



NOTICE OF OUTCOME OF PUBLIC HEARING

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

Legally Qualified Chair: Deni Mathews

Dates of Hearing: 20-21 March 2023

Officer: Former Police Constable Jack Martindale

IN THE MATTER OF POLICE (CONDUCT) REGULATIONS 2020

BETWEEN:

The Chief Constable of Devon and Cornwall Police

Appropriate Authority

and

PC Jack Martindale

Respondent

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. 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 officer has 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 required to prove the allegations is the balance of probabilities (the appropriate standard).

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.

Preliminary Matters

7. The allegations in this case arose as a result of two discrete periods of conduct. The first allegations arose out of an exchange of text messages between PC Martindale and a victim of crime who shall be referred to as Ms A. A process of inquiry into the messages exchanged resulted in a period of time during which PC Martindale was unable to undertake full duties. In August 2022 he was spoken to by Police Inspector [REDACTED] and in the course of that disclosure he volunteered that he had sent an inaccurate text message to his sergeant. The officer had indicated that he had tested positive for Covid, at a time that he had not in fact tested for Covid, he did this in order to justify not attending at work. Inspector [REDACTED] was acting as a Fed Rep when the disclosure as to the inaccurate message was sent.

8. Inspector [REDACTED] referred the admission of an inaccurate message to PSD as a potential honesty and integrity issue, the Inspector then proceeded to stand down from any further involvement with this officer. That referral led to the second set of allegations before the panel today.

9. At the outset of the hearing in this case the panel were asked to consider whether the disclosure made to Inspector [REDACTED] should have been referred to PSD, and whether it was there for the officer to face misconduct proceedings arising from disclosure made to his Fed Rep.

10. On this issue we were assisted by a note and supporting documentation provided by Mr Jenkins for the appropriate authority and previously copied to PC Rob Greening, the Fed Rep attending the hearing before us to assist PC Martindale.

11. We were not taken to any authority indicating that disclosure made in the circumstances above could be considered subject to any form of confidentiality. We were referred by the Fed Rep to advice from leading counsel sought in 1987 drawing an analogy between such disclosure, and disclosure to a lawyer such that it should be considered as confidential material. The argument being that it would be unfair for an officer represented by a Fed Rep rather than a lawyer to suffer any prejudice because of the difference in status in any disclosure that an officer should make to a representative during misconduct proceedings.

12. In considering the application to effectively exclude misconduct allegations arising from PC Martindale's disclosure to Inspector [REDACTED] we note the following. Inspector [REDACTED] received disclosure from PC Martindale whilst acting as a Fed Rep enquiring into the welfare of the officer at a time when he was struggling to undertake full duties. The disclosure was freely volunteered and certainly could not be considered to have been as a result of any enquiries by the Inspector that were in any way inappropriate.

13. The Inspector at the time was acting in the course of her duties as a serving police officer and was accordingly bound by the professional standards set out in **Challenging and Reporting Improper Conduct** in the Code of Ethics 2014.

14. Mr Jenkins has helpfully taken the panel to progressive iterations of Home Office guidance on professional standards and police officer misconduct proceedings. These are set out in some detail in his helpful note. The guidance provides no authority for the suggestion that information received by a Fed Rep in circumstances set out above should remain confidential.

15. The guidance persuades us to conclude that Police Inspector [REDACTED] as a serving officer was under a positive duty to disclose the matters revealed to her and that there is no basis for any criticism of the way in which there was a subsequent referral to professional standards. We do not find that any disclosure to the Inspector was subject to any provision of confidentiality and accordingly we find no impropriety in the existence of misconduct allegations flowing from that disclosure.

16. The decision of the panel is that both sets of misconduct allegations are lawful and in accordance with regulation 4(9) of the Police Misconduct Regulations 2020 we join the two sets of allegations to be heard together as a single set of proceedings.

Allegations

Part 1

1. On or about the 5th of September 2021 you became the officer in the case of Ms A, who had alleged that she had been assaulted. She had complained to police on 1st of August 2021 that she had been physically pushed by a bouncer at a public house and that she had sustained minor injuries. By your involvement as officer in the case your role was to progress the investigation, and that required that you contact Ms A.

2. You subsequently spoke to Ms A by telephone on 20 September 2021 and you met her at her home address on 28 September 2021, when it was agreed that the complaint she had made could be resolved by a community resolution.

3. In addition to the contact that you made with Ms A for legitimate police purposes, you exchanged hundreds of messages with her between 8th and 30th September 2021 using your police issue mobile phone. You also messaged her on WhatsApp using your personal mobile

phone.

4. The messages that you sent to Ms A using your police phone including messages where were completely inappropriate, in that they:

a. Included sexual references, such as “Fifty Shades of Gray”, “raunchy films” and not receiving a kiss;

b. Suggested or implied that you wished to pursue a sexual or emotional relationship with Ms A, a twenty two year old young woman who had been a victim of crime;

c. Had no relevance to the case with which you were concerned.

Part 2

5 On 12th August 2022 you sent a message to DS Lewis to say that you were sick, or words to that effect. You attached a photograph of a positive Covid test, with the implication that that was a test that you had just taken and that it showed that you had tested positive for Covid.

6 You sent a further message on 12th August 2022 to say that you were feeling progressively worse, or words to that effect.

7 On 15th August 2022 you sent a further message to DS Lewis to say that you were feeling better than previously, but not 100%, and that it was lucky that you had been to the shops before testing positive.

8 In each of the messages that you sent, as set out in paragraphs 1 to 3 above, you suggested that you were currently unwell and unable to attend work because you had Covid. You did not have Covid at that time, and you had not just tested positive for Covid.

9 In sending the messages as above you were dishonest. You were not unfit for work due to Covid at that time.

10 On 30th August 2022 you spoke to Inspector [REDACTED] when you admitted that you had lied about having Covid and reporting sick. You explained that you had sent a photograph of an old

Covid test.

The above allegations amount to breaching of the Police Officer's Standards of Professional Behaviour namely:

Authority, Respect and Courtesy: "Police officers do not abuse their powers or authority and respect the rights of all individuals". And also "officers should not establish or pursue an improper sexual or emotional relationship with a person with whom you come into contact in the course of your work who may be vulnerable to an abuse of trust of power."

Duties and Responsibilities: "Police officers are diligent in the exercise of their duties and responsibilities."

Discreditable Conduct: "Police officers behave in a manner which does not discredit the police"

Honesty and Integrity "Police officers are honest, act with integrity and do not compromise of abuse their position."

Stage 1. The Facts.

17. 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.

THE EVIDENCE:

18. We turn to the evidence heard by the panel. Necessarily the findings are set out sequentially but we have considered all aspects of the evidence before reaching any individual findings.

19. PC Martindale, as set out in his regulation 31 response at page 171 of the bundle in this case, did not deny sending or receiving the text messages exchanged with Ms A, or that he had spoken with her by telephone as alleged. He did dispute allegation 4 (b) as set out above, namely that the accepted communication suggested or implied that he wished to pursue a sexual or emotional relationship with Ms A. It is necessary for us to make findings of fact on this issue.

20. In reaching our findings of fact we have been assisted by a record of over 350 text messages exchanged between PC Martindale and Ms A, set out at page 78 of the bundle onwards. It is agreed and we so find that those messages cover the period from the 16th of September 2021 until the 30th of September 2021. The messages were recovered from a Police issue Samsung mobile phone.

21. PC Martindale told the panel that he had tried to delete the message exchange he had had with Ms A from his police Samsung mobile phone. The messages viewed by us were obtained by data recovery from that phone and as a consequence some of the messages are incomplete and we do not have all of the text messages exchanged between the parties. That fact is admitted by all parties and is evident from reading the messages themselves, some messages are missing.

22. At page 175 onwards of the documents submitted to us is a telephone extraction report setting out phone calls (both answered and unanswered) made between the officer's police Samsung mobile phone, and Ms A's telephone. Again those calls are not disputed and we make findings of

fact to reflect that document.

23. PC Martindale told the panel that he stopped contacting Ms A on his police phone at the end of September 2021, he explained that at that point he was in contact with her using his own personal mobile phone however shortly after transferring communications to his personal mobile phone, he ceased all communication with Ms A in the knowledge that it was inappropriate. That represented the end of his communication with her, he has not spoken to her or had any other contact with her since then. We have no communication data or evidence to demonstrate any evidence between the officer and Ms A after the 30th September 2021 and we find that the communication did stop at that point. On a balance of probabilities, we find that the communication stopped because it was ceased by PC Martindale.

24. Ms A did not wish to provide a witness statement for these proceedings and took no role within them. At page 167 of the documents before we have an email from her in which she indicates that though she knew that her contact with the officer should have been confined to matters relevant to the conduct of her case, "we both enjoyed chatting to each other". She also states, referring to PC Martindale, that "I do not believe that he meant anything bad towards me."

25. PC Martindale gave evidence and was cross examined. It was put to him that the first recovered text message is a message from him in which he is clearly answering a question from Ms A by reference to a character from Harry Potter. The officer accepted that prior to that first message dated the 16th September, he had telephoned Ms A, his first call having been a two minute call on the 10th of September 2021. He stated that the fact that non-policing matters such as Harry Potter films were being discussed was indicative of what he referred to as a "growing friendship" between himself and Ms A.

26. The officer accepted that the volume of text messages, and the nature of some was inappropriate and accepted that his contact with Ms A had gone beyond what was necessary for professional policing purposes.

27. We must make findings to reflect the nature of the contact and specifically to address the disputed allegation that the contact "suggested or implied" that the officer wished to pursue a sexual or emotional relationship with Ms A.

28. The text messages available to us contain a very large number of entirely innocuous messages. They set out exchanges on subjects such as Harry Potter, work, the weather and TikTok videos. These messages are inappropriate simply because they are unnecessary in the context of the professional relationship that existed between PC Martindale and Ms A who was a victim of crime. We further recognise that PC Martindale did undertake appropriate duties as a police officer in coordinating and arranging a community resolution disposal in relation to the assault that had been perpetrated upon Ms A, in that respect some of his contact with her was appropriate, professional and necessary. PC Martindale accepts and the messages indicate that in carrying out his duties he attended her home address in order to discuss a community resolution, we note and find that he did so and there is no evidence to suggest that in that face-to-face setting he acted with anything other than integrity and probity. We make a finding to reflect the propriety of his conduct when he met Ms A in person.

29. Within the messaging data there are however a number of exchanges that contain flirtatious material. The material includes reference to the book "Fifty Shades of Grey", reference to raunchy films, an exchange in which the officer made reference to the fact that messages sent to him have not been signed off with a kiss (x), and messages referring to the possible provision of a

“backrub”.

30. We have read the available evidence of messages in its entirety and where reference is made to a flirtatious text we have ensured that we have considered the message in the context available to us, we bear in mind that we do not have a complete communication record.

31. Having undertaken that task it is plain that within the messages exchanged there are several periods of exchange that are flirtatious, that conclusion is not disputed by the officer. It is clear that both parties to the conversation are content to take part in such a flirtatious exchange and we have insufficient evidence to make clear findings as to who initiated flirtatious exchanges. However in view of the officer’s clear duty his participation in such exchanges is unacceptable in any circumstance.

32. We note that on a number of occasions the officer also recognises the impropriety of his communication by making reference to the fact that he is using a work phone and that such subject matter is not appropriate.

33. We recognise that we do not have a complete communication record and that though we can make proper inferences from evidence before us, we must not speculate. We find that this officer ceased the inappropriate communication with Ms A unilaterally and before he was subject to any inquiry from colleagues. We find that he did so because he knew that he had breached his professional responsibilities and must stop such behaviour. We find that though flirtatious exchanges occurred he did not behave inappropriately when he did meet Ms A, and on the communication data before us we have no evidence to allow us to find that his communications were aimed at arranging a face-to-face meeting for further development of the relationship between them.

34. We are satisfied on balance from the evidence before us that Ms A was not upset by the messages exchanged and indeed her own messages reflect an insight into the fact that the flirtatious conversation was not appropriate between her and the police officer acting in the course of his duties. We accept from the email disclosed to us that Ms A never felt that PC Martindale meant any harm to her and though we must later consider reputational harm and risks of harm, we do not find that Ms A was harmed in anyway by PC Martindale. It is also the case that Ms A, as a victim of crime, does not demonstrate any areas of vulnerability as set out in paragraph 12 of the College of Policing guidance on professional boundaries (page 170 of the bundle).

35. We find that over the period between 16th September 2021 and 30th September 2021, PC Martindale engaged in protracted and unprofessional communication with Ms A, it contained irrelevant conversations about innocent matters such as TiKToK but also contained several flirtatious exchanges as set out above. We do not find sufficient evidence to conclude that the messages were exchanged with any intention of seeking to pursue a sexual relationship. The fact that the officer acted entirely properly when he did meet Ms A face-to-face also contributes to us concluding on the evidence before us that he did not seek to develop his interaction with Ms A beyond the existence of a flirtatious online conversation. We reach that finding given the fact that there is no evidence to suggest he was arranging or trying to arrange any face-to-face meeting in order to try and progress the nature of their interaction towards any form of sexual encounter or relationship.

36. We have kept in mind that we have an incomplete communication record and we have properly been asked to consider the implications of the fact that the officer sought to delete the message exchange in this case. We recognise those facts and it is correct that the officer tried to

cover his tracks in deleting the messages, he must be criticised for that but we also recognise that he had unilaterally ceased the inappropriate contact and in our judgement has been credible and consistent with us in his oral account as to his conduct in the matters concerned. We have considered a prepared statement that he provided at an earlier point in the investigation and we note and accept that as a young officer relatively new to service he simply followed advice from a federation representative in electing to give a prepared statement. In the circumstances we are not persuaded to draw any adverse conclusion against him from his decision to follow that advice. We are not persuaded that it would be fair or appropriate to infer from the fact of an incomplete communication record, that there would be any messages capable of justifying a finding that the interaction in this case went beyond the findings of flirtatious behaviour that we have set out above.

37. It follows that we do not find that the officer had any wish to pursue a sexual or emotional relationship with Ms A beyond the flirtatious exchange that he himself took the decision to curtail. We find that he enjoyed that exchange of messages in which he freely participated. We find that his motive was simply that of enjoyment and pleasure. We do not find that the messages can be considered simply as an appropriate manner in which to seek to reassure and/or empower a victim of crime.

38. The findings of fact above must now be considered against the asserted breaches of standards of professional behaviour. We begin with the standards required to maintain and display authority, respect and courtesy. The College of Policing guidance produced at page 169 of the bundle is helpful because it addresses the professional boundaries to be maintained between police officers and members of the public. Paragraph 7 of that document records the following:-

“While you may find yourself attracted to a member of the public, or find yourself in a situation where someone is attracted to you, it is your responsibility not to act on these feelings. This is to prevent any harm that such actions may cause and to maintain the integrity of the policing profession.”

39. In our judgement that guidance specifically addresses the scenario we find to have occurred in this case. The officer referred to a growing friendship between himself and Ms A, the attraction of that growing friendship and the feelings that led to it were the feelings that the officer should not have acted upon. He should not have allowed the exchange set out in the communications above to develop.

40. Accordingly we find that the officer has breached the professional standard of authority, respect and courtesy because he has not demonstrated appropriate respect to Ms A when pursuing a growing friendship and attraction in the course of a professional interaction. It follows that we also find that the standards of professional behaviour with respect to duties and responsibilities have been breached because the officer was not diligent in the discharge of his duty towards Ms A, he allowed himself to stray into personal friendship and irrelevant communications with Ms A. Finally, we find that the allegation of discreditable conduct is made out. His actions in overstepping the necessary professional boundaries between himself and Ms A represent behaviour that discredits the police service and undermines public confidence in the service because of his failure to remain within clear professional boundaries during his duties.

Part 2

41. We turn now to the second aspect of the factual allegations in this case concerning a false assertion of a positive Covid test. There is no factual dispute between the parties, that was

confirmed in the officer's response and in his evidence to us. That agreement between the parties and the evidence put to us in the bundle before us allows us to find that on the 12th of August 2022, whilst the officer was being investigated for the matters dealt with above, he sent a text message to DS Lewis saying that he was unwell and attaching a photograph of a positive Covid test. The clear implication of that message was that the officer had tested positive for Covid. A number of messages were exchanged with his sergeant in which PC Martindale confirmed that he would keep the sergeant informed as to his health and the sergeant indicated that she would mark him up as sick. On the 15th of August PC Martindale sent a message to say that he was feeling better but was still not 100% and also said, "Lucky I went to the shope (sic) before I tested positive haha". In fact, as the officer agrees, he had never tested and it follows that his dishonesty over a Covid test was persisted with over three days of a text exchange with his sergeant.

42. We make findings of fact that the officer lied to his sergeant by claiming to have tested positive for Covid when he had not in fact conducted any test at all, he sent a photograph of an old Covid test in order to support the lie that he told. That dishonesty persisted over three days.

[REDACTED]

[REDACTED] We also recognise that the dishonesty in this case came to light because the officer unilaterally volunteered his admission to Inspector [REDACTED] in short he made full, frank and open disclosure to the officer when she came to enquire as to his welfare. That full admission is significantly to his credit.

45. It is plain, and indeed PC Martindale accepts, that he has sent a dishonest message to his sergeant when he falsely claimed to have tested positive for Covid. It follows that professional standards of honesty and integrity have been breached by the dishonest messages in the text exchange that lasted over three days from the 12th until the 15th of August. Clearly dishonest messaging of that type also represents discreditable conduct because it is behaviour that inevitably brings discredit upon the police service and undermines public confidence in the service.

Misconduct or gross misconduct

46. Having made findings of fact above we must consider whether or not the allegations represent misconduct or gross misconduct. In the circumstances of this case we have first of all considered the findings in respect of PC Martindale's interaction with Ms A. In our judgement it is of note that the officer took a unilateral decision to end the interaction before he was the subject of any inquiry or investigation. Furthermore we note that when he met Ms A face-to-face he conducted himself appropriately and professionally. We found no evidence to suggest that the text message interaction was indicative of any ulterior or further intent to pursue a more intimate or sexual relationship and we note that we have seen no messages indicative of any plan or wish to meet face-to-face in order to promote further any personal relationship. We find that the conduct in relation to the text exchange is such that misconduct is made out but having applied the applicable test we are not persuaded that gross misconduct has been made out in respect of the first part of these allegations.

47. We return now to the second set of allegations concerning a false Covid test. Factually it is a relatively simple case of dishonesty to a Sergeant in order to avoid coming into work. [REDACTED]

[REDACTED] we do find that his dishonesty to his Sergeant is conduct that represents gross misconduct because it is capable of justifying immediate dismissal. The question of outcome we must now go on to consider in stage four of these proceedings.

OUTCOME

48. Having determined that the breaches of professional standards as set out above, set 1 represented **misconduct**, and set 2 **gross misconduct**, the panel must go on to decide what the disciplinary action should be.

49. The panel has been assisted by submissions on the question of outcome, and having heard representations, the panel then considered the appropriate outcome. For the appropriate authority it was submitted that though PC Martindale should be considered to have a low level of culpability in relation to the sending of the Covid texts by reason of the fact that [REDACTED], and despite recognising his own actions in volunteering that dishonesty, dishonesty that would not otherwise have come to light, the fact of the dishonesty, despite the fact that it was not operational, required immediate dismissal. The rationale for that was not only that public confidence in the Police requires that dishonesty is dealt with seriously, but also that the Chief Constable was permanently limited in the duties he could require of PC Martindale because a finding of dishonesty would expose the officer and police service to risk in the event that he ever appears in an evidential chain or in the event that his account of events is subject to challenge. Effectively it was submitted that the finding of dishonesty acted as a tarnish on his reliability as a police officer and his operational effectiveness was compromised by a permanent basis existing upon which his honesty could be challenged.

50. For the officer it was submitted that this was a short lived and uncharacteristic demonstration of dishonesty. The lie was volunteered to a senior officer and that was followed by open engagement with a disciplinary process. The officer indicated that lessons have been learned from both aspects of misconduct set out above, his interaction with Ms A and also his dishonesty to an Inspector. The officer indicated that he had educated himself subsequently on the damaging risk inherent in unprofessional behaviour such as he had demonstrated to Ms A. In short he said that he would be a better officer going forward for the mistakes that he accepted and had learned from.

51. 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.

52. 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 aforementioned guidance. The Panel adopted this approach.

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

54. This refers to the degree of blameworthiness. It was fairly submitted by the appropriate authority that at the time of his gross misconduct (dishonesty) the officer was suffering from [REDACTED], accordingly his culpability should be considered to be low. We agree with that submission.

55. In relation to the actions against Ms A, they were deliberate actions over a period of time [REDACTED], they are of more significant culpability but that is tempered by the active mutual participation in messaging by Ms A.

Harm

56 It is clear that the actions in relation to Ms A caused no direct harm to any individual and the only harm that resulted was a risk of reputational harm to the Police. Similarly in relation to the dishonest Covid assertions, the dishonesty was not operational and again the only harm caused was to the reputation of the Police if it is known that an officer has lied as to his availability for work. The fact is that the officer's [REDACTED] at the time would have justified his non-attendance at work in any event, that that also reduces the harm caused by his dishonesty.

57. The further harm caused by the officer's dishonesty to inspector [REDACTED], is that it has resulted in a finding against him of gross misconduct to reflect that dishonesty. The direct consequence of that is that the officer is compromised in his ability to discharge his duties because his reliability as a witness will always be subject to challenge on the basis of a recorded finding of dishonesty against him. That compromises him in his operational abilities and the operational functioning of any unit within which he undertakes a front line role. He is a young officer and there is the potential for such curtailment of his operational effectiveness to remain for the many years of service that he would otherwise have been eligible to complete.

58. 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 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. In this case we do find a risk of very serious harm to the reputation of Devon and Cornwall police in the event that an officer were to be retained despite having displayed dishonesty over a three day period as we have found to have occurred. The risk of reputational harm flows from any apparent impression

that such dishonesty is tolerated in any way by a police service that expects to maintain and be held to the very highest standards of integrity

59. From the observations above the panel are clear that the actions of the officer in particular in relation to his dishonesty, have caused a risk of serious and enduring harm to the reputation of the police service.

Aggravating factors:

60. The panel has kept in mind that though there have been several heads of professional behaviour that have been breached, we are concerned with just two incidents and there will be no double accounting in our assessment of harm and application of principles dictating the outcome.

61. We find that the dishonesty as to Covid testing was aggravated by the fact that it was extended over three days from the 12th to the 15th of August 2022. The exchange with Ms A was aggravated by the fact that the interactions also occurred over an extended period despite the officer having an opportunity at any time to withdraw from the inappropriate contact, we recognise of course that ultimately, he did unilaterally cease the inappropriate contact.

Mitigating factors:

62. The mitigating factors concerning the incidents are clear, the Covid dishonesty was limited in its impact on any other person and flowed from a decision made when the officer was in [REDACTED]. The breach was admitted and would not otherwise have come to anyone's attention. The officer has not disputed any aspect of the allegation. The exchange with Ms A is mitigated by the fact that the officer did not take any opportunity to progress in appropriate communication to an inappropriate face-to-face meeting. He also ceased the communication unilaterally and showed an awareness of the impropriety of his actions by on occasion closing down inappropriate exchanges before he finally stopped the communication.

63. 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.

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 atp.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)

64. 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.”

65. 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.

66. 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.**”

67. 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.”

68. 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 Earslferry.

69. The primary purpose of imposing disciplinary sanctions in police misconduct proceedings is to protect the public confidence in and the reputation of policing. The secondary 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.

70. The Panel has also had regard to PC Martindale's record of service and personal mitigation. Personal mitigation is important and must be taken into account. 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.

71. 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.”

72. 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.”

73. 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...”

74. 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.

75. This officer has a previous unblemished record of service. It is to his credit that he has not

disputed any significant factual events before us. We found him to be open and honest in his evidence and we accept that he has taken his own steps to re-educate himself as a result of the mistakes that he has made. We noted his respect for his fellow officers and for the police service that he served within. We also note that he himself ended the inappropriate communication that he had with Ms A, and that he volunteered his own dishonesty in relation to the Covid test. Those factors have already been referred to above but they also demonstrate personal mitigation of a man who shows remorse and self-control and for whom we find that dishonesty is out of character. We note from the documentation before us that it has not been established to us that the officer had received specific training on the avoidance of inappropriate boundaries when dealing with members of the public, specific training that is becoming ever more important in view of present-day public perceptions in relation to some police officers. It is not the fault of this officer that he has not had such bespoke training.

76. 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).

77. The Panel went on to consider all available outcomes, starting with the least serious. The Panel considered that a written warning or final written warning was not a sufficient outcome in this case in relation to the matter of dishonesty. The considerable 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 because it would still result in an officer being retained within police service despite the fact that he displayed demonstrable dishonesty. We do not find that the continued presence of such an officer within the force, given the compromise to his operational efficiency addressed in paragraph 57 above, would be conducive to maintaining public confidence in Devon and Cornwall Police. Any complainant might justifiably be worried if the officer responsible for investigating offences against them was an officer of compromised integrity and that in turn the investigation of the Devon and Cornwall Police in relation to their complaint would necessarily be less effective than it would be if it were to be conducted by an officer with an unblemished record. Such reputational damage would flow from any apparent willingness of the Devon and Cornwall Police to retain officers with findings of dishonesty against them.

78. Similarly no other sanction would assist in the present case and the panel have formed the view that the continued presence of this officer within a policing force when he has acted as we have found, will inevitably serve to reduce public confidence that the police force acts appropriately and decisively in the face of any such behaviour as we have found.

79. The consequence of our analysis is that the panel are of the view that only dismissal without notice can be seen as an appropriate outcome. We reach that view with some regret because this officer has given service that has previously been to a high standard and has conducted himself throughout these proceedings in exemplary fashion. However the public, in our view, will not tolerate a police force that continues to accommodate officers who have behaved dishonestly as we have found to have occurred.

80. It perhaps follows from our findings above that it is the finding of gross misconduct for dishonesty that in very large part leads us to a conclusion as to outcome. It is perhaps an academic observation but it should be recorded that if the officer had been before us just in relation to his conduct concerning Ms A, the absence of dishonesty would have allowed us to

consider that a final written warning was an appropriate disposal of the matter.

81. For the reasons set out above we find disciplinary action to be necessary and the only such action that properly reflects the duties upon us and the responsibilities that we must discharge, is that the officer be dismissed without notice.

Mr Deni Mathews

LEGALLY QUALIFIED CHAIR

Date: 22nd March 2023

Superintendent Louise Costin

POLICE PANEL MEMBER

Date: 22 March 2023

Ben Hughes

INDEPENDENT PANEL MEMBER

Date: 22 March 2023