BEFORE THE POLICE APPEALS TRIBUNAL
IN THE MATTER OF THE POLICE ACT 1996
IN THE MATTER OF THE POLICE APPEALS TRIBUNAL RULES 2020
AND IN THE MATTER OF FORMER PC BONNIE MURPHY

BETWEEN

FORMER PC BONNIE MURPHY

APPELLANT

(Represented by Miss Eva Niculiu)

AND

THE COMMISSIONER OF POLICE OF THE METROPOLIS

RESPONDENT

(Represented by Mr Stephen Morley)

Hearing Date: 25 October 2023

RULE 22 DETERMINATION

Background

1. Between 25 and 27 January 2023, the appellant attended a misconduct hearing convened pursuant to the **Police (Conduct) Regulations 2020**. At the conclusion of the hearing the misconduct panel [“The Panel”] found the appellant had breached the standards of professional behavior [“SPB”], namely honesty and integrity, authority, respect and courtesy, duties and responsibilities, and discreditable conduct. The Panel determined that such conduct, amounted to gross misconduct and the appellant was dismissed from the police service.

The Allegations

2. The allegations admitted or proven (relevant to this appeal) were as follows –

Allegation 1

On 27 January 2020, without a policing purpose, the appellant asked PC Jamie Lewis to send her a photograph of a decomposed corpse (which he did), thereby breaching the standards of -

(a) Honesty and Integrity (**proven – integrity**);

(b) Authority Respect and Courtesy **(admitted**);

(c) Duties and Responsibilities (**admitted**); and

(d) Discreditable Conduct (**admitted**).

Allegation 2

On 23 June 2020, whilst reporting to PS Victoria Coughlan that PC Lewis had sent her the photograph above, the appellant led PS Coughlan to believe that PC Lewis had sent her the photograph unsolicited, thereby giving a dishonest account, and breaching the standard of –

a) Honesty and Integrity **(proven).**

Allegation 3

On 25 March 2020, PC Lewis sent the appellant his marked answer sheet to the police 'basic driver' exam which potentially gave her an advantage in her own exam due to be taken the next day, and the appellant encouraged him to send it to her, thereby breaching the standards of –

(a) Honesty and Integrity **(admitted – integrity);**

(b) Challenging and Reporting Improper Conduct **(admitted);** and/or

(c) Discreditable Conduct **(admitted)**.

Allegation 4

On 26 March 2020 the appellant took her police basic driver's exam and cheated by (a) using the material sent to her by PC Lewis, thereby breaching the standards of –

(a) Honesty and Integrity **(proven);** and

(b) Discreditable Conduct **(proven).**

AND by using 'Google' during the exam, thereby breaching the standards of –

(a) Honesty and Integrity **(proven);** and

(b) Discreditable Conduct **(proven)**.

Summary of the Misconduct Proceedings

3. Between 25-27 January 2023, The Panel heard live evidence from the (now) Inspector Coughlin and the appellant. Additionally, The Panel considered the Misconduct Bundle comprising 453 pages of evidence including a psychological report and two addendum reports from Dr Lyle, a chartered psychologist.

4. The appellant's mental conditions and personality traits were diagnosed by Dr Lyle as follows -

(1) Attention Deficit Hyperactivity Disorder ('ADHD');
(2) High-functioning Autistic Spectrum Disorder (Asperger's); and

(3) Suggestibility in the top 2% of the population, statistically 'rare'.

5. At the relevant times, none of the conditions were diagnosed, or medicated, and only realised when Dr. Lyle was instructed for the purposes of the appellant's defence in the misconduct proceedings. In the unchallenged opinion of Dr Lyle, these conditions likely affected the appellant's (i) actions, (ii) perception, (iii) understanding, and (iv) judgment at the relevant times, in a number of ways, including:

   a. "A key feature of ADHD is doing things impulsively, without properly thinking through the implications and consequences of a particular action." (Bundle p. 427);

   b. "Really high levels of anxiety" (Bundle p. 427) particularly in response to exams;

   c. Inability to put herself in the place of others (Bundle p. 427);

   d. Inability to 'read' non-verbal signals and intentions of others, and social interaction norms (Bundle p. 427);

   e. "Might have led PC Murphy to misconstrue how another person might have regarded her actions, particularly perhaps when a more senior colleague seemed to be indicating that it was all right to act in these ways"; (Bundle p. 427); "some genuine deficiencies in perceiving how her actions might be interpreted by others" (Bundle p. 429); and

f. "An extremely high level of susceptibility to being influenced by others"; (Bundle p. 428); "The high score on Suggestibility could be expected to result in her being respectful of, and deferential to, the views of those with greater experience or authority, in this instance, PC John [sic] Lewis." (Bundle p. 429).

6. Dr. Lyle commented in his third report (Bundle p. 442) that Pc Lewis "may" have established a sense of trust and a degree of psychological dominance over the appellant, which made it "highly likely" that she would take her cue from him or go along with his suggestions or offers.

7. In its Determination, The Panel commented upon Dr Lyle's reports at paragraph 6 of the Notice of Outcome, inter alia -

"…Dr Lyle does not say that PCM lacks mental capacity…or that she struggles with the concept of right and wrong. He does not diagnose a cognitive or learning disability…ASD and ADHD are, it is commonly accepted, disorders of social communication and understanding / interaction…she may struggle to remember and articulate her thought processes at the time of the incidents…"

8. In commenting specifically upon the appellant receiving the photograph, The Panel noted at paragraph 15a –

"We come to the submission that PC Murphy may not have realised that asking for the photograph was wrong and that although she might have

cognitively understood her training, she was unable to put herself in the place of others to actually understand. It was also said by Dr Lyle that it might not have occurred to her at the time it was wrong because she has deficiencies in understanding what is socially appropriate. With due respect to Dr Lyle, we cannot agree with the subtext of this submission which is in effect that PC Murphy did not know right from wrong. PC Murphy had training on the Code of Ethics, the responsibility that comes with being a police officer and the power that brings."

9. And at paragraph 15b –

"The context of the reference to DPS, whilst said to be a joke, in our view was meant to, and did, alert Pc Murphy to the fact that Pc Lewis knew what he was doing was wrong and breached the standards and that she was too…we do not accept the argument that her knowledge of what is socially appropriate might lead her to not think this is wrong. She may not be able to put herself always in the place of others, but this was her request for the photograph…"

10. The Panel made the following observations at paragraph 27 when considering the appellant's impulsivity in relation to exam stress and anxiety –

"…we had no evidence of and were given no examples of any impact this had on her wider ability to perform the role of police officer…Her references speak of her calm and dependable nature but not of any impulsive reactions to the inevitable stress of the job. We conclude that

she is able in the main to compartmentalise her symptoms. In other words, her diagnosis has not impacted on any other area of her work save these allegations of breaches of the standards."

11. The Panel cited at paragraph 30 in its "Overarching findings" -

*"**The references, with two exceptions, make no reference to her neurodiversity and we accept that ASD and ADHD can be wholly hidden disabilities. However there is disconnect between the submission that she can sometimes experience such high anxiety that she lacks insight and can become impulsive with the weight of the references which speak of her calm nature in the face of extreme stress. It is hard to square that circle. Being a police officer is perhaps one of the most stressful jobs around. It would not be surprising if the claimed level of severity of her symptoms had not leaked into aspects of her work to be observed by others. That it has not, according to the references we find the reasoning for her actions, in effect the impact of her conditions, to be inconsistent."***

12. Having heard from Inspector Coughlin and the appellant, and having considered Dr. Lyle's three reports, The Panel determined that cumulatively allegations 1 & 2 amounted to gross misconduct as did cumulatively allegations 3 & 4. The appellant was dismissed from the police service. The Panel opined, inter alia at page 14 of the Notice of Outcome –

"…we are satisfied that this dishonest behavior and errors of judgment is a failure to uphold the highest standards the MPS strives to maintain. It is a

series of events that show her conduct over a period of time fell below the high standards the MPS rightly demand of their officers, and we are satisfied that in the circusmtances the only proportionate response and outcome which meets all three aspects of the misconduct regime's purpose is dismissal without notice."

<u>The Grounds of Appeal</u>

13. Pursuant to **Rule 4 of the Police Appeals Tribunal Rules 2020**, the appellant appeals on all three prescribed grounds as follows –

- The findings of gross misconduct and/or the disciplinary outcome imposed were unreasonable – **Rule 4(4)(a)**;

- There is evidence that could not reasonably have been considered at the original hearing which could have materially affected the finding or decision on disciplinary action – **Rule 4(4)(b)**; and

- There was a breach of the procedures set out in the **Conduct Regulations, Complaints and Misconduct Regulations or Schedule 3 or Part 2 of the 2002 Act**, or unfairness which could have materially affected the finding or decision on disciplinary action **- Rule 4(4)(c)**

14. The following arguments are made pursuant to **Rule 4(4)(a) and/or Rule 4(4)(c) –**

1) The Panel unreasonably and unfairly rejected the appellant's case that

at the relevant time she was under the negative influence of Pc Lewis;

2) The Panel made findings inconsistent with the evidence of Dr. Lyle, a jointly instructed expert witness who unreasonably and unfairly was not required to give oral evidence by The Panel;

3) The Panel unreasonably and unfairly found allegation two proven, by finding Inspector Coughlan's recollection of a conversation on 23 June 2020 reliable; and by finding the appellant had been deliberately untruthful in her account;

4) The Panel unreasonably and unfairly found allegation 4(a) proven, where the answer sheet provided the appellant with no advantage in her exam;

5) The Panel unreasonably and unfairly found in allegation 4(b), the appellant had been 'dishonest' in using Google to look up the meaning of a question in her exam;

6) The Panel unreasonably and unfairly made errors of reasoning and evidential analysis in assessing the seriousness of the conduct;

7) The Panel unreasonably and unfairly made cumulative findings of gross misconduct; and

8) Alternatively, if the conduct was properly characterised as gross misconduct, The Panel unreasonably and unfairly determined dismissal

was appropriate.

15. In relation to the appellant's application to admit new evidence under **Rule 4(4)(b)** and as referenced at paragraphs 73 & 74 of the appellant's grounds of appeal, the appellant seeks to introduce her witness statement dated 7 April 2023 (appendix 7 of the appeal bundle) and photographs of a time when she was handcuffed rear back-to-back on the ground by Pc Jamie Lewis. One of the photographs showing Pc Lewis kneeling beside her.

16. Additionally, the appellant seeks to admit (from the addendum grounds of appeal), two witness statements from Pc Ikponmwosa Aigbe, the first dated 14 April 2023 (appendix 8 of the appeal bundle) and the second dated 19 October 2023 (admitted today). Pc Aigbe was present at the scene of the incident. He challenged the incident and released the appellant from the handcuffs.

17. The appellant wishes to argue that she had forgotten about these photographs at the time of the original hearing; the appellant's poor memory being an accepted feature of her diagnosed neurodiversity. The appellant will aver these photographs support her assertion that she was under the negative influence of Pc Lewis at the relevant time; as such, the additional evidence could materially have affected The Panel's original decision on the finding or decision on disciplinary action.

Response to the Appeal

18. The Respondent argues the decision of The Panel to find gross misconduct

and thereafter to dismiss the appellant was fair and reasonable. The Panel took into account all relevant matters and did not rely upon anything irrelevant or inappropriate. The Panel did not fall into error.

19. In relation to the appellant's arguments listed 1-8 at paragraph 12 above, and made under **Rule 4(4)(a) and/or Rule 4(4)(c),** the respondent predicates –

1) It was reasonably open to The Panel to reject the appellant's account of being under the negative influence of Pc Lewis and is irrelevant as the appellant was chasing Pc Lewis, asking him to send her material;

2) The Panel's findings do not conflict with the expert evidence of Dr. Lyle and they did not find against him. His opinion was based upon what the appellant told him and his opinions were not definitive. The terms referenced in Dr. Lyle's reports were 'may' and 'likely' and it was for The Panel to determine whether or not they agreed with him;

3) The Panel were well placed to make a finding that the appellant was deliberately untruthful in her account provided to the now Inspector Coughlan and the appellant fails to identify a reason as to why The Panel's decision is unreasonable. The appellant is simply dissatisfied with the finding;

4) In relation to allegation 4(a) - The appellant used Pc Lewis's answer sheet as part of her preparation for the exam and if she had exactly the

same exam, she would have received an advantage. This was cheating before the exam and during the exam;

5) In relation to allegation 4(b), The Panel made a reasonable finding and the only issue to determine was whether the appellant's conduct showed a lack of integrity or was dishonest. There is little distinction between using Google to understand what a question means and using Google to obtain the answer. Both are cheating. The appellant thought her actions were funny as evidenced by her text to Pc Lewis after the event, citing "LOL";

6) The Panel took proper account of aggravating and mitigating features when assessing seriousness. Further, the 'team culture' submission in relation to receiving the photograph and cheating is poor. The appellant knew her actions were wrong.

7) The breaches of the SPB were serious and The Panel acted reasonably when determining that cumulatively allegations 1 & 2 amounted to gross misconduct and likewise allegations 3 & 4.

8) Dismissal was appropriate and within the range of reasonable outcomes available to The Panel. There were multiple acts demonstrating a lack of integrity and/or dishonesty and as such it cannot reasonably be argued that The Panel's decision to dismiss the Appellant is unreasonable.

20. In response to the appellant's application to admit new evidence into the proceedings, the respondent will argue –

- After the initial offer of the photograph and exam material by Pc Lewis, the appellant set about chasing Pc Lewis for the items, therefore, rendering the negative influence argument immaterial;

- Horseplay between new recruits was irrelevant to the issues The Panel had to determine and was therefore, not challenged by the respondent;

- The 'new evidence' submitted could have reasonably been obtained at the time of the original hearing and it could not have materially affected The Panel's findings because it was immaterial to the issues;

- The character evidence submitted by the appellant and relied upon by The Panel to distinguish Dr Lyle's conclusions, painted a rather different picture of the appellant;

- The appellant made no allegations against Pc Lewis in her first or second written response or her first Regulation 31 Response;

- There was 'scant' evidence of the appellant being under the negative influence of Pc Lewis; and

- The ground of appeal fails to recognise that Pc Lewis was not involved in a) the appellant's decision to use Google during an exam and b) the conversation between the appellant and Pc Coughlan.

The Law on Appeal

21. The misconduct hearing was held pursuant to **The Police (Conduct) Regulations 2020.** The appeal is made pursuant to **The Police Appeals Tribunal Rules 2020 ["The PAT Rules"].**

22. The PAT Rules state -

"Circumstances in which a police officer may appeal to a tribunal – Conduct Regulations

4.—(1) Subject to paragraph (3), a police officer to whom paragraph (2) applies may appeal to a tribunal in reliance on one or more of the grounds of appeal referred to in paragraph (4) against one or both of the following—

(a) a finding referred to in paragraph (2)(a), (b) or (c) made under the Conduct Regulations;

(b) any decision to impose disciplinary action under the Conduct Regulations in consequence of that finding.

(2) This paragraph applies to—

(a) an officer other than a senior officer against whom a finding of misconduct or gross misconduct has been made at a misconduct hearing;

(b) a senior officer against whom a finding of misconduct or gross misconduct has been made at a misconduct meeting or a misconduct hearing, or

(c) an officer against whom a finding of gross misconduct has been made at an accelerated misconduct hearing.

(3) A police officer may not appeal to a tribunal against a finding referred to in paragraph (2)(a), (b) or (c) where that finding was made following acceptance by the officer that the officer's conduct amounted to misconduct or gross misconduct (as the case may be).

(4) The grounds of appeal under this rule are—

(a) that the finding or decision to impose disciplinary action was unreasonable;

(b) that there is evidence that could not reasonably have been considered at the original hearing which could have materially affected the finding or decision on disciplinary action, or

(c) that there was a breach of the procedures set out in the Conduct Regulations, the Complaints and Misconduct Regulations or Part 2 of the 2002 Act or unfairness which could have materially affected the finding or decision on disciplinary action."

23. **Section 85 of the Police Act 1996** allows a Police Appeals Tribunal on the determination of an appeal, to make an order dealing with the appellant in any way in which he could have been dealt with by the person who made the decision appealed against. Alternatively, a Police Appeals Tribunal *can* remit a case back to a Miconduct Panel under **Rule 22(7) of the PAT Rules** if it decides the appeal is made out under Rules 4(4)(b) or (c).

24. **Paragraph 4.1 of Annex C to the Home Office Guidance** (Police Officer Misconduct, Unsatisfactory Performance and Atttendance Management Procedures) states –

"A Police Appeals Tribunal is not a re-hearing of the original matter; rather its role is to consider an appeal based on specific grounds".

The Gate-Keeper's Role – Rule 15

25. Before an appeal can proceed to a full hearing the **PAT Rules** state -

"**Review of appeal**

15.—(1) Upon receipt of the documents mentioned in rule 13(5) and (9), the chair must determine whether the appeal, or one or more grounds of appeal, must be dismissed under paragraph (2).

(2) An appeal, or a ground of appeal, must be dismissed under this paragraph if the chair considers that the appeal, or ground of appeal, has no real prospect of success, unless the

chair considers there is some compelling reason why the appeal, or, as the case may be, ground of appeal, should proceed.

(3) If the chair proposes to dismiss the appeal, or ground of appeal, under paragraph (2), the chair must give the appellant and the respondent notice in writing of the chair's view together with the reasons for that view before making a determination.

(4) The appellant and the respondent may make written representations in response to the chair before the end of 10 working days beginning with the first working day after the day of receipt of that notification; and the chair must consider any such representations before making a determination.

(5) The chair must give the appellant, the respondent and the relevant person notice in writing of the determination.

(6) Where the chair determines that the appeal, or ground of appeal, must be dismissed under paragraph (2)—

(a) the notification under paragraph (5) must include the reasons for the determination, and

(b) the appeal, or, as the case may be, ground of appeal, must be dismissed."

The meaning of "no real prospect of success"

26. Guidance on the above test is found in the case law concerning summary judgment in civil cases.

27. In **Swain v Hillman [2001] 1 ALL ER 91** Lord Woolf said:-

"…The words "no real prospect of being successful or succeeding" do not need any amplification, they speak for themselves. The word "real" distinguishes fanciful prospects of success or, as Mr Bidder submits, they direct the court to the need to see whether there is a "realistic" as opposed to a "fanciful" prospect of success…Useful though the power is…it is important that it is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at

the trial".

28. In **Three Rivers DC v Bank of England (No 3) [2001] UKHL 16** Lord Hope of Craighead quoted Lord Woolf and then said:-

"…I think that the question is whether the claim has no real prospect of succeeding at trial and that it has to be answered having regard to the overriding objective of dealing with the case justly. But the point which is of crucial importance lies in the answer to the further question that then needs to be asked, which is – what is to be the scope of that inquiry? I would approach that further question in this way. The method by which issues of fact are tried in our courts is well settled. After the normal processes of discovery and interrogatories have been completed, the parties are allowed to lead their evidence so that the trial judge can determine where the truth lies in the light of that evidence. To that rule there are some well-recognised exceptions. For example, it may be clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks. In that event a trial of the facts would be a waste of time and money, and it is proper that the action should be taken out of court as soon as possible. In other cases it may be possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance. It may be clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based. The simpler the case the easier it is likely to be to take that view and resort to what is properly called summary judgment. But more complex cases are unlikely to be capable of being resolved in that way without conducting a mini-trial on the

documents without discovery and without oral evidence. As Lord Woolf said in Swain v Hillman, at p 95 – "that is not the object of the rule. It is designed to deal with cases that are not fit for trial at all."

The meaning of no other compelling reason to allow the appeal

29. The emphasis is on the word "compelling". Its inclusion is significant. If there are no real prospects of the appeal succeeding, there must be a compelling reason (and not just some reason) to nonetheless permit the appeal to proceed at public expense and inconvenience.

Approach to be adopted

30. The function and approach to be adopted when considering an appeal has been clarified by case law. The function differs depending on which of the three grounds set out in Rule 4(4) is relied upon.

31. In **R (On the application of the Chief Constable of Hampshire) v Police Appeals Tribunal and Adam McClean [2012] EWHC 746 (Admin) Mitting J** said:-

"It is common ground that the ground of appeal under rule 4(4)(a) gives rise to a right of review only: the task of the Tribunal is to determine whether a finding of gross misconduct or as to the sanction imposed was reasonable or unreasonable. The Tribunal must dismiss an appeal on that ground if satisfied that the finding of gross misconduct and/or the sanction imposed were reasonably open to a reasonable panel – the test is a Wednesbury test shorn of technicality. The ground of appeal under rule

4(4)(b) involves a primary judgment which it is for the Tribunal to make: could the evidence have materially affected the finding or sanction?...the power of the Tribunal under rule 4(4)(c) is…whether the Conduct Regulations were breached and, if not, whether there was other unfairness; and in each case whether the breach or unfairness could have materially affected the finding or sanction.

<u>The meaning of "unreasonable" pursuant to Rule 4(4)(a)</u>

32. In determining the meaning of "unreasonable" pursuant to Rule 4(4)(a) Beatson J in **R (Chief Constable of the Derbyshire Constabulary) v Police Appeals Tribunal [2012]** expressed the view that **the issue of whether a finding or sanction was unreasonable should be determined by asking the question whether the panel in question had made a finding or imposed a sanction which was within the range of reasonable findings or sanctions upon the material before it.** In other words, was the finding or sanction imposed within a range of reasonable responses.

33. In furtherance of the above and in determining whether or not a finding or sanction is to be categorised as unreasonable it is now well established that the appropriate test to be applied is not a strict *Wednesbury* test but is something less. Or in other words it is something wider than the *Wednesbury* test. Moses LJ in **R (The Chief Constable of Durham) v Police Appeals Tribunal [2012]** confirmed that the Police Appeals Tribunal is not entitled to substitute its own view for that of the misconduct panel, unless and until it has reached the view that the finding or sanction imposed was unreasonable. Nor must the Police Appeals Tribunal substitute its own approach unless it has found that

the previous decision was unreasonable. Moses LJ said –

"…It is commonplace to observe that different and opposing conclusions can each be reasonable. The different views as to approach and as to the weight to be given to the facts may all of them be reasonable, and different views may be taken as to the relevance of different sets of facts, all of which may be reasonable. The Police Appeals Tribunal is only allowed and permitted to substitute its own views once it has concluded either that the approach was unreasonable, or that the conclusions of fact were unreasonable…"

34. In **R (On the application of Chief Constable of Wiltshire) v Police Appeals Tribunal & Woollard [2012] EWHC 3288 (Admin) Wyn Williams J** considered a number of cases where the court had grappled with the meaning of the term "unreasonable" in Rule 4(4)(a). Wyn Williams J confirmed that the correct approach and the one to be followed was as stated by Beatson J in the **Derbyshire** case and Moses LJ and Hickinbottom J in the **Durham** case.

<u>The legal principles in relation to new evidence pursuant to Rule 4(4)(b)</u>

35. If new evidence is admitted the three-stage test under **Ladd v Marshall [1954] 1 WLR 1489 at p1491** must be met:

i. It must be shown that the evidence could not have been obtained with reasonable diligence;

ii. If given, it would probably have had an important influence on the result of the case; and

iii. It is apparently credible although not incontrovertible.

36. Therefore, where evidence could have been secured without difficulty it would not fall within this sub-section because it would have been evidence which could reasonably have been considered. It is not sufficient to say that, simply because it was not there, it could not have been reasonably considered. It is a question of fact as to whether the evidence in question was reasonably available.

37. The issue was revisited in **R (O Connor) v PAT (2018) EWHC 190** where **HHJ Saffman** commented at **Para 174 & 175** that The PAT should not be constrained by the wording in **Ladd v Marshall**, noting the civil courts had relaxed its approach to the question, to take into account the overriding objective of dealing with cases justly. Whilst still recognising the principles in **Ladd v Marshall,** The PAT should not apply a straight-jacket approach.

38. Failures to adduce evidence by a person's legal advisers or representatives will not establish unfairness.

<u>The legal principles in relation to unfairness pursuant to Rule 4(4)(c)</u>

39. Unfairness in this context means unfairness to the individual police officer which results from something which is done or not done, either by The Panel Tribunal or by the Chief Constable, or those representing him, who bring the charges against him. Such failures can produce unfairness within the meaning of Rule 4(4)(c). It is perfectly clear from the terms of this Rule, since it is a ground of appeal, that other unfairness must mean unfairness to the individual police officer concerned.

Credibility

40. In **Langsam v Beachcroft LLP [2012] EWCA Civ 1230** the Court of Appeal stated:-

"**It is well established that, where a finding turns on the judge's assessment of the credibility of a witness, an appellate court will take into account that the judge had the advantage of seeing the witnesses give their oral evidence, which is not available to the appellate court. It is, therefore, rare for an appellate court to overturn a judge's findings as to a person's credibility. Likewise, where any finding involves an evaluation of facts, an appellate court must take into account that the judge has reached a multi-factorial judgment, which takes into account his assessment of many factors. The correctness of the evaluation is not undermined, for instance, by challenging the weight the judge has given to elements in the evaluation unless it is shown that the judge was clearly wrong and reached a conclusion which on the evidence he was not entitled to reach".**

Sanction

41. The task for the Tribunal when considering sanction imposed is to determine whether The Panel's view of the allegations was a reasonable one and whether The Panel's sanction constituted a reasonable response. In other words, was the sanction imposed within a range of reasonable responses?

42. When reaching a decision on disciplinary sanction, a Panel must not only

follow a structured approach to its decision making but show that it has done so: see **Roscoe (HHJ Pelling QC, 13 November 2018).**

43. The Panel must follow the correct approach as outlined in the **College of Policing's Guidance on Outcomes in Police Misconduct Proceedings ("the COP Guidance")** and derived from **Fulgers LLP v SRA [2014] EWHC 179 (Admin) per Popplewell J at [28] by taking the three-stage approach, namely**

i) First, assess the seriousness of the misconduct;

ii) Second, keep in mind the purpose for which sanctions are imposed; and

iii) Third, choose the sanction which most appropriately fulfils that purpose in light of the seriousness of the conduct.

44. This approach requires The Panel to have regard to the purpose of the misconduct proceedings when deciding on disciplinary action, including the maintenance of public confidence in the profession.

45. In **R (Green) v Police Complaints Authority [2004] UKHL 6** Lord Carswell said:-

"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 policy. 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"

46. Also relevant to this point is the case-law dealing with the weight to be given to personal mitigation. In short, the case-law confirms that while personal

mitigation may be relevant, the protection of the public and the interests of the profession will be given greater weight because of the nature and purpose of disciplinary proceedings, particularly where serious misconduct has been proven.

47. In **Salter v Chief Constable of Dorset Police [2012] EWCZ Civ 2010** Maurice Kay LJ said:-

"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…".

48. In **Darren Williams v Police Appeals Tribunal [2016] EWHC 2708** the court stated the following:-

"…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". The Court emphasised that this did not mean that personal mitigation is to be ignored **"….. on the contrary, it must always be taken into account".** However, the weight to be attached to such personal mitigation must always be fact specific and, given the strong public interest in the maintenance of respect and confidence in the police, it was right that personal mitigation should be afforded less weight than these other points.

49. The court went on **"…the purpose of the sanction is not primarily punitive and often not punitive at all: the purpose is to maintain public confidence in and respect for the police service…Personal mitigation which may provide a ground for reducing the punishment which would otherwise be imposed for a criminal offence cannot therefore have the same effect in disciplinary proceedings which have a different, and wholly or largely non-punitive, purpose. The second is that in criminal proceedings, a defendant's personal mitigation may enable him to distinguish himself from others convicted of similar offences, and so to demonstrate that the normal punishment for his offence would be unduly severe in his case. In contrast, a defaulting police officer or professional person will usually be able to adduce evidence of good character and to point to very severe consequences if dismissed or excluded from his or her profession".**

50. But it is not the case that personal mitigation will be ignored. In cases where it is not suggested that nothing less than dismissal is considered appropriate, there is also a public interest in keeping on officers who possess skills and experience: **Giele v General Medical Council [2005] EWHC 2143 (Admin) at [30].** Or in other words there is a sliding scale as to the weight carried by personal mitigation: the more serious the misconduct, the greater the weight given to the interests of the profession, and the protection of the public **(confirmed in Williams at [67]).**

51. The obvious message from the above cases is that dismissal is almost inevitable where the dishonesty undermines trust and confidence in the profession concerned, whether that dishonesty arises on an operational basis or on some other basis.

<u>Determination</u>

52. In a Rule 15 Determination dated 12 June 2023, it was suggested this Tribunal should first consider the appellant's application to admit new evidence under **Rule 4(4)(b) of The PAT Rules -**

> **"If new evidence is admitted under Rule 4(4)(b) the PAT can review the decision of The Panel, and potentially substitute its own conclusions on findings of fact and/or disciplinary outcome. Alternatively and perhaps more likely, it can remit the matter to a newly constituted Panel."**

53. The appellant and respondent were invited to make representations on the

above. No representations were forthcoming and the parties today agree we should first consider, as a preliminary point the appellant's application to admit new evidence which is directly linked to ground one of the appellant's appeal.

<u>Ground One - The Panel unreasonably and unfairly rejected the appellant's case that at the relevant time she was under the negative influence of Pc Lewis</u>

54. On the point, The Panel rejected the appellant's original submission. At Paragraph 14a of The Notice of Outcome, The Panel commented -

"We are asked to accept that Pc Murphy was under the malign or grooming influence of Pc Lewis throughout her time at Forest Gate both when she requested the photograph and when he offered to help her with the driving exam. We do not accept this…"

55. The Panel qualified their reasoning by commenting that having read the appellant's initial response to caution in November 2020, she was clear (at paragraph 6) that she did not regularly work with Pc Lewis, he was not a close working colleague or a close friend. In considering the appellant's evidence regarding the inappropriate horseplay endured at the hands of Pc Lewis including the contention that he handcuffed and singled her out, The Panel commented at paragraph 14b -

"As to his conduct and influence, we have read the character references…None of those people refer to a culture where that kind of behaviour was observed much less visited on Pc Murphy. The picture she

paints is that she was in thrall or subject to his malign influence…The impression we form was of a squad where officers were supported by each other and had somewhere to take concerns, not of a lone officer being victimised and powerless."

Rule 4(4)(b) – Application to admit new evidence

56. In support of the appellant's first ground of appeal, an application is made to admit new evidence. As referenced at paragraphs 73 & 74 of the appellant's grounds of appeal, the appellant seeks to introduce her witness statement dated 7 April 2023 (appendix 7) and photographs of a time when she was handcuffed rear back-to-back on the ground by Pc Jamie Lewis. One of the photographs showing Pc Lewis kneeling beside her.

57. Additionally, the appellant seeks to admit (from the addendum grounds of appeal), a witness statement from Pc Ikponmwosa Aigbe, dated 14 April 2023 (appendix 8) and a statement dated 19 October 2023 who was present at the scene of the incident.

58. The appellant argues she had forgotten about these photographs at the time of the original hearing; the appellant's poor memory being an accepted feature of her diagnosed neurodiversity. The appellant argues these photographs further support her assertion that she was under the negative influence of Pc Lewis at the relevant time; as such, the additional evidence could materially have affected The Panel's original decision on the finding or decision on

disciplinary action.

59. The appellant gave evidence. The appellant adopted her witness statement dated 7 April 2023 together with the three photographs. The appellant described in her statement that whilst handcuffed on the floor by Pc Jamie Lewis, she was rolling around, struggling to get up. The appellant says other officers were laughing at her and one officer found it so funny photographs were taken. The appellant describes she was laughing awkwardly at the time, but was embarrassed. Pc Aigbe came over to help and removed the handcuffs - **"He was the only person who helped."**

60. In evidence today, the appellant confirmed the photographs were not in front of the original Panel – **"They were somewhere on my phone".** The appellant said she was not aware of the photographs being on her phone at the time of the original misconduct hearing – **"I was really struggling with everything going on, felt like I was on a different planet. I was just trying to get through every day, I was not really thinking about that sort of stuff".**

61. The appellant confirmed the photographs were taken sometime in April 2020 and before June 2020 and before Pc Lewis' arrest. The appellant said – **"I remembered the photos after the hearing. I remember after the hearing, I was able to compose myself, thought about the what ifs. Remembered I had some pictures which would prove what I said. So, I went hunting in my phone".**

62. The appellant confirmed that in the third photograph (the landscape photograph), the two other people who can be seen are Pc Lewis and Pc Aigbe, leaning over her. The appellant says Jamie put her in the handcuffs which made her feel – **"really embarrassed and awkward".** The appellant confirms that until she had looked at the photographs again after the misconduct hearing, she had forgotten Pc Aigbe was present. The appellant says she mentioned this type of behavior in her Regulation 31 Response as well as talking to Dr. Lyle about it and in her evidence before The Panel.

63. During cross examination, the appellant confirmed it was only Pc Lewis who behaved in this way towards her. Mr. Morley reminded the appellant that during the misconduct hearing she commented Pc Lewis handcuffed her and pinned her to the floor <u>regularly</u> **[Page 85 of the Transcript]** and the appellant agreed this was correct. The appellant confirmed she would laugh along, but didn't like it. She would tell Pc Lewis to - **"fuck off"** at which point he didn't do it as much, but he still did it.

64. The appellant agreed with Mr. Morley that the photograph on her phone was important, and that she had not looked at her phone prior to the investigation - commenting her head was not in the right place. The appellant confirmed she had people helping her with the investigation, but no-one looked at her phone.

65. During re-examination, the appellant said that at the time of the misconduct hearing, she didn't believe there was anything relevant on her phone.

66. The appellant was asked by this Tribunal how many photographs she currently has stored on her mobile telephone. The appellant responded initially to say over 2,000 but later confirmed in the hearing (after checking) that as at today's date the number is 3,382.

67. Pc Ikponmwosa Aigbe gave evidence via a live-link. He confirmed he made two witness statements in the proceedings and adopted both. The statements are dated 14 April and 19 October 2023. In his statement dated 14 April 2023, Pc Aigbe confirms that he **"challenged"** this incident when he - **"…released Bonnie MURPHY from being handcuffed by Jamie LEWIS."** He continues – **"…I didn't find it funny so I went towards her and released her from the handcuffs…I can remember Jamie LEWIS being to my right…they all thought it was amusing…I didn't think it was professional hence why I stepped forward and challenged it."**

68. In evidence today, Pc Aigbe confirmed he had seen the photographs. He agreed he was in one of the photographs and described kneeling over the appellant who was face down on the floor, handcuffed. Pc Lewis was behind him. He commented that he can't really remember the incident now as it was a long time ago, but he did recall removing the handcuffs, commenting – **"No-one else was going to remove the handcuffs".** He said that he never found those jokes funny. He couldn't now recall if others found it funny and couldn't now recall if they were smirking.

69. Pc Aigbe said that Bonnie Murphy was young and he wanted to make sure she was okay. He always looked out for her in that sort of way. Others were significantly older than her. He thought she was maybe the second youngest on the team.

70. In cross examination, Pc Aigbe was asked if junior police officers found that sort of joke funny. Pc Aigbe replied – **“I don’t know what’s funny about it, I don’t recall seeing others have this treatment”.**

71. In reply to questions from this Tribunal, Pc Aigbe commented that at the time, the appellant was a young probationer. He felt like he was acting as an older brother. He wanted to make newer people feel more welcome. He couldn’t recall this type of behavior being prevalent in the team or that practical jokes were a regular thing to be experienced by probationers. He didn’t think it was that sort of seriousness or that it was that bad.

72. In re-examination, Pc Aigbe confirms he was not with the appellant 24/7. He felt by intervening he had led by example, and the incident didn’t need to be escalated. He didn’t assume there were problems.

73. Following the live evidence, both counsel made submissions upon whether the new evidence should be admitted into the proceedings. We will incorporate those submissions into our ruling. We have approached this task by asking a number of questions –

Is the additional statement of the appellant, her photographs, her evidence and the two statements and the evidence of Pc Ikponmwosa new evidence?

74. Mr. Morley contends the only new evidence produced by the appellant today is the three photographs. But these, he argues are nothing new. The respondent never challenged the appellant's contention that she was subjected to this type of behavior, namely being regularly handcuffed by Pc Lewis.

75. We take the view the additional statement of the appellant, the photographs, her evidence about the photographs and the two statements from Pc Aigbe together with his evidence, *is* new evidence. Put simply, none of this evidence was before The Panel and therefore, none of it could not have been considered by The Panel. It is evidence which has the potential to corroborate the appellant's claims that she was singled out and subjected to inappropriate horseplay, which in our view becomes relevant in The Panel's determination.

76. Having determined the evidence is new evidence, we address our minds to the three stage test in **Ladd v Marshall** to determine whether the new evidence should be admitted –

i) Could the evidence have been obtained with reasonable diligence at the time of the misconduct hearing?

We accept the appellant's poor memory is a diagnosed feature of her neurodiversity. Dr. Lyall's agreed and unchallenged opinion (Bundle p. 423) tells us this is the case and we have no reason to doubt it. We accept the appellant's evidence that, notwithstanding the evidence was available at the time of the original misconduct hearing, she had forgotten the photographs were stored on her mobile telephone. We also accept the appellant's evidence that she did not recall Pc Aigbe being present at the incident until she had looked at the photographs, after the misconduct hearing. We accept Miss. Niculiu's submission namely, the appellant's phone was not an obvious point in the case. For instance, at the time of speaking with Ps Coughlin, all text communication regarding the requesting of and the receipt of the decomposed corpse photograph and the exam material had been deleted. For all these reasons, we find the appellant has satisfied the first test.

77. As to the second test –

ii) Would the new evidence have an important influence on the case?

In order to answer this question, it is necessary to bear in mind the wording in **Rule 4(4)(b) of the PAT Rules –**

"There is evidence that could not reasonably have been considered at the original hearing which *could* have materially affected the finding or decision on disciplinary action"

78. At paragraph 74b of the appellant's grounds of appeal, it is submitted the new evidence supports the appellant's factual account in respect of the dynamics between her and Pc Lewis and the negative influence he exerted upon her. The first issue we must consider is whether The Panel rejected the appellant's submissions in this regard.

79. At Paragraph 14a of The Notice of Outcome, The Panel commented -
"We are asked to accept that Pc Murphy was under the malign or grooming influence of Pc Lewis throughout her time at Forest Gate both when she requested the photograph and when he offered to help her with the driving exam. We do not accept this…"

80. The words **"We do not accept this…"** are clear and leave no doubt in our mind that this was an express rejection of the appellant's evidence that she was under the negative influence of Pc Lewis.

81. Continuing with paragraph 14a, the Panel commented –
"…we heard her evidence about inappropriate horseplay and that he is said to have handcuffed her and singled her out. The oral evidence was that there were no other officers singled out. We accept that was an age gap and an experience gap".

82. And into paragraph 14b -
"As to his conduct and influence, we have read the character references…None of those people refer to a culture where that kind of behaviour was observed much less visited on Pc Murphy. The picture she paints is that she was in thrall or subject to his malign influence…The impression we form was of a squad where officers were supported by each other and had somewhere to take concerns, not of a lone officer being victimised and powerless."

83. Whilst The Panel did not expressly say - we are again left in no doubt their comments led them to factually reject the appellant's evidence.

84. Pc Aigbe confirmed in evidence today that he could not remember this type of behaviour happening to anyone else; which the appellant argues supports her contention that she was singled out.

85. Miss. Niculiu argues that having factually rejected the appellant's evidence, the new evidence presented contradicts The Panel's conclusions. The new evidence is likely to have made a material difference to their decision making.

86. Mr. Morley argues that after the initial offer of the photograph and exam material by Pc Lewis, the appellant set about chasing Pc Lewis for the items, therefore rendering the negative influence argument immaterial. He also opines that horseplay between new recruits was irrelevant to the issues The Panel had to determine; and was never challenged.

87. In addition, Mr. Morley avers the negative influence argument bore no relevance in the hearing, it was not dealt with in closing submissions and The Panel did not even talk about a finding in relation to the handcuffing in their determination.

88. Miss. Niculiu counters it was indirectly very relevant to The Panel's considerations, particularly bearing in mind the conclusions of the expert

witness and psychologist, Dr Lyall. In his third report, dated 11 December 2022, Dr. Lyall concludes, inter alia –

i) **Likely Pc Lewis had a degree of psychological dominance over the appellant (Bundle p. 443); and**

ii) **Highly likely the appellant would try to please Pc Lewis and/or want to take her cue from him and/or go along with his suggestions or offers (Bundle p. 444)**.

Miss Niculiu argues the negative influence argument therefore, fed into the appellant's culpability regarding allegations 1 & 3, particularly when factoring in Dr Lyall's opinion (Bundle p.429) –

i) **"The high score on Suggestibility could be expected to result in her being respectful of, and deferential to, the views of those with greater experience or authority, in this instance, Pc John *[sic]* Lewis"**

89. We take the view that a positive finding regarding the negative influence argument at the hands of Pc Lewis pervades both the appellant's request for the photograph and the exam material. In the light of the new evidence, The Panel might have afforded different weight to the observations of Dr. Lyle. On a balance of probabilities, The Panel may have more readily accepted his conclusions. Consequently, this could have materially affected The Panel's assessment at the fact finding stage and/or the disciplinary sanction imposed.

90. We have taken into account Mr. Morley's observation, namely The Panel felt

the character references supplied painted a rather different picture of the appellant; but we have noted those character references were supplied some considerable time after the events in question and not as Miss Niculiu puts it – **"two months into her stint on the team" -** the appellant being unaware of the psychological dominance exerted by Pc Lewis.

91. We believe the fact the appellant now brings new evidence to the table potentially contradicts the findings of The Panel and corroborates her assertion that she was singled out and subjected to inappropriate horseplay and dominance. This is likely to have materially affected The Panel's decision making.

92. We turn to Mr. Morley's argument, namely the appellant made no allegations against Pc Lewis in her first or second written response or her first Regulation 31 Response. Firstly, we comment that notwithstanding whether or not such facts were mentioned, this does not detract from the fact that that these contentions were raised before The Panel.

93. In any event, we note from the appellant's first written response dated 11 November 2020, reference is made in paragraph 20 [Bundle p. 336] to the culture of the team when talking about the sharing of the image and the exam paper. And similarly, at paragraph 8 [Bundle p. 340] of the appellant's second written response. In the appellant's Addendum Regulation 31 Response, dated 18 October 2022, specific mention is made of the team culture and the

horseplay; which behaviour the appellant found unwelcome [Para’s 4-8, Pages 416-417 of the Bundle].

94. There was therefore, mention of those contentions in the early pleadings and more detailed references in a later pleading. The issues were before The Panel. The fact more detailed references were made at a later date, is not a bar to the admission of new evidence.

95. As to Mr. Morley’s argument, namely there is scant evidence of the appellant being under the negative influence of Pc Lewis, we disagree. The evidence from the appellant confirms inappropriate behaviour occurred regularly. The appellant has now produced photographic evidence which has the potential to corroborate her account. This lends credibility to her argument that The Panel were wrong to displace such a contention in their determination.

96. And finally, we turn to Mr. Morley’s submission that the new evidence is immaterial because The Panel made findings of dishonesty against the appellant in her conversation with Ps Coughlin (allegation 2) and cheating in the exam by using google to look up the meaning of a question (allegation 4b). Mr. Morley argues the cumulative findings of gross misconduct including matters of dishonesty mean dismissal was inevitable.

97. We disagree. The findings of dishonesty were not in an operational context. It does not go hand in hand therefore, that (even if gross misconduct is found),

dismissal must naturally follow. In any event, allegations 1 & 2 were *cumulatively* found to amount to gross misconduct, likewise allegations 3 & 4.

98. We are firmly of the opinion that a positive finding in respect of the new evidence could have materially affected The Panel's assessment as to the finding of misconduct and/or the seriousness of the misconduct at play, when assessing the appellant's culpability, the harm caused and when considering mitigating factors. The appellant has satisfied the second test.

99. As to the third test –

iii) Is the new evidence credible although not incontrovertible?

There is no challenge to the credibility of the new evidence produced by the appellant. We have found the appellant's evidence, the photographs produced and the evidence of Pc Aigbe credible. The appellant has satisfied the thirds test.

100. In accordance with the principles in **Ladd v Marshall (1954) and R v (O'Connor) PAT 2018,** we are prepared to admit the new evidence into the proceedings. We are very concerned that as a young probationer, the appellant has produced sobering evidence to corroborate her assertions that she was subjected to a worrying level of inappropriate behaviour, at the behest of a more experienced and older male officer; the effects of which were no doubt exacerbated owing to the appellant's diagnosed neurodiversity. Propositions which underpinned significant parts of the misconduct at play and which were

wholly displaced by The Panel.

101. As to the preliminary point, we uphold the appellant's appeal under **Rule 4(4)(b) of The PAT Rules**. In accordance with **Rule 26(2)** we set aside The Panel's original determination and remit the matter to a newly constituted panel under **Rule 26(3).** Consequently, we do not make any ruling on the remaining grounds of this appeal.

102. The effect of this ruling means the appellant will be reinstated to the Metropolitan Police Service with immediate effect. The appellant will be entitled to loss of earnings from the date of dismissal to reinstatement; such loss of earnings to be off-set from any income earned by the appellant from the date of dismissal to reinstatement.

103. We are grateful to both counsel for their assistance in this matter.

Damien Moore –
Chair of the Police Appeals Tribunal

Sitting with:
Assistant Chief Commisioner Glen Mayhew &
Independent Member Bernard Nawrat

Hearing Date:	**25 October 2023**
Written Determination:	**7 November 2023**