

IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020

CONCERNING

Former PC 2291 MacPherson

DECISION OF THE PANEL

1) It is alleged that Former PC MacPherson has breached the Standards of Professional Behaviour in the following terms: -

1. Allegation 1 in relation to “Ms C”-

At all material times you knew or ought to have known:

- a. That Ms C was vulnerable and / or
- b. Of the prohibition against forming relationships with victims of crime and /or
- c. Of the West Mercia Police Notifiable Associations policy and / or
- d. Of the West Mercia Police initiative “Don’t Cross the Line”.

2. Between 8 August and 11 October 2018 you shared some 372 SMS messages with Ms C via your police issued mobile telephone, such communication on your police issued mobile telephone only ceasing when you provided Ms C with your personal mobile telephone number.

3. Your correspondence with Ms C via your personal mobile phone thereafter grew mutually flirtatious and sexualised, such that on 14 October 2018 and when you were still the OIC in her case, you attended her home address after the conclusion of your shift and had consensual sexual intercourse with Ms C.

4. After her case had been disposed of you continued to have a sexual relationship with Ms C for some three years when you knew, or ought to have known that the same was inappropriate.

5. This relationship continued even after you had been served misconduct notices in respect of a similar allegation regarding an inappropriate relationship with Ms A.

6. You failed to disclose your relationship with Ms C, whom you had met as a victim of crime, when you knew that you ought to have done so.

Breach/es of the Standards of Professional Behaviour

Such conduct is in breach of the Standards of Professional Behaviour in relation to Duties and Responsibilities, Authority, Respect, and Courtesy, Honesty and Integrity (the integrity limb) and Discreditable Conduct. It amounts to gross misconduct in that, if proven, it is so serious as to justify your dismissal.

2. Allegation 2 in relation to “Ms A”

1. Over the next month or so in an attempt to establish an emotional and / or sexual relationship with Ms A, you engaged in inappropriate communication with a victim of crime, namely:

- a. Making an excessive and unnecessary number of visits to the bank in order to see Ms A, causing her colleagues to comment on the same.
- b. Behaving in an inappropriate manner, including saying things like 'Here, she is, Miss Beautiful, she has made my day'
- c. Sending an excessive and unnecessary number of text messages to Ms A, routinely signing off such messages with 'x' and occasionally with content that was flirty and inappropriate including:
 - i. 'it is nice dealing with a lovely person. I hope you enjoyed your wine and have a good week x'
 - ii. 'sweet dreams x'
 - iii. 'you don't need much beauty sleep!!!!'
 - iv. 'Not wanting to sound creepy but I would have given you a hug to try and make it all right last Friday x'
 - v. 'Good afternoon lovely...the annoying copper here'

Breach/es of the Standards of Professional Behaviour

Such conduct is in breach of the Standards of Professional Behaviour in relation to Duties and Responsibilities, Authority, Respect, and Courtesy, Honesty and Integrity (the integrity limb) and Discreditable Conduct. It amounts to gross misconduct in that, if proven, it is so serious as to justify your dismissal.

It is alleged that these matters individually and/or collectively amount to gross misconduct, namely a breach of the Standards of Professional Behaviour that, if proved, is so serious that your dismissal would be justified.

2)Representation

Throughout the hearing the Appropriate Authority (AA) has been represented by Mr Barnabus Branston of Counsel. We are grateful for the quality of Mr Branston's submissions.

The officer had, in an email to the Federation Representative, DI Lesley Williams on the 13 July 2023 indicated his intention to resign from West Mercia Police and that he would not be attending the Hearing.

3)The Standards of Professional Behaviour are contained in Schedule 2 of The Police (Conduct) Regulations 2020 and within the Home Office Guidance of 2018:

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.

Duties and Responsibilities

Police officers are diligent in the exercise of their duties and responsibilities.

Police officers have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer when identified as a witness.

Discreditable Conduct

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

Police officers report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.

The Panel additionally considered the appropriate paragraphs pertaining to the Standards as set out in the Home Office Guidance and the Code of Ethics, to which the Guidance refers.

4) Preliminary Issues

Prior to the hearing the Chair made the following directions:

- (a) That the complainants be anonymised and identified only as Ms C and Ms A
- (b) That no witnesses were required to attend and give oral evidence
- (c) That the hearing be in public
- (d) That Notice of the hearing be published.

5) The Absence of the Officer

a. Former PC MacPherson resigned from West Mercia Police in advance of the hearing and had indicated that he did not intend to serve a Regulation 31 Response or attend the Hearing. The Panel were satisfied that the Officer was aware of the proceedings against him. DI Williams of the Police Federation of England and Wales confirmed that the former Officer had informed her that he would not submit a Regulation 31 Response and would not engage with the Hearing.

b. Mr Branston, Counsel for the Appropriate Authority [AA] applied to proceed under Regulation 37(3)(b).

c. The Panel were satisfied that Former PC MacPherson had been made aware of this Hearing and considered that it was in both the interests of justice and in the public interest for it to proceed and ruled in accordance with Regulation 37(3)(b) that the Hearing could be proceeded with and concluded in the absence of the Officer.

d. Furthermore, the Panel were satisfied that it was just to proceed without any legal representation on behalf of the Officer. The Panel noted that the Appropriate Authority was represented by experienced Counsel who would point out such matters as went in the favour of or to the mitigation of the Officer.

e. The former officer provisions apply.

6) The Panel's Approach

The Panel determined it was: -

- a. Required to consider the facts of the case and to make its findings of fact in relation to each of the allegations;
- b. Determine whether those findings of fact found constitute a breach of the relevant standards;
- c. Determine whether the conduct found proven against the Officer amounted to misconduct or gross misconduct.

The Panel reminded itself that the burden of proof is on the Appropriate Authority throughout, and the standard of proof is the balance of probability, namely what is more likely than not.

The Panel also reminded itself of relevant guidance from the Home Office Guidance: -
"2.265. The more serious the allegation of misconduct that is made or the more serious the consequences for the individual which flow from a finding against him or her, the more persuasive (cogent) the evidence will need to be to meet that standard. This does not mean that the standard is higher. It means only that the inherent probability or improbability of the conduct occurring is itself a matter to be taken into account when weighing the probability and deciding whether on balance the conduct occurred."

6) Purpose of misconduct meeting/hearing

2.212. The purpose of a formal misconduct meeting/hearing is to:

- a. Give the police officer a fair opportunity to make his or her case having considered the investigation report including supporting documents and to put forward any factors the police officer wishes to be considered in mitigation (in addition to the submission which must be sent in advance to the person(s) conducting or chairing the meeting/hearing for his, her or their consideration).
- b. Decide if the conduct of the police officer fell below the standards set out in the Standards of Professional Behaviour based on the balance of probabilities and having regard to all of the evidence and circumstances.

7) The Facts

In our deliberations, we make it plain that the Panel reviewed and considered the entirety of the facts and evidence presented to us.

a. Background

PC 2291 Alexander MacPherson was a Safer Neighbourhoods Officer in South Worcestershire and had approximately 12 years' service with West Mercia Police. Following a routine audit of Former PC MacPherson's police issued mobile phone on 23 June 2021, West Mercia Police identified an unusually large number of text messages between the officer and a victim of crime, Ms A.

On 19 March 2021, Former PC MacPherson was appointed as the Officer in the Case in relation to a complaint involving Ms A, who had been the victim of an assault at her place of work. From that date until 16 April 2021 there were 72 communications in the form of SMS (text) messages from his police issue mobile phone to Ms A, not all related to the investigation. Some messages were personal in nature and caused Ms A concern. Additionally, during the same period, Ms A states that the officer repeatedly attended her workplace in an attempt to speak to her. The frequency of the visits appeared to her to be excessive and not necessarily for a valid policing purpose. Victim contact and Crime logs in which communications with Ms A were recorded do not appear to reflect the level of contact that he had with her. It is alleged that the contact with Ms A was not for a proper policing purpose but was an attempt to abuse his position in order to establish an inappropriate emotional and/or sexual relationship with her.

Further lines of enquiry involving telephony indicated that on 4 August 2018 Former PC MacPherson was appointed as the Officer in the case in relation to an incident involving Ms C, who had allegedly been assaulted in a domestic abuse incident. There were 372 communications in the form of SMS messages exchanged between his police issued mobile phone and Ms C from 08 August 2018 until 11 October 2018. The communication ceased on his work mobile phone when he gave Ms C his personal mobile phone number and contact continued there. The crime log in which he recorded his communications with Ms C does not reflect the level of contact that he apparently had with her. Within the crime report, Former PC MacPherson noted Ms C's mental health condition and her vulnerability. He is alleged to have knowingly engaged in inappropriate communication with a vulnerable victim of crime.

8) Findings of the Panel

Our findings are as follows: -

Contact between Former PC MacPherson and Ms C

a. Former PC MacPherson first became professionally involved with Ms C on 4th August 2018, when he became the Officer in the Case (OIC) for a domestic violence assault incident where she was the complainant. The investigation was concluded on 16 October 2018 when Ms C declined to pursue the matter.

The Panel are satisfied that Ms C was vulnerable due to having a mental disorder and being a repeat victim of alleged domestic abuse. The entry made by the officer on 15th October 2018 stated "the IP has now provided a retraction statement. She does not want police to pursue this matter. She has bi-polar and is struggling to cope (suffering a lot of stress which is not helping her m/h) and does not want to go to court."

Former PC MacPherson was of course aware of Ms C's circumstances as he had himself recorded them on police systems. He was therefore well aware that she was highly vulnerable.

b. The task of the Panel has been made easier by the admissions made by Former PC MacPherson in his interview under caution on 3rd December 2021. On interview, the former officer accepts having an "affair" with Ms C and that he should have stopped the relationship developing at an early stage. He described how his relationship with Ms C had developed through the exchange of messages containing "risqué humour" and "banter" and that there had been a mutual attraction.

He stated that their conversation had transferred to his personal phone as it was no longer work related.

He denied that he had intended to establish a sexual relationship from the outset but acknowledged that he had first had sexual relations with Ms C on the 14th of October 2018, the day before he made the entry on the crime report listing her vulnerabilities.

c. Prior to 8 October messages between the officer and Ms C appear to be of a professional nature. However, they progressed to messages of an overtly sexual nature rapidly. An example is a message sent to Ms C at 19:38:15 on the 11th October 2018, when Former PC MacPherson said "Never tried it....I'm into women's butts, wife don't let me go anywhere near".

d. In her statement dated the 7th of October 2021, Ms C refers to the messages between herself and Former PC MacPherson quickly moving from the professional to "texting a lot, including flirty things".

It is of note that it was the former officer who suggested moving communications from his work mobile to his personal mobile phone on the 11th of October 2018. On the 14th of October 2018, Former PC MacPherson attended at her home address in part uniform and had sexual intercourse with Ms C.

Although Ms C says that this was consensual, she does say that she was in a very low place at the time, having just been assaulted, having a difficult relationship with her family and drinking far too much alcohol.

The Panel also note that the investigation was ongoing at the time and that the status of Ms C was that of a complainant in a domestic abuse assault. In fact, the following day on the 15th of October 2018, Former PC MacPherson made a log entry referring to Ms C's anxiety as to whether to proceed with her complaint or not.

The behaviour demonstrated by the former officer and not denied by him during his interview, was a misuse of his position and authority. Whilst there is always a power imbalance in any interaction between police and public, when the police come into a

person's life at a time when they are especially vulnerable, they should protect the vulnerable, not exploit them.

e. The impact of Former PC MacPherson's conduct on Ms C's mental health and wellbeing is apparent. In 2020 Ms C sent messages to the officer saying that he had "used her" for two years. She made an attempt to end her life in September 2021 because of her feelings for him and the fact that the former officer was married, and the relationship was thus unlikely to progress.

f. The Panel have considered the West Mercia Police training document, "Don't Cross the Line – Abuse of Position for Sexual Purposes" and have determined that Former PC MacPherson must have been aware of it, despite his denials and despite not having attended a formal course. The document is heavily publicised by the force and there were numerous posters and images on force computer systems. The officer also accepts that he was aware that the relationship was wrong and of course, he precipitated the decision to move from communicating via work phone to his personal phone.

The document contains the following passage:

"Any abuse of position for a sexual purpose will be considered as serious corruption, even if no criminal charges result. The member of the public does not have to be a vulnerable person for these behaviours to be an abuse of position. But any vulnerabilities – such as around age, mental health, abuse of alcohol or drugs, being a victim of domestic abuse, a witness to or victim of crime – will be considered as aggravating features".

g. Notifiable & Vulnerable Association Policy

The Panel have considered Warwickshire Police and West Mercia Police Notifiable & Vulnerable Association Policy.

The very important purpose of the Notifiable Association Policy is to manage potential risks in respect of current investigations and intelligence development. It is about vulnerability to corruption, coercion and conflicts of interest and provides the force with an opportunity to manage any concerns that may arise.

The policy includes the following section:

VULNERABLE ASSOCIATIONS

The Standards of Professional Behaviour apply to all staff and clearly identify that they should not abuse their powers, or authority, and respect the rights of all individuals. All staff should be aware when dealing with victims, witnesses, offenders or other vulnerable persons that there is likely to be an imbalance of power (for example due to vulnerability or through powers of office) and that an attempt to establish relationships beyond the professional may constitute an abuse of that power. It is therefore imperative that all members of the Alliance are aware of the contents of this policy to ensure they do not breach these standards and to enable them to identify this behaviour in others. The below points should be considered:

- Never use your position to establish or pursue a sexual relationship or improper emotional relationship with any current or former victim, witness, offender or other vulnerable person

We note that Former PC MacPherson said in interview that he did not know about the policy and hence his obligations pursuant to it.

He was an officer of many years' experiences and the Panel consider that he cannot have been unaware of his responsibilities. All police ranks and roles are expected to know, understand and act within the ethics and values of the Police Service and to justify and professionally account for actions to ensure adherence to legal frameworks and key working principles, policies and guidance. The Panel are satisfied that Former PC MacPherson must have at the very least known of the policy, even if he was unsure as to the detail or title. The responsibility to confirm what was required of him and to be accountable was unquestionably his.

In failing to disclose his relationship with Ms C, whom he had met as a victim of crime, when the Panel find that he knew that he ought to have done so, Former PC MacPherson breached the Standard in respect of Duties and Responsibilities.

h. The Panel are satisfied that the former officer took positive steps to pursue an emotional and/or sexual relationship with Ms C:

- The interaction between the former officer and Ms C escalated quickly to kisses on the end of messages and other sexualised comments
- There was inappropriate contact via both personal and work phones, moving to personal at the former officer's instigation
- There was contact whilst off duty
- The sexual relationship continued for approx. 3 years and long after Ms C's case was concluded.

i. We do not accept Former PC MacPherson's contention that he did not intend to have a sexual relationship with Ms C or indeed the officer's attempts to dilute his knowledge of her vulnerabilities. The responsibility to be aware of the imbalance of power between himself and Ms C was solely his, as was the necessity to maintain professional boundaries.

j. The Panel are satisfied that Former PC MacPherson has breached the Standard of Professional behaviour relating to Duties and Responsibilities in that he used the exercise of his duties and responsibilities to form an inappropriate relationship with a vulnerable complainant.

He failed to act with self-control, or to treat Ms C who was a member of the public with respect and courtesy as required, despite being aware of her fragility at the time but abused his powers and authority by commencing a relationship with her. As such, he breached the Standard in respect of Authority, Respect, and Courtesy.

For the same reasons, he failed to act with integrity and abused his position in failing to maintain appropriate boundaries but rather exploit his position for a sexual purpose.

Former PC MacPherson behaved in a manner which would undoubtably discredit the police

service and undermine public confidence, thus breaching the Standard in relation to Discreditable Conduct.

10)Contact between Former PC MacPherson and Ms A

a. On 19 March 2021, PC A had been appointed as the OIC for an offence of common assault in which Ms A was the victim. Ms A had been assaulted by a customer at the bank where she worked. The assault was admitted by the perpetrator and dealt with by way of a caution.

From 19 March until 16 April 2021, there were 72 communications (SMS (text) messages) from Former PC MacPherson's work mobile phone to Ms A. That level of contact was not reflected in the details that he entered into the crime report relating to the incident.

b. Ms A stated to West Mercia Police that the communications she received were not all related to the criminal investigation. She gave examples of messages which had given her cause for concern, such as one containing the greeting "morning lovely x" and another stating, "you don't need beauty sleep".

Ms A provided a statement dated 23 August 2021 to IOPC Investigators. She stated that initially her contact with Former PC MacPherson was professional but after several days the text messages became more personal in nature.

In her statement, Ms A stated that: "He would say in the texts, 'I hope you do not think I'm being creepy', and I would think why is he saying that?".

c. During the same period, Ms A stated that Former PC MacPherson had attended her workplace, where the assault had occurred, on about seven or eight occasions to attempt to speak to her. This occurred to the extent that it was being commented on by her colleagues and

subsequently her manager had needed to intervene to divert Former PC MacPherson away from her.

Ms A stated that she did not feel that the frequency and nature of the visits reflected a legitimate purpose relating to her case.

d. The Panel do not accept the account of Former PC MacPherson, who said in interview that he had not been interested in establishing an emotional or sexual relationship with Ms A. He explained that finishing his text messages with an "x" was simply being friendly and something that he did regularly with family and friends. He was aware that Ms A was upset by the assault on her, and he was trying to provide support to her by visiting her workplace. Ms A estimated that there had been seven or eight workplace visits.

e. The Panel have considered the messages passing between Former PC MacPherson and Ms A. Whilst many of the texts are work related and could be interpreted as providing support to a complainant, the Panel are satisfied that others are an attempt to try and initiate sexual contact with Ms A and to test her response, in order to try to pursue a sexual or improper emotional relationship with her.

For example, a text message sent to Ms A on the 22nd of March 2021 reads "unfortunately I am still here waiting. If the weather is nice I'm going to play on my motorbike it is nice

dealing with a lovely person. I hope you enjoyed your wine and have a good week x". That same day when they were discussing the colour of Ms A's hair which used to be red, the former officer replied "I thought you were naturally a blonde. I was bright ginger as a kid. It always looks better on ladies x".

The former officer sent a further message that same day saying "As long as you don't think I am being creepy" in response to the messages about Ms A's hair colour. The Panel consider that this was likely a further attempt by former officer MacPherson to judge Ms A's attitude before potentially taking things further.

These messages, along with others, were overly friendly, informal, and familiar, commenting on his assessment of Ms A's character and appearance. This flattery directed at Ms A went far beyond the officer's responsibility to keep Ms A informed of progress with the investigation and signposting her to victim support services to enable her to access support if needed. As such, there was no proper policing purpose for the majority of the messages sent to Ms A.

f. The number of visits that Former PC MacPherson made to Ms A's place of work appear to have been considered excessive by her and her colleagues. Former PC MacPherson stated in interview that he believed that all the visits had a valid policing purpose. The Panel are satisfied that some of the visits made by Former PC MacPherson did not have a proper policing purpose but were motivated by his desire to meet Ms A and to maximise the potential for a relationship to develop.

g. The Panel are satisfied that Former PC MacPherson has breached the Standard in relation to Duties and Responsibilities by allowing his desire to cultivate a relationship with Ms A to interfere with the exercise of his duties and responsibilities.

He breached the Standard relating to Authority, Respect, and Courtesy as he failed to act with self-control and to treat Ms A with respect. His repeated visits to her place of work and the overly familiar tone of his messages crossed from the professional to the inappropriate.

For the same reasons, he failed to act with integrity and abused his position in failing to maintain appropriate boundaries but rather to exploit his position in an attempt to pursue a relationship with Ms A.

Former PC MacPherson behaved in a manner which would undoubtedly discredit the police service and undermine public confidence, thus breaching the Standard in relation to Discreditable Conduct.

11) Decision as to Misconduct or Gross Misconduct

a. The abuse of position for a sexual purpose is defined by The National Police Chiefs' Council (NPCC) as: Any behaviour by a police officer or police staff member, whether on or off duty, that takes advantage of their position as a member of the police service to misuse their

position, authority or powers in order to pursue a sexual or improper emotional relationship with any member of the public.

The definition references an 'improper emotional relationship' and is therefore wide in scope. The Panel note that the definition does not include the words 'vulnerable' or 'victim' and includes any relationship with a member of the public. This is further evidence of its broad sweep.

b. The College of Policing guidance 'Maintaining a professional boundary between police and members of the public' acknowledges there may be situations where an officer feels there is mutual attraction. However, it is still their responsibility to not act on such feelings. It should be noted this document falls under the heading "interactions with members of the public involved in a current incident or investigation."

c. The College of Policing guidance was intended to be read in conjunction with the Code of Ethics. The Code of Ethics sets out that in regard to 'authority, respect and courtesy', an officer must "not establish or pursue an improper sexual or emotional relationship with a person with whom you come into contact in the course of your work who may be vulnerable to an abuse of trust or power".

d. The public can rightly expect to trust the police. Police officers and staff have immense power by virtue of the role they hold in society. When the police betray this trust, it has a devastating impact on victims and their confidence in the police. As Lord Bingham rightly said: "A profession's most valuable asset is its collective reputation and the confidence which that inspires" (Bolton v Law Society 1993).

e. The Panel are entirely satisfied that Former PC MacPherson's behaviour amounts to Gross Misconduct. For the avoidance of doubt, we rely upon the following factors: -

- He engaged in consensual sexual intercourse with Ms C who he knew was vulnerable.

- He messaged and visited Ms A, who was a victim of crime and vulnerable for that reason, not for a proper policing purpose but in an attempt to establish a relationship with her.

- Sexually inappropriate, sexually motivated, or lewd communications were sent to Ms C. The messaging between himself and Ms C involved the use of both police and private mobile devices and switched to personal mobile at the former officer's instigation in an attempt to hide his relationship with her.

- There were unnecessary contacts in the form of visits to the bank in respect of Ms A which the Panel find were not for a proper policing purpose but in order to try and develop a sexual or improper emotional relationship.

- Former PC MacPherson used kisses at the end of messages ('xx'), which were inappropriate and overly familiar in an attempt to build a relationship, trust and emotional connection with the Ms C and Ms A.

-There was contact with Ms C whilst off duty and visits to her.

-His relationship with Ms C continued after her case was concluded and after he had been served with Regulation 17 misconduct notices on three separate occasions in 2021, once by West Mercia Police and twice by the IOPC, and Ms C having been admitted to hospital after taking an overdose of paracetamol in September 2021, due to the impact of Former PC MacPherson's conduct.

- He failed to disclose his relationship of some three years with Ms C by way of the Notifiable Association Policy, whom he met as a vulnerable victim of crime, when he knew that he ought to have done so.

f. Former PC MacPherson's conduct in respect of both Ms C and Ms A was a serious betrayal of the trust and confidence that individuals should have in the police and only undermines the hard work of the vast majority of police officers, who do incredibly difficult work with a clear intent to serve and protect the public.

The legitimacy and effectiveness of UK policing is built on relationships between the police and the public and in a consent-based policing system engagement with the public is crucial in building public trust and confidence.

It is reasonably expected of police officers that they adhere to force values and principles, even in their personal time. This is the necessary trade-off for policing by consent and maintaining, or seeking to regain, public confidence in the service.

Police personnel who display sexualised behaviour towards a member of the public who they have come into contact with through work, undermine the profession, breach trust, exploit a power imbalance, act unprofessionally and. Such behaviours also have the potential to reflect negatively on police colleagues and have an impact on the professional relationships they have with the communities they serve.

g. In conclusion, the Panel is satisfied that each of the breaches of the Professional Standards in relation to Duties and Responsibilities, Authority, Respect and Courtesy, Honesty and Integrity and Discreditable Conduct individually and/or collectively amount to Gross Misconduct.

In the case of this former officer, it is appropriate to take disciplinary action.

Marsha Pearson
Independent Member

Wendy Evans
Legally Qualified Chair

Leanne Lowe
Superintendent