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 ALI SHAH

BETWEEN

FORMER PC ALI SHAH

APPELLANT

(Represented by Mr. Kevin Baumber)

AND

THE COMMISSIONER OF POLICE OF THE METROPOLIS

RESPONDENT

(Represented by Dr. Russell Wilcox)

Hearing - 3 & 4 April 2025

RULE 22 DETERMINATION

Introduction

1. Between 24-26 June 2024, 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 behaviour **["SPB"]**, namely –

- Authority, Respect & Courtesy;
- Use of Force;
- Orders & Instructions; and
- Discreditable Conduct.

The Panel determined that such conduct amounted to gross misconduct and if the appellant had still been a serving officer, he would have been dismissed from the police service.

Background

2. On 22 October 2021, the appellant was called to an incident along with his colleague PC Pearson at a children's care home [ADDRESS REDACTED]. A former resident "A", who was banned from the care home premises, had secured access with the assistance of his friend "B" and was refusing to leave B's room.

3. Upon arrival, PC Pearson engaged with A and B. Both were non-compliant. The appellant arrived at B's bedroom a little later: at 1:40:41 hours on PC Pearson's BWV. A was becoming increasingly belligerent. Initially, the appellant tried to reason with A and tried to calm the situation down.

4. At 01:42:15 hours on PC Pearson's BWV, the appellant is heard saying to A that he was spitting at him and to "calm the fuck down". He is seen reaching out with one hand to keep A at a distance. Soon after, the appellant is heard saying "calm the fuck down" and "get the fuck down".

5. At 01:42:27 hours on PC Pearson's BWV, the appellant is heard saying to

A, “you are now pissing me off, I’ve given you enough fucking chances”. The appellant is then seen stepping behind A and placing his right open hand on A’s back. A appears to be resisting and contact was made with the appellant’s body which caused A to fall forward.

6. At 01:42:32 hours on PC Pearson’s BWV, the former Officer is seen holding A’s left hand and appeared to be trying to move A down the stairs. [SENTENCE REDACTED]. The appellant lets go of A’s arm and says “go down you fucking prick”. B is then heard saying, “are you fucking stupid”. The appellant shouts in response, “mate, shut the fuck up and go outside”.

7. At 01:42:35 hours on the appellant’s BWV, the appellant is seen by the front door with B. The appellant asks B to go to his room but B refuses. The appellant threatens to arrest B if he does not comply. Again, B refuses to cooperate. The appellant steps forward and places his open hand on the back of B as if to steer him out of the premises. B swings his arm back as if attempting to shake off the appellant’s hand. The appellant pushes B away shouting, “don’t fucking push me”. B retorts “what’s wrong with you” before glancing down and saying, “hey, I’m epileptic, how are you going to Taser me”.

8. At 01:43:58 on the appellant’s BWV, the appellant’s Taser can be seen at the bottom of the screen. No warning is heard from the appellant that he is armed with a Taser, nor that he had withdrawn it from its holster. The appellant says

to B "What are you going to do? What the fuck are you going to do?" The Taser appears to be pointed towards the floor.

9. PC Pearson and A join the appellant and B. The appellant tells A he needs to leave and tells B to "fucking go inside." When B asks why, the appellant replies "I will fucking shoot you, go inside now, you fucking prick". B returns into the building, but shouts something back at the appellant. The appellant shouts back, "Who are you calling, who is telling you this, you fucking idiot".

10. Ms Bonsu is also outside. She follows B into the house and is followed by the appellant. B shouts back "you, you fucking…" The door is heard to slam and Ms Bonsu shouts for B to open it. The appellant tries to open the door. Eventually it is opened with the assistance of two young females. B is behind the door and there appears to be an altercation between B and the appellant. The appellant shouts at B, "what is your problem, what is your fucking problem, prick".

The Allegations

11. There were three allegations contained in the **Regulation 30 Notice** -

Allegation 1

On 22 October 2021 PC Ali Shah acted without respect and courtesy and acted in a way that is likely to bring discredit on the police service, in that he used inappropriate and/or insulting language towards members of the public, namely:

(a) "Calm the fuck down" and "get the fuck down" towards A;
(b) "You are now pissing me off, I've given you enough fucking chances" to A;

(c) "Go down now you fucking prick" to A;
(d) "Mate, shut the fuck up and go outside" to B;
(e) "What are you going to do? What the fuck are you going to do?" to B;
(f) "I will fucking shoot you, go inside now, you fucking prick" to B;
(g) "Who are you calling, who is telling you this, you fucking idiot" to B.

Allegation 2

On 22 October 2021 PC Ali Shah used unnecessary, disproportionate and/or unreasonable force and acted in a manner likely to bring discredit upon the police service, in that he pushed B on at least one occasion.

Allegation 3

On 22 October 2021 PC Ali Shah acted contrary to orders and instructions, acted without respect and courtesy, used unnecessary, disproportionate and/or unreasonable threats of force and acted in a manner likely to bring discredit upon the police service, in that he:

(a) Did not warn B that he was equipped with a Taser;
(b) Failed to give a clear warning of the intention to withdraw the Taser;
(c) Withdrew the Taser in circumstances when it was not proportionate, reasonable or necessary to do so;
(d) Held the Taser in an unauthorised carriage position without an operational need to do so;
(e) Failed to issue the correct commands to B;
(f) Stated "I am going to fucking shoot you".

12. The appellant accepted in his **Regulation 31 Response** that he made mistakes in relation to allegations 1 & 3, but he denied assaulting B.

Summary of the Misconduct Proceedings

12. The panel were provided with a bundle of papers comprising 185 pages,

including a witness statement from the care home manager Ms Sandra Bonsu, a regulation 30 notice, a regulation 31 response, use of force form, record of misconduct interview, witness statement of PC Simon Parfitt (Taser trainer), spit guard intranet site and contamination prevention article, bundle of unused material, bundle of character references and opening note. The Panel were additionally provided with body worn video (BWV) footage from former PC Shah and PC Pearson. A and B did not provide witness statements.

13. Former Pc Shah gave evidence. The Panel noted discrepancies in his evidence– "***He sought to claim that A had perhaps spat at him deliberately when this had never previously been raised by him. He attempted to claim that he had not got angry and lost control of himself despite having stated in his misconduct interview that he had lost patience and raised his voice. In his evidence he also indicated that he had got more angry which was contradictory with him having earlier in his evidence denied that he had not got angry or lost control. He claimed that he was particularly angered and hurt by B calling him a "curry muncher". He indicated that B had elbowed him aggressively and that he was fearful. He claimed to be in shock. It was in these circumstances that he drew his Taser fearing for himself and others. He claimed to fear the situation when B entered the kitchen as there were potential weapons in there and one of the girls had earlier demonstrated threatening behaviour involving a kitchen pan."*** **[Page 6 of the Outcome Report].**

14. Having considered the evidence and the submissions from the parties, The Panel determined all the allegations were proven and that taken together they were extremely serious in nature –

"FPC Shah has been found to have acted repeatedly in anger, having lost control and to have subsequently breached multiple regulations in respect of the standards of police conduct. He has used force on multiple occasions, used inappropriate and insulting language towards vulnerable members of the public, without just cause and has engaged his Taser in circumstances when it was totally unjustified and inappropriate to do so." **[Page 10 of the Outcome Report].**

15. The Panel ultimately concluded –

"In the light of the severity of the gross misconduct found proved the panel considered that had FPC Shah still been a serving member of the police service, that the appropriate and proportionate sanction in this case would have been dismissal without notice. Taking no action would be totally inappropriate and disproportionate in the light of the seriousness of the allegations found proved in respect of FPC Shah and potential harm caused to the victims thereof and to the harm caused to the reputation of the Metropolitan Police Service as a whole and the public confidence in it."

The Grounds of Appeal

16. Pursuant to **Rule 6 of the Police Appeals Tribunal Rules 2020**, the appellant appeals on the following prescribed grounds –

Ground One

1. The characterisation and findings made by The Panel were unreasonable – **Rule 6(4)(a)** and (if made out) –

Ground Two

2. The disciplinary action imposed was unreasonable - **Rule 6(4)(a)**

Ground Three

3. There was a material breach of the procedures set out in the **Conduct Regulations** or unfairness in respect of the disciplinary action imposed which could have materially affected the finding or decision in disciplinary action, namely the Panel made an error of law in reaching its decision to dismiss – **Rule 6(4)(c)**

17. Ground One

The appellant argues The Panel made unreasonable findings as follows –

a) The Panel's dismissal of the likely effects upon the appellant of the fact his father was on his death bed;

b) The Panel's assessment of A, namely that he was a "vulnerable child"; and

c) The Panel's dismissal of Ms Bonsu's positive and independent appraisal of the appellant's conduct.

18. Ground Two

The appellant argues that any disturbance to the factual findings pleaded in ground one, may consequently alter the outcome.

19. Ground Three

The appellant argues The Panel –

a) Misunderstood the meaning of personal mitigation in reducing the weight applied to mitigating factors; and

b) Misunderstood and misapplied the disciplinary action choices for former officers.

Response to the Appeals

20. The respondent resists the appeal –

Grounds One & Two

a) Having heard the evidence, The Panel did not accept the appellant had ***"a genuine and well-held fear"*** of catching covid because of A's spittle landing on him. The Panel gave reasons for its findings and was entitled to make those findings.

b) The appellant's actions showed no indication that he acknowledged or modified his behaviour because of attending an incident at a children's home. [SENTENCE REDACTED]. The Panel was entitled to make those findings.

c) Ms Bonsu called the police for the purpose of evicting A from the home. She was not therefore, truly an independent witness. Ms Bonsu was not present throughout the whole incident. The Panel was entitled to place whatever weight it thought appropriate to her evidence.

21. The respondent further predicates that even if alleged errors of fact finding are made out, those errors would have had no material bearing on the finding of gross misconduct.

22. Ground Three

a) The respondent does not accept that the matters referred to as mitigation rather than personal mitigation are correctly characterised. The different forms of mitigation substantially overlap. The Panel looked at these matters "in the round". There was no error of law.

b) The decision before The Panel, as laid down in **The Conduct Regulations** was to take disciplinary action or not to take disciplinary action. It is a binary choice. As per the Statutory Guidance, the only alternative to a finding of *"would have been dismissed if still serving"* would have resulted in taking no disciplinary action. The Panel commented taking no action was inappropriate.

The Law on Appeal

23. 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"].**

24. 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."

25. **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).

26. **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

27. 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"

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

29. 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".

30. 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

31. 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

32. 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.

33. 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.

The meaning of "unreasonable" pursuant to Rule 4(4)(a)

34. 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.

35. In furtherance of the above and in determining whether 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…"

36. 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.

37. The issue was revisited by **Mrs Justice Heather Williams DBE** in **The King (on the application of the Commissioner of Police of the Metropolis) and Police Appeals Tribunal and Pc Max Michel & Pc Shaun Charnock [2022] EWHC 2711 (Admin).** The principles identified above were reinforced as the correct approach and the following observations were

referenced –

i) **"The PAT must ask itself whether this finding was one that was within or outside of the range of reasonable findings that The Panel could have made;**

ii) **The PAT should keep in mind that the rule 4(4)(a) test is not met simply by showing a deficiency in The Panel's reasoning or a failure to consider a particular piece of evidence or similar error, if the finding of misconduct/gross misconduct was nonetheless one that The Panel could reasonably have arrived at. The question is whether that finding is unreasonable;**

iii) **The PAT will be careful not to substitute its own view as to what should have been the outcome of the charges. Whether The PAT agrees or disagrees with The Panel and whether it thinks it would have found the allegations proven if it had been hearing the disciplinary proceedings is not in point, as this in itself does not indicate that The Panel's findings was "unreasonable". In many circumstances, different and opposing views can both be reasonable; and**

iv) **The PAT should consider all of the material that was before The Panel, whether or not The Panel made express reference to it in the decision."**

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

38. 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.

39. 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.

40. 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.

41. 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>

42. 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

43. 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

44. 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?

45. 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).**

46. 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 **Fuglers 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.

47. 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.

48. 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"

49. 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.

50. 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…".

51. 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.

52. 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".

53. 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]).**

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

Determination

55. In a preliminary **Rule 15** determination dated 19 November 2024, it was determined all three grounds of appeal would proceed to a hearing, but with the following observation on grounds one & two of the appeal – "***the appellant will have an 'uphill battle' to persuade a Police Appeals Tribunal that it should interfere with the fact-finding conclusions of The Panel."***

Ground One – unreasonable findings - **Rule 4(4)(a)**

56. Did The Panel make unreasonable findings in relation to the following –

a) The Panel's dismissal of the likely effects upon the appellant of the fact his father was on his death bed;

b) The Panel's assessment of A, [SENTENCE REDACTED]; and

c) The Panel's dismissal of Ms Bonsu's positive and independent appraisal of the appellant's conduct.

The Panel's dismissal of the likely effects upon the appellant of the fact his father was on his death bed

57. Mr. Baumber argues it is inexplicable The Panel dismissed the likely effects upon the appellant of the fact his father was on his death bed. The Panel acted unreasonably in determining the appellant's personal circumstances were not on his mind at the time of the incident. Spittle was landing on the appellant from A and he was concerned at catching covid. It is obvious the appellant's personal circumstances would have '*taken their toll'*.

58. It is clear from reading the Determination, The Panel concluded the appellant's difficult family circumstances and his fear of contracting covid, were not factors on his mind at the time of the incident. The Panel explained their conclusion by carefully assessing the incident both in respect of the appellant's actions initially with A and then later with B.

59. In making its decision, The Panel explained the appellant's fear of catching covid from A's spittle, was not a genuine well held fear. The Panel gave its reasons for arriving at this conclusion, namely citing the appellant did not wear his mask, the incident occurred 1.5 years after lockdown restrictions were imposed and nowhere in the BWV was covid mentioned.

60. In any event, the more significant incident with B outside occurred after the

incident with A on the stairs and after any suggestion of spittle landing on the appellant.

61. The Panel's conclusions are clearly within a range of reasonable responses. The Police Appeals Tribunal will not interfere with well-reasoned findings of fact. The appellant's challenge is nothing more than a disagreement with those findings.

The Panel's assessment of A, [SENTENCE REDACTED]

62. Mr. Baumber argues The Panel's reference to A as a [SENTENCE REDACTED] is unreasonable. Throughout the incident, A was shouting, swearing, threatening the officers and spitting. He was also showing abusive, aggressive and erratic behavior. The appellant had to deal with what was actually in front of him.

63. We find The Panel's assessment of A, namely that he was a [SENTENCE REDACTED] unimpeachable. It is factually correct. A was 17 years old. He was a child. The Panel reviewed the BWV evidence and noted A telling the appellant [SENTENCE REDACTED]. The Panel further observed from the BWV that A had a [SENTENCE REDACTED]. We agree with Dr Wilcox's submissions on the point, that the description was *'a matter of fact'*. The Panel's description of A as a [SENTENCE REDACTED] is, therefore, factually correct, accurate and clearly not unreasonable.

The Panel's dismissal of Ms Bonsu's positive and independent appraisal of the appellant's conduct.

64. Mr. Baumber argues The Panel's dismissal of Ms. Bonsu's positive appraisal of the appellant is 'irrational'. Her statement was agreed evidence. The Panel was wrong not to treat her as an independent member of the public. The Panel dismissed her evidence without hearing from her. Ms. Bonsu is a professional who was informed upon A. Her evidence was independent and powerful in respect of A's highly problematic and disruptive impact.

65. We take the view The Panel was required to consider all the evidence, including that of the agreed evidence, coming in the form of a witness statement from Ms. Bonsu. Whilst Ms. Bonsu had a positive view of the appellant's conduct, The Panel was entitled to attach whatever weight they felt appropriate to this piece of evidence. Ultimately, The Panel found Ms. Bonsu was not an independent member of the public and that her views were not impartial, because her sole motivation was for A to be removed.

66. We are firmly of the opinion The Panel was entitled to arrive at its conclusion. The Panel provided clear justification. In any event, we note the appellant concedes Ms. Bonsu did not witness the entire incident. And of course, her assessment of the appellant's 'observed' conduct was her own subjective opinion. Notwithstanding the evidence was agreed, The Panel did not act unreasonably in dismissing or attaching little weight to it.

67. Accordingly, we dismiss grounds one and two of the appellant's appeal.

Ground Three – Was there a breach of the procedures or unfairness which could have materially affected the finding or decision on disciplinary action? **Rule 4(4)(c)**

Did The Panel misunderstand the meaning of personal mitigation in reducing the weight applied to mitigating factors?

68. There is no question in our mind, The Panel fell into error when assessing the seriousness of the misconduct in accordance with the test referenced in **Fuglers LLP v Solicitors Regulation Authority [2014] EWHC 179 (Admin)**.

69. The Panel conflated personal mitigation (which attracts little weight on sanction) with general mitigation, reducing the seriousness of the misconduct at play. General mitigation such as the incident being short in duration, a single episode, the challenging circumstances and the appellant's difficult personal circumstances should have been weighed into the seriousness assessment by The Panel.

70. That said, The panel approached all other parts of the seriousness assessment correctly, noting and explaining why the appellant's culpability was high, the fact the appellant caused emotional and psychological harm and referencing the several aggravating features at play.

71. Notwithstanding The Panel's error when disregarding or attaching little weight to general mitigation when assessing the level of seriousness, there is no contest from the appellant that The Panel's assessment of seriousness, on the facts as The Panel found, crossed the line into Gross Misconduct. And we agree. The line into Gross Misconduct was well and truly passed.

Did The Panel misunderstand and misapply the disciplinary action choices for former officers?

72. Mr. Baumber argues there was an error of law when The Panel approached its task in relation to sanction. The appellant asserts The Panel fell into error when determining it had a binary choice to make between taking no action at all or jumping to dismissal. The appellant prays in aid The Panel's comment (made after stating that the appropriate and proportionate sanction in this case would have been dismissal), that taking no action would be totally inappropriate and disproportionate in the light of the seriousness of the allegations found proved. The appellant asserts therefore, The Panel wrongly jumped to dismissal.

73. The appellant argues The Panel should have approached its task by considering all the available outcomes, just as it would do so for a serving officer. And only if lesser sanctions are inappropriate, should The Panel proceed to consider the ultimate sanction of dismissal. The appellant says it was not as simple as a binary choice of no action or dismissal. The Panel may have concluded that a Final Written Warning for example, was the appropriate outcome. And whilst practically, a Final Written Warning could not be administered, that is the information which would then flow through to the college of policing for inclusion within the barred list.

74. Unlike **Regulation 42 of the Police Conduct Regulations 2020**, the modified **regulation 42 of the Conduct Regulations 2020** (which deals with former officers) is silent as to which disciplinary outcomes can be imposed or

referenced –

"42 (1) The persons conducting a misconduct hearing may, subject to the provisions of this regulation—

(a) where they find the conduct amounts to gross misconduct, impose disciplinary action for gross misconduct…"

75. The respondent maintains The Panel approached its task correctly. There can only be two outcomes for a former officer, no action or dismissal, as referenced for example, in **paragraph 20.66 (d) & (e) of the Home Office Guidance, Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing –**

"20.66 The misconduct hearing for a former officer will be conducted as for serving officers under the Conduct Regulations and described in Chapter 11 with some important differences in the possible outcomes and sanctions. These differences are set out below:

d) where there is a finding of gross misconduct, the panel can only consider two potential outcomes: disciplinary action or no disciplinary action,

e) where there is a finding of gross misconduct and disciplinary action imposed it can only be that the former officer would have been dismissed if they had still been a member of a police force. There is no option to enforce other sanctions such as a final written warning or reduction in rank given the termination in the former officer's employment status. If the panel determines that the matter does not justify the sanction that the former officer would have been dismissed, no action will be taken and the finding of gross misconduct

recorded…"

76. Similarly, in **paragraph 3.31 of the College of Policing Guidance on Outcomes** –

"3.31…Where the panel finds that the conduct amounted to gross misconduct, it can only consider two outcomes: disciplinary action or no disciplinary action. Where the finding is gross misconduct and disciplinary action is imposed, this can only be that the former officer would have been dismissed if still serving. No other sanctions can be enforced. If the finding is gross misconduct but the panel determines that dismissal is not justified, then no action will be taken and the gross misconduct will be recorded…"

77. We have listened very carefully to the arguments presented by both sides. There is arguably some authority to support the appellants proposition that the same process should be followed whether the officer is a serving officer or has already resigned. **Paragraph 3.33 of The College of Policing Guidance on Outcomes in Misconduct Proceedings ["COPG"]** for example, goes on to reference that the same process must be applied when determining what the appropriate sanction would have been –

"3.33 Before a panel decides to impose the disciplinary action that the former officer would have been dismissed if still serving, it must follow the same process that applies to serving officers in arriving at what the appropriate sanction would have been."

78. Further, **paragraphs 3 & 4 of the modified regulation 42 of the Conduct**

Regulations 2020 provide –

"(3) Paragraph (4) applies where disciplinary action for gross misconduct is imposed.

(4) The person chairing a misconduct hearing must provide any information to the appropriate authority or, as the case may be, the originating authority, that the person considers ought to be included by virtue of regulation 3(2)(l) of the Police Barred List and Police Advisory List Regulations 2017 in the barred list report relating to the officer concerned (information relating to whether exemptions to requirement to publish the barred list entry apply)".

79. There is an argument therefore, that in following the '*same process'* **(paragraph 3.33 of COPG)** a Panel is required to consider less severe disciplinary outcomes first and that *'any information'* **(paragraph 4 of Regulation 42 of the modified Conduct Regulations)** might include disciplinary information on outcome, other than dismissal.

80. In our judgment however, the appellant's challenge can *only* be successful if we determine that any error *could* have materially affected the finding or decision on disciplinary outcome.

81. Whether or not The Panel approached their task correctly, we have found ourselves in a position where we are unmoved in our opinion that dismissal *was* the proper outcome in this case. The Panel was clear in its Determination that the level of gross misconduct proven was severe. We agree. Approaching sanction differently by considering other outcomes *would not* and *could not* in

our judgment have materially affected the decision to dismiss. The mitigating factors relied upon were simply not strong enough nor significant enough, either individually or collectively to row the appellant back from dismissal.

82. The tipping point for the appellant in this case is the unquestionable inappropriate and extremely worrying withdrawal of his Taser and the subsequent threat to shoot B, all within the premises of a children's home. This all occurred after the initial incident with A. This combined with the inappropriate language used throughout and the unnecessary force shown to B illustrates the appellant lost all control of himself. On the facts of this case, notwithstanding the general mitigation, the *only* appropriate outcome was one of dismissal. The Panel was therefore, correct in the level of sanction imposed.

83. On this basis, the appellant's challenge to the appropriateness of the procedure adopted by The Panel becomes irrelevant. Even if we determine there was an error of law or unfairness, we would not change the decision on disciplinary outcome and nor in our opinion would any other panel. Ground three is therefore, also dismissed.

Conclusion

84. We are in no doubt. The decisions made by The Panel were reasonable. There was no material breach of procedure or unfairness which *could* have materially affected the finding or disciplinary action.

85. For the reasons above, the appellant's appeal is dismissed.

Damien Moore –	**Chair of the Police Appeals Tribunal**
Sitting with -	**Assistant Chief Constable Vaughan Lukey & Independent Panel Member Fiona Bennett**
Hearing Date:	**3 & 4 April 2025**
Written Determination:	**17 April 2025**