



Neutral Citation Number: [2025] EWHC 93 (Admin)

Case No: AC-2024-LON-001947

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/01/2025

Before :

MRS JUSTICE YIP

Between :

The King (on the application of the Commissioner of Police of the Metropolis)	<u>Claimant</u>
- and -	
Police Misconduct Panel	<u>Defendant</u>
- and -	
Daniel Fletcher	<u>Interested Party</u>

James Berry & Katherine Hampshire (instructed by **Metropolitan Police Service
Directorate of Legal Services**) for the **Claimant**

The Defendant was not represented and did not attend
The Interested Party was not represented and did not attend

Hearing dates: 21st January 2025

Approved Judgment

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MRS JUSTICE YIP

Mrs Justice Yip :

1. This is a claim for judicial review concerning a decision of the Police Misconduct Panel in relation to Daniel Fletcher, now a former police sergeant of the MO19 Specialist Firearms Command of the Metropolitan Police.
2. An anonymity order has been made in this case prohibiting the publication or disclosure of the name, address, image or other information tending to identify the female officer who was the complainant in the disciplinary proceedings. That officer was referred to by the Panel as Officer A. I shall also refer to her as Officer A in this judgment. This judgment may accordingly be published in full. Any reporting of the judgment or the proceedings must abide by the terms of the order made by Lavender J on 30 July 2024.
3. At a hearing in March 2024, the Panel found that, during a team-building social event in 2017, PS Fletcher had intentionally put his finger inside the clothing of Officer A and touched her between the buttocks. The Panel found that this amounted to gross misconduct, that is misconduct which is so serious as to justify dismissal. The Panel then concluded that the appropriate outcome in light of their findings was that PS Fletcher should be demoted to the rank of constable.
4. The Commissioner of the Police of the Metropolis contends that the Panel's decision on outcome was unlawful and/or irrational. It is his position that no reasonable tribunal, properly directing themselves, could have taken any course other than dismissal. The claim therefore seeks the quashing of the decision on outcome with the matter being remitted to the Panel for a decision to be taken lawfully.
5. Mr Fletcher resigned from the police, leaving with effect from 14 July 2024. He has been served with these proceedings as Interested Party but has taken no part in them. The Defendant Panel, understandably, has also taken no part.
6. The first issue which arises is whether these proceedings are now academic in light of Mr Fletcher's resignation from the force.
7. If an officer is dismissed for gross misconduct, their name is added to the Police Barred List maintained by the College of Policing pursuant to Part 4A of the Police Act 1996. An officer's voluntary resignation does not have any such effect. There is therefore a material difference, with possible future implications, between an officer resigning and an officer being dismissed for gross misconduct.
8. I therefore accept that the proceedings are not academic.
9. The Claimant is afforded no right of appeal in relation to the Panel's decision. Any challenge can accordingly only be by way of judicial review, on conventional public law grounds.
10. By his grounds, the Claimant contends:
 - 1) The Panel unlawfully and/or irrationally failed to follow the correct structured approach to sanction by considering character evidence in its assessment of seriousness.

- 2) The Panel irrationally excluded as an aggravating factor a warning given by another officer.
- 3) The Panel irrationally took account as a mitigating factor of a potentially different culture and standards in place in 2017.
- 4) The Panel irrationally imposed the sanction of reduction in rank when the only reasonable sanction in the circumstances was dismissal.

Factual background

11. Officer A was deployed to MO19 as a constable. Mr Fletcher was her sergeant and line manager until she moved to a different unit. Rumours that there had been an incident between them existed but nothing had been investigated until 2021. At that time, a posting was being considered which would have brought Officer A and Mr Fletcher back together. The “tension” between them was explored and led to allegations that Mr Fletcher had been fixated with Officer A and had behaved inappropriately towards her on a number of occasions. The other allegations were less serious than the touching which was found proved. There was one other alleged touching incident when Mr Fletcher was found to have touched Officer A’s thigh. None of the other alleged misconduct was found proved. There is no challenge to the findings of fact. Accordingly, these proceedings must proceed on the basis that the only relevant matter is the incident which was found proved, that referred to by the Panel as the “buttock touching incident”.
12. That incident occurred in a public house. Mr Fletcher and Officer A were part of a group who attended a social activity, which was followed by most of the group going for drinks. Officer A was wearing a pair of shorts. While sitting on a bench she leant forward towards the table and this caused a gap to appear between the waistband of the shorts and her body. She was wearing thong style underwear. Mr Fletcher was found to have inserted a finger inside Officer A’s shorts and to have touched her between the upper part of her buttocks. The Panel found that the action could not have been other than intentional and that it was done without Officer A’s consent.
13. Other police officers were present at the time. The event had been organised by PS Andy Perversi. Officer A gave evidence that PS Perversi had seen Mr Fletcher looking down the back of her shorts and had said “no” in the way of a warning. PS Perversi denied that. It was his evidence that if he “saw someone about to sexually assault someone” he wouldn’t deal with it simply by saying “no Dan” as it had been claimed he had.
14. This leads into Ground 2, which I shall therefore take first.

Ground 2

15. The Panel made no finding as to whether PS Perversi had noticed Mr Fletcher looking down Officer A’s shorts and sought to warn him off. They referred to the fact that it did not form part of the formal allegations. That in itself did not prevent the Panel from making a finding as to whether or not PS Perversi had said what Officer A alleged. If they had so found, it would then have been open to them to consider whether that aggravated the seriousness of the offending.

16. It is apparent that there were multiple discrepancies in the evidence, which the Panel had to resolve. They correctly approached matters on the basis that the Claimant bore the burden of proof. In relation to other matters, they did not consider that the burden had been discharged. Having considered the transcripts of the evidence given to the Panel and having noted their approach to the evidence generally, I think it unlikely that they would have felt able to find that PS Perversi issued a warning before Mr Fletcher touched Officer A.
17. In any event, I am not convinced that PS Perversi's alleged warning was of any great significance when considering the appropriate sanction. The Claimant refers to the College of Policing Guidance on Outcomes in Police Misconduct Proceedings ("the Outcomes Guidance"), which the Panel was required to follow, pursuant to s87(3) of the Police Act 1996. The guidance lists at [4.76] potentially aggravating factors to be taken into account when assessing the seriousness of the misconduct, one of which is "continuing the behaviour after the officer realised or should have realised, that it was improper". Mr Fletcher did not require a warning to realise that putting his finger inside a female's shorts and touching her bottom was improper.
18. In the circumstances, I do not consider that it was necessary for the Panel to make a positive finding about the alleged warning and I reject Ground 2.

Ground 1

19. The Panel did err in their approach to mitigation. They were required to follow the Outcomes Guidance. That guidance contains a clear exposition of the correct legal approach. It provides a structured approach to ensure that decisions on outcome are taken lawfully. There was no reason to depart from it, and none was suggested by the Panel. The guidance requires that the seriousness of the proven misconduct is assessed first. The existence of any mitigating factors relevant to the conduct may be considered at that stage but the guidance makes it clear [at 4.5] that personal mitigation, such as testimonials and references, are to be considered only after assessing the seriousness of the conduct.
20. The personal mitigation afforded by the character references was to be taken into account. However, had the Panel adopted the correct staged approach, they would have appreciated that this would have required them to have regard to section 6 of the Outcomes Guidance. They should have kept in mind, as the guidance expressly says [at 6.2], that tributes and testimonials are not to be confused with mitigating factors relating to the conduct itself and [at 6.4] that the weight of personal mitigation will necessarily be limited. They would then have had to have regard to [6.6]:

"If the misconduct is so serious that nothing less than dismissal would be sufficient to maintain public confidence, personal mitigation will not justify a lesser sanction."
21. The flaw in the Panel's approach in departing from the guidance was a significant one, which may well have infected their decision on the outcome.

Ground 3

22. When explaining their findings of fact, the Panel accepted [40]:

“... that there may have been, up to 8 years ago, a greater possibility for bullying and sexism to exist and go unchallenged in a way that is less likely now.”

Dealing with the outcome, the Panel then said [at 146]:

“The Guidance states that, where the misconduct found proved took place several years earlier, an outcome must be considered by reference to the standards of the time rather than the current attitudes and standards. This misconduct took place some seven years ago and the Panel has already accepted that there may have been a different culture and standards in place at that time where bullying and sexism might go unchallenged.”

23. The Panel appear to have relied upon this as a factor justifying a less serious outcome than dismissal. It was irrational to do so. It is right that the Guidance refers [at 4.82] to considering the outcome by reference to the standards of the time rather than current attitudes and standards. However, it is quite wrong to elide a culture in which inappropriate conduct could go unchallenged with the idea that wholly inappropriate conduct may have been acceptable at the time.
24. It could not be rationally concluded that a different standard applied in 2017 in relation to a male police sergeant putting his hands inside the clothing of a female officer and touching her bare buttocks. That conduct was wholly inappropriate then, as it is now. The fact that the culture existing in 2017 may have allowed such conduct to go unchecked, in a way that it hopefully would not now, in no way mitigates what Mr Fletcher did in 2017. The notion that different attitudes and standards applied in 2017 should have played no part in the decision on outcome. The Panel wrongly put this into the balance.

Ground 4

25. Ground 4 raises an issue of wider importance. The Claimant contends that the sanction of reduction in rank was not appropriate in the circumstances of this case because the nature of the officer’s conduct was incompatible with his continued police service; and was not a question of poor of leadership. The Claimant considers this to be an issue of importance beyond this individual case, and for the police misconduct system generally.
26. The Home Secretary has issued guidance under s. 87(1) of the Police Act 1996 entitled “Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing” (“The Home Office Guidance”). Pursuant to s87(3) of the Act, the Panel were required to follow this guidance in discharging its functions.
27. Paragraph 11.133 of the Home Office Guidance states:

“Reduction in rank as a sanction is an available outcome ... where ... dismissal is not justified but the conduct warrants a tougher penalty than that provided by a final written warning and the circumstances of the behaviours in question and the findings made make this an appropriate outcome ...”

28. Paragraph 11.135 says:

“Reduction in rank should only be used where circumstances warrant it. It should not be an outcome as a ‘softer option’ or simply where there is sympathy for the officer concerned. It is available as a sanction where there are questions of poor leadership related to the specific responsibilities of senior ranks in the police force where there may be different expectations of behaviour. ...”

29. Mr Berry very properly took me to [11.136] of the Home Office Guidance pointing out that had Mr Fletcher been present or represented he might have argued that support for the Panel’s approach was to be found in that paragraph, which includes examples of “circumstances when reduction in rank might be appropriate and misconduct falls below the dismissal threshold”. Read in isolation, the second and third of the three examples might suggest a wider application, referring to cases in which there are fewer aggravating factors or cases where there are significant mitigating factors that weigh against full dismissal but not enough to justify final written warning. The next paragraph [11.137] explains that “Where reduction in rank is appropriate as an outcome, it will be because the misconduct justifies a reduction from the high level in which the poor example of leadership was exercised...”

30. Taken as a whole, it is clear that the guidance addresses the need for the conduct in question to be linked to leadership, rather being conduct which undermines the officer’s suitability to serve as a police officer at all.

31. The thrust of the Home Office Guidance is replicated in the Outcomes Guidance at [3.17 – 3.22]. [3.19] makes it clear that reduction in rank is appropriate where a tougher outcome than a final written warning is warranted, but the threshold for dismissal has not been reached. If the threshold at which dismissal is appropriate has been reached, the outcome should be dismissal. [3.20] states:

“It may be appropriate to consider reduction in rank where the misconduct under consideration falls below the threshold for dismissal and involves poor leadership that is below the standard expected of the rank and responsibilities of the officer concerned.”

32. The Panel concluded [157] that a final written warning would not adequately address the need to maintain public confidence and to declare and uphold standards of conduct within the police service.

33. As I have indicated, the guidance contained in both the Home Office Guidance and the Outcomes Guidance makes it clear that reduction in rank may be considered only when the misconduct falls below the threshold for dismissal and involves poor leadership that is below the standard expected of an officer of that rank.

34. The misconduct which the Panel found proved did not involve poor leadership. It was aggravated by Mr Fletcher being Officer A’s sergeant and line manager, but the misconduct itself was not related to his leadership role and responsibilities.

35. The Panel's reasoning appears to fall into the trap which the guidance contained in the Home Office Guidance and the Outcomes Guidance seeks to counsel against, namely using reduction in rank as a softer option when dismissal would otherwise be appropriate.
36. The Panel did not explain why the misconduct which they had found proved fell below the threshold for dismissal. There is no indication that they in fact considered that, before moving straight to consider reduction in rank. In my judgment, the Panel approached their decision on sanction in an impermissible way which was not in accordance with the Home Office Guidance and the Outcomes Guidance. There is certainly a significant gap in their reasoning as to why the proven misconduct in this case fell below the threshold for dismissal.
37. The position in this case is similar to that in *Salter v CC of Dorset* [2012] EWCA Civ 1047. I refer to the observations of Stanley Burnton LJ at [28]:
- “In cases in which the concern is with the abilities of an officer, it may be sensible, and perfectly rational, to consider that he is unfit for a supervisory role, but fit to act as a constable. In this case, however, the concern did not relate to the abilities of the officer, but to his integrity. An actual or perceived lack of integrity disqualifies a person from acting as either a constable or in a police supervisory role. The Tribunal did not explain how Mr Salter could be fit to be a constable but not to be a supervisor. This reason for its conclusion was either irrational or unreasoned, and on one or both grounds was defective.”
38. Similarly, in this case, the Panel did not explain why, in light of the proven misconduct, Mr Fletcher was fit to be a constable but not to be a sergeant.

Conclusions

39. It follows from the above that I consider that this claim succeeds on grounds 1, 3 and 4, but not on ground 2.
40. I have found significant flaws in the Panel's approach to outcome in that:
- i) The Panel failed to follow the Outcomes Guidance, which stated that personal mitigation in the form of character references should not be considered at the stage of assessing the seriousness of the misconduct but only after such an assessment had been made. Having departed from the guidance for no apparent reason, they gave no indication that they had regard to section 6, which deals with the proper approach to personal mitigation.
 - ii) The Panel confused change in the culture of challenging inappropriate conduct with different standards of conduct. As a result, they wrongly took account of different attitudes and standards in 2017, when that should have played no part in the decision on outcome.
 - iii) The Panel's reasoning does not support a conclusion that the misconduct involved poor leadership such as to make reduction in rank an available

outcome. The Panel's reasoning did not engage with the question of whether the proven misconduct fell below the threshold for dismissal before moving to consider reduction in rank. They gave no explanation for why Mr Fletcher's conduct rendered him unfit only for a supervisory role but left him fit to be a police constable.

41. These significant errors lead to the conclusion that the Panel's decision was unlawful and cannot stand. The decision on outcome must be taken again by the Panel applying the law and relevant guidance correctly.
42. In particular, the Panel must:
 - i) Make an assessment of the seriousness of the misconduct before moving to consider character references as part of the personal mitigation. The Outcomes Guidance including that at section 6 must be followed, giving the appropriate (limited) weight to personal mitigation.
 - ii) Leave out of account any perceived change in culture that relates to the way in which inappropriate conduct of this nature was responded to at the time. The Panel must assess the nature of the misconduct itself.
 - iii) Consider the relevant Home Office Guidance and Outcomes Guidance in relation to the availability of reduction in rank as a sanction. The Panel must address the question of whether the misconduct involved poor leadership such as to make reduction in rank an available outcome. They must consider whether, in all the circumstances, the threshold for dismissal has been reached. If it has, dismissal is the outcome that must follow. If not, the Panel must explain why not, addressing (if applicable) why the circumstances of Mr Fletcher's misconduct leaves him fit to be a police officer at any level.
43. I consider that it is preferable that, having heard all the evidence, the same Panel take the decision on outcome. However, if for any reason one or more members are not available to hear the matter within a reasonable time, the Panel may be reconstituted and can make the decision on the basis of the clearly recorded findings of fact made in the initial hearing.