IN THE POLICE CONDUCT PANEL

IN THE MATTER OF THE POLICE ACT 1996

AND IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020

BETWEEN:

THE CHIEF CONSTABLE OF DEVON AND CORNWALL

The Appropriate Authority

AND

PC X

The Officer

NOTIFICATION AND REPORT OF THE OUTCOME UNDER REGULATION 40 OF THE POLICE CONDUCT REGULATIONS 2020

Introduction

1. This case proceeded under the un-amended version of the 2020 regulations and the hearing took place between 3 November and 5 November 2025 before Derek Marshall (Independent Legally Qualified Chair – LQC), Chris Kennedy (Independent Panel Member) and Supt. Emma Butler-Jones (Professional Panel Member). All the Panel members have contributed to and approved this report, which confirms their findings and decisions.

2. The AA was represented by counsel Ms Katherine Hampshire and PC X ("the Officer") was represented by counsel Ms Susannah Stevens. The Officer attended the hearing with special measures being put in place as recommended in the medical evidence previously supplied so as to enable him to cope with the stress of the proceedings.

Preliminary Matters

3. Prior to the hearing the Chair had conducted a hearing at which representations were made and evidence was presented as to whether the Officer should be identified by name in the public notice and in these proceedings. A number of medical reports were presented to that hearing concerning the Officer's mental ill-health, largely arising out of a completely separate matter earlier in his police service. The Chair had decided that in the light of the conclusions of both medical experts about the Officer's mental health that it would be proper and in the interest of justice to make an Order prohibiting the identification of the Officer outside the hearing room pursuant to Regulation 39. He also directed that the two witnesses[1] should be referred to by cyphers and not names because it was not in the public interest that they should be identified by name since the case concerns the private sexual affairs of one of those people. At the outset of the hearing however, the Chair revisited this decision and there were no representations from anybody in attendance to the contrary or which suggested that the interim or preliminary decision ought to be revised.

4. A further preliminary issue then arose in which it became necessary to revisit some of the interim procedural decisions taken by the Chair. Counsel for the Officer asked for

[1] At the outset of the hearing it was agreed between counsel that only one of these people actually needed to give oral evidence

a “Chair only” decision on these matters and there was no objection from counsel for the AA so the two panel members were asked to withdraw and argument was presented on either side. The Chair then made a series of decisions which appear in Appendix A to this Report. It remained the case however that inadmissible material was still in the bundle (which had wrongly been distributed by the AA without first agreeing it with the officer’s legal team) and in the interests of expediency the panel resolved to ignore these matters and put them out of their minds rather than waste time having a further bundle prepared.

5. The Panel had read and digested the bundle of documents including the Regulation 31 Response prior to the hearing. The allegations were read into the record and the Officer confirmed his response through counsel at the outset of the hearing. In summary he admitted that there had been a sexual relationship between himself and the witness HR during the course of which some intimate photo images were made, but he denied that he had been responsible for creating a fake profile on a dating website purporting to be of Ms HR after the end of their relationship and he denied that he had posted any intimate pictures of Ms HR on a dating website (or any pictures purporting to be of her). His case was that he had deleted all the pictures and images he had taken. He denied that anything he had said or done after the relationship had ceased amounted to harassment of HR and he therefore denied the allegations of breaches of the required standards of professional behaviour. Gross misconduct was therefore also denied.

Legal Framework and Factual Background

6. The statutory and regulatory basis of the Panel lies in Section 51 of the Police Act 1996 and the Police (Conduct) Regulations 2020 (“the Regulations”). In addition the Panel is to have proper regard to the Statutory Guidance on Professional Standards,

Performance and Integrity in Policing Issued by the Home Office also issued in 2020, known as the "HOG", which states at paragraph 1.4:

> *The procedures described in this guidance are designed to accord with the principles of natural justice and the basic principles of fairness. The process and procedures covered by this guidance, along with the accompanying legal framework, should be administered accordingly and applied fairly and consistently to everyone. The guidance on the individual procedures is designed to further the aims of being fair to the individual who is subject to the process, as well as all parties involved. It is intended to assist with arriving at a correct assessment of the matter in question and providing public and policing confidence in the system.*
>
> ……………..
>
> *The persons conducting misconduct hearings will consider the facts of the case and will decide the facts (on the balance of probabilities) and whether the officer's conduct amounted to misconduct, gross misconduct or neither.*

7. The aim of misconduct proceedings is not primarily punitive although they can have that effect on the officer concerned. The overriding objective is to set and maintain the highest standards of professional integrity, to ensure public confidence in the Police and for the public to see that these things are done in a fair, open and transparent manner.

8. Regulation 41(15) of the 2020 Regulations provides as follows:

> *The person or persons conducting the misconduct proceedings must review the facts of the case and decide whether the conduct of the officer concerned amounts—*
>
> *(a) in the case of a misconduct meeting, to misconduct or not, or*

(b) in the case of a misconduct hearing, to misconduct, gross misconduct or neither.

And sub-rule 16 states

The person or persons conducting the misconduct proceedings must not find that the conduct of the officer concerned amounts to misconduct or gross misconduct unless—

(a) they are satisfied on the balance of probabilities that this is the case, or

(b) the officer admits it is the case.

“Misconduct” is defined in the 2020 regulations as

a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action

and “Gross Misconduct” is defined as

a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal

<u>The allegations</u>

9. The allegations against the Officer are set out in full in the Regulation 30 Notice as follows:

1. You have been a police officer since 30 March 2009.

2. …………………………

3. In October 2022 you met HR through the dating app called Tinder

4. During November and December the two of you were seeing each other regularly and went for a weekend away to Bristol.

5. On 31 December 2022 you spent New Years Eve together in Exeter, staying the night in a hotel.

6. *On 1 January 2023 you asked H R if you could invite another man to the hotel you were staying in, to have sex. You clarified that this would not be a threesome, and that you wanted to watch another man have sex with H R.*

7. *H R asked how you would go about arranging this. You showed her a website on your phone, explaining you had created a profile and were looking at people on the site.*

8. *H R recognised the profile picture of a man she used to know, called J G She told you she knew J G.*

9. *After further conversation about what you wanted H R to do, she refused.*

10. *The relationship ended on or around the 21 January 2023.*

11. *During the course of the relationship you took sexual photos and videos of HR with her consent. These included of you having sex together, photos of her vagina bent over, and close ups of her vagina whilst lying on the bed with her legs open.*

12. *Shortly after 21 January contacted you and asked you to delete the sexual H R videos and photos of her.*

13. *On 1 February 2023 H R w a s contacted by JG via Facebook Messenger to say he had been speaking to someone on the website fabswingers.com who claimed to be HR. This person had sent him intimate photographs which matched the description of those you had taken of HR during your relationship.*
14. *JG explained that the person, who's fabswingers.com username was "newslutlove" had "said they were HR , trains at (HR's gym) I knew them, loved "black cock". He further described HR as having "had a gang bang with 6 guys".*

15. *The profile "newslutlove" was set up by you. You spoke to J G and sent him the intimate photos via this profile.*

16. *On 15 February 2023 DR, the brother of HR made an online report to the IOPC about your actions.*

17. *Between around the 15 and the 18 February you had a text exchange with HR. This exchange included HR stating she didn't know how many pictures you had shared, and you responding "2 pictures".*

18. *The text exchange also included you repeatedly telling her you were going to lose your children and go to prison as a result of your actions being reported, and asking her not to make a complaint or statement.*

19. On 18 February 2023 DR made an online report to Devon and Cornwall Police about your actions.

The breaches of the appropriate standards of professional behaviour alleged are as follows:

Your said conduct is in breach of the Standards of Professional Behaviour of ***Honesty and Integrity****,* ***Authority, Respect and Courtesy****, and* ***Discreditable Conduct*** *in that:*

(A) You have created a fake profile on the website fabswingers.com and have conversed with a third party through the website whilst purporting to be HR.

(B) You have shared inmate/naked photographs of/or purporting to be of HR with a third party via the website fabswingers.com without the consent of HR.

(C) You have harassed HR by repeatedly telling her that you were going to lose your children and go to prison, and asking that she does not make a complaint or statement.

Analysis of the facts

10. The first task of the Panel therefore was to review the facts, assess what they amounted to and then to consider the seriousness of them in so far as they may be found to have been proved.

11. The AA's principal witness was the Officer's former girlfriend Ms HR. She confirmed the truth of her statement at pages 46 to 52 of the bundle and told the Panel that she and the Officer had dated for a period of about 10 weeks at the end of 2022 and beginning of 2023. They had met through the Tinder dating website. The Officer had told her that he was in the police and she had found this reassuring. She had thought that there was a good connection between them and that the relationship was a good one.

12. After about 4 weeks (she told the Panel) she and the Officer had gone away for a short holiday to Bristol and had done various social things such as attend a Christmas market. They then decided to have another long weekend together over the new year period and arranged to spend time in a hotel in Exeter, which she had been able to get at a discount as she worked for this particular hotel chain. They had dinner and went to a bar and also met with Ms HR's brother and his girlfriend. It was during this weekend that the Officer had asked Ms HR if she would agree to having sex with another man so that he (the Officer) could watch. She told the panel that the officer had suggested this in the past but that she was not interested. Ms HR did not know how you could do this and she asked the Officer, who showed her a website called FabSwingers on his phone where one could meet people who might be interested in this sort of activity. She said that the relationship hadn't been going well for a few weeks and that he had been asking about this for some while. She was not interested. Whilst looking at the site Ms HR had noticed that a man called "[JG]"[2] who she had known many years previously was posting on the site and she told the panel that she was surprised about this. She had not realised that this was something that people do. Ms HR told the panel that she had not spoken to JG for about 8 years prior to this incident.

13. The relationship between the Officer and Ms HR ended on about 20th/21st January 2023. She told the panel that she was devastated by the loss of the relationship and thought that this was because she could not give him what he wanted, in terms of the sexual activity that he had been suggesting. She next spoke to him a few weeks later when he sent her some "reels" (short video clips) on Instagram but by this time she had wanted

[2] Later identified as "JG"

to walk away from the relationship. She was taken to p49 in the bundle and looked at the messages that can be seen there and she told the panel that she had asked the Officer to delete and remove anything from his phone. She said that she had done a "terrible thing". By this she meant that she and the Officer had taken intimate pictures and video recordings of each other during their sexual activity. There were about 10 images and videos in total and she had deleted the ones she had taken from her phone after the end of the relationship. She said she had a "bad feeling" about the images.

14. Asked why she had taken these images and allowed herself to be photographed Ms HR told the panel that she had felt comfortable with the Officer doing this and that the images were for their own private viewing. She had kept hers in a hidden folder on her phone prior to deleting them. Referring back to JG she took the panel to p60 of the bundle and referred to an "unsent" message from him. She was very confused by the messages she had received from JG and there seemed to be something very strange going on. JG sent her a profile on the FabSwingers website which appears at p62 of the bundle. It appeared to be a reference to her and she thought that it could have been created by the Officer although she had thought at the time that it could equally well be that JG was lying. She described him (JG) on more than one occasion in her evidence as "sleazy" and "a sleaze bag" and she had not liked or trusted him. As she had seen him on the Fabswingers website on the Officer's phone whilst on holiday over the new year period she did not want to engage with JG.

15. After speaking with JG by messages, Ms HR then tried to contact the Officer. She first had to "unblock" him and there were two short phone calls between them although she could not recall what had been discussed. She was taken to various messages in the

bundle but this proved confusing for Ms HR because (as the panel had already worked out for themselves) the messages in the bundle were in the wrong order and incomplete and there was missing text. However, she was able to say that the image of the young woman at p125 was not her and that it had been sent to her by JG, not by the Officer despite the order in which the documents appear in the bundle suggesting otherwise. She told the panel that JG described some pictures he had seen which she thought might be of her, taken whilst she was with the Officer and this is what she meant when she asked the Officer about the pictures in the messaging at p126. She was not actually shown the images though. They next spoke a few days later on a Sunday and the conversation had been friendly and jovial. She told the panel that she had sympathy with the Officer because in her view he was unsure of his sexuality.

16. The second day of evidence was interrupted by an argument between counsel as to the messaging issues. It had been obvious to the panel from the outset that there were missing messages between HR and the Officer but it turned out that in fact there were also messages between HR and JG that had either not previously been seen or which had not been seen in a legible form. After considerable argument, counsel for the AA was asked the direct binary question as to whether the AA actually wanted to introduce this new (in the sense of unseen by the panel) material. She replied that she did not. Accordingly the problem resolved itself and the case was able to resume, albeit that the existing disclosed messages were still not in the correct order. It was however a matter of concern to the panel to be advised that the redacted bundle sent to the panel at the very end of last week had not been agreed.

17. Ms HR resumed her evidence by taking the panel to p70 of the bundle. She told the hearing that she had not wanted to speak to the Officer and that she was not in fact upset that he had quickly formed a new relationship (with CD) although this is what the Officer seemed to think was the problem for her. She was instead blindsided by "events", by which she meant that someone appeared to have created a Fabswingers account purporting to be her. She said that her belief that this had been done caused her to have a complete breakdown and that she had not left her home for several weeks because she feared that any man looking at her in the street might think that he had seen her image on the website. She also formed the impression that the Officer was threatening to harm himself and she did not want that on her conscience. The thought that he might do so made her feel very guilty. She also thought that the Officer was trying to stop her reporting him to the police for what she thought that he had done.

18. Ms HR was then taken through the messages from pages 78 through to 88 focussing in particular on p88. She confirmed that she had not actually seen any of the pictures said to have been posted on the website and did not know what pictures JG had seen, although she had been told by him that they were images of her. She could not recall what she had actually been wearing in any of the pictures that had been taken of her by the Officer. There was then a most important piece of evidence when she was taken to p96 of the bundle. Ms HR said that she had blocked JG from contacting her as he had started to send her images of his penis and was making most inappropriate suggestions to her. JG seemed to think that he had some right to her because he had seen her naked. By this time she was beginning to lose her temper with the Officer because she thought that he was trying to make her feel guilty for something that he (the Officer) had actually done.

19. At the close of the second day of the hearing counsel for the AA was asked how much longer she proposed to take in examination in chief. She replied that it would be another hour. This would have been in addition to the approximately hour and a half that she had already been asking questions of her own witness. She was asked to describe the outstanding issues she proposed to discuss with the witnesses but responded that it would be in relation to <u>all</u> of the matters alleged against the officer. This led to further legal argument at the beginning of the third day of the hearing. Counsel for the officer argued that it was impermissible for the AA to elicit evidence in chief from a witness which went above and beyond the material in her witness statement and the disclosed statement, and that even if it was permissible it would be unfair to do so. Counsel for the AA argued (in essence) that there was nothing in the rules which prevented her from establishing her case by oral evidence which was not merely explanatory or clarifying in nature of the material in the written statement.

20. The panel was therefore asked to make a decision on this and retired to do so. That second decision on a discrete issue appears at Appendix B of this report. In the light of that decision, the AA asked for a direction that the witness statement of HR should stand as her evidence in chief. The panel had already assumed that it would but for the avoidance of doubt, this was confirmed.

21. Unfortunately, this led to a new issue. When Ms HR was told about this by the IO she became upset and after some delay, a message was relayed to the panel which is set out in Appendix C to this report, the effect of which was that she was not prepared to give any more evidence unless she could continue to answer questions from the AA, as well as another issue which raised the question of apparent bias. The panel therefore reconvened and the panel member referred to (Mr Kennedy) explained that all that had

happened was that when the panel had completed their deliberations about the second discrete issue and the Chair had made a note of what had been decided, he had put his head around the door of the panel's retiring room to see whether anyone was available to let the parties know that the panel was ready to resume. Not seeing anybody he had walked down the stairs and noticed that the Officer's Federation Representative was there and had asked him to pass on the message to the Hearings Officer that the panel was ready to resume. There had been no other conversation. The Federation Representative confirmed this. Counsel for the AA was asked whether she intended to pursue an application for recusal on the grounds of apparent bias and (after seeking instructions) she confirmed that she did not intend to do so, whether based on this part of Ms HR's message via the IO or on any of the other things that she had said.

22. There was then yet further legal argument about what may have been said to Ms HR by the IO during the course of the last adjournment. Counsel for the officer complained that the witness Ms HR may have been told things that she ought not to have been, both in that break in the proceedings and previously. She alluded to part of Ms HR's oral evidence about the officer losing his phone which she would now be unable to ask questions about since Ms HR was refusing to resume her evidence if the next step in the process was going to be cross-examination. She indicated that she would now be making an application for the dismissal of the case on the grounds of abuse of process. This was not the application that the panel had anticipated she might make.

23. During the course of a further short adjournment so that counsel could take instructions on this new point the Chair undertook some quick research on the subject of abuse of process and he discovered a very recent (August 2025) Practice Note to the Health and Care Professions Tribunal Council which he shared with counsel (Appendix D). He

said that in his preliminary view this was useful guidance from a similar jurisdiction and that it seemed to him that if there was to be such an application then there would have to be an adjournment for skeleton arguments and evidence to be filed. This in turn led to the issue which the panel had expected to be raised by counsel for the Officer, namely that the panel should take the decision of its own volition and at this stage of the proceedings, that the officer had no case to answer.

24. Counsel for the officer started to develop this argument and helpfully, counsel for the AA said that in the light of the witness HR refusing to give further evidence if the first thing that was next to happen would be cross-examination she would not return to the hearing, she (counsel) would concede the point that the panel ought to disregard everything that had been said by her in oral evidence and that they should rely only upon the written materials in the bundle. The panel withdrew to consider the position.

Does the officer have a case to answer?

25. The panel had serious misgivings about this case from the very beginning even before the case had been opened and even having read the inadmissible material including the deleted allegation 2 and the wrongly included opinion of the IO. Those misgivings became worse as the case proceeded. There comes a point when the nettle has to be grasped and the panel accepted the invitation to do so.

26. The panel was fully aware that there is a very low threshold for the AA to overcome in order to show that an officer has a case to answer. The test for "no case to answer" in criminal proceedings is that there is no evidence that the Defendant committed the alleged offence or that the evidence is so weak or unreliable that no reasonable court

could convict upon the basis of the materials before it.[3] The analogous position in civil proceedings is where an application may be made for summary judgment[4], in which the principles there are that the judge must not embark on a mini-trial and should only grant the application if there is no real prospect of one of the parties succeeding.

27. The role of professional discipline panels may be thought to go wider than the ordinary civil and criminal courts in that the over-riding objective is to maintain public confidence in the profession, not to bring an offender to justice or to resolve a civil dispute, but that does not mean abandoning basic principles of fairness and justice. The panel understood therefore that they should only accept the invitation to dismiss the case if they concluded that this was the clearest possible case in which there was no reasonable prospect of the allegations against the officer becoming established.

28. Being mindful of those principles, in the judgment of the panel, even if all of the evidence of Ms HR was to be taken into account, including everything that she told the panel over the last two days, and even if the Chair had permitted paragraph 2 of the original r30 notice to stand (together with the other inadmissible materials which the panel had read because they had wrongly been supplied to them by the AA), there is simply no case to answer here. No reasonable panel could conclude that the allegations against this officer of

(a) setting up a fake profile on a website purporting to relate to HR

(b) sharing or posting images of HR on the website without her consent

[3] R v Galbraith [1981] 1 WLR 1039
[4] CPR Part 24

(c) harassing HR by repeatedly telling her that he was going to lose his job and his children and would go to prison and asking her to withdraw a complaint that he had done these things

could be established on the balance of probability because there is literally no evidence to support it, or if there is any evidence it is so feeble, unreliable and incomplete that no proper reliance could be placed upon it.

29. The AA's case depended wholly on a witness (Ms HR) who had not seen the alleged posted images nor the things that she had been told about by another witness (JG) who made very clear that he would not give evidence nor make a statement. Moreover the source of Ms HR's belief is a person (JG) who thought it appropriate to send her pictures of his penis and make inappropriate suggestions to her and who she told the panel thought that he had some right to her. Ms HR herself did not like or trust JG and when she was apparently told things by him she thought that he might be lying. She later came to suspect that it was the Officer who had created a fake profile on the website but there is nothing in the documents in the file or in the oral evidence we have heard which actually links her to the profile nor which links the Officer to any images of her or purporting to be of her. Any panel hearing this case would therefore be asked to rely on the hearsay upon hearsay of a person who the AA's primary witness did not trust or believe and who had apparently himself been sending her inappropriate images.

30. It was obvious to the panel that the IO thought that the image at page 125 in the bundle of a young woman in a short skirt was or may have been Ms HR and that it had been posted by the officer. This lay at the heart of the AA's case. However, Ms HR was

very clear that it was not her in the picture and that in any event the image had been sent to her not by the officer but by JG even though the sequence of the papers had seemed to suggest otherwise.

31. This entire case therefore rested on not merely hearsay but second hand hearsay and the assumption that the officer must have posted images of HR and set up a fake profile. That assumption is unwarranted because there is nothing in the papers or in the oral evidence which links the officer to the website profile and no reasonable panel could be expected to reach conclusions adverse to the officer based on the materials before it, especially the hearsay evidence of a "sleazy" third party (JG) who the key witness Ms HR herself did not trust. Why would any panel trust him?

32. In relation to the harassment allegation the panel did not think that there was any reasonable prospect of this being established because all the messages amount to is an exchange between HR and the officer after the breakdown of their relationship in which he was denying the accusation that he had posted images of her. Some of the contact was initiated by HR and some by the officer but in the judgment of the panel there was no prospect that this could be seen as harassment. They are equally consistent with a person panicking as a result of what was being suggested to him. Ms HR does not use the word "harassment" or "harass" from beginning to end of her statement in the criminal investigation. Moreover, since the panel had concluded that there was no case to answer on the underlying allegations about posting a fake website profile and images it would be perverse to allow the secondary allegation of harassment to stand.

33. Accordingly the panel dismissed this case.

LEARNING AND RECOMMENDATIONS

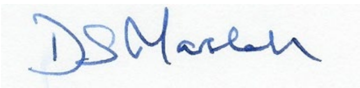
34. This was a difficult and troublesome case and the panel wish to say no more than the minimum necessary. They also do not wish to criticise any individuals since it would not be fair to do so when they can't answer back. Nevertheless, they do wish to record the following.

35. The root of all the problems in this case is that it was poorly investigated and poorly prepared. At the close of Ms HR's statement in the criminal investigation she says this: *"The victim personal statement has been explained to me but I would like to do this at a later date as this statement has been draining".* It is quite obvious therefore that Ms HR was prepared to give a full and detailed statement setting out her story in full so that the Officer, his legal team and the panel could understand the case that was going to be put forward by the AA. That was never done. Instead, an NFA decision was taken (meaning that someone had decided that there was insufficient evidence for the case to proceed) but no further steps were taken to prepare this case for a panel decision.

36. It seems to have been thought that the case could be built in real time and in front of the panel by counsel asking open questions (as opposed to "closed" questions not "leading" questions as counsel seemed to think) for hours on end in the hope that something would emerge to fill the obvious gaps in the AA's case. Whichever jurisdiction one thinks of, that is not the way the law works. The panel is not a court of law but neither is it the Star Chamber or a medieval inquisition. These allegations were very serious and it was up to the AA to make sure that its material was presented in a fair and orderly way so that the Officer should know the case he had to meet.

37. The effect of this has been unfairness not only to the Officer but also to the witness Ms HR. She complained to the panel via the IO that she was not being allowed to tell her story and there is force in what she says. That story should have been told in the further witness statement that she had been quite prepared to give but no-one had thought sufficiently important to take from her. She has been let down by the police service.

38. The preparation of the case for hearing has also been poor. Directions designed to get the case into proper shape were ignored and at least two opportunities to put things right were missed, including following a direct intervention from the Chair about three weeks prior to the hearing reminding the AA that there were still matters to attend to. It is wholly unacceptable that a bundle with inadmissible material was circulated by the AA without agreement or proper thought. We trust that lessons will be learned from this.

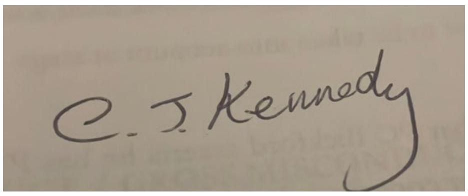


Derek Marshall LLB MCIArb

LQC

College Chambers, Southampton 6 November 2025

Supt. Emma Butler-Jones 6 November 2025



Chris Kennedy 6 November 2025

APPENDIX A

IN THE POLICE CONDUCT PANEL

IN THE MATTER OF THE POLICE ACT 1996

AND IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020

BETWEEN:

THE CHIEF CONSTABLE OF DEVON AND CORNWALL

The Appropriate Authority

AND

PC X

The Officer

CHAIR DECISION ON DISCRETE POINT

This is a Chair only decision as requested by the parties.

On 19 May 2025 I gave formal directions in relation to various matters in this case including redactions and additions to the bundle and in particular in relation to the Officer having been "spoken to" about a previous matter over 10 years ago. I indicated that I thought it had little or no probative value and that such impact as it might have would only be prejudicial and I directed that it this were to be pursued then the AA should file skeleton arguments prior to the next hearing.

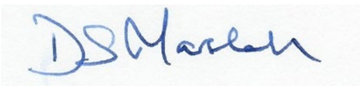
In fact what they did by the time of the next hearing on 2 June 2025 was to remove all the witness statements concerning the 2015 incident (a proper decision) leaving only an argument about some further documents which I directed should be removed because I agreed with the submission that they were a back door way of re-introducing material that had been withdrawn by the AA. I also said that this meant the AA needed to reconsider paragraph 2 of the r30 notice and that if the parties were unable to agree this then I would give further directions by email.

This was not done. Worse, I actually chased the AA by email on 13 October 2025 asking whether the directions had all been complied with. It is not my role to do this but I was anxious to avoid the very situation which has arisen this morning namely that the AA has not managed to reconsider this allegation and reach a consensus, nor are there skeleton arguments setting out what they say should happen now nor have agreed redactions to the bundle been made in full. Instead I had dictated to me (by Counsel for the AA) a new form of words for paragraph 2 of the r30 notice which both me and the Officer and his legal team were hearing for the first time. This is not fair and it is not just. Whether it is an ambush or a mistake is really not the point – I prefer to think that someone has made a mistake – but it matters not. The AA has had months to sort this out and it is not fair on the Officer, the witness HR waiting to give her evidence or the public that this hearing should be jeopardised by the AA's late change of position and failure to deal with issues which ought to have been resolved months ago.

This is a professional panel and I have been reminded that my primary duty is to see to it that things are done fairly, and the AA's approach is in my view unfair. Paragraph 2 of the r30 notice as currently drafted adds nothing to this case unless it is going to be alleged that the Officer <u>was</u> responsible for doing something similar in the past, which is clearly the opinion of the IO in a passage at page 22 of the bundle which even the AA accepts should not be in the bundle and which ought to have been redacted but was not. I do not see any point in this very old matter being raised unless it is to cast the implication that something similar happened in the past and that is not fair because it runs around the back of my previous unchallenged decisions and the AA's own decision to withdraw a witness statement.

Accordingly I am going to direct that all references to this 2015 matter of the officer being "spoken to" are withdrawn from the file, they are completely irrelevant and I and my colleagues are going to ignore and pay no attention whatsoever to the references to it at pages 22, 30 and 176 of the bundle and anywhere else where it may appear.

There is no recusal application being made by the Officer, who rightly accepts that this case must proceed today and I agree. It is not in his interest, that of the witness HR or the public that there should be any more adjournments.



Derek Marshall LLB MCIArb

LQC

College Chambers, Southampton 3 November 2025

APPENDIX B

IN THE POLICE CONDUCT PANEL

IN THE MATTER OF THE POLICE ACT 1996

AND IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020

BETWEEN:

THE CHIEF CONSTABLE OF DEVON AND CORNWALL

<u>The Appropriate Authority</u>

AND

PC X

<u>The Officer</u>

PANEL DECISION ON DISCRETE POINT

<u>Second discrete issue</u>

This is a collective decision of the panel as it involves matters of law, fact and discretion and all the panel members have contributed to it.

The Panel has been asked to consider two issues:

Is it possible for evidence in chief to be elicited orally which goes beyond the only statement of that witness and documents in the bundle (which were produced in the context of a criminal inquiry?)

Is it fair to allow the AA to continue to do this in the context of this case?

No authority was put before the panel on these points and this is perhaps not surprising because it really goes to fundamental matters of how proceedings – whether civil, criminal, employment or regulatory – normally function.

An AI google summary of the law seems to be accurate:

*In professional discipline proceedings, **evidence in chief** is typically presented through a pre-filed **written witness statement**, which the witness confirms under oath or affirmation in the hearing. The advocate then asks questions to elaborate on key points, provide context, and ensure the decision-maker fully understands the evidence.*

Key Aspects of Evidence in Chief

- ***Witness Statement as Primary Evidence:*** *The core of the evidence is contained in a detailed witness statement prepared in advance. Once sworn in, the witness confirms the statement is true, and it stands as their main evidence.*
- ***Purpose of Oral Examination:*** *The oral examination in chief is used to:*
    - ***Emphasise crucial points*** *of the case.*
    - ***Provide further detail*** *or clarification on specific matters.*
    - ***Update events*** *that have occurred since the statement was written.*
    - *Allow the witness to tell their story clearly and concisely.*

So, in the panel’s view the answer to the first question is “Yes” but within limits.

The second question is whether it is fair. That is a different matter.

It appears to the panel that since the “NFA” (No Further Action decision) of criminal offences there has been no attempt to gain further evidence other than that already provided in criminal justice proceedings. Therefore no attempt was made to improve on a NFA outcome. The panel asked itself *"What made the AA think that the case was strong enough for this hearing but not criminal justice proceedings*" apart from the lower standard of proof? There is no obvious answer to this as the case remained unchanged up to the point of the opening of these proceedings.

Since then, in the opinion of the panel, the AA have embarked on a prolonged attempt to build their case in real time, asking questions of the principal witness which go well beyond what is in her witness statement and apparently without any knowledge of what she is going to say in reply. Counsel for the AA says that this is not a deliberate fishing expedition to see whether she might be able to gain some information which is not otherwise available to her, but the panel disagrees. That is exactly what it is, and in our view it isn't fair. It is a fundamental principle of justice that a person being accused of something should know the case they have to meet and the evidence they have to respond to. It is not fair that they should find themselves having to answer allegations and evidence that emerges as the case against them goes along.

Counsel for the AA says that we should not worry too much that something unexpected might come out in the evidence which we should then ignore, but we disagree. This does not feel right or fair to the panel. How does that help us to reach a decision? It does not. It is entirely true that we have an inquisitorial function to some extent but that does not mean that we should step down from the top table or become detectives and that is what seems to us to be happening in this case. We agree with counsel for the officer that it is not right and it is not fair, just, reasonable or proportionate for this witness to be asked further questions in chief about aspects of the officer's r31 response or any other material that goes beyond her own statement in the bundle.

We have then gone on to carefully read HR's statement and most of the messages to see whether there is any material which could fairly be thought to be something about which further questions could be asked in chief without causing unfairness by expanding upon the case that is presented to us. We are unable to find anything and do not think it is right or fair that we should embark on a voyage of discovery. After very careful thought therefore and for all these reasons we are not going to permit the AA to ask any further questions of the witness Ms HR in chief.

We think that the fair way forward is to move to cross-examination straight away.

In the light of this decision the AA asked for a direction that the witness statement should stand as her evidence in chief. The panel had already assumed that it would but for the avoidance of doubt, this was confirmed.

Derek Marshall LLB MCIArb

LQC

College Chambers, Southampton

Supt. Emma Butler-Jones

Chris Kennedy 5 November 2025

APPENDIX C

Text of message sent by IO after speaking with the witness HR

Good afternoon,

I have spoken with HR via a Teams call. DR was with HR for support.

I apologised to HR for the delays, and advised her that there had been a morning of legal arguments, and that the panel had made a decision following those legal arguments that our counsel Kate Hampshire will not be asking her any further questions and that we would move to cross examination from PC X's barrister.

HR was extremely upset. She stated 'You're not allowing me to give my evidence, PC X's lawyer has caused these delays, and I'm not going to be cross examined if I am not allowed to give my evidence first. It feels corrupt. I'm not being given a voice. Every allowance has been made for PC X. No-one cares about my welfare. We are trapped in this room. It feels like the victim is being silenced, to give the accused a better run at this process. It feels corrupt and I'll get my own lawyer'

HR re-iterated that she will only be willing to be cross examined if she is first allowed to give her evidence to the AA counsel. She stated that she is willing to get her own lawyer if necessary and intimated they will take the matter to the press as they feel the process has been unfair, and weighted towards PC X.

She also raised that around 1 hour ago, they saw one of the panel members (not the chair, the male sat to his left) approach PC X and his welfare reps outside the hearing venue whilst he was on a walk. They felt this was evidence of a corrupt panel, and that the process is not being handled fairly.

HR became tearful. She stated that she would like the panel to explain to her why she is not allowed to give her evidence to the AA counsel.

Kind regards
Emily

APPENDIX D

Health and Care Professions Tribunal Service

PRACTICE NOTE

Abuse of process applications
This Practice Note has been issued for the guidance of Panels and to assist those appearing before them.

Introduction

1. The purpose of this Practice Note is to provide guidance on the approach to be taken when considering an application for a stay of proceedings on the grounds that there has been an abuse of process.
2. Abuse of process arguments are arguments that a case should not proceed (and should be stayed) because:
a. it is impossible for a Registrant to have a fair hearing and/or
b. continuing with the case would in all the circumstances offend the Panel's sense of justice and propriety or would undermine public confidence in regulation.
1
3. Abuse of process arguments can be made for a number of reasons and on multiple grounds. There is no definition or limitation on what circumstances may give rise to an abuse of process argument.
4. When an abuse of process argument is made, it is for the Registrant to show on the balance of probabilities that it is more likely than not that the proceedings should be stayed.
2

1 R v Maxwell [2011] 1 WLR 1837
2 Hamilton v Post Office [2021] EWCA Crim 577

1
August 20255. Whilst Panels do have jurisdiction to stay a case as an abuse of process, this should be an extremely rare course of action to take and there is a high bar to be met for any abuse argument to succeed. Panels should bear in mind that if a case is stayed as an abuse, this will mean that the allegations will never be fully considered or decided on.

Abuse of process on grounds that a fair hearing cannot be held

6. In considering an abuse of process argument on the basis that it is impossible for the Registrant to have a fair hearing, Panels should bear in mind that it is not enough for the Registrant to demonstrate that the factual circumstances which gave rise to the abuse have occurred. For example, it is not sufficient for the Registrant establish that there has been significant delay or that there is evidence which is missing without addressing the effect of those circumstances on their ability to have a fair hearing.
7. A Registrant must be able to demonstrate that as a result of those circumstances they have suffered such serious prejudice that it is now impossible for them to have a fair hearing. Panels considering any abuse argument on this ground will also need to carefully assess the actual level of any prejudice that has been suffered by a Registrant.
3

8. In most cases, any potential unfairness to a registrant arising from the factual circumstances which have given rise to the application can be adequately dealt with through case management and/or the usual hearing process. Panels can, for example, issue directions to ensure that there is effective case management in the future so that no further delays occur, or can issue directions for the disclosure of evidence. In addition to this, Panels routinely assess the impact of factors such as the passage of time when considering the evidence which is presented in the case.

9. Panels should only, therefore, stay a case in circumstances where the Registrant has established that they have suffered serious prejudice and in cases where there is nothing that can be done to mitigate or manage the prejudice that has been suffered by the Registrant. In most cases, even where there has been some prejudice to a Registrant, this will not mean that it is impossible for the Registrant to have a fair hearing.

Abuse of process on grounds that it offends the Panel's sense of justice or would undermine confidence in regulation4

3 R(Gibson) v GMC [2004] EWHC 2781

4 R v Maxwell, [2011] 1 WLR 1837, paragraph 108

2

August 202510. A Registrant may also argue that, irrespective of whether a fair hearing can take place, the proceedings should be stayed as to continue with them would be an affront to justice/bring regulation into disrepute, or, in other words, that even when a fair hearing could be possible it is, nonetheless, unfair for the case to continue at all.

11. It will be exceptional for any stay to be granted on this basis. In order for any such application to be made, the Registrant will need to demonstrate that there has been alleged bad faith, unlawfulness or executive manipulation by the HCPC through specific examples that are evidence based. A mere assertion that the HCPC has acted in bad faith or unlawfully without any specific examples and/or evidence will not be sufficient for this purpose.

12. When considering an application to stay a case on this basis, Panels will need to balance any issues raised by the Registrant with the public interest in allegations being heard and adjudicated upon. Panels considering an abuse of process argument should always be mindful of their overarching objective to protect the public (which includes the public interest) and when considering arguments of this kind, this should be at the forefront of the Panel's considerations.

Process for determining abuse of process applications

13. Abuse of process applications for a stay of proceedings should ordinarily be determined at a preliminary hearing unless the factual circumstances which give rise to the abuse argument arise in the course of the final hearing into the matter.

14. The Registrant will need to ensure that they provide the HCPC with full details of their application and should usually include a skeleton argument or written argument and any supporting evidence so that the HCPC has adequate time to consider and respond to the abuse argument. Once the HCPC is in receipt of the application the HCPC will then confirm that the matter should be listed for a preliminary hearing and the duration of that hearing. The HCPC will ensure that any response to the abuse of process argument is served no later than 7 days before the hearing.

15. If the circumstances which give rise to the abuse of process arise at the final hearing, Panels must ensure that the HCPC is afforded sufficient time to
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August 2025respond to any application. Due to the fact that abuse of process arguments can be made for a number of reasons and on multiple grounds, the Panel should also ensure that once both parties’ arguments have been received/ heard, sufficient time is afforded to the Legal Assessor to enable them to provide the Panel with the relevant legal advice