



NOTICE OF OUTCOME OF PUBLIC HEARING

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I have determined that an outcome notice in relation to the misconduct hearing of the below named officer will be published

Legally Qualified Chair: James Rickard

Date of Hearing: 14th and 15th June 2023

Officer: A Sergeant

The Chief Constable of Devon and Cornwall Police

Appropriate Authority

And

A Sergeant

DECISION OF THE PANEL

APPROACH:

1. We are a panel considering allegations of gross misconduct against the above officer.
2. We have considered all of the evidence. All panel members have read the bundle provided to us before the hearing. We have taken into account all documents to which we have been referred. We have also considered all the submissions made on behalf of each party.
3. In approaching our tasks we have borne in mind that:

3.1. We do not have to decide every matter of dispute, only those which assist us as to whether these allegations are proved.

3.2. We can draw inferences from the evidence submitted to us, meaning we can reach common sense conclusions from the evidence, but we have guarded against falling into speculation when reaching those conclusions.

3.3. Inevitably our findings are set out sequentially however we have not made any finding of fact without having first considered the entire evidential matrix.

PURPOSE OF POLICE MISCONDUCT PROCEEDINGS

4. The applicable regulations are the Police (Conduct) Regulations 2020 ("PCR"). We are helpfully reminded by the AA of some of the relevant caselaw in the opening note submitted to us.

5.1 The approach of the Panel as set out in the PCR is:

a) To ascertain the facts, whether admitted or found proven.

b) To determine whether, on the basis of those facts, the former officer have breached the SPB alleged.

c) To decide whether any such breaches constitute Misconduct, Gross Misconduct or neither.

d) Dependent on the findings under b) and c), to decide on the Outcome.

BURDEN AND STANDARD OF PROOF

6.1 The burden of proof is on the A.A.

6.2 The standard of proof is at S.9 Home Office Guidelines p193.

6.3 The allegations are as set out in the Regulation 30 Notices contained within the bundle. It is set out for us in the opening note and is set out below.

7 Stage 1. The Facts.

7.1 The burden of proving these allegations rests on the Appropriate Authority. The standard by which they are required to prove the allegations is the balance of probabilities (the appropriate standard). We have considered the Home Office Guidance 2018.

7.2 The panel has considered the allegations carefully. We have first ascertained the facts as we find them considering the burden and standard of proof. Then we have considered those facts as against the standards required under the Regulations.

7.3 The Sergeant was appointed as the OIC for the case of Ms.A (P.5 of the bundle)in which she had made a complaint of serious offences committed on her by her partner. Specifically Rape Controlling and coercive behaviour. This is outlined in the AA, s allegations. P5

7.4 The Sergeant became the OIC on the 12 March 2020, the DASH form completed by a colleague but thereafter and until its conclusion in November 2020, the officer then DC had conduct of the case.

7.5 He was the officer who conducted the ABE interviews with Miss A which are by their nature a point at which detailed information is given to an officer of great personal and sometimes distressing detail. It is an important process not only for the court process but also for the investigatory process as well. It is necessary for an officer to build a relationship of trust with a victim in order for the police to “achieve best evidence” hence the acronym ABE.

The panel do not suggest impropriety by the officer at this stage at all, but it would be the case that a great deal of personal knowledge is gained about a victim, by the victim of crime imparting that knowledge to the person entrusted to undertake this interview in this case then DC.

7.6 The officer’s involvement in the investigatory process continued until November 2020 during which time the officer quite properly provided the appropriate contact as an officer should who is dealing with a Rape/domestic violence allegation.

7.7 It appears from the evidence in the bundle that he retained this case quite properly after he left SODAIT . There was nothing unusual about that. He gained promotion and became a response Sgt in a Devon police station.

7.8 In November 2020 a decision was made by DI. Vicky Harper to NPW (not proceed with) the allegations of Rape and Controlling and coercive behaviour. This concluded the Sergeant’s duties as investigating officer for this matter. During the Sergeant’s time as OIC the level of activity and involvement was of a level to be expected for a case of this type. No more no less. There was no evidence of impropriety by the officer during this period.

7.9 The panel cannot comment on the level of training given to this officer regarding this speciality of being in SODAIT. However his experience is clear. The officer said in the text message 10/3/21 he stated his experience was DV, DA ,for the whole of his career and an investigator for 5 years. P.227 It was noted that during this period as OIC he was a DC and that he had some training. He commented on this in Cross Examination however as a Sodait officer he would have been familiar with the issues surrounding this area of work. Quite apart from that he had had 23 years of service and the knowledge that goes with those years of service. He had also been promoted to Sergeant which requires a higher level of knowledge an exam and a board, and the learning that goes with the taking of exams. He worked for the SODAIT team which is a team specialising in Sexual offences and domestic abuse. Such work was the only area of work undertaken by this team. The Panel are satisfied that as part of his work with Sodait he would have a very clear knowledge of Safeguarding, family dynamics, and the vulnerability of victims of domestic abuse settings.

8.The DASH report.

8.1 When Miss A was first seen the dash report was completed by another officer. The Sergeant would have had full access to the Crime reports. We are particularly drawn to the pages 176- 178 . Miss A describes the ordeal that she has undergone she said that she was very affected by what had happened to her that she felt isolated and ashamed and was unwilling to talk. She felt suicidal She recited a long history of domestic abuse lasting years. The detail is quite shocking and clear. In itself it would have confirmed to

anyone that she was a high risk domestic abuse victim which she was deemed to be by that assessment. The then DC would have known that. Such abuse that she had suffered is not easily shrugged off and there is evidence from Miss A to confirm that which we will deal with later. The officer would in the opinion of the panel have known that. It is clear from the evidence of <redacted>. They were people who knew her well, family and work colleagues. They all knew that she had gone through an awful time with her ex partner. She was seen by them to be vulnerable and a person for whom they had concerns. Each of these witnesses in their witness statements expressed surprise at Miss A's "association" with now Sergeant who they knew was the officer who investigated her case of Rape and Coercive controlling behaviour by her ex-Partner. A matter not proceeded with (NPW) Miss A on the other hand seemed unconcerned by this association. The panel have considered the weight to be attached to people close to Miss A who knew her well and each expressing a concerned view of the appropriateness of the association between Miss A and the Sergeant. It is a relevant and contemporaneous view which assists the panel to see how this looked to others at the time and not to do so with the benefit of hindsight. There is no doubt in the view of the panel that the association between an officer who had been the OIC in a Rape allegation was inappropriate. We do not take this as evidence against the character of the Sergeant, but an indicator of how other people felt about the emerging relationship.

8.2 From November 2020 to the 6 March 2021 Miss A had no contact with the Sergeant nor did she expect to. However, on the 6 March 2021 the Sergeant searched for or in some way found Miss A on Facebook. Contact was made by the Sergeant with Miss A. She tells us in her statement P23 that she was pleased to hear from him and that she felt a connection with him and it reveals the trust that she placed in him when he was the OIC. She even comments on the banter that they seemed to share. P23 This is all we can say about the "connection" between them when he was the OIC in the view of the panel it shows that there was a rapport between them. Whether that was mutual at that time we do not know and as we have said there is no evidence of it being inappropriate. At P23 Miss A explains what she thought may happen between them.

9. The relationship.

9.1 The officer has said consistently that there was no relationship but a friendship. It is clear to the panel that there is overwhelming evidence that a relationship developed between them swiftly. We do not accept that on any understanding of the difference between a friendship and a relationship, this was a relationship. Given the nature of the messages and the photographs shared consensually between them it was far more intimate than a friendship would have been within the circumstances of this particular power dynamic, that is between a policeman who investigated serious sexual offences of which she was the victim, and Miss A. That the only physical exchange was a kiss in a Police car does not mean in the context of the Sergeant it was not a relationship that had a very different impetus than a friendship would have. We do not know why in evidence the officer clings to this false notion. Miss A in her statement was clear what she thought was happening and this much is clear in the messages between them.

9.2 The sharing of intimate pictures of one another again consensual but are evidence of trust held by both of them for each other that is quite different to a friendship. In the view of the panel the mistake is the use of the words "friendship" and "relationship". A far better expression is "association" which in this context could include friendship or relationship. This particular association was clearly an inappropriate one, for the Sergeant to enter in to.

10. The Meetings

There were 3 meetings of the Sergeant and Miss A. at Miss A's place of work. He attended in his white BMW car. The third was when he attended in his meal break in a police car. It was on that occasion that they kissed. This provides further evidence of an intimacy beyond friendship. Miss A says in her statement that they kissed not like a snog but on the lips.

11. The messages.

11.1 The panel have read the messages carefully. They show the insight of the officer and the perceptible vulnerability of Miss A. It should be remembered that the officer did not in evidence consider Miss A to be vulnerable at that time. A statement that in the view of the panel if true could only have been self-serving to justify his true desire.

11.2 The message on the 9th March in which the officer asks if she is ok? Her reply was "not really". No one on the panel can blame her for feeling that way. When asked by the panel the question how long is a person 'vulnerable' the officer answered 'how long is a piece of string'. Which is exactly the correct answer. He was not at that time in a proper position to make the assessment. Something that he admitted when asked. Albeit in his view with hindsight. The Panel reject the officer's assessment because she gave a contemporaneous answer in that message she was "not fine". Of course, that did not feature in any selfless assessment by the officer of Miss A's vulnerability. For the avoidance of doubt in the view of the panel it should have done for anyone. In particular it should have done to a Sgt with 23 years of service who had most recently served in SODAIT.

11.3 The panel have considered the rest of the messages and their content no doubt the content was beguiling to the officer and the activity was consensual without a doubt however the sexualised content the clear expressions of wish and intent that at no point he resisted further endorsed the panels view that this was not a friendship on any enhanced view of the word.

The messages moved rapidly to include sexually explicit references to Miss A's nervousness about future sexual relationship. These messages were in our view actively probed by the Sergeant and developed by him. Building on knowledge and highly personal information gathered whilst the OIC in Ms A's case.

12. What guidance is there that guides the officers conduct?

12.1 The AA have pointed out the guidance that the officer should have been aware of that would have assisted him properly consider what to do in these circumstances.

They are:-

- (a) The Code of ethics.
- (b) The standards of professional behaviour
- (c) P.304 COP document Maintain boundaries
- (d) Notifiable associations P.289

12.2 Some confusion regarding this emerged at the hearing that has been clarified by counsel. We are grateful to them for clearing this up.

12.3 What we can take from all of this is that there was clear guidance available to the officer that having been an investigating officer in a case of extreme sexual and emotional violence even after concluding the investigation there is a need for caution and reflection.

12.4 None of the guidance that we have seen creates a prohibition on associations such as this one but indeed explains what to do if an officer finds himself in this situation.

12.5 However although one can point to all of these guides and seek answers, we cannot ignore the fact that he was an officer at the time with 23 years' experience and a recently promoted Sgt. There was no confusion as to how he came in to contact with Miss A and what he was doing for her at the time of the investigation. We find it difficult to believe that the officer did not know that there was a professional boundary that had been crossed.

12.6 The argument that this was an investigation that was over by virtue of it being NPW. We are told that it is a matter for the panel to decide whether 4 months after the conclusion of the investigation is sufficient time to pass for a relationship to be entered in to. For the avoidance of doubt the panel do not consider it was sufficient in this instance but that is based on the nature of the case investigated by the officer and the vulnerabilities that were apparent in the DASH report. The officer knew that he should not be entering into this relationship he said it himself in a conversation with her 15/3/21 22.00 hrs P.261 the officer in evidence gave the panel a different interpretation on what he meant. The panel do not believe him. In the context of the message, taking all of the messaging as a whole, the only way to interpret that message was that he knew he was acting in a way he should not be.

12.7 We are reminded not to look at this matter with the benefit of hindsight. We as a panel do not do so. We are aware of special concern surrounding violence to women and recent cases relating to this issue that has been a major national focus of policing for a long time. We do look at the guideline as our reference of prevailing views at the time. It is clear that the guidelines consider the probabilities that officers being human and having a qualified right to a private life will enter into relationships that started when they were involved in an investigation. It is clear that when the guidance was written (2017) the course of action was to exercise caution by asking a supervisor who would, we are sure, have engaged a process that ensured that Miss A was making an informed decision about this association. A vital safeguarding measure which was in place at that time which no doubt has greater resonance now.

12.8 It seems that the officer, he says, was not aware of the guidance that we have talked about above. Ignorance is not an excuse. It is clear to the panel that the officer was aware of the potential for concern, he tells us that as we have said. He chose to ignore that warning that he made to himself and shared with Miss A. There was ample opportunity for him to seek the assistance of PSD or a supervisor. He decided not to or decided not to look or ask for help all of which would have reassured the obvious public perception in this case.

12.9 We have not ignored the officers Art 8 rights and adopt the interpretation of the AA as outlined by the AA in their closing note which succinctly and accurately outlines this as what is in this instance a qualified right.

12.10 In conclusion we as a panel find that the AA have proved their case on the balance of probabilities. We have taken into account that the officer himself at the time was going through a relationship breakup and no doubt felt lonely. We have no evidence to suggest that his actions were cynical, but it was with a view to personal gain namely emotional and sexual encounters with Miss A. An encounter that Miss A was anticipating, and it seems wanted at the time. The difference between them at the time was he was a policeman who had been charged with the investigation of serious sexual and emotional

violence who was at the time of the DASH assessment a high-risk vulnerable victim with poor diagnosed mental health. The officer was told she was “not great” regarding her health his reply showed an understanding of what she had been through based on information or insight that he had acquired during the course of the investigation. The officer chose to continue. He knew that a line had been crossed if he was unsure, he could have looked and asked. The panel are satisfied that he knew at the time what he was doing was wrong. We reject the interpretation he places on it. The alternative is also true if he did not, he ought to have known. The information was in his grasp.

13 The standards that we are dealing with in this case are set out below.

13.1 Honesty and Integrity

13.2 Police officers are honest, act with integrity and do not compromise or abuse their position.

13.3 The AA do not suggest that the officer was dishonest. They confine their allegation to integrity. It is clear that the officer lacked integrity from the moment he made contact with Miss A on Facebook. There was no policing need for him to do so, we have heard no evidence that this was out of a sense of policing pastoral care. The conversation on WhatsApp that is at 9/3/21 23.44 the Sergeant asks the question below. Miss A replies on 10/3/21 06.17. He responds at 08.42. these questions and responses are very significant. That exchange as has been said above demonstrates a lack of integrity on the part of the officer in that he ignored the truth of Miss A’s response i.e. that she was not ok. and clearly used the insights that he gained of Miss A during the investigation. The reality is that an insight of this nature is information gained during the course of that investigation it had to be there was no other source for that statement. He had got to know her during the investigation, and he was prepared to use that information for personal gains of an emotional and sexual nature. We attach the relevant pages to this document below. They are important and demonstrate the level of knowledge of the officer and the obvious vulnerability of Miss A.



29 10/03/2021 08:42:58 GMT	I appreciate your honesty... Like I've said I think you've done brilliantly and real inspirational for others. I speak from experience having dealt with DV/DA for my whole career and then chiefly as an investigator for 5 yrs. I can imagine at times the "saddle" would be a scary place especially as you probably hadn't experienced sex as a pleasurable and loving, but as something that was expected without choice! As for your figure, and if I'm allowed to be honest, I always thought you looked great, obviously over the meetings we had throughout 6 months you clearly looked healthier and happier... looking incredible! I know from my experience of DA the body image confidence is the first to go and the last thing to come back, you've got positive mental attitude and I know you'll succeed! In your pics from neck up you're looking fantastic #justsayin
30 10/03/2021 09:39:13 GMT	I hope I didn't sound rude, pervy or creepy? Really not my intention
31 10/03/2021 12:46:05 GMT	No not at all, only just sat down. Cleaning a four bedroom house is bloody hard work. Back on shift tomorrow so getting everything done so that mother doesn't have to worry.
32 10/03/2021 12:49:04 GMT	That's a good daughter. I'm just off to work now, and picked up two extra night shifts at the weekend... I'll be exhausted, but it's £800 in my pay so what's tiredness got to do with it.
33 10/03/2021 13:39:17 GMT	Bloody hell don't get burn out. That's the paddle board for your kids paid for as well as the camping gear.
34 10/03/2021 14:22:50 GMT	Well I'm might treat myself first. I will get plenty of rest... problem is I get used to the extra money, it's dangerous! I need to buy a sofa bed as I only have a two bed and my kids need separate rooms hence I'll be relegated to the living room.
35 10/03/2021 17:10:08 GMT	Have you had your jab? I hope they do a vaccine passport. I want to fly somewhere, don't care where... just take a bag and sleep on the beach.
36 10/03/2021 17:48:49 GMT	Yes due my second one on the 15th April. I do overtime as a lot of my team get used to it plus my shifts are enough with two young kids. I have not been abroad since 2007 so am looking forward to next year as defo taking the kids somewhere.
37 10/03/2021 17:53:55 GMT	They'll love it... I took my children to France/Belgium a couple of years ago, we drove via Dover, they enjoyed the ferry as part of the holiday. I think you probably deserve a break abroad more so than your children... it's not being selfish.
38 10/03/2021 18:08:55 GMT	I had my time when I went to Hawaii two years in a row for 4 months at a time.
39 10/03/2021 18:10:34 GMT	You're selfless. I bet you'd wish you'd never come back.
40 10/03/2021 19:02:37 GMT	I meant that in a good way.
41 10/03/2021 20:43:18 GMT	Relationships are shite and not worth the hassle!
42 10/03/2021 21:58:56 GMT	Enjoy your shift tomorrow, I'll be glad to see the end of today.
43 11/03/2021 06:59:25 GMT	Good morning, blessed with dispatching North/East & West Somerset. Trees falling down everywhere. Hope your shift wasn't too bad.
44 11/03/2021 07:02:53 GMT	Good morning dispatch. It's been blowing an absolute hooley all night... my shift was ok, domestics and mental health! Now looking forward to 4 night shifts, lucky me.

We refer to P.13 of the opening note of the AA Para 38 which reminds us of SRA v Wingate 2018 EWCA.

Para 39 Chief Constable Thames Valley Police V PMP 2017

“integrity etc...”

13.4 In this instance the Sergeant was in a clear position of trust. That did not end as a result of the cessation of his role as investigating officer. His conduct did undermine the profession he breached trust and exploited a power imbalance. Such behaviours also have the potential to reflect negatively on police colleagues and have an impact on the professional relationships they have with the communities they serve. COP Guideline page 304 Para 5.

13.5 We agree with the AA that there is compelling evidence that the officer breached this standard of professional behaviour.

14 Authority, Respect and Courtesy

14.1 Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy. Police officers do not abuse their powers or authority and respect the rights of all individuals. Police officers ensure that any relationship at work does not create an actual or apparent conflict of interest and do not engage in sexual conduct or other inappropriate behaviour when on duty.

14.2 The officer certainly failed to act with self-control. Over a very short number of days the officer and Miss A became sexually interested in each other clearly built on by the officer whom she trusted. The messages clearly show the sexual motive of the officer and the Miss A's willingness to participate. However, her willingness has to be seen in the context of her being a long-standing high-risk victim of domestic abuse over many

years and he would have been aware of the potential power imbalance in these particular circumstances.

14.3 Para 48 of the AA's closing note deals with the suggestion made by the officer that it is with hindsight he should not have contacted Miss A. We the panel have found this not to be true. For reasons outlined above and, in the messaging, he knew that he should not have made contact with Miss A. at the time. The AA in this paragraph does not overstate the breach (P.16) "He was the investigating officer. Etc.

14.4 The officer had ample opportunity to seek the advice of his line manager regarding any inappropriateness. P.305 para 15 in the guidance.

15 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.

15.1 There is no doubt in the minds of the panel that the Sergeant's conduct was discreditable. His conduct would discredit the police force and undermine public confidence in it. This is by reference to the standards relating to situations that are dealt with in the document at page 304-305. The date of which is 6th September 2017.

15.2 Again the panel refer to Para 49,50, and 51 Page 16 of the AA's opening note with which we agree.

16 Seriousness

16.1 **Culpability.** The officer is solely responsible for the first contact with Miss A. He encouraged and developed that interest with it turned out an explicit sexual focus. Miss A's reciprocation and encouragement is noted by the panel but does not lessen seriousness as the AA says the onus is on the Sergeant as a police officer not Miss A.

Culpability is high.

17 Harm.

17.1 It is luck rather than judgement that Miss A was not overly traumatised by this. However, it clearly had an effect as she says at P 32 of her statement "I have recovered from my interaction with the Sergeant" It suggests that there was an effect on her at the time the impact that was lessened by the brevity of the relationship between them which ended by virtue of the timely intervention of Devon and Cornwall Police arresting him albeit no charges followed.

The reputational harm to the police D and C and policing generally is high.

17.2 The wider public would be understandably appalled by the officer's behaviour. The potential to undermine public confidence is clear and the efforts made by the police since the date of the document "Maintaining professional boundaries etc" since 2017 P304 have placed safeguarding the vulnerable at the highest level. The need for women to be safe and feel safe. This is not a new policy as we can see from the evidence in the bundle. The effect as stated by the AA is not by any means an overstatement but a measured statement of the realities of this officers' actions.

18 Aggravating features.

18.1 There is nothing we can add to the list of aggravating features at Para 55. A (G) of the AA's opening note.

18.2 Para 56 of the opening note. The panel note this but do not use this as a particular aggravating feature as it would stretch the evidence further than it should. However, 55 a-g

19 Mitigating features.

The panel note that the relationship between Miss A and the Sergeant was consensual. However, the responsibility was his to ensure that proper boundaries were kept and in the event of any uncertainty he should have sought guidance which was available.

We don't accept that the short time of the association was a mitigating feature. It did end because of any insight by the officer but a termination of it by Devon and Cornwall police.

The panel are of the view that the conduct taken as whole and the breaches of SPB are so serious that we consider this to be gross misconduct.

OUTCOME

1.1 Having determined that the breaches of professional standards taken collectively constituted Gross Misconduct, the panel must go on to decide what the disciplinary action should be.

1.2 The panel had been assisted by submissions on the question of outcome, and having heard representations, the panel then considered the appropriate outcome.

1.3 In determining the appropriate disciplinary action in this case, the panel has had regard to the *College of Policing's Guidance on outcomes in police misconduct proceedings (2022)* ("the guidance") including the need to :

a) assess the seriousness of the misconduct by reference to:

1. the officer's culpability for the misconduct.
2. the harm caused by the misconduct.
3. the existence of any aggravating factors.
4. the existence of any mitigating factors.

b) keeping in mind the purpose of imposing disciplinary action; and

c) choosing the disciplinary action which most appropriately fulfils that purpose for the seriousness of the conduct in question so that we act proportionately.

1.4 The Panel was also mindful of the principles set out in *R (Chief Constable of Greater Manchester Police) v Police Misconduct Panel & Roscoe* (HHJ Pelling QC sitting as a High Court Judge, November 2018) in which the Administrative Court emphasises the importance of following the structured 3 stage approach as set out in the guidance. The Panel adopted this approach.

1.5 With respect to seriousness, the Panel considered the 2022 Guidance on outcomes in police misconduct proceedings.

Culpability

2.1 This refers to the degree of blameworthiness. The officer is culpable for his own actions, he made deliberate choices in the actions he undertook he also had a number of opportunities to cease the association with Miss A, or ascertain whether the association with Miss A was permissible by reading the College of Policing guidance, the code of ethics, or notifying a supervisor or the professional standard department. Although Miss A consented to the association and even encouraged it, he was a police officer

.He was subject to a code of ethics and standards of professional conduct to which he must adhere and not ignore.

Harm

3.1 Of the “types” of harm categorised at Para 4.64 of the COP guidelines The relevant ones are :-

- (a) Psychological distress
- (b) Reputational harm.

3.1(a) Psychological harm.

It is clear the harm to Miss A was it seems not lasting and transitory. However we have noted that she said that she had “recovered from her interaction with the Sergeant” which suggests a degree of harm was caused even if it was minor and she recovered from it quickly. The panel accept that the harm to Miss A caused by the Sergeant was minor nonetheless it was taken into consideration as an aspect of harm under this category.

3.1(b) Reputational harm.

The further aspect of harm caused in this case is that of the reputational harm to the Devon and Cornwall Police. The present case cannot be considered in isolation from increasing public awareness of disciplinary issues within the police service, and as a consequence the reputational harm to any police force within which a serving officer is found to have breached the SPB will inevitably be serious and damaging.

3.2 As was stated in the case of *Fuglers LLP V SRA* [2014] EWHC 179 (Admin) at [29] a factor of the greatest importance is the impact of the misconduct upon the standing and reputation of the profession as a whole. Moreover, the seriousness of the misconduct may lie in the risk of harm to which the misconduct gives rise, whether or not as things turn out, the risk eventuates.

3.3 From the observations above the panel are clear that the actions of the officer have caused a risk of serious and enduring harm to the reputation of Devon and Cornwall Police and the police service. There is also as set out above an enhanced risk of harm to members of the public and colleagues given that at the time of his association with Miss A he was a Sgt and therefore in a senior and supervisory leadership role.

Aggravating factors:

4.1 The panel has kept in mind that though there have been several heads of professional behaviour that have been breached, we are concerned with a course

of conduct that took place over 13 days. Demonstrated the escalation of the officers behaviour. There will be no double counting in our assessment of harm and application of principles dictating the outcome.

4.2 We do find aggravating features in this case beyond those features of the incident that have already been dealt with above. We guard against any double accounting.

Para 4.76 of the COP guidelines.

- (a) There was premeditation. The officer initiated the contact with Miss A.
- (b) The contact was with a view to personal advantage, and clearly as the contact continued sexual gratification.
- (c) There was an abuse of trust, position, and authority. He was a Sgt. who had been the officer in charge of investigating an allegation of serious domestic sexual and emotional abuse.
- (d) He continued the behaviour after the officer realised or ought to have realise the behaviour was improper.
- (e) Miss A was vulnerable in the opinion of the panel. She said in her messages that she was not ok. The DASH form indicated what she had experienced and the damage to her health then. We know from what she said in her messages that she was not ok and she communicated that to the officer.
- (f) There was a significant deviation from instructions s there was national guidance surrounding this issue and is contained in the bundle dealing with this specific issue.
- (g) He failed seek advice from a colleague of senior officer.
- (h) Whilst we do not double count there are multiple proved allegations and breaches of the standards of professional behaviour.
- (i) The aggravating features in the guidance are not an exhaustive list, however the panel noted that the officer did not appear to show insight into the gravity of his misconduct found proven by the panel, on the community and policing general, nor how it breached the professional standards of behaviour.

Mitigating factors:

5.1 The mitigating factors taken into account on the officer's behalf are clear but limited.

- (a) Miss A was consenting and participating in the officer's behaviour.
- (b) He is an officer with a previous good service record.
- (c) In other respects, the officer was an individual who has demonstrated commitment to training and public service.
- (d) We have also noted and recognise that these proceedings have undoubtedly had a significant impact on the officer.
- (e) He has continued his public service within limits set for him by the police to a high standard, as is confirmed by the character references.

6.1 With respect to the purpose of imposing disciplinary action in police misconduct proceedings:

a) The primary purpose is to protect the public confidence in and the reputation of policing;

b) The second purpose is the declaratory purpose of maintaining high professional standards by demonstrating to other officers that misconduct of a certain kind and/or a certain seriousness will be dealt with by disciplinary action of a certain severity; and

c) The third purpose is to protect the public and/or officers and staff by preventing the officer from committing similar misconduct again by excluding them from the police service.

6.2 In *Redgrave v Commissioner of Police of the Metropolis* [2003] 1 WLR 1136

Simon Brown LJ (as he then was) at [33] approved the following dictum of Lord Diplock in *Zideman v General Dental Council* [1976] 2 All ER 334 at p.336: 72

“The purpose of disciplinary proceedings against a person convicted of crime is not to punish him a second time for the same offence but to protect the public who come to him as patients and to maintain the high standards and good reputation of an honourable profession”. (emphasis added)

6.3 In *R (Green) v Police Complaints Authority* [2004] UKHL 6; [2004] 1 WLR 725, Lord Carswell stated at [78]:

“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 police officers is left unchecked and they are not held accountable for it in a suitable manner, that confidence will be eroded.”

6.4 Lord Bingham (when Master of the Rolls) had previously made the same point in relation to the solicitors’ profession in *Bolton v Law Society* [1994] 1 WLR.

6.5 In explaining the apparent harshness of sanctions imposed by the Solicitors Disciplinary Tribunal he identified the purpose of such sanctions and said at p.518H (emphasis added): “The second purpose is the most fundamental of all: to maintain the reputation of the solicitors’ profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re- investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession’s most valuable asset is its collective reputation and the confidence which that inspires.”

6.6 In *Salter v Chief Constable of Dorset Police* [2012] EWCA Civ 2012, Maurice Kay LJ found that it was appropriate to draw an analogy between police officers and legal professionals at [21] (emphasis added):

“Although police officers do not have a fiduciary client relationship with individual members of the public or the public at large, they do carry out vital public functions in which it is imperative that the public have confidence in them. It is also obvious that the operational dishonesty or impropriety of a single officer tarnishes the reputation of his Force and undermines public confidence in it. In these respects, the similarities between solicitors and police officers justify the analogy provided that, ultimately, the

decision- maker, be it the PAT or a judge of the Administrative Court, appreciates at all times that the index case falls to be assessed in the context of policing.”

6.7 In *R (Coke- Wallis) V Institute of Chartered Accountants* [2011] UKSC 1 at [60] Lord Collins reaffirmed the purpose of professional disciplinary proceedings to be: (to protect the public, to maintain public confidence in the integrity of the profession and to uphold proper standards of behaviour: see *Bolton V Law Society* [1994] 1 WLR 512, 518 per Sir Thomas Bingham MR; *Gupta V General Medical Council* [2002] 1 WLR 1691, para 21, per Lord Roger of Earlsferry.

7.1 The primary purpose of imposing disciplinary sanctions in police misconduct proceedings is to protect the public confidence in and the reputation of policing. The second purpose is the declaratory purpose of maintaining high professional standard by demonstrating to other officers that misconduct of a certain kind and/or a certain seriousness will be dealt with by disciplinary action of a certain severity. The maintenance of public confidence and so that the public understand that such conduct will be treated with a severe outcome. The way to restore public confidence is to make sure that due process is followed and that an appropriately severe outcome follows.

7.2 The Panel has had regard to the officer’s record of service and personal mitigation. And the very positive references and his efforts since returning to work. The panel had due consideration to the personal made and gave it appropriate weight.

7.3 Personal mitigation is important and must be taken into account. The panel have taken in to account the mitigation put forward by Counsel for the officer.

7.5 However the decisions above give clear guidance on the limited weight to be given to personal mitigation (as opposed to conduct mitigation) in professional disciplinary proceedings in general and police misconduct hearings in particular.

7.6 In *Bolton* Sir Thomas Bingham MR explained why personal mitigation carried less weight in the professional disciplinary context than the criminal context at p.519B-D “Because orders made by the Tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often, he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well- founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.”

7.7 In *Salter* in the Court of Appeal, Maurice Kay LJ said at [23]:

“As to personal mitigation, just as an unexpectedly errant solicitor can usually refer to an unblemished past and the esteem of his colleagues, so will a police officer often be able so to do. However, because of the importance of public confidence, the potential of such mitigation is necessarily limited.”

7.8 In *R (Williams) v PAT* [2016] EWHC 2708 (Admin), Holroyde J confirmed that the approach to mitigation in *Salter* was not restricted to cases of honesty and integrity. Holroyde J also gave the following general guidance on how the question of mitigation should be approached in police misconduct cases:

“In my judgment the importance of maintaining public confidence in and respect for the police service is constant, regardless of the nature of the gross misconduct under consideration. 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. Gross misconduct involving dishonesty or lack of integrity will by its very nature be a serious threat: save perhaps in wholly exceptional circumstances, the public could have no confidence in a police force which allowed a convicted fraudster to continue in service. Gross misconduct involving a lack of integrity will often also be a serious threat. But other forms of gross misconduct may also pose a serious threat, and breach of any of the Standards may be capable of causing great harm to the public's confidence in and respect for the police.

This does not mean, of course, that personal mitigation is to be ignored. Nothing in the *Salter* principle suggests it must be ignored. On the contrary, it must always be taken into account...”

7.9 In conclusion, the panel must take account of the officer's personal mitigation, but the weight to be accorded to that mitigation:

a) is less than it would be in a criminal trial; and

b) is dependent upon the extent to which the officer's misconduct threatens the public confidence.

8.1 Having followed the steps above, the panel went on to choose the disciplinary action which most appropriately fulfils the purpose of imposing disciplinary action considering the seriousness of the conduct in question (bearing in mind the need to act proportionately).

8.58 The Panel went on to consider all of the available outcomes, starting with the least serious. The Panel considered that a final written warning was not a sufficient outcome in this case. The personal mitigation for this officer is obvious but as set out in the authorities recited above, the primary duty of the panel is to protect the public confidence that must be held in a police force. The panel do not consider that such confidence would be upheld by the imposition of a final written warning.

8.60 The consequence of our analysis is that the panel are of the view that dismissal without notice is the only proportionate and necessary outcome.

8.61 We reach that view with regret because this officer has given public service for several years. However, the public in our view will not tolerate a police force that continues to accommodate officers who have behaved as this officer has. The Sergeant was senior officer who has been proved to have breached the above standards of professional behaviour and the proven facts behind those breaches are so serious that the public would expect nothing less than dismissal without notice. Any lesser outcome would only serve to further discredit the credibility of the police service and not deter other officers from acting in similar way and would undermine the public trust and confidence in the Police.

Signature: Mr James Rickard
LEGALLY QUALIFIED CHAIR
Date: 22 June 2023

Signature: Supt Ben Davies
POLICE PANEL MEMBER
Date: 22 June 2023

Signature: Ms Jayne Clemence MBE
JP INDEPENDENT PANEL
MEMBER
Date: 22 June 2023