

SUMMARY BACKGROUND OF THE ALLEGATIONS

1. This Misconduct hearing relates to the conduct of Police Constable A (referred to as the 'officer' in this determination) between March 2020 and July 2022. In brief outline, the alleged conduct concerns the continuation of a business interest, fabricating a lateral flow test, driving vehicles on public roads which did not have an MOT in force, making a dishonest entry that a female victim 'was not willing to support police action' and that she 'was non-supporting' and making a comment that could reasonably be perceived to be offensive and/or likely to damage the reputation of policing.

1.2. The Appropriate Authority (AA) alleges that the officer's conduct, if proved, breached the Standards of Professional Behaviour (SPBs) relating to Honesty and Integrity, Orders and Instructions, Authority, Respect and Courtesy and Discreditable Conduct and amounts to gross misconduct that is so serious as to justify dismissal.

1.3. The Panel observes that the officer filed a Regulation 31 response in which he denied gross misconduct but acknowledged that he drove without an MOT in breach of the SPB relating to discreditable conduct. The officer further denied being dishonest or acting without integrity and stated that he did not consider he needed to declare a business interest. Additionally, he disputed the expert evidence in relation to the Covid-19 test and denied that he either smirked or laughed when reporting the circumstances of a sexual assault as he would never laugh about a victim.

1.5. On the first day of the misconduct hearing, the officer filed through his Counsel, Mr Banham, an Addendum response pursuant to Regulation 31(2) of the Police (Conduct) Regulations 2020 ('the Addendum'). In the Addendum, the officer admitted to the further allegation concerning a business interest. Together, with his earlier admission for driving without an MOT, the officer accepted that he breached the SPB with regards to Discreditable Conduct. He also accepted that his behaviour was so serious that it amounted to Gross Misconduct and was inconsistent with his continued service as a police officer.

1.6. The officer denied all the other allegations against him. In light of his admissions, the AA informed the Panel that all the remaining allegations concerning breaches of the SPBs relating to Honesty and Integrity, Orders and Instructions and Authority, Respect and Courtesy are withdrawn.

1.7. The Panel is grateful for the submissions and valuable assistance provided by Mr Matthew Holdcroft on behalf of the AA and Mr Colin Banham on behalf of the officer. Having heard the proposal made by the respective parties, the Panel went on to consider its decision.

The Panel's Approach

1.8. The Panel approached its fact-finding role in the following manner:

- To ascertain the facts (whether as admitted or found proven).

- To ascertain whether the facts as determined by the Panel, constitute a breach of the SPBs, as alleged;
and,
- Whether the breach of the SPBs amount to Misconduct or Gross Misconduct or neither?
- What Disciplinary Action (sanction) is appropriate?

1.9. In deciding matters of fact, the Panel is fully cognisant that the AA brings the case and the burden of proving the allegations rests with the AA. The standard of proof in misconduct proceedings is the civil standard of the balance of probabilities and the test is a simple unvarying balance of probabilities; what is more likely than not. 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 appropriately careful consideration by the Panel before it is satisfied of the matter which has to be established.

1.10. 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. In making a decision whether the alleged conduct is proven or not, the persons conducting, or chairing will need to exercise reasonable judgment and give appropriate careful consideration to the evidence (**See Paragraphs 9.10/9.11. of the Home Office Guidance 2020**).

The Regulation 30 Allegations

1.11. In light of the officer's full admissions to the factual allegations in the regulation 30 notice concerning his business interest and driving vehicles illegally on public roads without MOTs, the Panel finds those allegations proven based on officer's admissions. Specifically, the officer admitted to the following relevant paragraphs of the Regulation 30 notice: 1,3,4,7,11,12,14,16,17-83, 85, 87-98,101-106,110 -126,129-165,174-181,184-198.

1.12. In admitting the said allegations, the officer said that he should have given more information about the circumstances of his business stated there were numerous vehicles that he bought, improved and sold to others. Some were to family and /or friends but others were sold onto members of the public. He admitted to continuing to do that while he was away from work on sickness absence. In some instances he made a loss, and on others he made a profit but overall did not make a significant amount of money from what he considered to be a 'hobby'.

To Ascertain Whether the Facts as Determined by the Panel Constitute a Breach of the Standards of Professional Behaviour

2. The Panel has considered the proven facts and is mindful that in considering this question, it must exercise reasonable judgement and give appropriate and careful consideration to the evidence. The Panel is also aware that when applying the SPBs in any decision or misconduct hearing they shall be applied in a reasonable,

transparent, objective, proportionate and fair manner and, due regard shall be paid to the nature and circumstances of a police officer's conduct, including whether his or her actions or omissions were reasonable at the time of the conduct under scrutiny. The Panel takes notes that all police officers are in a position of trust and responsibility whether on or off duty.

2.1. Turning to the SPB of Discreditable Conduct which is relevant to the proven conduct in the Regulation 30 notice, this Standard provides that an officer will behave in a manner, whether on or off duty, which does not bring discredit on the police service or undermine public confidence in policing. In particular the Code of Ethics requires an officer to always think about how a member of the public may regard their behaviour, whether on or off duty.

2.2. In light of the officer's factual admissions and admitted breach of this SPB, the Panel finds a breach of the SPB relating to Discreditable Conduct.

WHETHER THE BREACH OF THE STANDARDS OF PROFESSIONAL BEHAVIOUR CONSTITUTES MISCONDUCT OR GROSS MISCONDUCT?

3. Having found a breach of the SPB relating to Discreditable Conduct, the Panel went on to consider whether the proven conduct amounts to 'Misconduct' 'Gross Misconduct'. In assessing this matter, the Panel is mindful that under the Police (Conduct) Regulations 2020 'Misconduct' is defined as a breach of the standards that is so serious as to justify disciplinary action and 'Gross Misconduct' is defined as a breach of the standards that is so serious as to justify dismissal.

3.1. In considering the issue of seriousness of the proven conduct, the Panel is aware that in his Addendum the officer accepted that his behaviour was so serious that it amounted to gross misconduct. In light of the officer's admission and applying Regulation 41(16)(b), the Panel finds that the proven conduct of the officer concerned amounts to gross misconduct.

Finding on Outcome

4. The Panel is aware that in his Addendum response the officer accepted that his proven behaviour was inconsistent with his continued service as a police officer. As a result the Panel heard no further submissions regarding an appropriate and proportionate outcome.

4.1. However, in considering the officer's position that Panel has had regard to the officer's record of police service in accordance with the 2020 Regulations and also paid close attention to the 2023 College of Policing Guidance (the 'guidance').

4.2. Of particular importance, are the following paragraphs in the guidance:

At paragraph 2.3: the guidance sets out the purpose of the misconduct regime which is threefold:

- *Maintaining public confidence in and the reputation of the police service*
- *Upholding high standards in policing and deterring misconduct*
- *Protecting the public*

4.3. In the context of the purpose of professional disciplinary proceedings, the Panel is aware this is drawn from established case-law:

In Bolton v Law Society [1994] 1 WLR 512

Sir Thomas Bingham MR (as he then was) stated “*A profession’s most valuable asset is its collective reputation and the confidence which that inspires.*”

In R (Green) v Police Complaints Authority [2004] UKHL 6

Lord Carswell stated in relation to the police service:

“Public confidence in the police is a factor of great importance in the maintenance of law and order in the manner which we regard as appropriate in our polity. If citizens feel that improper behaviour on the part of officers is left unchecked and they are not held accountable for it in a suitable manner, that confidence will be eroded”.

4.4. In distilling these important principles to reach an appropriate and proportionate outcome for the officer, the Panel is aware of the importance of following the three-stage structured approach explained by Mr Justice Popplewell in the decision of Fuglers LLP v SRA [2014].

4.5. The three stages are to assess the seriousness of the misconduct; to keep in mind the purpose of imposing sanctions; and, to choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question.

4.6. Turning to the issue of seriousness of the proven conduct, the Panel accepts that the proven conduct amounts to gross misconduct and that his culpability is at the higher end of the range.

4.7. It is evident that the proven conduct would undermine public confidence in the police service as a whole and that harm has been done to the reputation of the Sussex Force.

4.8. In light of the circumstances, the Panel accepts the officer’s own admission that the only proportionate outcome is dismissal without notice. Accordingly, it is the decision of this Panel that the proportionate outcome in this case is dismissal without notice and the officer to be placed on the barred list.

Dated: 5 July 2024

