

Former PC Lewis

The former officer has been served with the relevant papers in this matter and has communicated that he does not wish to attend the hearing. He has not requested an adjournment to a later date. On the basis that he has received notice of the hearing, the panel do find that it is fair and in the interests of justice to proceed with the misconduct hearing in the absence of the former officer.

The task of the panel on disputed matters of fact is not, as such, to determine the truth. It is to identify what needs to be proved, by whom, in this case the appropriate authority, upon the basis of a correct identification and analysis of the legal rules governing the case. It must then form a judgment (doing so rationally, reasonably and impartially), for each such proposition of fact, as to whether the evidence presented at the hearing made what the party bearing the burden of proof says occurred appear – more probably than not – to be what occurred.

The law in respect of factual determinations

The burden of proving the facts pleaded rests with the appropriate authority.

The standard to which the appropriate authority must satisfy the panel is the simple balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. Within this context, there is no room for a finding by the panel that something might have happened. The panel may decide that it did or that it did not: Re B [2008] UKHL 35.

Findings of fact must be based on evidence and not on speculation. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence.

In determining whether the appropriate authority has discharged the burden upon it, the panel looks at what has been described as ‘the broad canvass’ of the evidence before it. The role of the panel is to consider the evidence in its totality and to make findings on the balance of probabilities accordingly. Within this context, the panel must consider each piece of evidence in the context of all of the other evidence: Re T [2004] 2 FLR 838.

The panel must always bear in mind that a witness may tell lies in the course of an investigation. The panel must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear or distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything: R v Lucas [1982] QB 720. I make clear that in reaching our conclusions in these matters, we have given ourselves this direction in respect of the evidence we have heard.

We have also considered our purpose within the misconduct regime which is:

1. to maintain public confidence and the reputation of the police service
2. to uphold high standards in policing and deter misconduct
3. to protect the public.

This is a case concerning various matters as particularised in the regulation 30 notices served upon the former officer.

The former officer was interviewed about the allegations.

The officer, as is their right since a change in the regulations, decided to resign his position.

The Appropriate Authority, the federation representative and the panel have ensured that the case of the officer was dealt with fairly in the absence of attendance of the officer.

The allegations are as set out in the regulation 30 notice and we will not repeat the allegations here in full but it concerns two allegations, the first of sending intimate images of Miss A to PC B without consent and denying in interview that the former officer had sent these. The second allegation concerns engaging in oral sex with PC B and having PC B masturbate the former officer.

There was no evidence of live witnesses so the panel considered the written evidence contained within the bundle.

PC B

In interview, PC B confirmed that former officer Lewis had sent her images of Miss A via WhatsApp.

A digital download of PC B's mobile telephone was carried out and two images of Miss A were located.

PC B admitted that her and former officer Lewis had engaged in sexual activity whilst on duty together including performing oral sex on former officer Lewis.

She confirmed that she never did anything to former officer Lewis whilst they were in police vehicles, but that he would expose himself whilst she was driving the vehicle.

Former officer Lewis

He admitted that Miss A and himself would send each other sexually explicit photos. He denied sending or showing any of these images to PC B but said he probably described them to her.

A digital download was carried out on the former officer's laptop and images of Miss A were found on it. Those images were compared to the two images found on PC B's mobile telephone and they were identical. The report could not establish whether the images were sent from PC Lewis or from PC B.

He admitted that in various police premises he and PC B would engage in mutual masturbation and sometimes touch each other. He denies doing this in a police vehicle. He also admitted that once or twice PC B had performed oral sex on him.

Findings of fact

The first stage for the panel is to make findings of fact in relation to the allegations.

In making the findings of fact, the panel was assisted by all of the evidence before it, the evidence in the bundle, the documents, and the submissions made.

The burden of proof is on the appropriate authority, and it is the simple balance of probabilities, i.e. what is more likely than not.

Moving onto the relevant facts for allegation one.

He was questioned in interview at length about the images that PC B says he sent her. PC B was able to describe the photos in quite some detail.

The officer admits that he had received the images of Miss A and that he described them to PC B but did not send them to her or show her them. He agreed that Miss A and him would send each other sexually explicit photos.

The former officer's laptop was checked as was the mobile phone of PC B.

Two images of Miss A were found on PC B's phone and identical images were found on the former officer's laptop. The person completing the report was not able to say which direction the images were sent or who sent them to whom.

Having considered the evidence, on the balance of probabilities we do find that Former officer Lewis was in possession of photos of Miss A as per his admission. In addition we find on the balance of probabilities that the two photos in question were sent from former officer Lewis to PC B, this finding is based upon the evidence of PC B and the digital examination of the laptop and mobile telephone. Since the former officer has denied sending the images, he has not provided any evidence of consent of Miss A to share the images and we therefore find on the balance of probabilities that the images were sent without her consent.

In relation to sending the images he consistently denied sending the images to PC B. His explanation was that he described them to PC B. On the balance of probabilities the former officer did not tell the truth about sending the images, he clearly sent these to PC B as there is no other explanation as to how PC B has them on their phone other than the evidence from PC B that the former officer sent the photos to them. This finding is based upon the evidence of PC B and the digital examination of the laptop and mobile telephone and the answers given by the former officer in interview.

Moving onto the relevant facts for allegation two.

Again former officer Lewis was questioned at length in interview about the sexual activity between him and PC B.

He admitted that in various police premises he and PC B would engage in oral sex and mutual masturbation. He also admits that he and PC B would touch each other too during these interactions on occasion. PC B confirms the sexual acts but denies that anything happened in the police van.

Having considered the evidence, on the balance of probabilities we do find that former officer Lewis engaged in oral sex with PC B. We also find that

former officer Lewis allowed PC B to masturbate him. On the balance of probabilities these acts took place in various police premises on various dates. The AA have not proved on the balance of probabilities that masturbation by PC B on former officer Lewis took place in police vehicles.

Breaches of the standards of professional behaviour

In relation to these allegations, the AA says the former officer's behaviour has breached the standards of professional behaviour in relation to the following:

Honesty and integrity

The code of ethics states that officers will be honest and act with integrity at all times.

IVEY test

In relation to honesty and integrity it is alleged that the officer breached this by way of denying in interview that he had sent two images of Miss A to PC B.

This was an incorrect and untrue statement, as the panel have found as a matter of fact that on the balance of probabilities former officer Lewis has sent these images to PC B.

In determining dishonesty, the tribunal must use the accepted test for dishonesty, also known as the Ivey test which arises from a change in the law made by the Supreme Court in 2017.

Subsequent to the Supreme Court judgement, the High Court confirmed that the Ivey test is good law in professional conduct tribunals, such as this, in the cases of GMC V Krishnan and Uwen V GMC.

The test the tribunal needs to apply is as follows:

Firstly, the Tribunal must ascertain (subjectively) the actual state of the officer's knowledge or belief as to the facts. The reasonableness or otherwise of his belief may evidence whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held.

Secondly, once that has been established the Tribunal must determine whether his conduct was dishonest by applying the (objective) standards of ordinary decent people. It is not necessary for the individual to appreciate that what he has done is, by those standards, dishonest.

In this matter it is the panels finding that when making the statement within his interviews that he had not sent the images to PC B, on the balance of probabilities the former officer knew he had sent the images in question to PC B and lied to the interviewing officers.

Applying the objective standards of ordinary decent people it is also our finding that such people would also accept that the officer was being deliberately dishonest when making the statement in interview.

Former officer Lewis did not act with honesty and integrity at all times and knowingly made a false statement in a professional context.

We therefore find that the AA have proven a breach of this standard.

Authority respect and courtesy

On the balance of probabilities, the panel do find that former officer Lewis has breached this standard.

He did not carry out his role in a professional manner.

This is because he did not treat Miss A with respect and courtesy when forwarding images to PC B without Miss A's consent.

The sexual behaviour he engaged in was inappropriate and was carried out on police premises and whilst on duty and he has clearly not treated PC B with respect and courtesy by engaging in such acts.

Taking part in sexual activity as described in the bundle is not acceptable behaviour for any police officer whilst on duty and on police premises.

Discreditable conduct

On the balance of probabilities, the panel do find that former officer Lewis has breached this standard.

This is because he has behaved in a manner which could discredit the police service as he failed to maintain the highest standards of behaviour.

The conduct could result in members of the public losing trust and confidence in the policing profession.

His behaviour could have compromised his own or his colleagues' credibility and reputation in policing.

His behaviour is clearly damaging to the reputation of both himself and of policing generally.

We adopt the words used by counsel for the AA, and do find that any reasonable member of the public would be understandably shocked and appalled that a police officer has behaved as former officer Lewis did.

Level of Misconduct

It is alleged by the Appropriate Authority that the breaches amount to gross misconduct. The former officer admits that his behaviour amounts to gross misconduct.

Gross misconduct means a breach of the standards of professional behaviour which is so serious as to justify dismissal. Misconduct means a breach of the standards of professional behaviour that is so serious as to justify disciplinary action.

Having regard to the above and all of the matters we have heard and considered we do find that this is a matter that falls within the definition of gross misconduct, due to the impact and potential impact on colleagues and public confidence.

Judgment on outcome former officer Lewis

Firstly, we would like to thank everyone for their assistance in this matter.

The panel have considered all the submissions, the evidence, the service record and the college of policing guidance on outcomes.

We have also considered our purpose within the misconduct regime which is:

1. to maintain public confidence and the reputation of the police service
2. to uphold high standards in policing and deter misconduct
3. to protect the public.

In assessing the seriousness of the misconduct, we have considered:

1. The officer's culpability.

In this matter, the allegations that we have found proven all concerned the direct conduct of the officer. The conduct was intentional and deliberate. The officer should have recognised that there was a risk of harm to both individuals and the reputation of policing.

2. The harm caused (and the risk of harm).

There was the potential for emotional harm to Miss A.

There is also a risk of reputational harm as the public would see this behaviour as unprofessional and unacceptable.

3. The aggravating factors.

There are multiple proven allegations and breaches of the standards in this case.

The conduct was intentional and deliberate behaviour.

There was an attempt to conceal the sending of the images to PC B by denying that any were sent to her.

There was an element of continuing behaviour by way of sexual conduct over a sustained period of time when the officer should have realised that it was inappropriate.

4. Mitigating factors.

There were partial admissions at the officer's second interview.

In conclusion, the panel do find that the conduct is serious in nature due to the above factors.

Outcome

The appropriate authority says that only a finding that the officer would have been dismissed if he was still a member of the police force, will fulfil the purposes of the disciplinary process. The representative for the officer did not have instructions from the officer.

Having considered all the above matters and the available outcomes, the panel firstly considered whether a finding of gross misconduct with no further action was sufficient. We confirm we directed ourselves as to the purpose of the misconduct regime as set out above and that the purpose of misconduct proceedings is not to punish the former officer.

Having regard to the purpose and all of the matters set out above, we do consider that taking no further action is not sufficient when considering the nature of the proven allegations, the purpose of the disciplinary regime and the protection of the public.

This matter concerns multiple breaches of the standards and clearly could have an impact on public confidence in policing.

The most appropriate outcome is therefore a finding that the officer would have been dismissed had he still been a member of the police force and that this sanction does fulfil the purpose of the misconduct regime.

Once Cleveland police became aware of the behaviour of the former officer, they have acted appropriately and brought the matter to a misconduct hearing so that we, as the independent panel could examine the case and make an appropriate decision.