

NOTIFICATION OF OUTCOME OF MISCONDUCT HEARING

PS 1580 John WALSHAW. On 16-17 May 2023 you were asked to appear at a misconduct hearing, which was conducted by:

Legally Qualified Chair: Nick HAWKINS

Independent Panel Member: Ms Gillian SEAGER

Panel Member: Superintendent Ian WALL

Particulars of allegations:

It is alleged that:

1. As particularised in Annex A you had:

- i. Racist memes and other content on your personal phone.
- ii. Homophobic memes and other inappropriate content on your personal phone.
- iii. Photographs of a female with her breasts exposed on your works issued mobile phone .
- iv. Inappropriate content and imagery on your works issued mobile phone, including exposed genitalia.
- v. Content of a racist and /or offensive nature on your works issued mobile phone.
- vi. Inappropriate content and imagery on your personal mobile phone

2. As particularised in Annex B you:

- i. Engaged in conversations via Social Media messaging with PC X. These conversations contained a number of comments and images including racism and homophobia.
- ii. Engaged in conversations via Social Media messaging with PC X. These conversations include derogatory comments in relation to West Mercia Police colleagues, and others. These conversations also espouse acts of abhorrent violence towards said colleagues many of whom you have been in contact with through work.
- iii. Failed to challenge PC X in relation to racist, homophobic, and derogatory nature messages that he sent to your personal mobile.
- iv. Had images of a racists, derogatory, grossly offensive nature and which indicate that you have far right tendencies on your personal mobile phone.

Particulars of Misconduct:

3. Police Sergeant Walshaw it is alleged that you have breached the Standards of Professional Behaviour as follows:

- i. **Authority, Respect and Courtesy:** in that you failed to act in a professional manner and behaved in a manner that may damage your reputation and that of policing. The images and conversations as alleged at Paragraphs 1 and 2 show little regard for respect of your colleagues or those of different sexual orientation or race.
- ii. **Equality and diversity:** in that you had memes and other content on your work and personal mobile phone that are discriminatory in nature. Further, that you engaged and actively participated in conversations that are discriminatory.
- iii. **Discreditable conduct:** in that your behaviour as set out in the Particulars of the Allegation and Particulars of Misconduct have discredited the police service and/or severely undermined public confidence in it.
- iv. **Challenging and reporting improper conduct:** in that you failed to challenge PC X's behaviour. The messages from PC X were such that they fell woefully short of the Standards of Professional Behaviour.

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.

PRELIMINARY MATTERS

1. I held a Pre-Hearing in this case on 11 April. At that Pre-Hearing I granted PS WALSHAW anonymity to protect his health and his children.
2. On 5 May I made a provisional order under Regulation 39(3)(c) to grant anonymity to people who feature in the Regulation 31 response, and those individuals referred to in the messages in question. I also made a provisional order with regard to the officer who faces linked proceedings.
3. There were no representations from either Ms HINTON, counsel for the Appropriate Authority [AA] nor from DI WILLIAMS, for the Officer. Following a discussion in open

hearing with a representative of the press, no representations were made by the press at this point.

4. Accordingly, I made a formal order under Regulation 39(3)(c) there shall be no reporting that directly or indirectly identifies:

PC X
Seven named officers

5. I made the same order regarding PS WALSHAW, making it clear that I intended to revisit the position of PS WALSHAW at the conclusion of this hearing.

RESPONSE TO ALLEGATIONS

6. PS WALSHAW confirmed that his position was as set out in paragraphs 1 and 2 of the Regulation 31 Response in that he accepted the memes and messages listed in the Annexes to the Regulation 30 Notice were on his private and police phones. He provided comment on each meme and message.
7. He also confirmed that his position with regard to the alleged breaches of professional standards was as set out in paragraph 60 of his Response. The unequivocally accepted breaches of Discreditable Conduct, and Challenging and Reporting Improper Conduct.
8. He accepted breaching Authority Respect and Conduct but did not accept the messages were motivated by race or sexual orientation. He accepted breaching Equality and Diversity but stated that the conversations were not discriminatory. The Panel treated this as an equivocal admission.

9. PS WALSHAW accepted that the conduct and breaches admitted amounted to gross misconduct and he confirmed that he understood that dismissal could be justified in his case.

EVIDENCE

10. Prior to the Hearing the Panel was provided with a bundle of evidence. This contained a number of witness statements, the West Mercia Police policies for “Use of Mobile Phone Devices”, for “Social Media”, and for “Acceptable Use (of data). The bundle also contained screen shots and extracts from text messages on PS WALSHAW’s personal phone and his police phone.
11. PS WALSHAW had always accepted the factual basis for the allegations against him, no witnesses were required to attend the Hearing and give evidence.

THE APPROPRIATE AUTHORITY’S CASE

12. Ms. HINTON, Counsel for the AA, provided the Panel with a helpful Opening Note and outlined the case in the following terms. In Allegation 1 there were six separate series of memes and messages:

- Racist content on his personal phone
- Homophobic content on his personal phone
- Indecent images of a female officer on his work phone
- Inappropriate imagery on his work phone
- Racist and offensive content on his work phone
- Inappropriate content on his personal phone

These messages covered a time frame from 30 November 2019 until 11 October 2021.

13. Allegation 2 dealt with messages between PS WALSHAW and PC X. These included:

Derogatory comments about colleagues in West Mercia Police

Threats and intimations of violence towards police colleagues

14. Allegation 2 also dealt with PS WALSHAW's failure to challenge and report PC X's conduct. It also dealt with images of a "racist, derogatory, grossly offensive nature and which indicate that you have far right tendencies", on his personal phone.

These messages covered a time frame from 17 March 2021 until 11 October 2021.

15. Ms HINTON did not take the Panel through each of the messages and memes listed in Annexes A and B to the Regulation 30 Notice as the Panel had already indicated that they had read the evidence. She did, however, describe the material generally as containing nazi, racist and homophobic material. She described some of the messages as "borderline criminal" pointing in particular to messages 77 and 78 which contained messages about child abuse and violence against women.

16. Counsel for the AA also made submissions about the nature of the alleged breaches of Standards of Professional Behaviour, referring the Panel to the relevant standards and the guidance on them as set out in the College of Policing Code of Ethics. She submitted that each of the four Standards listed in the Regulation 30 Notice had been breached. Dealing specifically with Equality and Diversity she pointed out the list of protected characteristics which should not be discriminated against, and the proactive approach to equality and diversity which was expected of officers.

17. Ms HINTON helpfully referred the Panel to two cases which she submitted were relevant in this case. The first *R (on the application of Chief Constable of Wiltshire Police) v Panel Chair, Police Misconduct Panel v Paul. Woollard* [2012] EWHC 3288(Admin) set out at paragraph 51 "that it was reasonable for the Panel to focus on the nature of the words used rather than whether or not the words actually entered the public domain" *per Wyn Williams J.*

18. The second case, *BC and others v Chief Constable of the Police Service of Scotland and Others* [2020] *CSIH* 61 had relevant guidance at paragraph 164 which dealt with a police officer's expectations of privacy [on his phone] which would be different from a member of the public. An example might be "a constable who in messages evidenced attitudes showing an inappropriate attitude towards various groups in society that would be likely to give rise in the mind of the public that he could not impartially discharge his duties." *per X Menzies*.

19. Ms HINTON submitted that the totality of the breaches amounted to Gross Misconduct, noting that this remained a decision for the Panel.

PS WALSHAW's REPONSE

20. PS WALSHAW was represented by DI WILLIAMS, from the Police Federation of England and Wales. She stated that PS WALSHAW stood by his detailed Regulation 31 Response, in which he set out his response to every message and meme.

21. DI WILLIAMS confirmed that PS WALSHAW accepted the breaches as set out and accepted they amounted to gross misconduct.

22. However, PS WALSHAW did not intend to cause offence. He was not racist nor homophobic and he was not a nazi. Whilst conceding that the messages were unpalatable DI WILLIAMS reminded the Panel that the AA had to prove the case.

ANALYSIS OF THE FACTS

23. The Panel reminded themselves of the content of the messages and memes before concentrating on those messages and memes that PS WALSHAW had not accepted were inappropriate. He had put forward a series of reasons which included that the messages were satire or political commentary, that photos of a female police officer were private, and that messages between himself and PC X were private. He categorically denied that some messages were racist or homophobic.

24. The Panel followed the case law set out above. It was not relevant to our findings whether any of the offensive messages or memes got into the public domain. We also accepted that PS WALSHAW's right to privacy was limited by his position as a police officer. We also noted that the Standards of Professional Behaviour apply to officers whether on or off duty.

25. It is not necessary to set out our analysis of each of the messages that were not accepted as inappropriate by PS WALSHAW. With regard to many of the messages and images the Panel did not agree that messages were not racist nor homophobic and the Panel noted that many images were also Islamophobic.

26. There were a number of messages and memes which as individual messages may not have been seen as offensive. However, these have to be seen in the context of a large quantity of offensive messages and memes and even the least offensive messages had to be seen as offensive when looked at alongside all other messages.

27. The Panel accepted that some of the images were historic images. In a different context (e.g. in a history book) these images may not be offensive, but in the context of other racist and right wing messages these images were offensive.

28. The Panel did not accept that it would ever be appropriate to have naked pictures of another police officer on a police phone, even if the images were freely sent by the other officer. The Panel did not accept that PS WALSHAW could reasonably claim privacy in these circumstances.

29. The Panel did not consider that the offensive messages between PS WALSHAW and PC X could be explained away as a private conversation between Officers who were helping each other deal with issues. The messages were both derogatory to fellow officers using graphic language and included comments about inflicting violence on those fellow officers. The Panel also considered that PS WALSHAW was under a positive obligation to challenge and report PC X, both as a fellow officer and as an officer holding a supervisory rank.

DECISION ON THE FACTS

30. The Panel reminded themselves of the burden and standard of proof which required the AA to prove all allegations to the civil standard.

31. The Panel found that PS WALSHAW had all of the matters alleged in Allegation 1 (i) to (vi) on his personal and work phones.

32. The Panel found that PS WALSHAW did engage in conversations via social media with PC X as alleged in Allegation 2(i) and (ii)

33. The Panel found that PS WALSHAW failed to challenge PC X as set out in Allegation 2(iii)

34. The Panel found that PS WALSHAW had the images as alleged on his mobile phone which indicate that he had far right tendencies as alleged in Allegation 2(iv)

ANALYSIS OF THE ALLEGED BREACHES OF PROFESSIONAL STANDARDS

35. The Panel noted PS WALSHAW's admissions. As with the facts the Panel concentrated on the Breaches of Standards which were not fully admitted.
36. Dealing with Equality and Diversity, the Panel concluded that PS WALSHAW did not act with fairness and impartiality, and his possession and transmissions of the memes and messages found on his phones demonstrated that he did not treat all people with respect. The Panel found that his phones had content which were offensive to people with protected characteristics including race, religion and belief, sex, and sexual orientation. He clearly did not actively seek to promote equality and diversity.

FINDINGS ON THE ALLEGED BREACHES OF PROFESSIONAL STANDARDS

37. The Panel found as follows:

Authority, Respect and Courtesy: in that you failed to act in a professional manner and behaved in a manner that may damage your reputation and that of policing. The images and conversations as alleged at Paragraphs 1 and 2 show little regard for respect of your colleagues or those of different sexual orientation or race.

The Panel found that PS WALSHAW did not act with self-control and did not show respect to members of the public nor to the police, particularly those of different sexual orientation or race.

The Panel found this Breach proved as alleged.

Equality and diversity: in that you had memes and other content on your work and personal mobile phone that are discriminatory in nature. Further, that you engaged and actively participated in conversations that are discriminatory.

The Panel found that PS WALSHAW had discriminatory content on both his personal and work phones and engaged in conversations of a discriminatory nature. The Panel found messages and memes that would be grossly offence to people with protected characteristics including race, religion and belief, sex, and sexual orientation.

The Panel found that PS WALSHAW did not act with self-control and did not show respect to members of the public nor to the public, particularly those of different sexual orientation or race.

The Panel found this Breach proved as alleged.

Discreditable conduct: *in that your behaviour as set out in the Particulars of the Allegation and Particulars of Misconduct have discredited the police service and/or severely undermined public confidence in it.*

The Panel found that PS WALSHAW behaved in a manner both on and off duty that would bring discredit on the police service and undermine public confidence in policing.

The Panel found this Breach proved as alleged.

Challenging and reporting improper conduct: *in that you failed to challenge PC X's behaviour. The messages from PC X were such that they fell woefully short of the Standards of Professional Behaviour.*

The Panel found that PS WALSHAW failed to challenge PC X's behaviour. The Panel did not accept PS WALSHAW's assertion that their conversations were a way of them supporting each other through their individual issues.

The Panel found this Breach proved as alleged.

LEVEL OF MISCONDUCT

38. The Panel found that PS WALSHAW's breaches of the Standards of Professional Behaviour (both those he admitted and those found by the Panel) amounted to Gross Misconduct, which 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".

SANCTION

39. The Appropriate Authority provided PC WALSHAW's record of service. Ms HINTON referred the Panel to the College of Policing Guidance on Outcomes [the Guidance] and submitted that the only appropriate sanction was dismissal without notice.

40. DI WILLIAMS provided the Panel with a character reference from a retired police officer. She submitted that dismissal was not necessary in the exceptional circumstances of this case.

41. The Panel were provided with a bundle of medical evidence and went into private session at this point.

42. The Panel went back into public session. In terms of personal mitigation, the Panel were reminded that PS WALSHAW had contributed to the police service over 27 years and had an unblemished record. He had made open admissions at an early stage of these proceedings, had engaged with the proceedings, and attended the Hearing despite having significant ill-health. He had shown insight and remorse and there was no risk of a repetition of his behaviour. DI WILLIAMS concluded by inviting the Panel to impose reduction in rank as the sanction.

REPRESENTATIONS ON REPORTING RESTRICTIONS

43. Ms HINTON submitted that the reporting restrictions should remain in force for PC X and the other Officers named in the order made at the beginning of the Hearing. She submitted that there was a presumption of openness, and that PS WALSHAW should lose the anonymity he previously enjoyed. However, in order not to compromise PC X's forthcoming Hearing the restrictions should stay in force until the conclusion of that case.

44. DI WILLIAMS submitted that PS WALSHAW'S case was exceptional and that the balance between the public interest and PS WALSHAW was in his favour. She advised the Panel that his two children were at primary school and had an unusual surname and so could be easily linked with PS WALSHAW. She also argued that lifting reporting restrictions could have an adverse effect on PS WALSHAW's health.
45. Mr GODDARD from Newsquest read an email from his organisation opposing reporting restrictions with regard to PS WALSHAW. He reminded the Panel of the public interest and the presumption of openness. He also argued that the restrictions should be lifted now to allow contemporaneous reporting.
46. Neither DI WILLIAMS nor Mr GODDARD opposed the continuation of reporting restrictions for the officers already subject to them, nor to PC X.

ANALYSIS ON SANCTION

47. 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.

48. In determining the appropriate sanction, we followed the approach set out in the College of Policing Guidance on Outcomes in Police Misconduct Proceedings 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

- The Panel have found that PC WALSHAW's behaviour was deliberate.
- PS WALSHAW's behaviour was discriminatory towards people with protected characteristics.
- The discrimination was conscious and deliberate as evidenced by the quantity of the messages.

HARM

- PS WALSHAW's behaviour has caused distress to the officers named in the message exchange with PC X. They have been made aware of the general nature of the messages and safeguarding measures have had to be put in place for them.
- The harm to the reputation of policing is considerable. The behaviour of police officers, and in particular discriminatory behaviour, is a matter of considerable national concern, both in the media and in policing oversight bodies at present and has been for some time. PS WALSHAW's behaviour could further damage public confidence in policing.

AGGRAVATING FACTORS

- The Panel reminded themselves of the dangers of double-counting matters and found the following aggravating features in this case:
- PS WALSHAW's behaviour took place over almost two years.
- PS WALSHAW was in a supervisory position and should set an example and act as a role model.
- There are multiple proven allegations and breaches of the Standards of Professional Behaviour.

MITIGATING FACTORS

- The Panel accepted that PS WALSHAW had expressed remorse and shown insight for his admitted behaviour. However, as shown by his Regulation 31 Response, not all matters were admitted and so the amount of credit that can be given for insight and remorse is limited.

49. Having considered the culpability, harm, aggravating and mitigating factors the Panel consider this to be a very serious case involving the repeated use of messages and memes of a discriminatory, derogatory, violent and sexualized nature and messages and memes displaying right wing tendencies.

PERSONAL MITIGATION

50. The following factors were advanced on behalf of PS WALSHAW and taken into consideration by the Panel:
- a. The reference provided to his character.
 - b. His previous good character.
 - c. His contribution to the police service over 27 years
 - d. His medical diagnosis and prognosis

51. Whilst accepting that these matters are relevant and to PS WALSHAW's credit, the Panel were mindful of X Justice Maurice Kay confirmed in 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.'

52. 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.

ANALYSIS

53. The Panel considered that this was a disturbing case involving messages and memes of a grossly offensive nature over an extended period. Whilst having significant sympathy for PS WALSHAW's health issues, the Panel did not consider that this excused his behaviour. Although the Panel accepted that PS WALSHAW and PC X messaged each other to share frustrations, the content of those messages went far beyond anything that might be understandable in their particular situation.

54. Although none of the messages went into the public domain, beyond the civilian members of PS WALSHAW's WhatsApp group, the public would have been shocked and appalled had they done so. Police Officers have a duty to protect their communities, especially those with protected characteristics, from discriminatory behaviour and to uphold the law. Some of the messages were, quite rightly, described as "borderline criminal" during the Hearing, and PS WALSHAW may have been required to investigate reports of similar messages.

The public could have no confidence that he would do so properly in the light of his own messaging history.

55. The Panel considered whether a Final Written Warning would be sufficient in this case and concluded that it would not be sufficient to maintain public confidence in the profession of policing, to set and maintain standards of behaviour, or to protect the public from the risk of further harm.

56. The Panel considered whether Reduction in Rank would be sufficient in this case and reminded itself of the guidance provided by the College of Policing. Whilst PS WALSHAW's failure to challenge PC X was a leadership failure, his overall behaviour and breaches went far beyond a simple leadership issue and demonstrated attitudes that have no place in a police officer of any rank. This sanction would not achieve the purposes of the police misconduct regime.

57. The Panel concluded that the only sanction that would ensure the maintenance of public confidence in, and the reputation of, the police service is that of dismissal without notice.

58. As a result of this misconduct hearing the following was found under Regulation 35(3) (b) and imposed with effect from 17 May 2023:

Dismissal without Notice

SANCTION

In announcing sanction, the Panel Chair read out the following:

“PS WALSHAW,

We have taken into account everything that has been said on your behalf, your long service and previously unblemished career. We accept that you are dealing with significant and long-term health issues. We have given you as much credit as we can for remorse and insight, although this is limited as you did not accept that many of the messages and memes were inappropriate and lacked insight that many of the messages were indeed racist or homophobic.

You showed a complete lack of respect for people with protected characteristics. You also exchanged grossly offensive and threatening messages about a number of police colleagues, with another junior police officer. The repeated memes and messages with nazi connections and overtones demonstrate right wing attitudes, even if you do not consider yourself to be racist, homophobic, or right wing. There can be no place in the police service for anyone who behaves as you did between November 2019 and October 2021 and the public could have no confidence in policing if Officers were allowed to continue to serve after such behaviour.

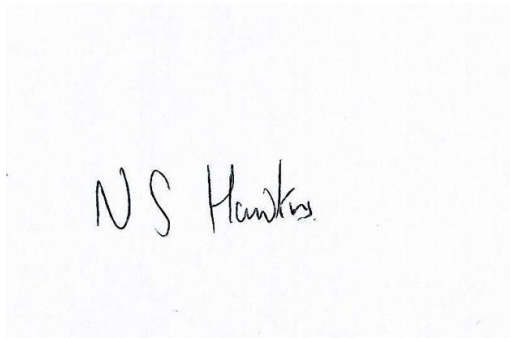
The only appropriate sanction that can be imposed on you today is of Dismissal without notice, and that is the sanction we impose.”

REPORTING RESTRICTIONS

59. The Panel maintained the reporting restrictions granting anonymity to PC X and the other officers named in the earlier order.

60. The Panel accept that there may be exceptional circumstances which justify the imposition of reporting restrictions prohibiting the naming of an officer who has been the subject of the Hearing. Health and the welfare of children are two potential reasons for making such an order. However, the Panel consider that the public interest in openness and transparency, which is achieved through the reporting of Police Misconduct Hearings, outweighs other factors in the case and accordingly I am lifting the reporting restrictions concerning PS WALSHAW.

61. However, the Panel are bound to honour the rulings of the Legally Qualified Chair dealing with PC X's case next week and the lifting of reporting restrictions will not take place until the conclusion of PC X's case.

A photograph of a handwritten signature in black ink on a white background. The signature reads 'NS Hawkins' in a cursive, slightly slanted script.

Nick Hawkins
Legally Qualified Chair

18 May 2023

RIGHT OF APPEAL

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 Department of Professional Standards in the first instance.