

NOTIFICATION OF OUTCOME OF MISCONDUCT HEARING

Former Police Constable Mark HIDDEN. On 9 March 2023 you were asked to appear at a misconduct hearing, which was conducted by:

Legally Qualified Chair: Nick HAWKINS

Independent Panel Member: Marsha PEARSON

Panel Member: Chief Superintendent Damian BARRATT

Alleged Conduct

1. It is alleged that between 28th December 2019 and 18th April 2020 you formed and engaged in an improper sexual relationship with, Ms. A, a person whom you met through your duties as a police officer and who you knew or ought to have known was vulnerable. It is further alleged that:
 - i. That you engaged in sexual activity with Ms. A while on duty on the: 27th January 2020, 24th February 2020, 26 February 2020, 6th March 2020 and 9th April 2020.
2. It is alleged that you conducted searches/accessed personal data on police systems in relation to Ms. A and her former partner, Mr. B. You knew or ought to have known that searching for and accessing the personal data was for a non-policing purpose. The said searches are as follows:
 - i. On the 16 November 2019 you accessed the Genie record of Ms. A via a link on OIS Log 0806S 151119. You had no cause to access this record as you were not the OIC nor were you tasked with attending the incident.
 - ii. On the 28th November 2019 you conducted a personal search and accessed records of Mr B on Genie. You had no cause to search for or access the records as you were not the OIC nor were you tasked with attending any incident in relation to the matter.
3. It is alleged that, on the 9th and 17th April 2020 you breached Covid restrictions¹ by visiting, other than for a policing purpose, Ms. A.

4. It is alleged that your use of your police issue mobile phone was in breach of West Mercia's "use of mobile devices" policy in that:
- i. Between the 15th January 2020 and the 17th May 2020 you sent and received messages of a sexual nature with Ms. A (including sending and receiving sexually explicit pictures and videos.
 - ii. The messages mentioned at 4(i) being for a non-policing purpose and for the purpose of furthering your inappropriate sexual relationship with Ms. A.
 - iii. You engaged in the messages identified at 4(i) primarily while on duty.

It is alleged that the above acts are in breach of the following Standards of Professional Behaviour:

- i. **Authority, respect and courtesy** - in that you behaved in a manner that would damage the reputation of policing and you pursued and established an improper sexual relationship with a vulnerable person that you had met through your duties as a police officer as alleged in allegation .
- ii. **Confidentiality** - in that you conducted searches and accessed personal data on police systems that was not for a policing purpose as alleged in allegation 2. Members of the public rightly expect that the police officers/staff will only search for and access records held on police systems where there is as proper policing purpose to do so.
- iii. **Orders and Instructions** - in that you failed to abide by West Mercia's "use of mobile devices" policy when using your mobile phone as alleged in allegation 4 i-iii
- iv. **Discreditable Conduct** - in that the allegations listed at 1-4 are likely to severely undermine the public confidence in the integrity of the policing service.

RESPONSE TO ALLEGATIONS

5. Former PC HIDDEN did not respond formally in a Regulation 31 Response.

PRELIMINARY MATTERS

The Absence of the Officer

6. 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. She confirmed that he was aware of the date of the Hearing.
7. Mr WATERS, Counsel for the Appropriate Authority [AA] applied to proceed under Regulation 37(3)(b), the former Officer having not engaged with the process.
8. The Panel were satisfied that former PC HIDDEN had been made aware of this Hearing and considered that it was in both the interests of justice and in the public interest for this Hearing 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.
9. 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.

Anonymity

10. Mr WATERS, counsel for the AA, made an application under Regulation 39(3)(c) for reporting restrictions to protect the identity of Ms A and Mr B. If granted this effectively would give anonymity to the officers. A member of the media was present at the Hearing but made no representations about this application.
11. Whilst the need for openness and transparency in police misconduct hearings normally requires those involved to be named, there are cases where this principle is outweighed by the public interest in ensuring that vulnerable complainants and witnesses are not deterred from coming forward through fear of publicity and loss of privacy.
12. I am satisfied that this case is such a case. I direct that there shall be no reporting of this case that directly or indirectly identifies Ms A or Mr B.

EVIDENCE AND SUBMISSIONS ON BEHALF OF THE APPROPRIATE AUTHORITY

13. Counsel opened the case by acknowledging that former PC HIDDEN was a man of good character. Counsel set out the background to the allegations in the following way.
14. The Former Officer met Ms A in the course of his policing duties in April 2019. She was vulnerable.
15. On 29 April 2019 he commenced a sexual relationship with Ms A which continued until April 2020. The affair was revealed by Ms A on 16 May 2020.
16. Ms A's vulnerability was as a victim of domestic violence. The Former Officer was involved in investigations into incidents involving Ms A and continued to do so after commencing a relationship with her.

17. During the course of the relationship significant numbers of messages, photos and videos were exchanged. Former PC HIDDEN used his police mobile phone to communicate with Ms A.
18. He also conducted searches on police computer systems. Some of these were for a policing purpose but the search on 16 November 2019 (on Ms A) and the search on 28 November 2019 (on Mr B) were not for legitimate policing purposes.
19. Counsel for the AA submitted that the former Officer knew the relationship was improper. The Standard of Police Behaviour, "Authority, Respect and Courtesy" specifically prohibits relationships with vulnerable people met through policing. He also knew that the West Mercia Police "Use of Mobile Devices" policy did not permit the use of phones to exchange sexualised messages, photos and videos.
20. In August 2019 the former Officer was appointed the Officer in Charge [OIC] of an investigation involving the son of Ms A's friend and met Ms A. There was a second legitimate visit.
21. In November 2019 he was appointed OIC into a second investigation. It was during this investigation he made the two searches referred to in Allegation 2. The second search on 2019 was made after the file had been closed by an Inspector. Former PC HIDDEN was not the OIC for either of the incidents that he searched.
22. It was submitted that the former Officer must have been aware of her vulnerability, not least because he completed a risk assessment on her on 16 January 2020 (which was after the relationship had become sexual). He completed a second assessment on 19 January.

23. The sexual relationship continued whilst former PC HIDDEN was dealing with Ms A in a policing context. Matters came to a head on 16 May 2020 when a neighbour called the police over concerns about Ms A. Officers were despatched and former PC HIDDEN, having heard this on his radio, indicated he would attend asking the control room if they wanted “to slow everyone else down”. He arrived at Ms A’s house first and was seen by the neighbour to be attempting to access her phone.
24. When other Officers arrived Ms A was arrested for being drunk and disorderly. At this point she informed Officers that, “Mark has been fucking me”. They informed former PC HIDDEN’s supervisor and he returned to the Police Station. On arrival he admitted the affair to his Sergeant and also volunteered that he had exchanged messages with Ms A.
25. Ms A gave statements about former PC HIDDEN. She said that he was “using her for sex” but that all contact was consensual. She confirmed that they had exchanged messages and that they had sex when he was on duty.
26. She stated that the affair had “left her feeling stupid” and that she “felt used and let down”
27. Both Ms A and former PC HIDDEN’s phones were examined. Ms A’s phone contained 5559 messages between them. His contained less as he had deleted most of the messages, however some deleted messages were recovered during examination. Many of the messages were of a sexual nature.
28. A report generated from the download of Former PC HIDDEN’s work phone found 257 still images and 13 videos, which appear to have been exchanged between PC HIDDEN and Ms A over WhatsApp. A report generated from the download of Ms A’s phone found 141 still images and 23 videos. Many were of a sexually explicit nature

THE OFFICER'S CASE

29. Former PC HIDDEN was interviewed by investigators from the Independent Office for Police Conduct on 6 October 2020. At the start of the interview, he read out the following statement.

"I have viewed and read all paperwork and disclosure material in reference to this investigation. I accept all WhatsApp messages, images, videos recovered from my works phone were sent and received by myself and...[Ms A]. I accept that I formed a sexual relationship with ...[Ms A] as of me meeting her as a result of my police duties. I accept that ...[Ms A] and I engaged in consensual sexual intercourse at her home, home address on approximately six occasions. On one of these occasions I was currently on duty as a police officer. I accept that forming a sexual relationship with ...[Ms A] was wrong and completely inappropriate. I accept that during my training as a PC I received clear guidance from West Mercia police prohibiting sexual relationships. I have no-one to blame but myself for this and I admit I was attracted to ...[Ms A] from the outset and allowed my attraction to her to influence my decision making. I have let myself down, my family down and West Mercia police down. I apologise unreservedly to ...[Ms A] for my actions. I will accept the consequences of my actions and my behaviours. In relation, in relation to the phone, I accept that I misused police, West Mercia police phone to further my relationship with ...[Ms A]. In relation to the access to Genie and OIS police data systems, all access was for a legitimate police purpose. I am happy to answer any questions that the IOPC require. I accept that my career in the police service is now finished."

30. In summary former PC HIDDEN admitted that he knew the relationship was wrong; he admitted having sex with Miss A including occasions whilst on duty; and he admitted the improper use of his police phone. However, he claimed that his access to the police Genie system was for legitimate policing purposes.
31. Answering questions about Allegation 2 he stated that he accessed the Genie record of Ms A on 16 November as he might talk to the OIC in the case about it as part over a handover.

32. With regard to the search of Mr B on 19 November he said he might have accessed the record to help a colleague as he was logged on. He did not name the colleague.
33. Former PC HIDDEN admitted breaching COVID Regulations in April 2020.
34. To his credit, PC HIDDEN accepted his awareness of Ms A's vulnerability and accepted that he had caused her harm. He offered an apology through the investigators.

ALLEGED BREACH OF PROFESSIONAL STANDARDS AND LEVEL OF MISCONDUCT

35. The Appropriate Authority referred the Panel to the definitions of the relevant Standards of Professional Behaviour as set out in the College of Policing's Code of Ethics. The key provisions are:

Authority Respect and Courtesy

2.4 According to this standard you must:

- *not engage in sexual conduct or other inappropriate behaviour when on duty*
- *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.*

Orders and instructions

- 5.1 According to this standard police officers must obey any lawful order that is given and must abide by Police Regulations.*

Confidentiality

7.1 According to this standard you must:

- *access police-held information for a legitimate or authorised policing purpose*

Conduct

I will behave in a manner, whether on or off duty, which does not bring discredit on the police service or undermine public confidence in policing.

9.1 As a police officer, member of police staff or other person working for the police service, you must keep in mind at all times that the public expect you to maintain the highest standards of behaviour. You must, therefore, always think about how a member of the public may regard your behaviour, whether on or off duty.

9.2 You should ask yourself whether a particular decision, action or omission might result in members of the public losing trust and confidence in the policing profession.

9.3 It is recognised that the test of whether behaviour has brought discredit on policing is not solely about media coverage and public perception but has regard to all the circumstances.

Examples of meeting this standard are when you: • avoid any activities (work-related or otherwise) that may bring the police service into disrepute and damage the relationship of trust and confidence between the police and the public

36. The AA submitted that the facts, if found by the Panel, fall squarely within the definitions of the Standard of Professional Behaviour alleged to have been breached and as set out above.
37. Counsel also addressed the Panel on the level of misconduct. He reminded us of the definitions in the Police (Conduct) Regulations 2020 and submitted that the conduct was clearly gross misconduct.
38. The Panel retired to consider these matters in turn, i.e; the facts; if proved the alleged breach; and, if found, the level of misconduct.

ANALYSIS

39. The Panel treated former PC HIDDEN as a man of good character. This goes to his credit for two reasons. In terms of credibility a person of good character is more likely to be telling the truth than a person who does not have good character. In terms of propensity a person of good character is less likely to commit an offence than a person who does not have good character.
40. The Panel considered that the evidence in support of Allegations 1,3 and 4 was incontrovertible. Former PC HIDDEN effectively admitted these allegations in his prepared statement and in answers to questions in interviews. Accordingly, the Panel found Allegations 1,3 and 4 to be proved as set out in the Regulation 30 Notice.
41. The Panel did not find former PC HIDDEN's explanations for the searches of Genie on 16 and 19 November 2019 to be credible. His explanations were vague and he did not name either colleague that he claimed to be helping. The Panel noted that he was not the OIC in either investigation and had no legitimate policing purpose for the searches. On the balance of probabilities, it was more likely that there was no legitimate policing purpose for the searches. The Panel found Allegation 2 to be proved for both Allegation 2.i. and 2.ii.
42. Having considered the submissions of the Appropriate Authority and having reminded ourselves of the content of the College of Policing Code of Ethics the Panel considered that Former PC HIDDEN had breached the Standard of Professional Conduct relating to all four Standards alleged in the Regulation 30 Notice.
43. With regard to Authority, Respect and Courtesy, considering Allegation 1, the Panel found that Former PC HIDDEN had engaged in sexual conduct when on duty. He had also established and pursued an improper sexual relationship with a person with whom he came into contact in the course of his work who was vulnerable to an abuse of trust or power.

44. With regard to Confidentiality, considering Allegation 2, the Panel found that Former PC HIDDEN had made two searches for which there was no legitimate policing purpose.
45. With regard to Duties and Instructions, considering Allegation 4, the Panel found that Former PC HIDDEN had breached the West Mercia Police “Use of mobile devices” policy.
46. With regard to Conduct, considering all four Allegations, the Panel found that Former PC HIDDEN had behaved in a manner which had brought discredit on the police service. He had not maintained the highest standards of behaviour nor had he thought how a member of the public might regard his behaviour.
47. The Panel then considered whether the breaches found amounted to Misconduct or Gross Misconduct. Misconduct is defined in Regulation 2(1) of the 2020 Regulations as “a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action”. Gross Misconduct is defined in Regulation 2(1) of the 2020 Regulations as “a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal”. The Panel concluded that Former PC HIDDEN’s breach of the Standards of Professional Behaviour amounted to gross misconduct.

FINDINGS:

48. The Panel accordingly found that:

The Allegations set out in the Regulation 30 Notice at Allegations 1 to 4 are proved. Former PC HIDDEN has breached the Standards of Professional Behaviour relating to

Authority, Respect and Courtesy	Allegation 1
Confidentiality	Allegation 2
Orders and Instructions	Allegation 4

Discreditable Conduct

Allegations 1,2,3 and 4

The Breach of the Standards of Professional Behaviour is found by the Panel to be Gross Misconduct.

SANCTION

49. The Appropriate Authority provided former PC HIDDEN's record of service. Mr WATERS referred the Panel to the College of Policing Guidance on Outcomes and submitted that the only appropriate sanction, had former PC HIDDEN still been a serving police officer would have been dismissal without notice.
50. In his remarks Mr WATER reminded the Panel that former PC HIDDEN was a man of previous good character, prior to the findings of this Hearing. He acknowledged the early admissions with regard to Allegations 1,2 and 4; his insight of the harm caused to Ms A; his remorse; and the fact he took immediate responsibility for his actions.

ANALYSIS

51. The Panel reminded itself that the purpose of this misconduct hearing is threefold:
- a. Firstly, to protect the public confidence in and the reputation of policing.
 - b. Secondly, to maintain the high professional standards by demonstrating to other officers that misconduct will not be tolerated.
 - c. Thirdly, to protect the public and/or officers and staff by preventing the officers from committing similar misconduct again.
52. In determining the appropriate sanction, we followed the approach set out in the College of Policing Guidance on Outcomes in Police Misconduct Proceedings [updated in 2023] and the caselaw referred to within that document. Following that approach, we took the following matters into account when assessing the seriousness of the conduct before us.

CULPABILITY

53. The Panel considered that culpability was high.
- The behaviour was intentional and deliberate
 - The case involved misuse of police computer systems
 - There was a malicious motive for accessing the information
 - There was personal gain
 - The case involved sexual impropriety with a vulnerable woman
 - The former Officer abused his position of trust with a victim
 - The victim was vulnerable as a victim of domestic violence

HARM

54. The Panel considered that there was both actual and reputational harm in this case. Ms A suffered harm and felt used and let down by Former PC HIDDEN.
55. The Panel are in no doubt that former PC HIDDEN's behaviour, if known would seriously harm public confidence in policing. The public expect police officers to help victims and not to take advantage of them. There are significant local and national concerns at present about the behaviour of some male police officers towards women, and this case would only add to those concerns.

AGGRAVATING FACTORS

56. The Panel reminded themselves of the dangers of “double-counting” factors under Harm and as Aggravating Factors. Having considered the Guidance on Outcomes section on Aggravating Factors the Panel found the following to be present:

- The conduct was premediated and planned.
- The conduct was for sexual gratification
- The conduct was an abuse of trust
- The conduct was regular and repeated
- The behaviour was prolonged.
- The former Officer should have realised his behaviour was improper,
- The vulnerability of the victim
- Significant deviation from instructions in the misuse of a police mobile device
- A failure to seek advice about his relationship with Ms A
- The scale and depth of national concern about police behaviour towards women and girls.

MITIGATING FACTORS

57. The Panel considered the guidance in the College of Policing Guidance on Outcomes and found that the following mitigating factors were present in this case:

- Immediate admissions when his conduct was reported
- a. Insight into his behaviour as evidenced by his prepared statement in interview
- b. Remorse and an apology to Ms A in interview

58. Having assessed culpability and harm, having identified the aggravating, and mitigating features in this case and before taking into account personal mitigation, the Panel concluded that the overall level of seriousness in this case was very high.

PERSONAL MITIGATION

59. The Panel found the following personal mitigation:
- Former PC HIDDEN served in the special constabulary for 12 years and was in the police from 2019 until his resignation in 2022.
 - Former PC HIDDEN is a man of previous good character.

60. Whilst accepting that these matters are relevant and to Former PC HIDDEN's credit, the Panel were mindful of the Court of Appeal decision in *Salter*:

'As to personal mitigation, just as an unexpectedly errant solicitor can usually refer to an unblemished past and the esteem of his colleagues, so will a police officer often be able so to do. However, because of the importance of public confidence, the potential of such mitigation is necessarily limited.'

61. The Panel reminded itself of the purpose of imposing sanctions. The Panel considered the guidance contained in *R (on the application of Chief Constable West Midlands Police) v Panel Chair, Police Misconduct Panel v Officer 'A' [2020] EWHC 1400 (Admin), 2020* at paragraph 64.
62. The Panel considered the two options open to us. We considered that taking no action would be insufficient to maintain public confidence and to mark the gravity of the breaches of professional standards, for the reasons set out in paragraphs 53 to 60 above.
63. The Panel concluded that public confidence would not have been maintained if former PC HIDDEN had been allowed to continue as a serving officer if he were still serving.

In announcing the decision of the Panel, the Chair made the following comments.

“The Panel gave former PC HIDDEN credit for his previous good character, for his 12 years-service in the Special Constabulary and for his 3 years as a Police Constable

However, the Panel considered that this was an extremely serious case. Former PC HIDDEN was entirely responsible for his own behaviour. He knew that Ms A was vulnerable but deliberately entered into a sexual relationship with her, knowing it was wrong and contrary to the behaviour expected of a Police Officer. He took advantage of Ms A leaving her “feeling stupid” and “used and let down”.

He also misused data held for a policing purpose and misused his police phone. Finally, he broke the COVID regulations that he should have been upholding. His behaviour breached four different standards of professional behaviour.

The Panel felt that members of the public would be appalled to learn of Former PC HIDDEN’s behaviour and that his actions would cause reputational harm to the police service locally and nationally. The public turn to police officers in time of need and vulnerable people need their protection and not to be taken advantage of.

Former PC HIDDEN’s behaviour, if known, would seriously undermine public confidence in policing.

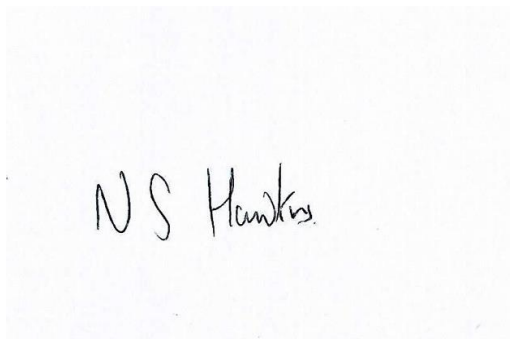
The Panel were in absolutely no doubt that we would have dismissed former PC HIDDEN had he still been a serving Officer.”

OUTCOME

As a result of this Misconduct Hearing the following was found under Regulation 42(3) (b) and imposed with effect from 30 March 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 HIDDEN will be placed on the College of Policing Barred List

A photograph of a handwritten signature in black ink on a light-colored, slightly textured paper. The signature is written in a cursive style and reads "NS Hawkins".

Nick Hawkins
Legally Qualified Chair

12 May 2023

You have a right of appeal against the finding and/or the outcome imposed at a misconduct hearing.

You may only appeal on the grounds that: -

- a) The finding or disciplinary action imposed was unreasonable.
- b) There is evidence that could not reasonably have been considered at the misconduct meeting which could have materially affected the finding or decision on disciplinary action;
or
- c) There was a serious breach of the procedures set out in the regulations or other unfairness which could have materially affected the finding or decision on disciplinary action.

Should you wish to appeal you must do so in writing to the appropriate authority, clearly setting out the grounds for the appeal **within 10 working days** beginning with the first working day after the receipt of the notification of the outcome of the misconduct meeting (unless this period is extended by the appropriate authority for exceptional circumstances).

You should address your appeal to the Police Appeals' Tribunal Manager through Professional Standards Department of West Mercia Police