

WEST YORKSHIRE POLICE FORCE

Notice of Outcome of Police Misconduct Hearing (Regulation 43 Police (Conduct) Regulations 2020)

CHAIRPERSON'S ACCOUNT

Officer concerned:	Former Detective Constable Andrew Shaw
Date of hearing:	4-6 October 2023
Name of person chairing:	Mr Karimulla Akbar Khan (LQC)
Name of panel members:	Hayley Ryder (IPM) Assistant Chief Constable Pat Twiggs (Assessor)

The Decisions of the Hearing

Allegation No.	Allegation	Finding Proven / Not Proven	Outcome
See Regulation 30 Notice Allegations			
1-	On 6 th June 2021, you returned home with your wife after an afternoon at your local club.	Proven based on admitted facts	Not considered an allegation by Panel.
2-	An argument ensued which culminated in you punching your wife. Causing her to fall to the floor and sustain a proximal humoral fracture to her right humerus.	Not Proven	
3-	You then went upstairs with a box of wine and left Mrs Shaw on the floor without seeking medical attention for your wife. Mrs Shaw then rang the emergency services.	Proven based on admitted facts	Paragraphs 3 & 4 - Dismissal without Notice if still in service
4-	When the officers attended and you were arrested, you were unco-operative and challenging resulting in it being necessary to handcuff you to take you safely into custody.	Proven based on admitted facts	

Brief Summary of Matter

1. This misconduct hearing arises from events on 06 June 2021 when former Detective Constable 4436 Andrew Shaw (the 'officer') whilst off duty, returned home with his then wife Mrs Julie Shaw ('JS') after an afternoon drinking at their local Berry Brow Liberal Club.

1.2. The Appropriate Authority (AA) in its Regulation 30 notice (filed pursuant to the Police (Conduct) Regulations 2020) alleges that an argument broke out which culminated in the officer punching JS causing her to fall to the floor and sustain a proximal humeral fracture to her right humerus. The officer is alleged to have then gone upstairs with a box of wine leaving JS on the floor without seeking medical assistance for her. JS rang the emergency services. When the police attended the officer was uncooperative and challenging leading to him being handcuffed and arrested.

1.3. The AA alleges that the officer's conduct breached the Standards of Professional Behaviour (SPBs) relating to Discreditable Conduct and amounts to gross misconduct, which is so serious that dismissal would be justified.

1.4. The Panel is grateful for the submissions and assistance provided by Ms Olivia Checa-Dover on behalf of the AA and Mrs Rosalind Scott Bell on behalf of the officer.

1.5. 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 Standards of Professional Behaviour, as alleged;
and,
- Whether the breach of the Standards of Professional Behaviour amount to Misconduct or Gross Misconduct?
- What Disciplinary Action (sanction) is appropriate?

1.6. In deciding matters of fact, the Panel is fully cognisant that the AA brings the case and the burden of proof 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. 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 Facts as ascertained by the Panel in relation to the Regulation 30 Allegations

Summary of the evidence of Mrs Julie Shaw (JS)

1.7. JS gave oral evidence. She adopted her two witness statements dated 07/06/2021 and 04/07/2022 respectively.

1.8. She stated that on 6th June 2021, she and the officer spent the afternoon at the Berry Brow Liberal Club drinking for a few hours. The officer's behaviour changed and he started to become argumentative with others present so they left by taxi to go home arriving at around 21.30 hours.

1.9. Once home they both noticed some flowers had been left for their neighbour and as they were not indoors JS took the flowers home and started to unwrap them to put in water for the evening. She said she stood beside the kitchen island with the kitchen sink behind her. Out of the blue the officer started to argue with her and called her a c**t several times which he knew she never liked. He was arguing about money. He told her that she had better add his name to her bank account.

1.10. JS said the ground floor was open plan. The argument started in the kitchen area and in the middle of it the officer walked over and opened the patio doors and threw outside the garden cushions JS had previously brought inside to keep dry. She then threw some wrapping paper from the flowers at him. He immediately lost his temper and ran up to where she was standing at the kitchen island and barged her with the full weight of his body and punched her with his full force to her right shoulder. She instantly knew from the force and the pain that he had broken her arm and she fell to the floor and said 'You've broken my arm' to which he replied 'I don't give a shit about you'.

1.11. JS said she asked the officer to call an ambulance but he walked off upstairs taking a box of wine with him. She then called the ambulance and they contacted the police who arrived and took her to hospital. In this regard, the Panel has heard the audio of the call made by JS to the ambulance. During the call she said she was attacked by her husband and was frightened and in shock. JS told the Panel that the pain was indescribable. She was afraid that the officer would come back down stairs and assault her again. When she was taken to the hospital she was X-rayed and informed that she had suffered a displaced spiral fracture through the humeral shaft.

1.12. During cross-examination, JS said that it was after the officer had told her she had better add him to her bank account that he 'charged' at her. She later told the Panel in response to a question of clarification that the officer came at her like a 'tank'. JS said the officer was not standing near the kitchen island at the time he charged at her but she was stood in the same place beside the kitchen island at all times. It was suggested to JS that she was cross with the officer because of something rude he had said about her mother. She had then gone around to where the officer was stood beside the island and hit him with her right hand on the left side of his face, and then tried to hit him again, but he put out his left arm to stop her and that is when his elbow connected and got in the way causing the spiral fracture. JS disagreed and said the officer punched her with his fist.

1.13. JS was further asked if she had told their daughter Poppy Shaw that the fracture might have been caused by the officer's elbow. JS said 'No'. In relation to drink, JS accepted that she had been drinking but she wasn't drunk and that the officer had drank double of everything. It was put to her they were both in drink and that she had come over to him and struck him in the face, and when she went to do it again, the officer raised his left arm to try and deflect her. She replied that she never hit him.

1.14. JS stated after the impact of the punch, she put herself on the floor gently by putting her left arm down. She did not fall. She was on the floor when the officer went upstairs. JS was asked. 'So, if anyone said the injury was caused because of the impact of falling on the floor they would be wrong?' JS replied, 'Yes, totally'.

Summary material evidence of former DC Andrew Shaw (the 'officer')

1.15. The officer confirmed that he and JS had been out drinking at the Berry Brow Liberal Club from around 4.15pm and returned home by taxi around 9pm. He said everything was fine at the club. He had drunk around seven to eight pints and JS about six pints in that time. He agreed that JS had brought some flowers inside that were left outside their neighbours home. Once inside their house, JS was stood at the kitchen island with her back to the sink unwrapping them. He stood on the other side of kitchen island where the bar stools were located although he was also walking around the ground floor which was open plan.

1.16. The officer said JS started arguing with him whilst she was stood unwrapping the flowers. The topics of the argument were mainly money and her mother. Before the altercation, the officer accepted that he had walked towards the patio doors opened them and threw out the garden cushions. He said the argument had started before this and followed the order of money, cushions and her mother. There had been a culmination of lots of issues and he accepted the argument was heated. He did not recall any paper wrapping being thrown at him by JS.

1.17. The officer said while stood beside the kitchen island he made the remark that JS's mother was a gossip. At that point, JS went berserk and flew around the top end of the island and came straight towards him and struck him with a half-clenched fist on the cheek area under his left eye. He said it was unexpected and he was shocked. He raised his left hand with an open palm and swept his arm around and slapped the top of her head and then walked away. He said the strike by JS was not a quick jab but her arm was fully extended and appeared to stay there.

1.18. The officer said at the time he did not recall making any contact with her right arm except only touching the top of her head. He said given the fracture outcome; it must have been a harsh impact. He did not recall any touching of her right arm and his action threw her off towards the last bar stool beside the island. He asked her what did she think she was playing at. He did not want to hang around so he left upstairs taking a box of wine with him. The last time he saw her she was stood up by the Kitchen island near the bar stools.

1.19. The next day on 07/06/2021, the officer attended a police interview and was told that JS had suffered a fracture. He observed that a bruise had developed on the inner bony part of his elbow and thought that his elbow must have come into contact with JS's arm and that was how the bruise had occurred. In this regard, the Panel has seen a picture of the bruise to the inner bony part of officer's left elbow.

1.20. The officer accepted that he went upstairs with a box of wine and while upstairs he heard JS shout out that he had bust her arm. He replied that he couldn't give a shit. He thought JS was lying as he didn't believe he had connected with her arm but had only slapped her on the head. He stayed upstairs out of her way. He admitted that at the police station he said to PC Gidley 'I only slapped her around the head and that's it'.

1.21. The officer said he did not punch JS. The only conclusion he could come to was that in sweeping her arm away his elbow had come into contact with her right arm causing the fracture. It was in self-defence. He did not see JS fall at any point.

1.22. The officer admitted that when officers arrived at the house, he was uncooperative and failed to comply with an arrest. He apologised for his behaviour towards the officers which was embarrassing. He had behaved this way because he did not want to be handcuffed. He was feeling a lot of emotional frustration as he knew his marriage was coming to an end and he had been drinking. He regretted his behaviour and felt ashamed.

1.23. The officer said on the Tuesday (8th June) following the incident, he saw his daughter 'Poppy' and told her his story and showed her the bruise on his elbow. The following Sunday, he saw Poppy again who by this time had seen her mother, JS. Poppy told him that her mother had said 'it might have been his elbow, it happened that fast, I can't remember'.

1.24. During cross-examination, the officer said:

- He was willing to be arrested but did not want to be handcuffed.
- He was not trying to intimidate the arresting officers by calling them 'pussies'. It should not have happened.
- Although he had drunk around seven to eight pints, he was drunk but not very drunk. However, he accepted 'being in drink' may have affected his behaviour and contributed to the escalation of the argument.
- He accepted that he had called JS's mother a 'gobshite' and had said nasty things about her previously.
- He accepted he wasn't happy that JS has secretly squirrelled away money into a separate bank account while he had been paying for everything over the years. He didn't feel safe in his marriage because JS was saying it was her 'get away money'.
- He denied striking JS. She struck him first and he used a distraction technique taught to officers to deflect her.
- He said his interview record was incorrect – JS did not come at him again but her arm remained extended in place after the punch and he raised his left arm to sweep her arm away by coming over the top of her head. He was not lying and had demonstrated what he had done during the police interview. It was not intentional force but a reaction to JS's strike. He did not know at the time that his elbow had come into contact with JS's arm. However, he believed he had caused the fracture by his actions made in self-defence.
- He accepted he had stated during the police interview that he didn't bruise easily and that may explain the contact with the bony part of his elbow coming into contact with her arm and no obvious bruising appearing until the next day.

The Panel's analysis of the evidence regarding the alleged assault (paragraph 2 of the Regulation 30 notice)

Agreed Facts

1.25. The Panel finds the following agreed facts based on the evidence:

- They (JS and the officer) were both in drink on the 6th June when they returned home from the Berry Brow Liberal Club.
- Once at home, there was a heated argument about money and comments made about JS's mother.
- There was an altercation between JS and the officer that led to JS sustaining a spiral fracture.
- The fracture did not happen as a result of JS falling to the ground.
- Following the altercation, the officer went upstairs with a box of wine where he remained until the police arrived and arrested him.
- Upon arrest, the officer was uncooperative and challenging to the officers.
- The officer developed bruising to the inside bony area of his left elbow on the next day following the altercation.

1.26. In considering the evidence, the Panel recalls that the burden of proof rests on the AA to prove its case to the civil standard of proof. It is not for the officer to prove his innocence. Against this background, the Panel is aware this is one of those cases where it is one person's word against another given the absence of any independent witnesses. The credibility and reliability of the witnesses is therefore critical to the Panel's assessment of the evidence in relation to the issues.

1.27. The Panel is faced with two different versions of what is said to have happened. The AA alleges the officer intentionally assaulted JS by a punch which resulted in the spiral fracture. The officer in contrast maintains that he acted in self-defence when JS struck him on the left cheek; he raised his arm in a sweeping motion to slap JS on top of her head and by doing so his elbow connected with JS's upper arm causing the spiral fracture.

1.28. In assessing their respective evidence, the Panel finds that JS's oral evidence has been inconsistent with some parts of her earlier witness statements. The material inconsistency told to the Panel was that she did not fall to the ground. She said 'I did not fall'. She was then asked. 'So, if anyone said the injury was caused because of the impact of falling on the floor they would be wrong?' JS replied, 'Yes, totally'. JS's oral evidence was in direct contradiction to her statement dated 07/06/2021 where she stated 'I instantly knew from the force and the pain that he had potentially broken my arm and I fell to the floor'. The Panel finds this is new evidence which was not provided to the two medical experts. Paragraph 20 of Dr Goyal's report specifically mentions that the prosecution's case stated 'It is then alleged the suspect punched the victim on the right arm causing her to suffer a proximal humeral fracture to her right humerus which caused her to fall to the floor in pain'. Likewise, Dr Shaw's assessment and opinion mostly proceeds on the basis of a fall.

1.29. JS further embellished what happened. In this regard, she told the Panel that the officer charged or ran up to her and barged her with his full body weight. No where in her earlier written evidence had she mentioned anything about being 'charged' by the officer. She further clarified to the Panel that he came at her like a 'tank'. The Panel finds that memories tend to fade with time rather than improve and these additions to her evidence are indicative of embellishment to improve upon it.

1.30. JS was also asked if she had spoken to 'Poppy'. Her response to the Panel was 'No'. The Panel has received an account from DC Smeaton, the Investigating Officer, that Poppy Shaw reported to him that she had spoken to her mother (JS) who had told her that it might have been the officer's elbow, it all happened so fast. Whilst the Panel acknowledges that the account provided by DC Smeaton is hearsay and must be treated with caution, the Panel has not heard any evidence from the AA to contradict the assertion that Poppy Shaw spoke her mother after the incident. The Panel is therefore prepared to attach some limited weight to DC Smeaton's occurrence report that JS had spoken to Poppy.

1.31. Taken together, these unsatisfactory aspects of JS evidence casts some doubt on her credibility and reliability. In contrast, the officer's evidence has been more consistent throughout with regard to his version of events. Although the Panel acknowledges that there is the appearance of some ambiguity between his evidence to the Panel and his interview record regarding whether JS tried to strike him again before he responded, overall the Panel is satisfied that the ambiguity is innocent as he did seek to demonstrate during the interview what he actually did. The Panel does not find that the officer has tried to fabricate a story to explain the bruise on his elbow. The Panel considers that he acted in good faith by trying to understand how the bruise to his elbow may have caused the fracture and therefore articulated his views to the police whilst at the same time being candid and straightforward about not actually recalling that his elbow had connected with JS's upper arm.

1.32. The AA has also sought to argue it is more likely that the officer would have been the aggressor compare to JS as he was angered by the money issues during the argument. In support, the AA points to the officer's interview where he complained that he had supported JS and the family all the way through and now JS wanted all her money and her own independence. The AA says this was the trigger for the unlawful force by the officer as the nasty comments made by him about JS's mother had been made previously and therefore JS would have been unlikely to be motivated to strike the officer first. With respect, the Panel does not accept this analysis. It is too simplistic regarding the deteriorating marital situation that existed between JS and the officer. In this regard, the Panel is aware that there was a history of bad feeling between JS and the officer. JS told Dr Mistry that he had attacked her previously under the influence of alcohol and she had tried to leave him and found him controlling. It is therefore entirely plausible that with her long standing frustration about her marital situation JS could have been equally motivated to strike the officer first as much as he might have been to do so because of the money issues. Therefore, such an analysis without further detailed exploration of their marital relationship does not take the Panel very far.

1.33. Overall, the Panel finds the officer's account to be more credible and reliable compared to JS's. The officer's account is further supported by the medical evidence to the extent it is helpful to the Panel. In this regard, the Panel is aware that the two medical experts proceeded on the basis of JS falling to the ground and that no attempt was made to correct this as JS's evidence seemingly did not change until the hearing. That being said, there are some aspects of the medical reports which clearly support the officer's account of what happened and how the fracture likely came about.

1.34 In both expert reports (Mr Goyal dated 13/04/2022 and Mr Shaw dated 27/06/2022) the account of the officer has remained the same, consistent with what he told the Panel, namely, that in the course of defending himself from a strike by JS, he used his left arm to sweep across her right arm and slap the top of her head and by doing so his elbow must have come into contact with her upper arm causing the fracture. In contrast, following the oral evidence of JS, her account as relied upon by the two experts is now inaccurate.

1.35. This being said, there are a few relevant matters that can be distilled from the two reports which are helpful to the Panel. These are as follows:

- Both experts confirm that the injury suffered by JS was a displaced spiral fracture.
- Both experts confirm that the fracture is consistent with a twisting motion in the lower part of the humerus whilst the upper part (shoulder) was fixed in place.
- Both experts confirm that a direct punch as maintained by JS would most likely have resulted in a traverse fracture which was not found on the X-Rays.

1.36. Finally, Mr Shaw stated at paragraphs 13 & 14 of his report that the most common situation in which a spiral fracture occurs is following a fall. He went on to say that such a fracture can also occur when the arm is twisted by another individual beyond the range of movement at the shoulder'.

1.37. In light of the factual evidence and by drawing together the relevant strands of the medical reports, it is clear that JS did not suffer a traverse fracture which would have been the more likely outcome from a direct punch as she claims. Instead, JS suffered a spiral fracture which is caused when there is a twisting motion in the lower part of the humerus whilst the upper part (shoulder) remains fixed in place.

1.38. The medical evidence states that this can happen commonly when there is a fall or when the arm is twisted by another individual beyond the range of movement at the shoulder. The Panel is aware that a fall has been ruled out by JS and therefore the fracture could not have happened that way. The absence of a traverse fracture also suggests that a direct punch to the shoulder did not happen as claimed by JS. However, what has been consistently maintained by the officer is that the sweep of his arm to slap the top of JS's head very likely connected his elbow with JS's upper right arm causing the fracture. This is consistent in the Panel's view with Mr Shaw's alternative basis for how a spiral fracture may occur, namely, when the arm is twisted by another individual beyond the range of movement at the shoulder'. It would appear to the Panel that the officer's elbow more likely than not connected with JS's upper arm with force, resulting in it being twisted causing the spiral fracture. Because the incident happened so quickly, the officer may not have fully appreciated what had happened, hence his lack of awareness that his elbow had connected with JS.

1.39. In light of the Panel's findings regarding the credibility and reliability of the officer's evidence compared to that of JS, taken together with the Panel's assessment that the medical evidence is mostly supportive of the officer's account, the Panel finds the AA has failed on the balance of probabilities to prove its case that the officer assaulted JS. The Panel finds that the spiral fracture was caused by the actions of the officer acting in defence of himself and was an accident. Accordingly, Paragraph 2 of the Regulations 30 notice is found not proven.

To Ascertain whether the Facts as determined by the Panel constitute a breach of the Standards of Professional Behaviour

1.40. The Panel has considered the proven and admitted 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 Standards of Professional Behaviour 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 note that all police officers are in a position of trust and responsibility whether on or off duty.

1.41. Turning to the alleged breaches of the Standards of Professional Behaviour by the officer set out in the Regulation 30 notice, namely, Discreditable Conduct:

Discreditable Conduct

1.42. According to this Standard, 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.

1.43. Based on the Panel's findings regarding paragraph 2 of the Regulation 30 notice and the officer's factual admissions regarding paragraphs 1,3,& 4 of the Regulation 30 notice, the Panel finds the officer has breached this SPB.

Whether the breach of the Standards of Professional Behaviour amounts to Misconduct or Gross Misconduct?

1.44. Having found the officer breached the SPBs relating to Discreditable Conduct, the Panel went on to consider whether the proven conduct amounts to 'Misconduct' or 'Gross Misconduct'. The Panel is mindful that under the Police (Conduct) Regulations 2020 'Misconduct' is defined as a breach of the SBP that is so serious as to justify disciplinary action and 'Gross Misconduct' is defined as a 'breach of the SPB that is so serious as to justify dismissal.

1.45. In considering the issue of seriousness of the proven conduct, the Panel is aware this matter is to be determined by reference to the officer's culpability for the misconduct; the harm caused by his misconduct and the existence of any aggravating and mitigating factors relevant to the conduct. In undertaking this task, the Panel is acutely aware that the proven conduct of the officer is to be judged according to the circumstances prevailing at the time it occurred and not now. It is a contemporaneous assessment.

1.46. In terms of assessing culpability, the Panel is centrally focused on the two admitted allegations at paragraphs 3 & 4 of the Regulation 30 Notice.

1.47. Turning first to paragraph 3, the officer has admitted to going upstairs with a box of wine and leaving JS on the floor without seeking medical attention. The AA has characterised this behaviour as the officer 'failing to seek medical attention'. In this regard, the Panel recalls that the officer's evidence was that he was already upstairs when JS shouted that he had 'bust' her arm and that he honestly believed she was lying as he could not recall touching her arm. The Panel accepts his evidence, namely, that he genuinely did not believe that JS had a broken arm as he was unaware of having made any contact with her arm. Accordingly, the Panel does not find that the officer 'failed' to seek medical attention for JS because at the time he honestly did not believe she was in need of medical attention.

1.48. Turning to paragraph 4, the officer has admitted to being uncooperative and challenging when the other officers arrived resulting in it being necessary to handcuff him to take him safely into custody. There has been a dispute over the temporal nature of this allegation and what evidence is relevant to his admitted conduct. The Panel finds that the relevant evidence is limited to the officers attending the property and then leaving by car with the officer arrested. It does not extend to driving to the custody suite as taking into custody means effecting an arrest which was done at the officer's home. As far as his conduct was concerned, the Body Worn Video of PC Giblin shows the officer resisting arrest by lying on the ground, pleading not to be handcuffed, stating to the officers about the need to arrest his wife and generally being argumentative and uncooperative. Such conduct is tantamount to resisting or wilfully obstructing a constable whilst he is acting in the execution of his duty which is a criminal offence under section 89 of the Police Act 1996. Even though he was not charged with obstruction, the reality is that the officer resisted and made the job of the arresting officers, his policing colleagues, more difficult than it needed to be. Although the officer was not charged with a criminal offence the College of Policing Guidance 2023 makes it clear that proven conduct of a criminal nature should be taken into account when considering culpability.

1.49. In relation to any harm caused, the Panel considers the harm caused in this case that arises from the proven conduct relates solely to the undermining of public confidence in policing by a serving police officer resisting arrest. Although the officer's conduct was not known by the public at the time, the College of Policing Guidance advises that how such behaviour would be perceived by the public is relevant to assessing culpability. In the circumstances, the Panel considers that the officer's proven conduct would very likely undermine public confidence in the police.

1.50. The Panel next turned to consider the presence of any aggravating factors relevant to the officer's conduct and finds that his intentional and deliberate resistance to arrest and the proven allegations all amount to aggravating factors. Turning to mitigating factors relevant to the conduct of the officer, the Panel finds his conduct was confined to a single episode of brief duration, and taken together with open admissions at an early stage, remorse and accepting responsibility for his actions, these factors all amount to mitigation.

1.51. Having assessed the seriousness of the misconduct of the officer, the Panel finds his culpability to be at the higher end of the range and the proven allegations taken individually and/or cumulatively amounts to gross misconduct.

Finding on outcome, including any aggravating or mitigating factors affecting the seriousness of the failures in standards

1.52. The Panel heard submissions from Counsel for the AA and the Defence concerning an appropriate and proportionate outcome.

1.53. By way of background context, this case relates to a former officer. The 2022 Guidance on Outcomes in Police Misconduct Proceedings issued by the College of Policing ('the Guidance on Outcomes') (reissued in 2023 with numbering) provides that where a Panel finds that the conduct amounted to gross misconduct (as has been found in this case), it can only consider two outcomes: disciplinary action or no disciplinary action.

1.54. Where disciplinary action is imposed, this can only be that the former officer would have been dismissed if still serving. If the Panel finds that the conduct amounts to gross misconduct, but determines that dismissal is not justified, then no action will be taken and the gross misconduct will simply be recorded.

1.55. In approaching its decision-making regarding an appropriate and proportionate outcome for the officer the Panel has considered the submissions, together with the officer's record of police service in accordance with Regulation 42(14)(a) of the 2020 Regulations. The Panel has also paid close attention to the Guidance on Outcomes.

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

In Paragraph 2.3: the Guidance sets out the purpose of the misconduct regime is threefold:

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

1.57. 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".

1.58. 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]**.

1.59. 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.

1.60. Turning first to the issue of seriousness of the proven conduct, the Panel has already conducted this exercise in relation to the severity assessment and adopts its earlier reasoning now in respect of outcome. The Panel recalls that it has already found the officer's culpability to be at the higher end of the range.

1.61. Turning to the records of police service for the officer, the Panel notes the officer started in service on 04/12/1995. At the time of the proven incidents he was an experienced officer. During his career he has received three commendations, two judicial and one from the Divisional Commander. The officer is not of previous good character. He received a gross misconduct finding on 9th June 2016 resulting in a final written warning.

1.62. The Panel has received no testimonials on behalf of the officer, although it is correct to observe that at the time of the proven allegations his 30 year marriage was failing which no doubt placed its own stresses on him. In considering the appropriate weight to place on personal mitigation, the Panel has been guided by the decision of Holroyde J in the case of Williams v The Police Appeals Tribunal [2016] EWHC 2708. The judgment makes it clear that the weight to be attached to personal mitigation in any particular case is necessarily limited owing to the importance of maintaining public confidence and respect in the policing service. As stated by Holyroyde J 'What may vary will be the extent to which the particular gross misconduct threatens the preservation of such confidence and respect. The more it does so, the less weight can be given to personal mitigation'.

1.63. In light of the Panel's findings, especially around the officer resisting arrest, such conduct must inevitably threaten and undermine the preservation of public confidence and respect for the policing service. Accordingly, whilst accepting that personal mitigation is always relevant, given the seriousness of the findings in this case, the Panel has attached little weight to it.

1.64. The Panel next turned to consider the purpose for imposing outcomes in police misconduct proceedings. In this regard, the Panel recalls these are threefold - to maintain public confidence in and the reputation of the policing profession as a whole, to uphold high standards, deter misconduct and to protect the public. These objectives must take precedence over the specific impact that the sanction has on the individual whose misconduct is being sanctioned.

1.65. In terms of maintaining public confidence in and the reputation of the police service, at the relevant time he was a serving officer. Under the Code of Ethics, officers are expected to fully cooperate with fellow police officers in the execution of their duties whether on or off duty in exactly the same manner expected from a member of the public. He did not do so. Such conduct significantly undermines public confidence in policing and if left unmarked in an inappropriate manner would send the wrong message to other police officers and to the public that such behaviour will be tolerated.

1.66. The officer has shown remorse and accepted responsibility for his proven conduct; however this is not the first time that he has been found culpable for breaches of the Code of Ethics to the level of gross misconduct. Even accepting for the fact that those findings were some seven years ago, and the underlying misconduct was of a different nature, the Panel does not consider that public confidence would be maintained by the retention of an officer with two sets of gross misconduct findings. Sadly, it is indicative of a pattern of behaviour by an officer who has failed to respect the Code of Ethics and who does not fully understand the importance of upholding high standards of behaviour and maintaining public confidence and trust in policing.

1.67. For the reasons mentioned, the Panel finds that it can feel no reassurance that if the officer were still in service there would be no repetition of his behaviour or that he would adhere to the required Standards of Professional Behaviour expected of him in the protection of the public.

1.68. These proceedings look forward and are designed to protect the public, deter future misconduct, and maintain the reputation of the policing profession. The Panel has carefully considered all the relevant factors in the circumstances of the officer taking care to not 'double count'. It has considered amongst other factors, the seriousness of the conduct, the harm caused to the reputation of the policing service, any remorse and insights shown about his individual conduct, and the likelihood of any harm manifesting itself in the future. It has also considered the least severe sanction through to the most severe. In light of the previous final written warning which appears not to have had the intended salutary lesson it ought to have had the Panel does not consider that simply recording a finding of gross misconduct is sufficient in this case.

1.69. Overall, the Panel finds that only disciplinary action would be appropriate in this case and that the officer would have been dismissed without notice if still in service.

Signed on behalf of the Panel

Mr Karimulla Akbar Khan
Legally Qualified Chair (LQC)

05 October 2023

RESTRICTED

