xvii. *I exited the vehicle and could see a male in the ditch behind the broken wall. I could see he had a leg injury however I myself was in too much pain to get to him. I removed my stab vest and turned around and could see two female pedestrians stood staring. I told them to call an ambulance however they did not react. I then screamed at them to call an ambulance and this time one of them took out their mobile phone. The pain then became so unmanageable that I laid on the ground. I then remember PC Cunningham arriving along with multiple firearms units and I was taken to hospital."*

47. The officer also provided a bundle of evidence related to his character. This included eight character references, two awards, a divisional commendation, two letters of good work and a card of thanks.

48. On 9th July 2024, the officer adopted the contents of his Regulation 22 response, which he stated was accurate, and gave oral evidence that:

- i. He had a long standing interest in public service given the occupation of his family members.
- ii. Prior to 17th July 2019, the officer had driven in hundreds of grade 1 incidents. He was trained not to focus on the speedometer and that he was to drive to the road conditions rather than being focused solely with speed. He also referred to other aspects of his training including multi convoy driving, driving in the middle of road, safety at junctions, accelerating through a hazard (from practical training) and active passengers. He believed he had driven in accordance with his training. He did not recall the Sussex Police speed thresholds specific policy as the training was all around driving to the conditions.
- iii. He was aware of much of the information from the control room over the radio.
- iv. He was aware that there were cameras within the police vehicle as they were visible and recorded every drive. He assumed the vehicle did not contain equipment to record the audio.
- v. When directed to the wooded area, PC Bothwell was the navigator and made the decision as to the route, although it was collaborative. He only thought that he might have been required to deploy the stinger as he was trained to do so, but given an SFI had been declared, he thought it would have been unlikely.
- vi. He had activated the blue lights by the time the police vehicle had reached Bear Road.
- vii. He did not recall using the siren during the incident. He may have been using the silent approach and so that might have been why it was not activated. In such circumstances, he had to be more careful for people to spot him.
- viii. He was not sure if he had driven on Bear Road during a grade 1 incident before. He had used the road 4-5 times previously. He was not familiar "at all" with the side roads off Bear Road and was unaware there was a nursery on Riley Road. He was aware the speed limit was 20mph and that he had travelled at twice the speed limit. He accepted that his stopping distance was compounded by going downhill. He stated that the whole road had a consistent gradient.
- ix. He did not recall the white van on the junction with Riley Road but accepted it was visible in the CCTV footage. He accepted that was a potential risk and a hazard. He did

not specifically remember whether he could see past the van through to the pavement before the junction.

- x. He saw Ms Ni's left hand indication prior to her moving over to the left and slowing down. Ms Ni's vehicle was a hazard.
- xi. He saw Mr Marchant's vehicle slow considerably fairly quickly after Ms Ni moved over, and he believed this was in response to the police vehicle. He did not see any right hand indication on Mr Marchant's vehicle. He did not recall the sun coming into play when looking at the indicators and accepted what could be seen in the CCTV footage. He could see from the footage that Mr Marchant was in the middle or to the left of the westbound lane. Mr Marchant's vehicle was a hazard.
- xii. In his experience, professional drivers (like taxi drivers) slowed down and did not pull over when a police vehicle overtook.
- xiii. He felt that his driving was appropriate and that he did not drive at excessive speed.

THE PANEL'S FINDINGS

Preliminaries

- 49. The contents of the 2012 Regulations, Home Office Guidance concerning police officer misconduct 2018 ("HOG 2018") and the College of Policing Guidance on Outcome in police misconduct proceedings 2023 ("CoP Guidance 2023") were at the forefront of the panel's mind.
- 50. The panel noted that the purpose of disciplinary proceedings was threefold (CoP Guidance 2023 para. 2.3):
 - i. To maintain public confidence in, and the reputation of the police service.*
 - ii. To uphold high standards in policing and deter misconduct.*
 - iii. To protect the public.*
- 51. The purpose of a formal misconduct hearing was to (HOG 2018 para. 2.212):
 - a. Give the police officer a fair opportunity to make his or her case having considered the investigation report including supporting documents and to put forward any factors the police officer wishes to be considered in mitigation (in addition to the submission which must be sent in advance to the person(s) conducting or chairing the meeting/hearing for his, her or their consideration).*
 - b. Decide if the conduct of the police officer fell below the standards set out in the Standards of Professional Behaviour based on the balance of probabilities and having regard to all of the evidence and circumstances.*
 - c. Consider what the outcome should be if misconduct is proven or admitted. Consideration will be given to any live written warnings or final written warnings (and any previous disciplinary outcomes that have not expired) and any early admission of the conduct by the police officer.*
- 52. In deciding the matters of fact, the panel was fully cognisant that the AA brought the case and the burden of proof rested with the AA. The standard of proof in misconduct proceedings was the civil standard of the balance of probabilities.

53. The inherent probability or improbability of the conduct occurring was a matter to be taken into account when deciding whether, on the balance of probabilities, the conduct occurred. There was no room for a finding that something might have happened, the panel had to decide that it did or that it did not happen (Re B [2008] UKHL 35).
54. In making a decision whether the alleged conduct was proven or not, the panel exercised reasonable judgment and gave appropriate careful consideration to each piece of evidence in the context of all of the other evidence (Re T [2004] 2 EWCA Civ 558; [2004] FLR 838).
55. The panel had in mind, and gave itself the direction from R v Lucas [1982] QB 720, that a witness might have told lies in the course of the investigation. The panel was mindful that a witness might have lied for many reasons. The fact a witness had lied about some matters did not mean that they had lied about everything.
56. The panel also noted that an honest witness could be mistaken.
57. The officer had four previous matters on his driving record, as referred to by Mr Burgess. The panel was cognisant of the fact that where someone had been involved in driving incidents in the past it did not prove that they did so on a subsequent occasion. The panel was to consider what weight ought to be attached to the officer's driving record when determining the allegations.
58. The panel did not draw an adverse inference from the fact that the officer did not provide an account beyond his prepared statement during his criminal and misconduct interview.
59. It was not opposed that the witness, Nigel Marchant, was permitted to give evidence by way of video link. The fact that Mr Marchant gave evidence in that way bore no reflection upon the officer (or the witness) and had no bearing on the panel's judgment of the witness' evidence (or the officer's).
60. The panel was mindful that this incident was almost five years old, having occurred on 17th July 2019. The delay was of no fault of the officer and the panel did not place any fault against the officer. The panel was alert to the fact that the delay in these proceedings may have resulted in inconsistent memories for the witnesses who gave oral evidence during the misconduct hearing.

Factual allegations

61. Within the Regulation 21 notice, the AA made seven allegations against the officer. The panel considered each allegation in turn. The panel's dissatisfaction with the allegations should be noted; the panel's view was that the allegations were characterised as being poorly drafted and/or worded.
62. The panel found the officer to be an impressive, articulate and intelligent witness. This was reaffirmed by the bundle of character evidence which the panel took into consideration. Nevertheless, the panel did have concerns with the manner of the officer's driving on 17th July 2019. It ought to have been apparent that reaching speeds of 58mph and driving an average

of 44-47mph in a residential 20mph zone, on a road with a steep gradient, and when indiscriminately accelerating through hazards, could have resulted in some kind of incident. Although the panel applied minimal weight to his previous driving record, the panel was mindful that the officer had been involved in previous incidents of questionable driving in quick succession in 2017 with Surrey Police, but it was noted that no driving issues were raised since he joined Sussex Police in 2018.

63. The panel found that the officer was responding to the incident in good faith. Having considered all of the circumstances, the panel found that the officer's driving did not amount to dangerous driving (which was effectively conceded by the AA), and/or careless driving, although this should not be viewed as the panel condoning the officer's driving or excusing the subsequent injury and damage caused.
64. Notwithstanding the operational decision making during the initial incident, the panel found that the collision was the result of an accident and did not find there was sufficiently clear and cogent evidence to apportion blame to either Mr Marchant or the officer, and did not seek to do so in any event. The panel did find that Mr Marchant's gym bag would have obscured the offside view out of Mr Marchant's rear window and therefore would have partially obscured the view he would have seen from his middle mirror, in accordance with the evidence of PC Moller. The panel made no determination in respect of Mr Marchant's right indicator and whether the police vehicle's siren was in use. As conceded by the AA, the panel agreed that the emergency warning lights system in the police vehicle was activated.
65. Given the panel's previous comments about the speed the police vehicle was travelling at, and the distance available as seen in the CCTV footage, the panel could not see how the officer would have been able to overtake both Ms Ni's and Mr Marchant's vehicles "well before" the junction with Riley Road. This is particularly in light of the AA abandoning allegation ii.
66. Although there was an email stating that Sussex Police's response driver training was the same as Surrey Police's (given it was a national system under the Roadcraft framework), the panel was disappointed that no further evidence from Sussex Police was provided in respect of Sussex Police's local policies and procedures given the evidence from Mr Burgess during the Crown Court trial in 2022 that every force had different ideas, especially regarding speed thresholds.
67. The panel agreed with the officer that his driving, (and that of Mr Marchant), caused and/or contributed to the injuries of Mr Gunn, PC Bothwell and the officer, but that his driving did not amount to the dangerous and/or careless driving.
68. In respect of each allegation, the panel found:
 - i. The officer drove at excessive speed on Bear Road – **not proven**
 - ii. The officer did not carry out proper observations when overtaking Ms Ni's vehicle – **abandoned by the AA**
 - iii. The officer failed to heed the fact that Mr Marchant's vehicle was turning right into Riley Road and take appropriate action – **not proven**
 - iv. The officer failed to complete his overtaking manoeuvre well before the junction with Riley Road – **not proven**

- v. The manner of the officer's driving as described at paragraphs i to iv above was a) Careless and/or b) Dangerous – **not proven**
- vi. The manner of the officer's driving as described at paragraphs i to iv was a breach of the relevant policies and training as set out – **not proven**
- vii. The officer's careless and/or dangerous driving caused or contributed to the accident which injured Mr Gunn, PC Bothwell and himself – **not proven**

69. In conclusion, the panel **dismissed the allegations as not proven.**

DECISION ON PUBLICATION

70. The panel heard no representations as to whether the panel's decision should be published. The panel decided that the decision should be published in accordance with the requirement in Reg. 36(6) 2012 Regulations since it was important that misconduct hearings and decisions were transparent.

Bryan McAlley (IPM)
T/Chief Superintendent Adam Hays (PPM)
Francesca Anderson (LQC)

10th July 2024