

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

RE. FORMER SPECIAL CONSTABLE 4737 MATTHEW WHITE

DETERMINATION OF CHIEF CONSTABLE WEBSTER

Preliminary matters

1. The accelerated misconduct hearing for former Special Constable 4737 Matthew White was held in public on 7 February 2024. The Appropriate Authority was represented by T/Insp Simon Clark, and the officer, who was not in attendance for the hearing, was represented by PC Paul Crowley, his Federation Representative.

Allegations

2. On 17 January 2024 the former officer was served with a notice of accelerated misconduct hearing proceedings outlining two allegations, which if proven, were assessed as amounting to gross misconduct. Those allegations were:

On 12 June 2023 you were off duty you were looking for a laptop belonging to your brother-in-law that had been left on a train.

Allegation 1:

- a. *You attended at [ADDRESS 1];*
 - i. *Told the occupant you were a police officer and showed your police badge;*
 - ii. *Inferred you were acting in your capacity as a police officer;*
 - iii. *Entered [ADDRESS 1] when you had no power to do so;*
 - iv. *Searched [ADDRESS 1] when you had no power to do so.*

Allegation 2:

b. *You attended at [ADDRESS 2];*

- i. Told the occupant you were a police officer and showed your police badge;*
- ii. Inferred you were acting in your capacity as a police officer;*
- iii. Entered [ADDRESS 2] when you had no power to do so;*
- iv. Searched [ADDRESS 2] when you had no power to do so.*

"The above conduct breached the Standards of Professional Behaviour relating to 'Discreditable Conduct' which is so serious as to justify dismissal and therefore amounts to gross misconduct."

3. In summary, it is alleged that former SC White's actions were a breach of the standards of professional conduct in respect of Discreditable Conduct, and that this amounted to gross misconduct.
4. The burden of proof is on the Appropriate Authority to prove that the former 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.
5. The former officer's Regulation 54 Response disputes that he has done anything wrong. It does not address the question of whether his conduct breached any of the standards of professional behaviour. It is silent as to whether he admits conducting the alleged searches, but in his interview under caution he did admit that he conducted searches as alleged.
6. At the hearing I heard from the Appropriate Authority and the former officer's representative.

Determination of conduct

8. In making my determination, I have assessed all relevant information made available to me in the supplied bundle. It was confirmed that all parties had access to the same information, and no submissions were made to introduce additional information on the day of the hearing. I have considered all representations made on behalf of the Appropriate Authority and 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, and particularly that gross misconduct is a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal.
10. There is an issue as to whether the officer did in fact have had a power to enter these premises. I find that he did not:
 - (a) The only power that could conceivably have been exercising is the power pursuant to s.17 PACE to enter premises;
 - (b) Former SC White on his own account did not intend to arrest anyone within the premises, and he did not suspect that the laptop was going to be destroyed. He therefore lacked any lawful purpose to exercise the power pursuant that section.
11. My findings are that these two allegations were proven, on the balance of probabilities. The bases for my so finding are:
 - (a) Allegation 1:
 - (i) The beginning of the incident is captured on Ring doorbell footage;
 - (ii) The officer admits the facts of the allegation;
 - (iii) There was no power for the officer to enter the premises.
 - (b) Allegation 2:

- (i) The beginning of the incident is captured on Ring doorbell footage;
- (ii) The officer admits the facts of the allegation;
- (iii) There was no power for the officer to enter the premises.

12. For the avoidance of doubt I consider that the evidence set out above is all incontrovertible, because it consists of CCTV footage, and the officer's admissions in interview.

13. I have found that these amount to breaches of the Standards of Professional Behaviour in relation to discreditable conduct. It is unacceptable for police officers to, without authority or supervision and whilst off duty, conduct investigations and searches on behalf of family members, and to use their warrant card and position as a police officer to do so. This brings discredit on the force and on policing more generally.

Misconduct or Gross Misconduct

14. I agree with the Appropriate Authority that it is appropriate to take account of the structure for assessing seriousness set out in the College of Policing Guidance:

Culpability

15. As to culpability:

- (a) The searches that SC White conducted were unlawful. SC White had had the same training as any constable. He should have known better and could have foreseen the risk of harm.
- (b) These were deliberate acts.
- (c) They caused members of the public to experience unlawful searches.
- (d) They were also for the benefit of a family member, and I consider that this increases SC White's culpability. Whilst he honestly believed that he had a power to enter the properties and conduct the searches, he compromised his position by doing this for a family member in circumstances in which I find he would not have done the same for any other member of the public.

- (e) Accordingly I assess SC White's culpability as high.

Harm

16. As to harm:

- (a) There has been harm to the members of the public in this case who experienced unlawful searches and have had their confidence in the police shaken. This includes a member of police staff. Their rights were also infringed.
- (b) There has also been harm to the reputation of the force and to policing in general. A reasonable member of the public in possession of all of the circumstances of this case would in my view be alarmed by the conduct of SC White and the manner in which he used his position for the benefit of his family members, however honestly he believed he was entitled to do so. This is not the most serious case, but neither is it minor or trivial.
- (c) There is no particular national or local concern about this type of misconduct.
- (d) Accordingly I assess harm in this case as medium.

Aggravating features

17. The following aggravating features are relevant:

- (a) I do not take into account here the abuse of position or the personal advantage, as these were taken into account as features of the officer's culpability.
- (b) There has been a significant deviation from force policy.
- (c) He failed to seek advice from colleagues or senior officers, despite the fact that he sought such advice afterwards, so plainly he knew that advice was required.
- (d) There are two allegations and two victims.

Mitigating features

18. The only mitigating features here are:

- (a) The officer's early admissions as to the facts;
- (b) The fact that the officer genuinely believed that he was acting pursuant to a legitimate policing purpose. I give this factor very limited weight as whilst the officer may honestly have believed this, it was not reasonable for him to believe it in the circumstances;
- (c) The officer did seek advice after the searches. Whilst this was not calculated to reduce the harm he had caused (because he wasn't aware that he had caused any), it did in fact allow these matters to come to light and thereby limit the harm that his actions caused;
- (d) I note that the officer has offered an apology for and distress he has caused, but I balance that against the fact that he does not accept any wrongdoing therefore he lacks remorse and insight into his actions.

19. Taking all of the above factors into account, I have concluded that these breaches do individually and collectively amount to Gross Misconduct. Dismissal could be justified in these circumstances.

Determination of outcome

20. Having determined that the breaches of professional standards taken individually and collectively constituted gross misconduct, I invited representations from the Appropriate Authority and the Officer's representative on the appropriate outcome in this matter.

21. Further brief submissions were made by the Appropriate Authority that:

- (a) This was deliberate misconduct.
- (b) The former officer should have known that his conduct was improper.
- (c) A crime was recorded, and police officers should uphold the law, not break it.
- (d) There is harm to public confidence from the former officer's actions.
- (e) The former officer infringed the rights of the occupants of the addresses.

- (f) Dismissal would be appropriate in this case because of the effect of his actions on the reputation of policing.
- (g) The personal gain here, because this was being done for family members, aggravates this matter.
- (h) He attended several houses, without checking the addresses on police systems.
- (i) He did not enquire whether the laptop had been handed in elsewhere before undertaking the searches.
- (j) Dismissal will deter misconduct by others.

22. Submissions were made on behalf of the Officer that:

- (a) The officer has resigned, so I should consider if he were still a serving officer, what would be the appropriate sanction.
- (b) He genuinely believed a crime was being committed and that there was a need for immediate action to be taken.
- (c) There was harm, but he genuinely believed he had a policing purpose, so any harm was unintentional.
- (d) I should consider his training record and level of knowledge.
- (e) His actions were not deliberately harmful, he was acting in error not malice.
- (f) He did not seek to hide what he had done, because he genuinely believed that what he was doing was right.
- (g) This was a brief incident, isolated to a single enquiry at multiple addresses.
- (h) He was polite to the victims of his misconduct.
- (i) There is a marked difference in experience between a paid officer and a special constable.
- (j) That a final written warning might have been appropriate had he remained in service.

23. 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 is undertaken by the criminal justice system. Throughout my deliberations, I have been resolutely focused on maintaining public confidence in Cleveland Police.
24. 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.
25. Having found earlier at stage one of proceedings that the conduct constitutes Gross Misconduct, the outcomes available to me are:
- (a) to take no disciplinary action, on the basis that he would have received a final written warning;
 - (b) to find that the former officer would have been dismissed if still in service.
26. I considered the potential outcomes in order from the lowest sanction (taking no disciplinary action) 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

27. I have already 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. I will not repeat my findings as to culpability, harm, and aggravating features, but the following additional points were raised which I deal with as follows:
- (a) I have not taken into account that a crime was recorded. No action was taken against the officer in the criminal justice system and I have no evidence that a particular crime has been committed.
 - (b) I do not consider that the fact that the officer failed to check whether the laptop had been handed in elsewhere materially affects my assessment of seriousness.

- (c) I have considered all of the submissions made on the officer's behalf as set out above, but I do not consider that any of them materially affect my assessment of seriousness because I have already taken them into account.
- (d) I do not accept that this was a brief incident. It consisted of two searches and knocking on others doors. It was neither a prolonged incident nor a brief one, so its duration neither aggravates nor mitigates the position.
- (e) I must be clear that the only abuse of position I have found in this case is that the officer has acted on behalf of family members. I do not find that the officer has abused his position in any other way.
- (f) I should equally be clear that I do not hold it against the officer that he failed to provide a Regulation 18.

28. There is no personal mitigation in this case. I have taken account of the Officer's record of service which contains nothing of relevance.

Determination

29. I find that the appropriate outcome in this case is that the officer would have been dismissed had he remained in service:

- (a) The proven allegations are sufficiently serious to justify dismissal as set out above;
- (b) The former officer's Regulation 54 response demonstrates a thorough lack of insight into the impropriety of his actions;
- (c) Only a finding that the officer would have been dismissed will uphold the purposes of these proceedings:
 - (i) protecting members of the public from future harm by SC White by placing him on the barred list;
 - (ii) deterring similar misconduct by others; and
 - (iii) upholding high standards in policing so as to retain confidence in policing and in Cleveland Police in particular.

30. 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

6 February 2024