

IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020
IN THE MATTER OF AN ACCELERATED MISCONDUCT HEARING

RE. POLICE SERGEANT 2187 ANTHONY SIMPSON

DETERMINATION OF CHIEF CONSTABLE 3239 WEBSTER

Preliminary matters

1. The accelerated misconduct hearing for Police Sergeant 2187 SIMPSON was held in public on 25th October 2022. The Appropriate Authority was represented by Christian Fixter, and the officer, who was not in attendance for the hearing, was represented by Paul Crowley.
2. No representations were made prior to the hearing that it should be held otherwise than in public, accordingly the hearing was held in public

Allegations

3. On the 10th October 2022 the officer was served with a notice of accelerated misconduct hearing proceedings outlining allegations, which if proven, were assessed as amounting to misconduct. Those allegations were:
 - (a) On 10 March 2022 PS Simpson's house was searched. In an office used only by PS Simpson two hand rolled cigarettes were found which contained cannabis. One of the cigarettes was partially smoked and his DNA was found on that cigarette. PS Simpson was interviewed under caution about this and admitted possession of

cannabis in a prepared statement. The matter was dealt with by a Combined Penalty Notice. PS Simpson paid £90 in settlement of this on 5th August 22.

- (b) When PS Simpson received the cannabis, he was party to a supply of controlled drugs from another person. He took no action to bring this criminal offence to the attention of the force.
 - (c) He then retained the cannabis, committing a criminal offence.
 - (d) He discussed smoking cannabis in Whatsapp messages with others..
4. In summary, it is alleged that PS Simpson's actions were a breach of the standards of professional behaviour in respect of Discreditable Conduct and Duties and Responsibilities, and that this amounted to Gross Misconduct.
5. The burden of proof is on the Appropriate Authority to prove that the officer behaved in the manner alleged and that in doing so, he breached the standards of professional behaviour. The Appropriate Authority must further satisfy me that the manner of the breach is of such a nature or degree that it amounts to gross misconduct. The standard of proof is on the balance of probabilities.
6. In the Officer's Regulation 54 Response dated 17 October 2022 he states that:
- (a) *"I admit to the possession of cannabis. Although, ordinarily, I would accept this amounts to gross misconduct but in my case, I feel I have pertinent factors contributing to mitigation."* (para 4)
 - (b) *"In summary I hope that my circumstances can be heard, listened to and fully taken into account when making your decision and that I hope, eventually I can tell the story of how I was a good cop and after a serious of unfortunate circumstances I was medically retired."* (para 63)
7. At the outset of the proceedings I clarified with the Officer's representative that he did not accept that the allegations amounted to gross misconduct. I also clarified that the

Officer did not accept smoking the cannabis, given what he said in his prepared statement (bundle page 76), though it was confirmed that the Appropriate Authority did not assert that he did and this was not therefore an issue I needed to determine.

Determination of conduct

8. In making my determination, I have assessed all relevant information made available to me in the supplied bundle, in addition to a drug test and a letter from an Occupational Therapist that were submitted on the Officer's behalf. It was confirmed that all parties had access to the same information, and no submissions were made to introduce any other additional information on the day of the hearing. I have considered all representations made on behalf of the Appropriate Authority and by the Officer. I have utilised the relevant sections of the College of Policing Document '*Guidance on Outcomes in Police Misconduct Proceedings*' in formulating the rationale for my determination.
9. Before making my determination, I reminded myself of the definition of misconduct and gross misconduct as prescribed by regulation 2.
10. My findings are that, on the balance of probabilities that the allegations are proven.
11. The bases for my finding that the allegations were proven are:
 - (a) The basic facts of the misconduct are admitted by the officer.
 - (b) There is incontrovertible evidence of the officer's possession of cannabis as:
 - (i) the cannabis was recovered from a locked office used only by him;
 - (ii) it has been tested and confirmed to be cannabis;
 - (c) There is no evidence that any report was made by the officer of the supply of cannabis to him.
 - (d) I have seen copies of the text messages which relate to cannabis.

12. Additionally I made the following specific findings of fact:

- (a) I find that the officer suffers from mental health issues as outlined in the NHS letter provided to me. I do not make any findings that he suffers from any issues which go beyond those set out in that letter that would be relevant to his culpability as there is no expert medical evidence which would support such a finding. It was open to the officer to request that this hearing be adjourned for such evidence to be obtained, and he has chosen not to do so.
- (b) I have not made any finding as to whether or not the officer smoked the cigarette because I have not been asked to do by either party.
- (c) I reject the officer's contention that he forgot that he was in possession of the cannabis. I do not consider it plausible that a serving police officer would forget that he was in continued possession of cannabis for a number of months and the officer has not given evidence about this so his assertion that he forgot is untested.
- (d) The officer has been interviewed on three occasions and been given the opportunity to provide written submissions to this hearing. He has at no stage sought to identify the person who supplied him with cannabis. I accept that the officer has a right to remain silent on advice from his legal representative and not to incriminate himself. However, the officer is also under a continuing duty to report criminal offences, and having accepted the facts of his misconduct the justification for failing to identify the person who supplied him with the cannabis falls away. I consider that this demonstrates a continuing failure to comply with his duties and responsibilities.
- (e) I do not hold it against the officer that he is absent from the hearing today and accept that this is because of his ongoing mental health issues.

13. On the basis of those findings, I find that PS Simpson's conduct in the round amounted to gross misconduct.

14. The bases for my finding of gross misconduct are:

- (a) I accept that in isolation the WhatsApp messages would amount to misconduct only. I therefore treat them as an aggravating feature of the other matters.
- (b) The harm in this case is high. The reputational harm caused by an officer breaking the law, concealing that over a significant period of time, and continuing to fail to reveal the identity of the person who supplied him with those drugs is significant.
- (c) Culpability in this case is high.
 - (i) I do not consider that the officer's mental health issues affect his culpability for this offending. Memory issues and cognitive fatigue would not have prevented the officer from refusing to accept possession of the drugs nor reporting the supply to his supervisors.
 - (ii) I accept that over a short period of time the officer's mental health issues could have prevented him from remembering about the drugs. However, the officer was in possession of the drugs for a period of 9 months and in the absence of clear, expert medical evidence as to the effect of his mental health issues I am unable to find that the officer was unable to remember about his possession of those drugs for that period of time.
 - (iii) In those circumstances I treat the officer's misconduct as deliberate for the purposes of assessing culpability.
 - (iv) I note that the possession of the drugs is a criminal offence and that breaking the law is unacceptable for officers who are to uphold the law.
 - (v) However, the more serious matter in this context is the ongoing failure to report the supply of drugs to his supervisors.
- (d) Aggravating features:
 - (i) I find that it is an aggravating feature that the officer sought to conceal his offending, hiding the drugs in a drawer in a garage. I note that this was a

submission made in mitigation by the officer – that he deliberately hid the drugs from others. I do not consider that this is a mitigating feature in this case but an aggravating one.

(ii) For the avoidance of doubt I have not double counted the lengthy period for which the officer was in possession of the drugs, having taken account of that in relation to culpability.

(e) Mitigating features:

(i) I take account at this stage of the fact that the officer has suffered some mental ill health that may possibly have affected his mental state. I have given this due weight, but it does not reduce the seriousness of this matter below that of gross misconduct given everything set out above.

(ii) I take account of the officer's apology which was submitted today, and his acceptance of the facts alleged in his third interview. I give this appropriate weight given that these were not admissions or apologies made at an early stage.

Determination of outcome

15. Having determined that the breaches of professional standards taken individually (with the exception of the WhatsApp messages) and collectively constituted gross misconduct, I invited representations from the Appropriate Authority and the officer's representative on the appropriate outcome in this matter.

16. Submissions were made by the Appropriate Authority that dismissal was the only appropriate outcome in this case:

(a) Reference was made to the criminal nature of the misconduct, and to the CoP Guidance on Outcomes which states that it is unacceptable for officers who are responsible for upholding the law to break it themselves;

- (b) It was said that the officer's level of culpability was high because he intentionally took possession of the cannabis;
 - (c) The length of the possession of the cannabis was referred to as a matter increasing culpability;
 - (d) It was said that the officer was a role model with leadership responsibility and significant seniority of service;
 - (e) The community perception of these offences was referred to as a matter which increases harm.
17. Submissions were made on behalf of the officer that reduction in rank was the appropriate outcome:
- (a) Significant reliance was placed on the officer's mental health as an issue which reduced his culpability for this misconduct;
 - (b) It was suggested that he had not received appropriate support for his mental health issues;
 - (c) The suggestion was made that DSE were "out to get him";
 - (d) It was noted that he had apologised for his conduct and made admissions;
 - (e) It was submitted that he had been an "exceptional, successful" officer;
 - (f) It was submitted that the quantity of cannabis was small;
 - (g) It was submitted that this would be a sufficient sanction to maintain public confidence in the force.
18. I remind myself of the threefold purpose of misconduct proceedings:
- (a) to maintain public confidence in, and the reputation of, the police service;

- (b) to uphold high standards in policing and to deter misconduct;
 - (c) to protect the public.
19. My core duty here has been to ensure that whatever decision I make upholds public confidence both in Cleveland and in policing more widely. My role is not punitive as that is a duty that has already been considered and undertaken by the criminal justice system. Throughout my deliberations, I have been resolutely focused on maintaining public confidence in Cleveland Police.
20. Any action I take today has been to balance the officer's rights proportionately with the requirement to maintain public confidence, and the public interest that may be served by retaining an officer with 15 years of service, including 7 as a supervisor, and who has received two commendations from senior officers.
21. Having found earlier at stage one of proceedings that the conduct constitutes gross misconduct, the outcomes available to me are:
- (a) Final written warning;
 - (b) Reduction in rank;
 - (c) Dismissal without notice.
22. I considered these potential outcomes in order from the lowest sanction (written warning) through to dismissal and assessed them as to how they may meet the need to fulfil the purpose of the misconduct proceedings, and the purpose of imposing sanctions.

Seriousness

23. I have considered the seriousness of the misconduct that gave rise to the officer's appearance at the hearing today, in accordance with the College of Policing's Guidance on Outcomes, and my conclusions and the reasons for them are set out above.

Personal Mitigation

24. A significant amount of personal mitigation has been put forward on behalf of PS Simpson:
- (a) Prior to 2018 PS Simpson received two commendations and had no disciplinary record of any kind.
 - (b) In 2018 he was assaulted, then prosecuted and convicted for a public order offence before being acquitted on appeal. He was subject to two sets of disciplinary proceedings as a result of this, and the second set of proceedings was found to be an abuse of process.
 - (c) A further set of proceedings was taken against PS Simpson for an allegation of fraud. These did not result in any disciplinary action.
 - (d) For the avoidance of doubt I have not taken into account any of the other disciplinary allegations against PS Simpson and have focussed my decision only on the misconduct which is the subject of these proceedings.
 - (e) He perceives that the DSE are “out to get him” as a result of this. I make no findings as to the truth or otherwise of this assertion, but I accept that whether this was a reasonable view or otherwise this had an effect on his mental state.
 - (f) In 2021 he had a serious mountain-bike accident resulting in a head injury and the symptoms referred to in the letter that I have seen. I accept that this will have caused him significant distress and difficulty.
25. I have taken account of the decision in *R (on the application of Williams) v Police Appeals Tribunal and another* [2016] EWHC 2708 as to the weight to be given to personal mitigation in police misconduct proceedings, in particular what is said at paragraphs 66-68 of that decision.
26. In my view this is a case which significantly threatens the public’s confidence in and respect for the police service. This is because the possession of the cannabis is a criminal offence for which there has been a sanction, drug offending is a key concern for the public

in Cleveland, and the case turns not only on the commission of that offence but on the failure to identify a drug supplier which is discreditable for a police officer and the reputation of the service. I therefore give PS Simpson's personal mitigation less weight than I otherwise would.

Determination

27. I find as a consequence of the above that the appropriate outcome in this case is dismissal because:
- (a) The starting point is that I have found that these facts amount to gross misconduct. That means that dismissal could be justified, but it does not mean that dismissal will follow in every case.
 - (b) I have taken into account all of the factors that I set out above in relation to culpability, harm, aggravating and mitigating features.
 - (c) In addition, I do accept that having heard from the parties on this point that PS Simpson was a role model and that others would look up to him. He had been a sergeant and a supervisor since 2015 and a police officer since 2008 so would be looked up to as an experienced officer.
 - (d) I consider that the actions of PS Simpson as set out above do significantly undermine the public's trust and confidence in the service. I find that a public would expect an officer in these circumstances to be dismissed and that dismissal is required to maintain the public's trust and confidence. I have not found that PS Simpson's culpability has been lessened by his mental health issues.
 - (e) I consider that there is a need for a strong declarative effect that the possession of drugs and the failure to report the supply of drugs is not acceptable to Cleveland Police, as this will deter future misconduct.

- (f) I have taken into account PS Simpson's personal mitigation as set out above, but I do not consider that this attracts sufficient weight in the circumstances to alter my decision on outcome.
28. I have considered whether either a final written warning or a reduction in rank would achieve the purposes of these proceedings. I have concluded that they would not:
- (a) For all the reasons set out above, and in particular the length of time over which the officer possessed the cannabis and failed to disclose the identity of the individual who supplied it, I take the view that public confidence would be undermined if a lesser sanction than dismissal was imposed.
 - (b) They would not uphold high standards and deter misconduct as the message sent would not be that this is unacceptable behaviour but that this is behaviour that can be punished and tolerated.
29. I do not have enough information before me to determine whether the officer is disabled for the purposes of the Equality Act. As a matter of prudence, I have considered in any event whether:
- (a) It would be a reasonable adjustment to impose a lesser sanction on the Officer;
 - (b) It would be discriminatory to dismiss the Officer in all the circumstances.
30. In my judgment the misconduct process takes into account the factors that I would be required to take into account were the officer disabled:
- (a) I have considered, as part of these proceedings, whether a lesser sanction would achieve the legitimate aims of these proceedings, and I have determined that it would not. Dismissal is therefore a proportionate means of achieving those legitimate aims.

- (b) I have considered whether it would be reasonable to impose a lesser sanction. For the reasons set out above I do not consider that it would be reasonable to do so as a lesser sanction would not achieve the aims of these proceedings.
31. As a consequence of the above I indicated that the officer's details would be included within the Police Barred List (Regulation 3(2)(I) of the Police Barred List and Police Advisory List Regulations 2017).
32. I am aware of the officer's right to appeal in accordance with the Police Appeals Tribunal Rules 2020. The officer should provide notice of his intention to appeal to the Appropriate Authority within 10 working days of receipt of this written determination.

Chief Constable Webster

25th October 2022