

IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020

CONCERNING

Former PC 2291 MacPherson

OUTCOME

1)The Panel must now determine outcome.

2)The former officer provisions apply. Paragraph 20.66 of the Home Office Guidance 2020 states:

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.

2)In assessing the seriousness of this case we are required by common law (as usefully summarised in the College of Policing Guidance on Outcomes in Misconduct Proceedings) to keep at the forefront of our minds the purpose and objective of these proceedings, which is to maintain public confidence in and the reputation of the Police, uphold high standards and deter misconduct and to protect the public. We appreciate that the objective is not to punish the officer (although it may have that effect) and that we should therefore do no more (although also no less) than that which is necessary to satisfy the key objectives of the proceedings. We must (and we have) considered the seriousness of the misconduct, the purpose of sanctions and chose an outcome which most appropriately meets that purpose. Assessing the seriousness is to be approached in terms of the four factors set out in the Fuglers decision which we have carefully considered and will come onto in some detail in a moment.

3)The Panel have therefore followed the structured approach as set out in the College of Policing Guidance on Outcomes in Police Misconduct Proceedings.

In summary, the Panel:

Assessed the seriousness of the conduct and the behaviour of the officers;

Reminded itself of the purpose of imposing sanctions, namely:

Maintaining public confidence in and the reputation of the police service;

Upholding high standards in policing and deterring misconduct; and protecting the public.

Arrived at an Outcome which most appropriately fulfils the purpose of imposing sanctions in the light of the seriousness of the officer's conduct.

4) Seriousness of the Conduct and Behaviour:

In assessing the seriousness of the behaviour of former PC MacPherson, the Panel considered the following factors in line with the guidance in the CoP Guidance on Outcomes:

The culpability borne by him for his actions

The harm caused by his actions

The existence of any aggravating factors

The existence of any mitigating factors

5)Culpability

We find Former PC MacPherson's culpability to be high.

a.The Panel consider that former PC McPherson's conduct was intentional, deliberate, targeted or planned and therefore more culpable than conduct that has unintended consequences. He engaged in a sexual relationship with Ms C and actively attempted to pursue one with Ms A.

b. Former PC McPherson's culpability is increased because he was in a position of trust, and the Panel are satisfied that his level of responsibility was affected by specific circumstantial factors. This is due to his particular role in relation to Ms C, who was a complainant in respect of a domestic abuse allegation and also in respect of Ms A, who was a victim of an assault in her place of work.

c. Certain types of misconduct should be considered especially serious:

Abuse of position of trust or authority

The Panel have considered para 4.44 of the Guidance and consider that it corresponds with the former officer's conduct:

The nature of the office of constable means that all police officers are in a position of trust and authority in relation to members of the public. An officer's misconduct will be more culpable where it involves an abuse of this position. The abuse of position for a sexual purpose (APSP) is a form of serious corruption, defined as any behaviour by a police officer, whether on-duty 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. Such conduct can cause substantial damage to public trust and confidence in the police and is particularly serious where the subject of the officer's behaviour is a vulnerable person.

d. Both Ms C and Ms A were vulnerable, Ms C due to her mental ill health and status as a domestic abuse victim and Ms A due to her experience of crime.

The Panel are satisfied that the officer recognised this. Former PC MacPherson recorded on police systems the vulnerabilities of Ms C and knew the facts of the assault involving Ms A.

6)Harm

The College of Policing Guidance then addresses the harm caused by the officer's actions, indicating that this can be considered in various way. The text refers to harm caused to particular individuals, but the guidance recognises that harm may also be caused on a wider basis:

“Effect on the police service and/or public confidence

Harm will likely undermine public confidence in policing...Where an officer commits an act which would harm public confidence if the circumstances were known to the public, take this into account. Always take seriously misconduct which undermines discipline and good order within the police service, even if it does not result in harm to individual victims.

a.Misconduct may affect particular individuals, in which case the harm caused may depend on the victim's personal characteristics and circumstances. Misconduct can also harm the wider community.

We consider that Ms C suffered harm, as evidenced by the tone of some of her messages to the former officer, where she is clearly distressed and her suicide attempt in September 2021.

Also, Ms A details that she was left feeling fearful because the former officer had her personal details. He also left her feeling concerned about his repeated visits to the bank and agitated because of his contact with her.

b. How such behaviour would be, or has been, perceived by the public will be relevant, whether or not the behaviour was known about at the time.

The Panel have considered the scale and depth of local or national concern about the behaviour in question.

When a police officer or member of police staff abuses their position for sexual purpose it has a significant impact on the survivor and more widely on confidence in policing. The legitimacy and effectiveness of UK policing is built on relationships between the police and the public, but there are challenges in this relationship after several high-profile cases involving officers' sexual misconduct. The public would be deeply concerned if they were aware of the conduct of former PC MacPherson.

7)The CoP Guidance then provides non-exhaustive lists of potential aggravating and mitigating factors.

The Panel find that the following factors that indicate a higher level of culpability or harm apply:

- malign intent, such as sexual gratification, financial gain or personal advantage
- abuse of trust, position, powers or authority
- regular, repeated or sustained behaviour over a period of time

- continuing the behaviour after the officer realised, or should have realised, that it was improper
- serious physical or psychological impact on the victim
- vulnerability of the victim
- multiple proven allegations and/or breaches of the Standards of Professional Behaviour

8) Mitigating factors

The Panel are unable to identify any mitigating factors.

9)In conclusion, the Panel find the level of harm to be high.

10)The CoP Guidance addresses personal mitigation. It states that personal mitigation is not relevant to the seriousness of the misconduct, and it is to be considered after this assessment. Further, that “the weight of personal mitigation will necessarily be limited particularly where serious misconduct has been proven”. The primary consideration “is the seriousness of the misconduct found proven. If the misconduct is so serious that nothing less than dismissal would be sufficient to maintain public confidence, personal mitigation will not justify a lesser sanction”. Nonetheless, “personal mitigation is always relevant and should always be taken into account”.

As such, the Panel have noted the unremarkable but previously unblemished service history of former PC MacPherson.

11)Outcome

a. The Appropriate Authority made the submission that the only possible sanction is that, if PC MacPherson was still a serving officer, he would be dismissed without notice.

b. In respect of former PC McPherson, we find that the appropriate sanction had he still been a member of the Police Force would have been that of dismissal without notice. The Panel is also satisfied that the breaches of the standards, as we have found, would have been incompatible with his service as a Police Officer if he had still been in service and that the need to protect public confidence in and the reputation of the police service, the need to maintain high professional standards and the need to protect the public and officers and staff by preventing similar misconduct in the future is appropriately served by the imposition of disciplinary action.

c.As a result of this Misconduct Hearing the following was found under Regulation 42(3) (b) and imposed with effect from the 18th September 2023:
 “A finding that the officer concerned would have been dismissed if he had not ceased to be a member of a police force”.

As a consequence of this outcome former PC MacPherson will be placed on the College of Policing Barred List.

11) Appeal

a. Former PC MacPherson has a right of appeal. Notice must be given within 10 working days of the receipt of the regulation 43 Report under the 2020 Regulations. The Federation representatives will be able to provide the former officer with further information if required.

Marsha Pearson
Independent Member

Wendy Evans
Legally Qualified Chair

Leanne Lowe
Superintendent