

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

FORMER PC 2522 DANIEL SMYTHE

DETERMINATION

Introduction

1. I conducted an Accelerated Misconduct Hearing ('AMH') in respect of Former PC 2522 Daniel Smythe ('the Former Officer') on 23rd July 2026 and my reasons for the determinations I made during the hearing are set out below.

Preliminary Issues

2. Prior to the AMH, I considered whether it was appropriate for me to Chair the AMH given that I had been involved in an earlier decision to suspend the Former Officer from duty whilst an investigation into his alleged misconduct was taking place.
3. Having taken legal advice on the issue, I sought representations from the Former Officer, however, he has not engaged in the proceedings and so has not provided any representations in respect of this issue.
4. In any event, I considered the well-established test for apparent bias laid down in Porter v McGill, (i.e. 'whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased') in the context of the overarching principle that misconduct proceeding must be fair to the Officer (or Former Officer) concerned.
5. In reaching my decision I had regard, in particular, to the following matters:
 - a. A decision to suspend is inevitably made whilst an investigation is ongoing, and it therefore is not – and cannot be – a final or even a provisional determination of any issue or allegation which an Officer faces;
 - b. My decision to suspend in this case was made over 12 months ago, at a time when I was dealing with high a number of such decisions. I have not had any subsequent involvement in his case;
 - c. Given the passage of time and the number of other cases I have dealt with over the intervening period I now have no independent recollection of the Former Officer's case; and
 - d. The Former Officer has been given the opportunity to raise any objection he has, or to make any other submissions, on my hearing the AMH and he has declined to do so.

6. Having considered these matters and being mindful of the need to ensure fairness, I applied the test in Porter v McGill set out above and was satisfied that apparent bias was not established on the facts of this case and it was therefore appropriate for me to Chair the AMH.

Former Officer's Attendance

7. The Former Officer was not in attendance at the commencement of the AMH. It was confirmed by both the Appropriate Authority, and the Former Officer's Federation Representative that he had been notified the AMH and was also made aware that he could be legally represented at the hearing, but that he had not responded to the notification and no legal representative had been instructed to attend on his behalf.
8. The Former Officer had also failed to provide a Regulation 54 response to the Regulation 51 Notice and had disengaged from the misconduct process.
9. In those circumstances I concluded that the Former Officer had voluntarily chosen not to attend the AMH, that it was appropriate to proceed in his absence given the public interest in AMHs being conducted expeditiously, and there would be no unfairness caused to the Former Officer whose interests were represented by his Federation Representative.

The Allegations

10. The allegations brought by the Appropriate Authority ('AA') in this case (and set out in the Regulation 51 Notice are as follows):

Allegation 1

On or around 28 April 2024 you assaulted Witness A by grabbing their back as they were leaving.

The above conduct breached the standards of Professional Behaviour relating to Discreditable Conduct.

Allegation 2

On 11 March 2024, you assaulted Witness A by throwing liquid over them.

The above conduct breached the standards of Professional Behaviour relating to Discreditable Conduct.

Allegation 3

On 24 April 2025, you told Officers you had lost your mobile telephone when in fact you had hidden it in a plant pot at the address where you were arrested.

The above conduct breached the standards of Professional Behaviour relating to: Discreditable Conduct and Honest and Integrity.

Allegation 4

On 24 April 2025, you performed a factory reset on your mobile telephone preventing recovery of material from your mobile phone.

The above conduct breached the standards of Professional Behaviour relating to Discreditable Conduct and Honest and Integrity.

11. The above conduct was alleged to amount to Gross Misconduct.

Procedure

12. As the Former Officer had not filed a Regulation 54 response to the Regulation 51 Notice I proceeded on the basis that the Former Officer denied the four allegations he faced. I then invited submissions from the Appropriate Authority on the evidence which was relied upon in support of the allegations and their submissions on the seriousness of the alleged misconduct. I then invited submissions from the Former Officer's Federation Representative, and I received legal advice on the proper approach to fact finding at this stage.

13. I was advised that my task was to:

- a. Review the evidence and determine the facts;
- a. Decide which, if any, Standards of Professional Behaviour have been breached;
- b. Determine whether the conduct found proven against the Former Officer amounts to misconduct, gross misconduct or neither.

14. I was also advised that the burden of proving the facts alleged rests with the Appropriate Authority throughout and the standard of proof is the balance of probabilities.

15. I was also advised how to approach the Former Officer's previous good character and referred to the definitions of honesty and integrity provided in Ivey v Genting Casinos and SRA v Wingate respectively. Finally, I was reminded that Misconduct is defined in the Regulations as "a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action" whereas Gross Misconduct is defined in the Regulations as "a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal."

16. Having considered all of the material set out in the bundle and the representations which have been made by the Appropriate Authority and the Former Officer's Federation Representative, and having borne in mind that the burden of proving the allegations, on the balance of probabilities, rests with the AA throughout, and the other legal advice which I was given, I made the following findings.

17. In respect of Allegation 1 – On or around 28 April 2024 you assaulted Witness A by grabbing their back as they were leaving - I found the allegation proved. I relied upon Witness A's account as to the circumstances in which the incident occurred and found it

to be credible. I also noted that their account was supported by the unprompted admission by the Former Officer in text messages which he sent Witness A (at p.100 in the Hearing Bundle) that he had “once tried to drag **** out” of the house.

18. Such conduct plainly constitutes a breach of the Standards of Professional Behaviour in respect of Discreditable Conduct as police officers are required to behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.
19. In respect of Allegation 2 - On 11 March 2024, you assaulted Witness A by throwing liquid over them - I found the allegation proved. I again relied upon Witness A's account, which I found credible, and moreover their account was supported by the photographs of Witness A and **** where they are wet, and the text messages where Witness A makes the allegation and the Former Officer does not dispute their account that he had spilt liquid on Witness A and ****.
20. Such conduct plainly constitutes a breach of the Standards of Professional Behaviour in respect of Discreditable Conduct.
21. I did not accept the Former Officer's contention (made earlier in the proceedings) that Witness A has invented accusations to cause trouble for him, since they do not then support a criminal investigation or a misconduct process into his conduct, so that cannot have been any part of their motivation in reporting his behaviour to the police.
22. In respect of Allegations 3 and 4 - that on 24 April 2025, you told Officers you had lost your mobile telephone when in fact you had hidden it in a plant pot at the address where you were arrested and On 24 April 2025, you performed a factory reset on your mobile telephone preventing recovery of material from your mobile phone - I found both allegations proved.
23. Having considered the witness evidence, it was apparent that the Former Officer stated that he had lost his phone when he was arrested when he knew that he had not, since the forensic digital evidence indicates that he had wiped his phone by performing a factory reset moments before he was arrested, and he must have then hid his phone in a plant pot. In my view, it was only the threat that a specialist search team being deployed at the address where he was arrested, and the invasive nature of such a search, which caused the Former Officer to disclose the location of his mobile telephone.
24. The Former Officer must have intended, by wiping the contents of his telephone, to impede the police investigation into the allegations made by Witness A. There is no other sensible explanation for his behaviour, particularly when coupled with his decision to conceal the wiped phone in a plant pot.
25. Having considered the test for dishonesty in Ivey v Genting Casino I am satisfied that the Former Officer knew well that he had not lost his telephone when he told the arresting officers that he had, given that he had wiped the phone only moments before, and he was plainly acting dishonestly by the standards of ordinary decent people when he said that

he had. The Former Officer's conduct therefore breached the Standards of Professional Behaviour in respect of the Honesty limb of the Honesty and Integrity standard.

26. I have also had regard to the test for a lack of integrity set down in SRA v Wingate and the high professional standards expected from police officers and am clear that the wiping of a telephone which the Former Officer knew was material to an investigation plainly constitutes a breach of the Integrity limb of the Honesty and Integrity standard and represents a serious departure from the high standards of professional behaviour which the public would rightly expect from a serving police officer.
27. In assessing the seriousness of the breaches found proved, I have had regard to the College of Policing Guidance on Outcomes and the four factors to be considered when assessing harm – culpability, harm, aggravating and mitigating factors.
28. Dealing with allegations 1 and 2 together – this was intentional and deliberate behaviour, targeted towards the victim, and this was not, therefore, an isolated incident.
29. Albeit there was no criminal conviction arising from the Former Officer's conduct, the conduct which I found proved would constitute to a criminal offence of common assault and is therefore particularly serious misconduct. Moreover, the misconduct involves violence and bullying behaviour. I also note that in Allegation 2, **** was present and was thereby exposed to the Former Officer's violent conduct. This was plainly highly culpable misconduct.
30. In relation to harm, whilst there is no evidence of lasting physical injury cause to the complainant but upset and distress would plainly have been caused to them. There is also, however, very substantial reputational harm to policing where officers – whether on duty or off duty – engage in violence and I found that the Former Officer did so on two occasions. I therefore assess the level of harm as High.
31. When considering aggravating factors, I was careful to avoid double counting, with the only relevant aggravating factor being the scale of local and national concern about police officers' attitudes and behaviour towards ****. I also considered matters of mitigation, but none are evident.
32. My overall assessment in respect of allegations 1 and 2 was that they each constituted Gross Misconduct.
33. In respect of allegations 3 and 4 – this intentional and deliberate conduct and somewhat planned, given the Former Officer's re-setting and concealment of the mobile phone. Again, this conduct amounts to criminal misconduct as the Former Officer's conduct in wiping his phone (and thereby destroying evidence) and concealing his phone (and thereby concealing evidence) when he knew that there was an active police investigation into his conduct (given the arrival of police officers to arrest him), amounts to an offence of attempting to pervert the course of justice and so is especially serious misconduct.
34. This was in my view highly culpable misconduct.

35. In relation to harm this type of misconduct would plainly have a very significant adverse effect on public confidence in policing and undermine the trust and confidence which the wider criminal justice system can have in police officers if they are prepared to engage in such conduct.
36. In relation to aggravating factors, there was plainly attempting to conceal wrongdoing, but I must be careful not to 'double count' this feature. I also considered matters of mitigation, but none are evident.
37. My overall assessment in respect of allegations 3 and 4 is that they each constitute Gross Misconduct.
38. In summary, therefore, I found all four allegations proved and that they individually and cumulatively amount to Gross Misconduct.

Outcome

39. I then invited submissions from the Appropriate Authority and the Former Officer's Federation Representative on the appropriate outcome.
40. In reaching my decision, I had regard to the College of Policing Guidance on outcomes in police misconduct proceedings ('the Guidance'), which provides that there are three stages to determining the appropriate outcome in police misconduct proceedings:
- (i) To assess the seriousness of the misconduct
 - (ii) To keep in mind the purpose of imposing sanctions
 - (iii) To choose the sanction that most appropriately fulfils that purpose for the seriousness of the conduct in question
41. The threefold purpose of the police misconduct regime is:
- i. to maintain public confidence in, and the reputation of, the police service, and
 - ii. to uphold high standards in policing and to deter misconduct; and
 - iii. to protect the public
42. I also noted and took account of the Guidance that:
- a. Misconduct proceedings are not designed to punish police officers but are centrally concerned with the reputation or standing of the profession rather than the punishment of the individual officer.
 - b. However, as the outcome imposed can have a punitive effect, the outcome should therefore be no more than is necessary to satisfy the purpose of the proceedings
 - c. I have therefore considered less severe outcomes before more severe outcomes and identified the least severe outcome that deals adequately with the issues identified, while protecting the public interest.
43. In making my determination on outcome I also had regard to the Former Officer's record of police service, which confirms that he joined the force on 4th April 2016 and left on 12th April 2026.

44. I assessed the seriousness of the misconduct as part of my decision-making at Stage 1 and do not repeat that now, however, in summary, I have found that each of the four allegations individually and cumulatively amounts to Gross Misconduct and that each allegation amounts to misconduct which is criminal conduct.
45. I note that that the Guidance at paragraph 4.17 states that “It is unacceptable for police officers, who are responsible for enforcing the law, to break the law themselves” and that, at paragraph 4.74 the Guidance provides that:
- “Where gross misconduct has been found and the behaviour has caused – or could have caused – serious harm to individuals, the community and/or public confidence in the police service, dismissal is likely to follow.
- A factor of the greatest importance is the impact of the misconduct on the standing and reputation of the profession as a whole.
46. In my judgment, and for the reasons set out earlier, the Former Officer’s conduct was highly culpable misconduct capable of causing serious damage to public confidence in the police.
47. No personal mitigation was advanced by the Former Officer, and in any event, I had regard to paragraph 6.4 of the Guidance, which provides that “due to the nature and purpose of disciplinary proceedings, the weight of personal mitigation will necessarily be limited, particularly where serious misconduct has been proven.”
48. The Former Officer’s decision to engage in violence and then seek to destroy and conceal evidence relating to his conduct is wholly inconsistent with him continuing to serve as a police officer.
49. Had the Former Officer continued to be a police officer I would have concluded that the only appropriate disciplinary outcome capable of adequately fulfilling the three fold purpose of the police misconduct regime is that he be dismissed without notice.
50. I therefore determined that had the Former Officer still been a serving officer he would have been dismissed.
51. As a consequence of my decision, the Former Officer’s details will be added to the Police Barred List.

Chief Constable Victoria Fuller

24th July 2026