

In The Matter of the Police (Conduct) Regulations 2020 Leicestershire Police Constabulary

RE: Former Officer

The Panel in these proceedings dealt with allegations of breach of the Standards of Professional behaviour under the Police (Conduct) Regulations 2020.

The following paragraphs represents the Panel's findings in respect of the Misconduct hearing held at the Leicestershire Police Headquarters on 15 February 2023.

Documents

1. The Panel considered the hearing bundles provided by the Appropriate Authority (AA) which included the following:
 - a) Regulation 30 Notice dated 12 September 2022.
 - b) Regulation 31 Response (undated)
 - c) Body Worn Video footage (and transcript) of PC R and PC E.
 - d) CCTV footage and transcript.
 - e) Use of Force Form.
 - f) Record of the former officer's interview dated 31 May 2022.

Standard and Burden of Proof

2. The Burden of Proof falls on the AA to prove the allegation to the requisite standard.
3. In determining the facts, the Panel is required to apply the Civil standard of proof namely, on the balance of probabilities. The conduct will be proven on the balance of probabilities if the Panel is satisfied by the evidence that it is more likely than not that the alleged conduct occurred.

4. Further, the inherent probability or improbability of the conduct occurring is to be taken into account in deciding whether the conduct occurred.

Former Officer's Response to the R30 Allegations

5. In response to the alleged misconduct, the former officer denies that their conduct, as alleged, amount to a breach of the Standards of Professional Behaviour.
6. Prior to the commencement of the hearing the AA made several attempts to contact the former officer by email without success.
7. The former officer tendered their resignation with immediate effect.

Witnesses and Evidence

8. The Panel heard evidence from PC R and PC E.
The Panel concluded that the evidence of PC R and PC E was credible and reliable.

Findings of Fact

9. The Panel made the following findings of facts having considered the live evidence and the available documentation within the case papers, and submissions made by Counsel on behalf of the AA.
10. On 20th March 2022 PC R and PC E responded to a call for assistance that a male ("Suspect A") had been refused entry to a nightclub in Loughborough because he was in possession of what appeared to be a knife. Suspect A then left the club and his movements were monitored by CCTV operators. PC R located Suspect A who matched the description and required him to stop and submit to a search.

11. PC R activated his BWV and told Suspect A that he was detaining him for the purposes of a search, and gave him the required information about the search. Suspect A was handcuffed by PC E and searched. The former officer arrived at the scene and assisted in the detention of Suspect A, but left shortly afterwards to attend to a report of another male detained as a result of the same report.
12. PC R's search of Suspect A did not locate a knife or an offensive weapon: the officer did, however, find two wallets on Suspect A's person. As a result, Suspect A was invited to write his name and date of birth in PC R's pocket note book. He wrote successive different names, which did not match the details in the wallets found. Accordingly, the officers tried to establish the reason why Suspect A had wallets in different names in his possession. To this end, Suspect A spoke to a friend in the presence of the officers with a view to verifying his account that he had been given his friend's wallet.
13. Suspect A then winced and clutched his side and fell to the floor: he made retching sounds and coughing for several minutes. PC R considered Suspect A's conduct to be a pretence.
14. The former officer returned and spoke with PC R who explained what had occurred. The former officer then suggested using a portable fingerprint scanner to confirm Suspect A's identity. Suspect A was then asked to put his finger on the scanner. Suspect A, who was on the ground, alleged that he had been 'hit' by one of the officers.
15. The former officer then turned back to PC R, lowered their voice and in the presence of PC E, asked '*you're not rolling are you?*'. The former officer took hold of PC R's vest to indicate that '*rolling*' was a reference to his BWV and to check whether the red light on PC R's camera was illuminated. The former officer told PC E to turn her camera off.

16. The former officer checked PC R's camera immediately before training his taser on Suspect A for about two and a half minutes to ensure his compliance and activated his taser. Suspect A put his hands up and stood up. Suspect A eventually placed his finger on the finger print scanner, which confirmed that he was not known to Police. Suspect A provided the officers with his details and identified an address, and requested the officers to take him home. PC E enquired of Suspect A why he was now willing to provide the details and whether these could be believed.
17. On returning to the police station PC E and PC R raised their concerns about the approach taken by the former officer with their sergeant, PS B, who reviewed the incident and noted that the former officer had not completed a 'Use of Force' (UOF) form in relation to the incident. As a Result, PS B submitted a report to PSD and subsequently discussed the events with PS E who was the former officer's supervising Sergeant at the relevant time.
18. On 27th March 2022 the former officer submitted a UOF form that detailed his rationale for the use of the taser which was stated as being to '*protect self, protect public, protect subject, protect other officers, secure evidence, effect stop and search, prevent harm, prevent escape*'. Further, the former officer stated that he was concerned for the safety of the officers present, in part due to the threat posed by Suspect A who was believed to be in possession of a knife and was uncooperative. The details provided by the former officer on the UOF was misleading in that it exaggerated the perceived threat posed by Suspect A and failed to state that the taser was deployed to ensure compliance with his instructions.
19. In all the circumstances, the Panel concluded that the former officer's proven conduct amounts to **Gross Misconduct** and the Standard of Professional Behaviour engaged are as follows:

- (a) Honesty and Integrity
- (b) Use of Force
- (c) Discreditable Conduct

Decision on Outcome

Legal considerations

In determining an appropriate outcome at a misconduct hearing, the person or persons conducting the hearing must consider and have due regard to “Guidance on outcomes in police misconduct proceedings” issued by the College of Policing pursuant to section 87 of the Police Act 1996.

The Police (Conduct) Regulations 2020 provides that, where a panel finds the case against the officer subject of misconduct proceedings proven as to Gross misconduct, they can impose one of the following disciplinary actions:

1. Final written warning
2. Reduction in rank
3. Dismissal without notice.

The College of Policing Guidance on Outcomes (2022) provides that when determining the appropriate outcome, the panel should consider the purpose of the misconduct proceedings which is threefold namely:

1. To maintain public confidence in, and the reputation of, the police service.
2. To uphold high standards in policing and deter misconduct.
3. To protect the public.

Further, the College of Policing Guidance provides that Misconduct proceedings are not designed to punish police officers. The central concern is the reputation or standing of the police service.

In determining outcome, the Panel is required to consider less severe outcomes before more severe outcomes.

Standards of Professional Behaviour

The Panel considered that the proven conduct in relation to the former officer engaged the following professional standards namely:

- (a) Honesty and Integrity
- (b) Use of Force
- (c) Discreditable Conduct

Following the Guidance on Outcomes in Police Conduct Proceedings there are three stages in determining the appropriate sanction;

- a. assess the seriousness of the misconduct.
- b. keep in mind the purpose of imposing sanctions.
- c. choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question.

The Panel is required to assess the seriousness of the proven conduct by reference to the following:

- a. The officer's culpability for the misconduct.
- b. The harm caused by the misconduct.
- c. The existence of any aggravating factors.
- d. The existence of any mitigating factors.

The Panel is required to conduct a balancing exercise between;

- 1. the officer's record of service, any character evidence and available mitigation; and,
- 2. culpability, aggravating factors and harm caused.

Personal mitigation such as character references and testimonials must be considered after the assessment of the seriousness of the conduct.

Culpability

Culpability denotes the officer's blameworthiness or responsibility for their actions. The more culpable or blameworthy the behaviour in question, the more serious the misconduct and the more severe the likely outcome.

Conduct that is intentional, deliberate, targeted or planned will generally be more culpable than conduct that has unintended consequences.

The Panel considered that the former officer's proven conduct was deliberate and intentional, and amounted to operational dishonesty.

In all the circumstances, the Panel considered that the former officer's level of Culpability is **High**.

Harm

The public perception and the reputation of the service are relevant when considering the harm or the risk of harm caused by the proven conduct. The Panel is required to take seriously misconduct that undermines discipline and good order within the police service, even if it does not result in harm to individual victims.

Further, where no harm has resulted from the proven misconduct, the Panel must consider the risks attached to the officer's behaviour, including the likelihood of harm occurring and the gravity of harm that could have resulted.

The Panel concluded that, if the circumstances of the proven conduct were known to the public it would cause reputational harm and undermine public confidence in policing. In particular, the Panel had regard to the former officer's misleading completion of the Use of Force form and the steps taken to conceal his misconduct by encouraging his colleagues to turn off their BWV.

In all the circumstances, the Panel considered that the level of harm caused is **High**.

Aggravating Factors

Aggravating factors are those tending to worsen the circumstances of the case, in relation to the officer's culpability or the harm caused.

The Panel considered what, if any, aggravating factors were present in this case indicative of a high level of culpability. In this respect, the Panel had regard to the efforts made by the former officer to conceal their misconduct. Further, the Panel had regard to the former officer's assertion that his colleagues account of event was malicious because they were friends with another officer with whom he had personal issues.

Additionally, the Panel had regard to the fact that the former officer continued their behaviour when they should have realised that the conduct was improper and the use of force amounted to a significant deviation from force instructions in relation to the use of tasers. Furthermore, the Panel also had regard to the multiple proven allegations and or breaches of Standards of Professional Behaviour.

Mitigating Factors

Mitigating factors are those tending to reduce the seriousness of the proven misconduct. Some factors may indicate a lower level of culpability, or that the harm caused by the proven misconduct is less serious than it might otherwise have been.

The Panel noted the absence of any acceptance of responsibility by the former officer for his conduct and or any genuine remorse or insight.

Outcome

In all the circumstances, having concluded that the former officer's proven conduct was serious and amounted to Gross Misconduct, and having applied the structured approach, the Panel determined that had the former officer remained employed they would have been dismissed.

Signed: *David Tyme*

David Tyme, LQC

Dated: 15 February 2023.....

Panel Members:

Chair: David Tyme, LQC

PM: ACC Kerry Smith

IPM: Mrs Julia Peters