

POLICE APPEALS TRIBUNAL

**IN THE MATTER OF POLICE ACT 1996
AND IN THE MATTER OF POLICE APPEALS TRIBUNAL RULES 2020
AND IN THE MATTER OF FORMER PC HOLLIE-MAY WOODS**

Heard at: Holiday Inn, 299 Leicester Road, Wigston, Leicester Le18 1JW B4 6AF

on 4 September 2023

Before: Deputy Chief Constable I Balhatchet, Mr D Hollingworth and Ms S Fenoughty (Chair)

Between

FORMER PC HOLLIE-MAY WOODS

Appellant

AND

THE CHIEF CONSTABLE OF LEICESTERSHIRE POLICE

Respondent

Representation

For the Appellant: Ms A Williamson

For the Respondent: Mr D Penman

DECISION AND REASONS

1. This is a determination made in accordance with The Police Appeals Tribunals Rules 2020 which provide for the hearing of appeals made by a police officer against a decision made under the Police (Conduct) Regulations 2020.
2. This decision is made in the appeal of former PC Woods who appeals against the decision made on 10 February 2023 that she be dismissed from the Leicestershire Police Service without notice.

BACKGROUND

3. The hearing took place between 6 and 10 February 2023. The particulars of misconduct facing the appellant were:

1. Facts

1. *On 30th April 2022 you were off duty and socialising in Nuneaton town centre with your brother TS, sister DW and friends GH, NJ, and C, after attending a family birthday party.*
2. *At around midnight hours your group entered [REDACTED] night club in Nuneaton and remained there until an incident occurred at around 0250 hours involving TS and a third party on the dancefloor. This resulted in the intervention of door staff who asked TS to leave. He refused, and was therefore physically escorted from*

the dance floor towards the exit.

3. *You intervened and attempted to prevent TS being removed from the premises. In the course thereof you were hanging on to TS in order to frustrate staff from removing him, and shouting at staff.*
4. *Staff member Mr [REDACTED] intervened to remove you from holding on to him by taking hold of your arm/wrist. You said words to the effect that he had assaulted you and that he could not do that to a female, before striking him with your hand and/or pushing him.*
5. *Both you and TS were escorted from the premises by door staff onto the outside street. At this point you and TS spoke to door staff in relation to the reasons why TS had been ejected. You filmed the door staff and/or took photos of them and/or their badges, holding your phone camera close to Mr [REDACTED] face and speaking to them in an aggressive manner. You were physically confrontational.*
6. *You stated that you knew 'the boss' of the premises implying that you would be more likely to be believed about what happened or that you could cause issues for the staff.*
7. *You then spoke to the premises General Manager Mr [REDACTED] and demanded that you be given the CCTV of the incident. When Mr [REDACTED] said that they would only release that to the Police or Licensing Authority, you and/or your sister stated that you were a police officer.*
8. *Having been identified as a police officer you continued to remonstrate with staff, complaining about your treatment and demanding the CCTV footage.*
9. *At no time during your interaction with the door staff was there any suggestion that TS had been ejected or treated in the manner that he had because of his sexuality. However, by the end of your dealings with door staff, when they were closing the premises doors, you declared words to the effect 'they've just kicked him out for being gay'.*
10. *At around 03.23 hours you telephoned [REDACTED] to report the ejection of TS from the premises alleging that it was a homophobic incident and that you had been assaulted by door staff. In the course of this report you identified yourself as a Leicestershire Police officer and told the call handler that you thought it was embarrassing that [REDACTED] had never done anything about these incidents.*

2. Particulars of misconduct

1. *The conduct at paragraphs 1.3 to 1.10 represented you intervening in a nightclub incident unreasonably, and behaving inappropriately in your dealings with door staff and/or thereafter reporting staff to police when there was no reasonable basis to do so. The conduct is likely to undermine public confidence in the police.*
2. *The conduct at paragraphs 1.7, 1.8 represented you identifying yourself as a police officer inappropriately whether*
 1. *To intimidate the staff with whom you were remonstrating; or*
 2. *To assert a basis for them to release the CCTV footage to you; or*

3. *In the course of your 999 call to [REDACTED] to influence their response to your call;*

The conduct represented an abuse of your authority.

3. *The conduct at paragraphs 1.9 and 1.10 represented you reporting to Police that the incident was homophobic when there was no reasonable basis to do so, whether*

1. *The call was made maliciously to cause trouble for the premises;*
2. *So that you could artificially escalate the seriousness of the incident to influence the response by [REDACTED]*

The conduct was dishonest and/ or lacked integrity.

3. *Reasons the conduct amounts to gross misconduct*

1. *The conduct is seriously discreditable*
2. *The conduct continued for an extended period and resulted in you reporting a police incident inappropriately as retaliation for the ejection*
3. *You identified yourself as a police officer to gain an inappropriate advantage*
4. *The conduct was dishonest and/ or lacked integrity.*

4. Both parties were represented by counsel at the hearing; the appellant was represented by Ms Ailsa Williamson and the respondent was represented by Mr Daniel Penman.
5. The appellant did not dispute that she had been in the night club, but she disputed the allegations of misconduct and breaches of the standards. She accepted that she could have diffused the situation better, but she maintained her belief that the incident that she reported had been homophobic.
6. At the hearing, the Panel heard submissions from both counsel, and heard evidence from a number of witnesses, including the appellant. It took into account all the evidence, including the documentation, video and audio evidence.
7. The Panel concluded that the breaches of the Standards of Professional Behaviour were so serious that dismissal without notice was the appropriate and proportionate outcome.

LAW

8. The Police Appeals Tribunals Rules 2020 apply to appeals against decisions made in accordance with the Police (Conduct) Regulations 2020.

The Police Appeals Tribunals Rules 2020

Circumstances in which a police officer may appeal to a tribunal

Rule 4 (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.

The Home Office Guidance (published 5 February 2020) sets out the procedures for dealing with misconduct and for appeals to the Police Appeals Tribunal.

The Police (Conduct) Regulations 2020, Schedule 2 set out the Standards of Professional Behaviour. The following standards are relevant in this case:

Honesty and Integrity

Police officers are honest, act with integrity and do not compromise or abuse their position.

Authority, Respect and Courtesy

Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

Police officers do not abuse their powers or authority and respect the rights of all individuals.

Discreditable Conduct

Police officers behave in a manner which does not discredit the police service or undermine public confidence, whether on or off duty.

APPEAL

9. The appellant's representative set out the grounds of appeal against the decision on outcome in a document dated 23 April 2023. She set out the legal framework for the appeal, and caselaw relevant to the meaning of "*unreasonable*" in such appeals. She said the grounds relate to the finding of the breach of the honesty and integrity standard, submitting that there had been:

1. Breach of procedure and unfairness when finding a breach of the Honesty and Integrity standard, and
2. Irrational and unreasonable finding that there was a breach of the Honesty and Integrity standard.

10. The detail of the appeal is as follows:

11. The specific allegation of the breach of the standard relating to honesty and integrity was contained in the Regulation 30 notice:

2.3 The conduct at paragraphs 1.9 and 1.10 represented you reporting to Police that the incident was homophobic when there was no reasonable basis to do so, whether

2.3.1 the call was made maliciously to cause trouble for the premises; or

2.3.2 so that you could artificially escalate the seriousness of the incident to influence the response by [REDACTED]

12. The paragraphs referred to, §1.9 and §1.10 set out the factual background:

1.9 At no time during your interaction with the door staff was there any suggestion that TS had been ejected or treated in the manner that he had because of his sexuality. However, by the end of your dealings with door staff, when they were closing the premises doors, you declared words to the effect 'they've just kicked him out for being gay.'

1.10 At around 03.23 hours you telephoned [REDACTED] to report the ejection of TS from the premises alleging that it was a homophobic incident and that you had been assaulted by door staff. In the course of this report you identified yourself as a Leicestershire Police officer and told the call handler that you thought it was embarrassing that [REDACTED] had never done anything about these incidents.

13. The Panel did not go through the allegations to indicate what it found proved and what was not found proved. In § 21 and § 22 of its decision, it found that the appellant honestly believed the incident she reported to the police had been homophobic. It did not find that she honestly believed her brother had been suddenly dragged out by his throat. It concluded that she *"deliberately sought to escalate the severity of the incident by using her police knowledge and or position"*.

14. The allegation at § 2.3 was: *"The conduct at paragraphs 1.9 and 1.10 represented you reporting to Police that the incident was homophobic when there was no reasonable basis to do so."* Given the finding that the appellant honestly believed, when she reported it, that the incident was homophobic, that allegation could not be found proved, unless her belief had been held unreasonably. Such a finding would need to be clearly set out, and there is nothing in the decision to suggest this was the Panel's view.

15. § 2.3.1 and § 2.3.2 set out alternative reasons why the appellant would report that the incident was homophobic when there was no reasonable basis to do so. These reasons would not require consideration if § 2.3 were found not proved. If it were proved, it should be clear whether it was on the basis of § 2.3.1 or § 2.3.2.

16. As to § 2.3.1, given the finding that the appellant honestly believed the incident had been homophobic, the Panel could not have found that the report was purely malicious.

17. As to § 2.3.2, the allegation was that the appellant sought artificially to escalate the seriousness by using the phrase *"homophobic incident"*, knowing it would be taken very seriously by [REDACTED]. There was nothing inappropriate in reporting an incident as homophobic when the appellant honestly believed it to be the case.

18. The Panel appear to have misunderstood the allegation in § 2.3. It found that the appellant did not honestly believe her brother had been dragged out by his throat and that she had:

"deliberately sought to escalate the severity of the incident by using her police knowledge and or position by referring to the conduct of [REDACTED] and by drawing an analogy with a domestic situation in which case she stated that an arrest would have been made."

19. There was no allegation that, when she reported the incident, the appellant had lied to the police about whether her brother had been dragged out by his throat. The Panel appears to have found a breach of the standard of honesty and integrity on a basis that

was not contained in the Regulation 30 notice. This is a serious breach of procedure.

20. Reg 30(1)(a)(ii) of the 2020 Conduct Regulations and the Home Office Guidance § 2.11 require the alleged conduct to be identified, with clear particulars of how that conduct is alleged to amount to misconduct. In **The Queen (Chief Constable of Derbyshire) v Police Appeals Tribunal v Wesley Green, Thomas Stewart [2012] EWHC 2280 (Admin)** the court approved the approach of a Police Appeals Tribunal who found that the panel had not been entitled to make findings of breaches of the standards other than those identified in the Reg 21 notice.
21. In the appellant's case, it was even more unfair; the Panel found a breach of the standard of honesty and integrity on a factual basis that had not been alleged. This was not only a breach of procedure, but was also unreasonable, because the appellant had been reporting what her brother had said about being grabbed by the throat.
22. Further, it was unreasonable for the Panel to make its finding in the light of:
 1. No CCTV of the moment Mr ██████ was first approached, so no evidence to assist in determining how he was first grabbed;
 2. The witness evidence of how the incident started was confused and unclear.
23. The Panel found that the appellant deliberately sought to escalate the severity of the incident by referring to the conduct of ██████ and drawing an analogy with a domestic situation. It appears that the Panel found the breach of the standard of honesty and integrity because the appellant criticised ██████ for not doing enough to investigate earlier homophobic incidents experienced by her brother, and NFA'ing the October 2021 incident without notifying him.
24. The appellant was entitled to express her frustration and disapproval of the way her brother's previous complaints had been investigated. There was no allegation that, to criticise ██████ was in breach of any standard of professional behaviour. It was unfair, and a breach of procedure, to make such a finding.
25. The Panel found that drawing an analogy with a domestic situation was an attempt to escalate the situation, in breach of the standard of honesty and integrity. This had formed no part of the allegation.
26. The Panel's approach to this part of the allegation was deeply flawed, in the ways set out above.
27. On the Panel's own findings of fact, all allegations relating to breaches of the standard of honesty and integrity should have been found not proved.
28. If the appeal is allowed, the Police Appeals Tribunal should re-determine the appropriate disciplinary action. The level of seriousness would be significantly different if the only standards breached were Discreditable Conduct, and Authority Respect and Courtesy, and not Honesty and Integrity, and the outcome decision were confined to the allegations in the Reg 30 notice.
29. The appropriate outcome would be a Final Written Warning, possibly for an extended period of up to 5 years.
30. Ms Williamson made the following additional submissions to the Tribunal.

31. It was clearly unfair to find that the appellant's conduct had breached the standard relating to honesty and integrity. It had not been alleged that she lied about the manner in which her brother had been removed from the club. It was not open to the Panel to decide for itself that there was a serious breach of the professional standards on a factual basis that had not been alleged. The Panel's findings at § 22 of its decision appear to be the basis of its decision.
32. It appears to be conceded that the Panel erred in making a finding of the breach of the standard of honesty and integrity on a factual basis that was not alleged.
33. At § 22, the Panel also found that the appellant deliberately sought to escalate the severity of the incident by using her police knowledge. This finding does not amount to a breach of the standard of honesty and integrity. The appellant was entitled to express her frustration and there was nothing inappropriate in telling the call handler that she was a serving police officer. The central case against her was that she attempted to escalate the severity by claiming that the incident had been homophobic. However the Panel had found that she honestly believed that this had been the case, so it cannot have been inappropriate that she reported it as such.
34. As to the finding that the appellant sought to influence ██████████ in their response to her call, she was not asking for any particular response. She was content for the matter to be dealt with the next day; it had been the call handler who suggested that the officers in the area could deal with the matter at the time. If this finding was based on the appellant's mention of what would happen in a domestic violence situation, it is borderline as to whether this is a breach of the professional standards. It is not the most serious of the Panel's findings.
35. As it had been unfair to make the finding that there had been a breach of the standard of honesty and integrity, it follows that it was unreasonable to base the outcome decision on this flawed finding. The Tribunal should therefore allow the appeal and redetermine the outcome.
36. Submissions to the Panel on the appropriate outcome had focused on the finding that there had been a breach of the standard of honesty and integrity, which would be irrelevant to the Tribunal's decision if it allowed the appeal. The Tribunal would consider the Panel's findings, stripped of the finding relating to honesty and integrity. The facts found include the contact made when the appellant "*lashed out*" and "*glanced*" one of the bouncers as she withdrew from his grasp as the group made its way to the exit. The contact made outside the club, between the appellant's hand and the bouncer's chest, had not been categorised as a "use of force".
37. The context of the incident was a matter that the public would have in mind; the appellant honestly believed there had been a homophobic incident involving her brother, and a lack of explanation as to why he had been asked to leave the club. The matter was sensitive, as there had been two previous incidents which had not been adequately investigated, and the family had found this deeply upsetting.
38. The appellant's actions were discreditable and were rightly categorised as gross misconduct. However, her actions were not at a level of seriousness which demanded the dismissal of an officer, young in service, in her probationary period, with an exceptional record.
39. As to remorse, the appellant had repeatedly made it clear that she had reflected extensively on the events that had occurred. She was embarrassed, and acknowledged

that she could have dealt with the situation much better, and should have just left, and dealt with it the next day.

40. It had been conceded that it had been unfair to find there had been a breach of the standard of honesty and integrity. This unfairness could have materially affected the decision on disciplinary action, which was based on this very serious finding and it must have been a significant factor in the ultimate outcome.

RESPONDENT'S SUBMISSIONS

41. In response to the appeal, in a document dated 25 May 2023, the respondent's representative submits that the appropriate outcome was dismissal. He submits as follows:

The Panel made the following findings that the appellant had:

1. sought, while intoxicated, to interfere with the removal of her brother from a nightclub;
 2. assaulted a member of the door staff, by lashing out at him;
 3. assaulted the same member of staff by pushing him to the chest, and being verbally aggressive and physically confrontational to the door staff;
 4. demanded CCTV footage of relevant events, and being told it would only be provided to the licencing authority or the police, responded that she was a police officer, before continuing to remonstrate with door staff;
 5. deliberately sought to escalate the severity of the incident by using her police knowledge by referring to the conduct of [REDACTED] and drawing an analogy with a domestic situation on her 101 call.
42. The appeal is not resisted to the extent that it is accepted that the Panel's findings on honesty and integrity do not align with the allegations. However, even without taking those findings into account, the sanction imposed was reasonable, and the appellant would have been dismissed in any event. It is therefore unnecessary to deal with the question of whether the Panel's finding, that she did not honestly believe her brother had been grabbed by the throat, was reasonable.
43. The appellant says it was not alleged that it was a breach of any standard to criticise [REDACTED]. However, § 1.10 states that she had identified herself as a Leicestershire Police officer and said she thought it embarrassing that [REDACTED] had never done anything about these incidents. § 2.1 also referred to these matters as being likely to undermine public confidence in the police, thereby breaching the Discreditable Conduct standard.
44. Whilst the appellant is entitled to express frustration and disapproval of [REDACTED] handling of incidents she is involved in, she is not entitled to do so having identified herself as a police officer.
45. The Panel was entitled to make the finding in § 22 in relation to the deliberate escalation of the incident, a finding which relates to the standard of Discreditable Conduct, which is set out in the allegation.

46. The Panel found the appellant's actions to have been deliberate and intentional, and the level of harm to be high.
47. The appellant denied the allegations in their entirety, showing neither remorse nor insight into her behaviour, and continuing to attempt to blame door staff throughout the hearing.
48. The Panel does not place breach of the honesty and integrity standard at the foreground of its decision-making. The matter receiving the most attention is the appellant's interaction with the door staff in full view of exiting patrons. This relates to standards of Discreditable Conduct, and Authority, Respect and Courtesy.
49. Even if the Panel incorrectly found a breach of the honesty and integrity standard, its decision to dismiss her was nonetheless reasonable.
50. If there is a need for the outcome to be redetermined, the appropriate outcome remains dismissal. The allegations which were found proved and have not been appealed are serious in their own right, and call for dismissal. The appellant's failure to admit responsibility or show insight, and her continued attempts to blame door staff all point to dismissal as the appropriate outcome.
51. Mr Penman made the following additional submissions to the Tribunal.
52. It was accepted that the Panel ought not to have made the finding in relation to honesty and integrity, as set out by the appellant.
53. At § 22 of its decision the Panel makes two findings: the first relates to the appellant's belief regarding the way her brother was removed from the club. This finding ought not to have been made. The second part of this paragraph is a finding that she sought to influence ██████████ during the call. This finding was properly made, and the Panel found that this conduct was discreditable.
54. The second part of the Panel's finding in § 22 of its decision relate to §§ 1.10 and 2.2 of the allegation. There was an error in § 2.2 of the allegation, which omitted that it referred to facts in § 1.10 as well as 1.7 and 1.8. The clear inference from the appellant's criticism of ██████████ during the telephone call was that she was trying to influence their response.
55. Even if the whole of § 22 is a finding that the Panel ought not to have made, the impact of any unfairness or unreasonableness must be considered in the context of an appeal.
56. On one reading, for an appeal to succeed, the Panel must also find that the outcome was unreasonable. On another reading, if it has shown that the finding was unreasonable, that opens the gate to redetermination by the Tribunal. The respondent's view is that the first interpretation is correct.
57. The finding relating to honesty and integrity is not structurally important to the decision, and is not the primary reason for the decision on disciplinary action. This pillar of the findings can be removed without materially affecting the decision on outcome.
58. The Panel found the appellant's evidence to be evasive and lacking in integrity. The only matter that falls to be reconsidered was § 22. This could not have affected the decision, and it is open to the Tribunal to expunge this finding and leave the outcome in place. The original decision of the Panel was within the range of reasonable decisions.

59. If the Tribunal were to allow the appeal and consider it appropriate to redetermine the outcome decision, it should consider seriousness. Key factors were as follows:

1. Culpability was high, as the appellant's actions were deliberate.
2. There was no physical harm, but there was significant reputational harm.
3. Aggravating factors were significant. There was an abuse of position, and the appellant continued to blame others. She took no responsibility for her actions, which took place over a sustained period. This was not a matter which occurred in the heat of the moment. This was extremely poor behaviour from a serving officer. Her actions continued after she should have realised her actions were improper, and her conduct breached more than one standard of behaviour. She showed no remorse, as she did not accept that she had acted as alleged, but brought multiple members of the public to a hearing on the basis that they were not telling the truth.
4. It was suggested that there had been some provocation, as the appellant had seen her brother man-handled, and this contributed to the way she behaved. However, before he was removed from the premises, she did not know why he had been ejected, which raises the question of whether it was a reasonable factor in her mind. Even though she had a reasonable belief that the incident was homophobic, the public would also be aware that, in fact, there had been no suggestion that this had been the case.

60. It had been suggested that the appellant's actions be excused because she had made a mistake. However, this would carry little weight in the minds of the public, if they knew of the unsavoury way she had behaved.

61. Even if the appellant's concern to preserve the CCTV resulted from a previous incident where the CCTV was not available, there are proper ways to do that, rather than demanding it while intoxicated and identifying herself as a police officer. Legitimate concerns do not excuse such an abuse of position in public.

62. If the Tribunal considers that it should redetermine the matter, the outcome would be the same.

EVIDENCE

63. The Tribunal was provided with the documentation and other material available to the Panel at the hearing, including the video and audio evidence, a transcript of the hearing, the Notice of Outcome document, the appellant's grounds of appeal and the respondent's response to the appeal.

DECISION

64. The appeal was based on the grounds in Rule 4(4)(a) and (c). The Tribunal agreed that there was some overlap in this case.

65. The meaning of "*unreasonable*" in this context is a matter of law. To show that a finding or a decision to impose disciplinary action was unreasonable, the appellant must show that it did not fall "*within the range of reasonable findings or outcomes to which the panel could have arrived*" (**Chief Constable of the Derbyshire Constabulary v Police Appeals Tribunal** [2012] EWHC 2280 (Admin) at §36.

66. In **R (Durham) v Police Appeals Tribunal [2012] EWHC 2733 (Admin)** at §10 the court said:

“.. an appeal will not succeed simply because the appeals tribunal concludes it would have reached a different decision... Where the decision reached by the panel was within the range of reasonable decisions to which the panel could have come, and appeal will nevertheless fail, even if the appeal tribunal would have reached a different decision to that reached by the panel.”

67. To succeed in showing that there are grounds for appeal under Rule 4(4)(c), the appellant has to show that there had been a breach of the procedures or unfairness which could have materially affected the finding or decision on disciplinary action.

68. Ms Williamson submitted that the primary basis for the appeal was under Rule 4(4)(c), so the Tribunal considered this first.

69. It was not disputed by the respondent that it had been unfair of the Panel to make a finding that there had been a breach of the standard of honesty and integrity, when it had also found that the appellant had an honestly held belief that the incident had been homophobic.

70. It was also not disputed that it had been inappropriate to make a finding that she did not hold an honest belief in relation to the information she passed on about the way in which her brother had been removed from the club. The Tribunal found that it was unfair to have made such a finding when there was no corresponding allegation.

71. However, the respondent submitted that this unfairness could not have materially affected the decision on disciplinary action, as the outcome would have been the same even without these findings. The Tribunal rejected this submission, and took the view that the Panel must inevitably have given significant weight to its finding that there had been a breach of the standard of honesty and integrity. It took particular note of the College of Policing Guidance which states:

“4.20 Offences of dishonesty... are particularly serious and likely to terminate an officer’s career. Such offending involves a fundamental breach of the public’s trust in police officers and inevitably brings the profession into disrepute.”

72. The Tribunal did not accept Mr Penman’s submission that, as these findings were not mentioned in the decision, the Tribunal could be satisfied that they were not essential components of the decision on disciplinary outcome. The College Guidance also stated:

“4.30 There may be cases where an officer has behaved dishonestly but the dishonesty is unconnected to a police operation or investigation and could be regarded as minor or trivial in nature....”

73. The Panel had not stated that the dishonesty was minor or trivial in nature. In the absence of a clear indication that the breach of the standard relating to dishonesty and integrity was not a weighty factor in the Panel’s decision, the Tribunal concluded that it could have materially affected the finding on disciplinary action because of its inherently serious nature and the fundamental importance of honesty and integrity in the police.

74. Accordingly, the Tribunal found that the grounds of appeal under Rule 4(4)(c) were made out in relation to the finding in § 22 that:

“As regard the manner of ██████████ removal from the club, the Panel did not conclude that PC Woods had an honestly held belief that he was suddenly dragged out by his throat as stated during her 101 call to ██████████.”

75. The Tribunal did not accept Mr Penman’s submissions regarding the interpretation of Rule 4(4). However, this was of no consequence, as it had found that the unfairness could have materially affected the findings and the decision on disciplinary action.

76. The Tribunal did not need to go on to consider whether the Panel’s finding in relation to the breach of the standard of honesty and integrity was unreasonable. In **Cleveland Constabulary, R (on the application of) v Police Appeals Tribunal [2017] EWHC 1286** the court said, at § 53:

“(B) The PAT is not entitled to substitute its own view for that of the panel unless and until it has already reached the view for example that the finding may by the panel was unreasonable or that there was another valid basis for appeal as provided by paragraphs 4(4)(b) and/or 4(4)(c) of the Rules.

(C) The PAT is entitled to substitute its own view for that of the panel once it has concluded either that the approach the panel took was unreasonable or the appeal from the panel's decision is justified under grounds 4(4)(b) or 4(4)(c)

(D) In other words, rule 4 (4) provides a gateway for an appeal. If the appellant gets through the gateway because the PAT find that the decision of the panel was for example, unreasonable or unfair then it is open to the PAT to substitute its own views for those of the panel. Thus, once the gateway is negotiated, the PAT can deal with this matter on a clean slate basis and can make an order dealing with the appellant in any way in which he could have been dealt with by the panel whose decision is appealed.”

Conclusion

77. The Tribunal determined that the grounds of appeal were made out under Rule 4(4)(c) for the reasons set out above.

78. Both representatives submitted that, in the event that the grounds of appeal were made out, the Tribunal would be in a position to substitute its own decision. The Tribunal agreed that this was the appropriate course of action. The majority of the factual findings of the Panel were preserved; it was only the finding in relation to honesty and integrity which fell away. There were contained in the first sentence of § 22 and § 26(c) of the Panel decision, and related to § 2.3 of the allegation.

79. Having allowed the appeal, the Tribunal considered the appropriate outcome in relation to the misconduct which the Panel had found proved. These were particularised in the allegation at § 2 as follows:

1. *The conduct at paragraphs 1.3 to 1.10 represented you intervening in a nightclub incident unreasonably, and behaving inappropriately in your dealings with door staff and/or thereafter reporting staff to police when there was no reasonable basis to do so. The conduct is likely to undermine public confidence in the police.*
2. *The conduct at paragraphs 1.7, 1.8 represented you identifying yourself as a police officer inappropriately whether*

1. *To intimidate the staff with whom you were remonstrating; or*

2. To assert a basis for them to release the CCTV footage to you; or
3. In the course of your 999 call to [REDACTED] to influence their response to your call;

The conduct represented an abuse of your authority.

80. The Tribunal took account of the College of Policing Guidance on Outcomes in assessing the seriousness of the misconduct. It noted that the appellant accepted that her conduct had been rightly categorised as gross misconduct.
81. In considering the separate parts of the allegation, the Tribunal accepted Ms Williamson's submission that, insofar as she was seeking to influence [REDACTED] during the 101 call, the appellant's misconduct was not very serious. She had honestly believed the incident was homophobic, and reported it as such, although she had used inappropriately disparaging language, indicating how she considered the matter might have been handled differently. The Tribunal was of the view that, as a stand-alone incident, this would amount to misconduct, but not gross misconduct. However, it took a different view in relation to the rest of the allegation. It considered the misconduct set out in §§ 2.1, 2.2.1 and 2.2.2 to be much more serious, and that, separately and collectively, these allegations could be characterised as gross misconduct.
82. The Tribunal kept in mind the purpose of police misconduct proceedings: to maintain public confidence in, and the reputation of, the police service, to uphold high standards in policing and deter misconduct, and to protect the public. It considered the following factors:

1. Culpability

The appellant's actions were deliberate and intentional, although not planned. She was off-duty, but she identified herself as a police officer during the course of the incident and must take a high degree of responsibility for her actions.

2. Harm

There was no evidence of actual harm. However, there was considerable potential for reputational harm. This can be seen from the statement of the Head Supervisor, given 18 days after the incident. He stated:

"PC Woods then said "I'm a police officer". At this I said to PC Woods words to the effect of "if you are a police officer you need to look in the mirror at how you are behaving as it is disgusting..."

The Tribunal agree that the appellant's conduct would undermine public confidence in the police service.

3. Aggravating factors

The Tribunal did not agree that the appellant's abuse of authority was an aggravating factor. It regarded that approach as double-counting, since the allegation was that the appellant had abused her authority, which was, in itself, a serious matter.

The Tribunal considered that it was an aggravating factor that the appellant had engaged in a prolonged period of confrontation with the staff at the club, in a busy

public place, and had continued to behave inappropriately after she should have realised that her conduct was improper.

4. Mitigating factors

The Tribunal considered that there were a number of mitigating factors. The appellant had a genuine belief that her brother had been the subject of a homophobic incident, and that this was connected to two previous incidents. She also believed that those incidents had not been dealt with adequately by [REDACTED], and she was concerned that this matter should receive attention. Although it took place over a prolonged period of time, this was a single incident, against the background of previous good character.

The appellant had evidently reflected on her behaviour and recognised that she should have dealt differently with the situation. Mr Penman said that she had not shown remorse for something she did not accept she had done. However, this did not prevent her from having insight into the nature of the misconduct finding which had been made against her. In **Yusuff v General Medical Council [2018] EWHC 13 (Admin)** the court said:

“18. It would be wrong to equate maintenance of innocence with a lack of insight...The registrant may be able to demonstrate insight without accepting that the findings at the original hearing were true.”

83. Looking at the misconduct in the round, the Tribunal considered that it was serious, and that the mitigating factors, whilst weighty, did not excuse the appellant's actions, which she should have realised were improper. Her actions harmed the reputation of the police, and the public would expect that significant disciplinary action would be taken as a result. It considered whether a final written warning would deal adequately with the issues, whilst protecting the public interest.

84. The Tribunal took the view that the public would recognise that a young, inexperienced officer would be likely to learn from a serious error of judgement early in their career that, after a period of reflection and learning, they would be highly unlikely to repeat. The Tribunal considered that the public would not find it necessary, to maintain confidence in the police, to dismiss an officer in their probationary period, who had reflected on their actions, and learned from the experience. The Tribunal had in mind the reaction of the Head Supervisor at the club, who said:

“It is not my intention to get PC Woods into serious trouble, but at the same time I would like her to understand that as a police officer particularly, you can't go around behaving in the manner in which she behaved that night. I think she needs to realise what you can and can't do as a police officer.”

85. The Tribunal also took into account the personal mitigation, from which it could be seen that the appellant was held in high regard by a range of colleagues of varying seniority.

86. The Tribunal considered that a final written warning would adequately reflect the gravity of the finding of misconduct. It is an outcome which will have a significant impact on the appellant. Whilst there were several mitigating factors, they did not reduce the seriousness of the conduct significantly. However, the Tribunal was of the view that dismissal would be disproportionate to the nature of the misconduct, and was not required in this case in order to maintain public confidence in the police and to uphold standards.

87. The Tribunal considered the length of the Final Written Warning, in accordance with Regulation 42 of The Police (Conduct) Regulations 2020. Whilst the appellant was still young in service, it considered that a period of three years would suffice to mark the seriousness of her misconduct. This would serve as a constant reminder to her, during this period, of the standards that she is required to uphold in order to maintain public trust in the police service. The Tribunal considered that a longer period would be disproportionate, and this outcome would satisfy the public interest in this case.

Backpay

88. The appellant's representative invited the Tribunal to consider her request for back-pay. The respondent made no representations on this matter.

89. Schedule 6 to the Police Act 1996 states, at paragraph 7:-

(1) Where on the determination of an appeal the tribunal makes such an order as is mentioned in section 85(2), the order shall take effect—

(a) by way of substitution for the decision appealed against, and

(b) as from the date of that decision.

(2) Where the effect of the order made by the police appeals tribunal is to reinstate the appellant in the force or in his rank, he shall, for the purpose of reckoning service for pension and, to such extent (if any) as may be determined by the order, for the purpose of pay, be deemed to have served in the force or in his rank continuously from the date of the original decision to the date of his reinstatement.

90. The Tribunal confirms that, by operation of law its decision takes effect from 10 February 2023. The effect of its decision is the reinstatement of the appellant. In the circumstances, it determines that the respondent should pay the appellant back pay owing for the period from 10 February 2023 to 4 September 2023, subject to a deduction equivalent to all income she received in respect of other employment during that period.

91. No application for costs was made, so the Tribunal therefore made no order for costs.

Sara Fenoughty
Chair of the Police Appeals Tribunal

5 September 2023