

THE SUBSTANTIVE HEARING – COMMENCED 27th FEBRUARY 2024

Counsel appeared for the AA (Mr Ley Morgan) and for the FPC (Mr Rawlinson). The Regulation 30 notice for the Panel was now as follows:

'Alleged Facts

1. *On 5th November 2001 you joined Cleveland Police.*
2. *In 2010 you were promoted to Sergeant.*
3. *In 2013 you resigned from Cleveland Police.*
4. *In November 2020 you re-joined Cleveland Police.*
5. *On 13th August 2022 whilst in Flares Public House, Middlesbrough you touched Ms A's bottom without her consent.*
6. *On 3rd December 2023 you resigned from Cleveland Police.*

Alleged Breach - Authority, Respect and Courtesy

You have breached the Standard of Professional Behaviour concerning Authority, Respect and Courtesy because you:-

1. *Failed to act with self-control.*
2. *Failed to treat Ms A with courtesy and respect.*
3. *Engaged in unwanted conduct and/or unwanted conduct of a sexual nature towards Ms A.*

Equality and Diversity

You have breached the Standard of Professional Behaviour concerning Equality and Diversity because your behaviour towards Ms A:-

1. *Was unwanted conduct and/or unwanted conduct of a sexual nature.*
2. *Had the purpose or effect of violating the dignity or creating an intimidating hostile, degrading, humiliating or offensive environment for Ms A as a woman.*
- (iii) *Was less favourable treatment because she is a woman, in that you would not have subjected a man to such treatment;*

Discreditable Conduct

You have behaved in a manner that discredits the police service and undermines public confidence in it because a reasonable member of the public would be justifiably concerned that a police officer had engaged in unwanted sexual conduct.

It is alleged that your behaviour amounts to gross misconduct and that your name should be included on the College of Policing Barred List.'

The parties agreed that Ms A should be anonymised as 'Ms A' during the hearing and that her name would not be publishable. Otherwise the hearing would be in public with the public excluded as and when that was necessary and appropriate.

Only one witness was called on behalf of the AA – Ms A. She gave her evidence via a remote link. She was cross-examined by counsel for the FPC.

The FPC was the only witness called for in his defence. He was cross examined by

counsel for the AA.

The Panel's decision on the facts alleged

The Panel reminded itself of the burden and standard of proof.

The Panel applied the good character direction, i.e. regarding the FPC's propensity to have committed the allegations and regarding his credibility is to be given as he has testified and made pre-trial statements.

We noted that both Ms A and the FPC had consumed alcohol. Our focus, we determined, was bound to be on the evidence of Ms A because she was the only witness called by the AA and it bore the burden of proof.

We found that various documents were relevant and helpful in deciding the facts made out. These included, but were not limited to, Ms A's questionnaire, the occurrence log, the photographs taken in Flare's, the Facebook messages produced by the FPC and each witness's taped interview transcript.

We found that Ms A was a witness who did her best to give an honest account. There was no malice in her making the complaint.

However, in terms of Ms A's credibility, and whether we could rely on her evidence on the allegations made, these were significant factors:

- Whilst the law does not require corroboration of an allegation, we were satisfied that the alleged touching happened in a reasonably busy area of the night club where we might have expected it to have been witnessed;
- Ms A did not see who touched her bottom;
- Ms A did not react in any way to being touched as she claimed;
- The 'mechanism' of the alleged touching was given differently on different occasions by Ms A – on clothing, under clothing, over clothing, on her skin, unclear which actual area of her body, the length of her skirt, whether the FPC had used his hands or his fingers;
- Ms A was definite in her evidence that the FPC had never had his arm around her waist but the photographic evidence showed clearly otherwise and showed that Ms A and the FPC had spent some time together in Flares;
- Ms A completed the questionnaire and entered the venue wrongly ('Turtle Bay' and not 'Flares');
- Ms A had not made a complaint until she was asked to complete the questionnaire and even then answered q.4 of it in the negative when in fact it would have been positive on her account;
- Although Ms A's definition of what happened is not material to our classification of it, she was very reluctant to class it as sexual touching and did not wish to pursue it as a criminal matter;
- The FPC gave a consistent account throughout;
- We considered that the evidence of speculation by the FPC over the motive for Ms A's delay in making a complaint was only of marginal relevance to our decision;

- The day after the alleged incident, Ms A took part voluntarily in Facebook messages with the FPC and these were friendly in content.

We make no findings regarding other possible causes for Ms A's complaint and some of them would in any event be speculative and unsupported by evidence.

We remind ourselves that possibilities are not enough to satisfy the standard of proof. Suspicions are in the same category.

We are not satisfied that it was more likely than not that the incidents leading to the allegations had happened as suggested and therefore conclude that the AA has not discharged the burden of proof. That brings the case to an end at this stage.

Andrew Clemes
LQC
28th February 2024