

BEFORE: The Police Appeals Tribunal

UNDER THE POLICE TRIBUNAL RULES 2012

Heard by remote hearing

On 5th June 2020 and 11th June 2020

Before

LEGALLY QUALIFIED CHAIR MRS NAHIED ASJAD
ASSISTANT CHIEF CONSTABLE KERRIN WILSON
STEVE MATTHEWS

Between

EX-PS JONATHAN FLINT

Appellant

and

THE CHIEF CONSTABLE OF NOTTINGHAM

Respondent

Representation:

For the Appellant: Mr Michael Rawlinson, Counsel
For the Respondent: Ms Briony Ballard, Counsel

DECISION AND REASONS

The decision under appeal

1. The Appellant was dismissed with notice on the 7th of November 2019 following a misconduct hearing that took place between the 5th and the 7th of November.

Grounds of appeal

2. The grounds of appeal relied upon under Rule 4 of the Police Appeals Tribunals Rules 2012 and permitted under a Rule 11 decision to be argued before this Tribunal were:
 - i. That the finding or outcome was unreasonable (Rule 4(4)(a))
 - ii. That there was a breach of the procedures set out in the Conduct Regulations or other unfairness which could have materially affected the finding or decision on outcome (Rule 4(4)(c))

The Decision of the Tribunal

ALL REFERENCES TO GROUNDS ARE AS CONTAINED IN THE DOCUMENT – GROUNDS OF CHALLENGE & SKELETON ARGUMENT

Grounds 1(a) and Ground 2(a)
Inconsistent findings, Multiple Revisiting of the same conduct
Misapplication of Aggravating features
Unfairness and Unreasonableness

- 32 These grounds are made out.
- 33 There was inconsistency in the findings that the Panel made that followed from the duplicitous nature of the Regulation 21 notice.
- 34 The Regulation 21 notice was far too complicated which led to the findings being confusing and unclear. This was the direct result of the Panel having to revisit the same facts again and again.
- 35 The Regulation 21 notice contained 11 allegations. Three of those were directed at the actions of the Appellant in affecting entry to the property. According to Counsel for the Respondent:
- Allegation 1 – was about the ground for entry to the property – what officer said to justify why he was going in
- Allegation 4 – was about whether the entry was lawful irrespective of the reason why he said he was going in
- Allegation 11 – was about the motivation sitting behind the use of the Appellants police powers
- 36 This Tribunal could not rationalise why, if this was an improper motive case, there was a need for the conduct of the Appellant to be set across three allegations in this way. The findings that emerged from the way in which the regulation 21 was drafted led to the following inconsistent findings.
- 37 The Panel made an express finding that the Appellant made a mistake and deliberately did not misrepresent his police powers when he instructed Ms Bowen to let him into the property. They made an express finding that there was no improper abuse of position but an unintentional one born out of ignorance and mistake. All of these findings are the direct opposite of:
- a. Misrepresentation to unfairly induce – which requires a deliberate act
 - b. Facilitating an aim – namely letting the bailiff into the premises – which again requires a deliberate act
- 38 If this was an improper motive case, then there would have been deliberate misrepresentation in the instruction given to open the door and not a mistaken one. If this was an improper motive case the Panel would have found the standard of honesty and integrity breached in relation to Allegations 1 and 4. But it didn't. The Panel only found a breach of the standard of duties and responsibilities in respect of Allegation 1 and only found a breach of the standards of Orders and Instructions, Duties and Responsibilities and Discreditable Conduct in respect of Allegation 4. Its relevant to note that the Panel specifically

addressed its mind to the gravamen of Allegation 4 and whether the entry was lawful, irrespective of why he said he was going and said this:

Again, we think that the misrepresentation here arises from ignorance and mistake as opposed to dishonesty.

So by this point, twice in relation to the Allegations 1 and 4, the Panel has expressly ruled out any dishonest conduct.

- 39 It is difficult to see therefore how a finding in relation to Allegation 11 can reasonably stand in the light of those findings. As the Code of Ethics, issued by the College of Policing points out, it is the standard of Honesty and Integrity that states:

I will be honest and act with integrity at all times, and will not compromise or abuse my position.

- 40 Having expressly ruled out an abuse of position in relation to Allegation 4 and arguably Allegation 1 as well, it is unreasonable to conclude that that the conduct contained within these allegations, was for an improper motive. Allegation 11 includes 1, 2, 3 and 4, 5, 6, 7, 8 and 9 for which at no point did the Panel find an abuse of position. They only found a lack of diligence, lack of authority, respect and courtesy, use of force and discreditable conduct. It was unreasonable therefore for a finding of lack of integrity to be made, for an allegation that relies on other allegations for which no breach of honesty and integrity were made and only a unintentional abuse of position was found.
- 41 The Panel's findings was unclear and open to misinterpretation and for that reason they were unreasonable.
- 42 There were breaches of the procedures and some other unfairness because there was a failure to follow the Home Office Guidance which states:

1.9. Where the misconduct procedure is being applied, it is important to identify the actual behavior that is alleged to have fallen below the standard expected of a police officer, with clear particulars describing that behavior.

2.189. The appropriate authority will also provide the police officer with a notice containing the matters discussed at regulation 21(1)(a) of the Conduct Regulations, including the particulars of the behaviour that is alleged to have fallen below the standards in the Standards of Professional Behaviour.

2.190. It is necessary to describe the particulars of the actual behavior of the police officer that is considered to amount to misconduct or gross misconduct and the reasons it is thought the behavior amounts to such.

- 43 We accept the submission made on behalf of the Appellant that it is not enough that the opening note explains what the conduct is. It is the Regulation 21 notice that must make it clear and on this occasion, it failed to do so.
- 44 As regards the 'aggregation of seriousness' that flowed from the findings, this must follow from what we have said in relation to the findings, particularly as regards what the Panel said in relation to seriousness. Abuse of position was listed as the first aggravating feature. But as noted, any findings in relation to abuse of position were unreasonable due to their inconsistency as was there any reference to numerous allegations.

Grounds 1 (b) 1(c)
Disparity with PC Elliott
Inconsistent approach from the AA – reference seriousness and outcome and potential effect on the Panel

- 45 Ground 1(b) is partially made out. There was some unfairness.
- 46 There were aspects of PC Elliott's evidence that should have been addressed by the Panel. In particular, the Panel when assessing outcome referred to the seniority of the Appellant and his position of trust and how it influenced PC Elliott. There was discrepancy in the evidence that was given in relation to this arising, however, from what was said at the hearing and what was said during the Misconduct meeting. PC Elliott's Regulation 36 decision was before by the Panel and mentioned as an ancillary matter. Apart from noting that it was helpful, the Panel made no mention of the factual findings. They should have done so however, given the discrepancy in evidence and the importance of it.
- 47 Ground 1(c) is not made out. Any decision that the AA may have had in relation to whether the Appellant's conduct amounted to misconduct or gross misconduct was overridden once Ms Bowen made a complaint and the IOPC investigated this.
- 48 There is nothing other than a bare assertion that this had any effect on the Panel.

Ground 2(b)
Misapplication of the correct legal test for dismissal
Unreasonableness

- 49 This ground is made out.
- 50 The Panel stated:
- As a matter of gross misconduct, which by definition is a breach so serious that dismissal would be justified, caselaw very strongly points to an outcome of dismissal. To do otherwise really needs to be justified by something exceptional.*
- 51 The Appellant, both Counsel and this Tribunal are left in the unenviable position of having to surmise or at worse guess what caselaw the Panel could have been referring to. The Appellant and the public are entitled to know the legal basis upon which a decision that leads to dismissal, is based on. A finding of gross misconduct does not lead to a presumption of dismissal that can only be overcome by something exceptional. This was not a case where

a finding of operational dishonesty was made. In that regard we cannot accept the submission made by Counsel for the Respondent that the comment made by the Panel that the Appellant “set the tone, set the pace, yet only a few minutes later unlawfully entered the home of a socially vulnerable woman...” was consistent with him not being operational. It would be grossly unfair to the Appellant to read into a Panels reasoning something as significant as that.

52 As it stands the Panel’s approach to outcome was unreasonable because it misdirected itself as to the law.

Ground 2(c)
Unreasonable Outcome

53 For all of the reasons given above, this ground is made out.

Decision

54 The appeal is allowed accordingly.

55 We have remade the decision.

56 We accept that the conduct of the Appellant was so serious as to amount to gross misconduct. Gross misconduct does not mean automatic dismissal. Had that been the intention of Parliament, they would have excluded other outcomes from consideration.

57 The purpose of misconduct proceedings is three fold:

- maintain public confidence in and the reputation of the police service
- uphold high standards in policing and deter misconduct
- protect the public.

58 We have considered the lowest sanction first – namely Management Advice. This would have some useful purpose in that appropriate training could be arranged, an action plan produced, and the Appellant could be held to account for his behaviour by robust management by an Inspector. But such an outcome would not mark the seriousness of this gross misconduct borne out by arrogance and perhaps ignorance – which can sometimes be seen as unconscious bias by ordinary members of the public.

59 Mr Flint, your Counsel recognised that your shortcomings as an officer and as a Sergeant need to be addressed. We are willing to give you a chance to redeem yourself and to learn from this experience. And to make sure that you do so, you will be subject to a final written warning for a period of 18 months.

60 The Appellant is reinstated with immediate effect with back pay, taking into consideration any earnings you may have made in the meantime.

This is a Statement of the Tribunal’s Reasons for its Determination, in accordance with Rule 22 of the Police Appeals Tribunal Rules 2012

Mrs Nahied Asjad
Assistant Chief Constable Kerrin Wilson
Steve Matthews