

IN THE MATTER OF GROSS MISCONDUCT PROCEEDINGS
UNDER THE POLICE (CONDUCT) REGULATIONS 2020
BETWEEN:

The Chief Constable of Devon and Cornwall Police

Appropriate Authority

And

Former Officer Hayley Jones

Officer Concerned

Decision document.

Introduction

1. The misconduct proceedings were heard in accordance with the Police (Conduct) Regulations 2020, as amended.

The AA was represented by Mr Mark Ley Morgan

Former officer Hayley Jones was represented by Mr Kelly Brocklehurst

APPROACH:

1. We are a panel considering allegations of gross misconduct against the above officer.
2. We have considered all the evidence. All panel members have read the bundle provided to us before the hearing. We have considered all documents to which we have been referred. We have also considered all the submissions made on behalf of each party. We have considered the further documents submitted during the hearing and the evidence of the witnesses called to give evidence in person.
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”).
- 5.1 The approach of the Panel as set out in the PCR is:
- a) To ascertain the facts, whether admitted or found proven.
 - b) To determine whether, based on those facts, the officers have breached the SPB alleged.
 - c) To decide whether any such breaches constitute Misconduct, Gross Misconduct or neither.
 - d) Dependent on the findings under b) and c), to decide on the outcome.

BURDEN AND STANDARD OF PROOF

- 6.1 The burden of proof is on the A.A.
- 6.2 The standard of proof is at S.9 Home Office Guidelines.p193.
- 6.3 The allegations are as set out in the Regulation 30 Notice contained within the bundle.

7.0 The allegations put by the AA are as follows:-

These allegations are from the AA's opening note and the Reg.30 notice which describes the allegations as put and identifies the matters withdrawn by the AA.

Alleged Facts.

7.1 You claimed for overtime or TOIL on the following dates when you knew that you were not entitled to do so:

- a. 30th September 2023.
- b. 1st October 2023.
- c. 27th October 2022.
- d. 29th October 2022.
- e. 6th November 2022.
- f. 7th November 2022.
- g. 8th November 2022
- h. 10th November 2022. (This matter was withdrawn by the AA)

7.2. On 10th October 2022 you used a Force vehicle for a personal journey when you knew that you should not do so.

8.0 Alleged Breaches of the Standards of Professional Behaviour. -

8.1 Honesty & Integrity

You have breached the Standard of Professional Behaviour concerning Honesty & Integrity because:

8.2 You claimed for overtime or TOIL on the following dates when you knew that you were not entitled to do so:

- a. 30th September 2023.
- b. 1st October 2023.
- c. 27th October 2022.
- d. 29th October 2022.
- e. 6th November 2022.
- f. 7th November 2022.

g. 8th November 2022

h. 10th November 2022. (This matter was withdrawn by the AA)

8.3. On 10th October 2022 you used a Force vehicle for a personal journey when you knew that you should not do so.

8.4 Alleged Breach – Discreditable Conduct

Your behaviour brings discredit upon the police service and undermines confidence in it because a reasonable member of the public would be concerned that a police officer had behaved dishonestly by:

- (a). Claiming overtime or TOIL that she was not entitled to claim for.
- (b) Using a police vehicle for a private journey.

8.5 It is alleged that your behaviour both singularly and collectively amounts to gross misconduct.

9.0 The AA provided the panel with an opening note for which the panel are grateful.

9.1 The evidence in this matter consists of the hearing bundle of 246 pages. Further pages were added to the bundle during the hearing which were also considered. Mr Ley Morgan in his opening note reminds the panel of the approach to be taken and an overview of the case which is helpful.

As has been stated above the panel have considered all the evidence both heard from the witnesses, the evidence within the bundle, and any further evidence submitted during the hearing.

In determining this case the Panel adopted the '4 stage approach': This includes that provided in the bundle and live evidence. It has also considered the former officer's working approach which included the use of books and folders which have not been located.

9.2 Stage 1 - Ascertain the facts on the balance of probabilities

In ascertaining the facts, the Panel considered the allegations as outlined in the notice under Regulation 30 and amended by three applications during the hearing

Allegation 1 - You claimed for overtime or TOIL on the following dates when you knew that you were not entitled to do so –

1.(a). 30th September 2023. - The Panel finds on the balance of probabilities the former officer did not work the 8 hours rest day overtime claimed on this day to undertake the tasks allocated. The tasks allocated and the method to complete them of using a word proforma on a force laptop are agreed facts. The Lawful Business Monitoring is clear the former officer was logged on to her laptop several times only between 11:51 and 15:52.

1.(b). 1st October 2023. - The Panel finds on the balance of probabilities the former officer did not work the 8 hours rest day overtime claimed on this day to undertake the tasks allocated. The tasks allocated and the method to complete them of using a word proforma on a force laptop are agreed facts. The Lawful Business Monitoring is clear the former officer did not log on to her laptop at all on 01 October 2023.

In respect of both allegation 1. (a) and 1. (b) the tasks allocated to be completed within 16 hours of rest day overtime were the completion of four ARMS assessments in respect of four offenders normally managed by a colleague who was absent. These offenders were visited by the former officer on 26/27/28 September 2023. The panel found evidence that despite the officer suggesting three of the assessments were completed and the fourth started during the

overtime hours, none were submitted as complete to be uploaded as was clearly the expectation to keep the public safe. The former officer suggested it was her intention to submit the group once complete. The evidence shows they were submitted at different times over a two-day period once the former officer returned from annual leave and within her usual duty hours on 10/11 October 2023.

The panel finds this supports the AA's allegation they were not completed as the former officer suggests during the claimed rest day overtime hours.

1.(c). 27th October 2022. - The Panel finds on the balance of probabilities the AA has not proven these hours were not worked as claimed. The Panel relies upon the fact that the officer made one very short phone call from her work phone during the hours claimed.

1.(d). 29th October 2022. - The Panel finds on the balance of probabilities the former officer did not work the 5 rest day overtime hours claimed on this day. The tasks the overtime were given to complete were not recalled with clarity. There was no laptop use during these hours and the former officer's explanation that she would have been working on printed material if not using her laptop her suggestion that she relied on material that she had printed was not supported by print records which showed she had printed two pages between 20/10/2022 and 07/11/2022.

1.(e). 6th November 2022. - The Panel finds on the balance of probabilities the former officer did not work the 4 rest day overtime hours claimed on this day. The tasks the overtime were given to complete were not recalled with clarity. There was no laptop use during these hours and the former officer's explanation that she would have been working on printed

material if not using her laptop was not supported by print records which showed she had printed only two pages between 20/10/2022 and 07/11/2022.

1.(f). 7th November 2022. - The Panel finds on the balance of probabilities the former officer did not work the 3 hours claimed on this day between 1700 and 2000. The Lawful Business Monitoring shows the former officer logged off her laptop at 1502 for the day. Whilst there is an acceptance that work in preparation for the next day's tasks may have been completed without needing access to everything held on the system the Panel did not find it credible that this amounted to 5 hours work.

1.(g). 8th November 2022. - The Panel finds on the balance of probabilities the AA has not proven these hours were not worked as claimed. The Panel relies upon the fact that the officer was preparing and conducting an interview and whilst there is a degree of uncertainty as to what she was doing, it is not proven she was not working.

2. 10th October 2022 you used a Force vehicle for a personal journey when you knew that you should not do so. –

The Panel finds, on the balance of probabilities, that the former officer did use the vehicle for a personal journey and knew she should not do so. The former officer admitted leaving Crownhill Police Station in the vehicle at 0724 and heading to her home address to collect a parcel which she spent 30 minutes dropping at the Post Office. She then collected a colleague with whom she had planned visits that day. Having spent 40 minutes in the colleague's home address, they travelled to a garden centre for breakfast, staying there 40 minutes before heading to Plymouth to conduct their first visit at 0957. The Panel makes no adverse decision on the former officer or her colleague taking a meal break and having this early in their shift.

It does however find the former officer took a vehicle from Crownhill Police station far earlier than it was needed for their duties and used it for a personal journey, and errand which she had been clearly reminded was not acceptable in a message from supervisors to the whole team earlier in 2022.

10.0 Stage 2 - Decide whether, on the facts found proved, the officer's conduct has breached the Standards of Professional Behaviour ("SPB")

10.1 Alleged Breach - Honesty & Integrity

It's alleged you have breached the Standard of Professional Behaviour concerning Honesty & Integrity because:

You claimed for overtime or TOIL on the following dates when you knew that you were not entitled to do so

The Panel have found proved the facts in respect of five of the occasions on which you claimed overtime or TOIL. The Panel therefore finds that the Appropriate Authority has proved on the balance of probability that you have breached the standards of professional behaviour in respect of honesty and integrity.

10.2 Alleged Breach – Discreditable Conduct

It's alleged your behaviour brings discredit upon the police service and undermines confidence in it because a reasonable member of the public would be concerned that a police officer had behaved dishonestly by:

- (a). Claiming overtime or TOIL that she was not entitled to claim for.
- (b). Using a police vehicle for a private journey.

The Panel have found the facts in respect of five of the occasions on which you claimed overtime or TOIL and that you used a police vehicle for a private journey proved. As such the Panel finds the Appropriate Authority has proven on the balance of probability that you have breached the standards of professional behaviour in respect of discreditable conduct.

The Panel finds the breach of the above standards individually and collectively are so serious to be Gross Misconduct, and that if the officer were still serving in the police force, dismissal would be considered.

11.0 OUTCOME

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

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

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

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

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

b) keeping in mind the purpose of imposing disciplinary action; and
c) choosing the disciplinary action which most appropriately fulfils that purpose for the seriousness of the conduct in question so that we act proportionately.

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

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

12.0 Culpability

12.1 This refers to the degree of blameworthiness. The former officer was solely responsible for her actions, she made deliberate choices in the actions she undertook. She was subject to a code of ethics and standards of professional conduct to which she must adhere and not ignore.

The Panel finds culpability high, former PC Jones was an experienced officer and the expectations on her were clearly set out by her supervisors.

Harm

12.2 Of the "types" of harm categorised at Para 4.64 of the COP guidelines The relevant ones are :-

Harm to the public – the panel finds the public hold the police in high regard and expect them to be honest and not make false claims on public funds.

The further aspect of harm caused in this case is that of the **reputational harm** to Devon and Cornwall Police. The panel find the former officer's conduct would affect the reputation of the police service and those who serve within it. The present case cannot be considered in isolation from increasing public awareness of disciplinary issues within the police service, and consequently the reputational harm to any police force within which a former officer is found to have breached the SPB will inevitably be serious and damaging

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

12.4 From the observations above, the panel are clear that the actions of the officer have caused a risk or potential risk of serious and enduring harm to the reputation of the police service.

13.0 Aggravating factors:

13.1 The panel has kept in mind that though there have been two heads of professional behaviour that have been breached, we are concerned with a course of conduct that took place over a short period of time. There will be no double counting in our assessment of harm and application of the principles dictating the outcome.

13.2 The panel do find aggravating features in this case beyond those features of the incident that have already been dealt with above.

Para 4.76 of the COP guidelines.

- (a) There was premeditation.
- (b) The former officer continued the behaviour after the officer realised or ought to have realised the behaviour was improper.
- (c) There was a significant deviation from instructions, there was national guidance with evidence contained in the bundle dealing with the use of police vehicles. The officer knew the rules surrounding overtime claims and it seems ignored them to advantage herself.
- (d) Whilst we do not double count there are multiple proved allegations and breaches of the standards of professional behaviour.
- (e) The aggravating feature in the guidance is not an exhaustive list. The panel noted that the officer did not appear to show insight into the gravity of her misconduct that the panel found proved.

14.0 Mitigating factors:

14.1 The panel finds no mitigation in respect of the circumstances of the breaches.

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

- (a) Personal mitigation was also considered, and the panel noted the evidence of the character witnesses including Tracey Webb and the officers service to the community of over 20 years.

14.3 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 *Ziderman v General Dental Council* [1976] 2 All ER 334 at p.336: 72

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

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

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.

14.5 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.”

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

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

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

15.0 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).

15.1 The Panel went on to consider all of the available outcomes, which in the case of a former officer are limited.

16.0 The Panel concludes in this case disciplinary action would be appropriate and if serving this officer would have been dismissed.

CHAIR

Assistant Chief Officer Alexis Poole

INDEPENDANT PANEL MEMBER

David Senior

INDEPENDENT PANEL MEMBER

Mike Marshall

LEGALLY QUALIFIED ADVISOR

James Rickard
