

IN THE POLICE MISCONDUCT HEARING

Pursuant to the Police (Conduct) Regulations 2020

IN THE MATTER OF:

FORMER POLICE CONSTABLE ('FPC') MARTIN BINALA

DECISION OF THE PANEL

Cameron Brown KC (Chair), Commander Beehag-Fisher And
Deborah Fajoye

Judgment

Introduction

1. These misconduct proceedings are brought under the Police (conduct) Regulations 2020.

The Allegations

2. The Panel was referred to a Regulation 30 notice in respect of FPC Binala and allegations that his conduct amounted to gross misconduct.
3. In particular, it was alleged that FPC Binala had breached the following standards of professional behaviour, as set out in the notice in the following terms:

"1. On 12 September 2021 you were on duty in plain clothes with other officers in Hounslow, West London. You were in an unmarked police vehicle. At about 8.30pm you saw a Mercedes car which was parked in Albion Road, Hounslow and which had [name redacted] sitting in the driver's seat.

2. You approached [name redacted] and spoke to him and you then engaged in a struggle with him, together with PC Dunne and PS Cathcart. [name redacted] was restrained and repeatedly struck by you and the other officers. PAVA spray was used on him. He was arrested and placed in handcuffs. A decision was subsequently taken to de-arrest [name redacted]

and, after a delay, he was taken to hospital so that his injuries could be attended to.

3. You subsequently gave an account of your actions in a statement and other documents, including a Use of Force form.

4. It is alleged that you breached the Standards of Professional Behaviour of

a. Honesty and Integrity (“Police officers are honest, act with integrity and do not compromise or abuse their position”),

b. Authority, Respect and Courtesy (“Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy. Police officers do not abuse their powers or authority and respect the rights of all individuals”),

c. Use of Force (“Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances”),

d. Duties and Responsibilities (“Police officers are diligent in the exercise of their duties and responsibilities”) and/or

e. Discreditable Conduct (“You behaved in a manner which brought discredit on the Metropolitan Police Service and undermined public confidence in policing”).

5. As to Honesty and Integrity and Discreditable Conduct, it is alleged that

a. You falsely claimed in your statement that you “could instantly smell a strong smell of cannabis from the vehicle”, and/or

b. You falsely stated in your Use of Force form that you were unable to use your BWV.

6. As to Authority, Respect and Courtesy, Use of Force, Duties and Responsibilities and Discreditable Conduct, it is alleged that during your interaction with [name redacted] you

a. Acted without lawful authority to stop and search him,

b. Failed effectively to identify yourself as a police officer,

c. Verbally abused him,

- d. Arrested [name redacted] when there were not lawful or reasonable grounds to do so (or alternatively you continued his detention after you appreciated there were no longer reasonable grounds to do so),*
- e. Left him handcuffed for longer than was necessary, proportionate and reasonable in all the circumstances,*
- f. Failed to provide appropriate aftercare for [name redacted] at the scene, or to ensure that he received prompt medical attention, and/or*
- g. Delayed requesting an ambulance or taking him to hospital.*

7. As to Use of Force it is alleged that

- a. You used you knee to strike him in the chest whilst he was in his vehicle, and/or*
- b. Together with other officers, you beat him repeatedly, Beyond what was necessary, proportionate and reasonable in all the circumstances.*

The matters set out above are individually and/or collectively so serious that they amount to gross misconduct and justify dismissal.”

Representation

- 4. Throughout the hearing the Appropriate Authority ('AA') has been ably represented by Ms Kane of Counsel. The Officer was ably represented by Ms Bostock of Counsel.
- 5. The Panel would like to thank both Counsel and representatives for their assistance in hearing this case, including the provision of an opening note and detailed Scott schedule.

Preliminary Issues

- 6. This case had previously been adjudicated and been the subject to the Police Appeals Tribunal, which had remitted the case back to the Panel for a rehearing. While the Chair had read a copy of the Judgment, the other Panel members had

not. The Panel accordingly did not take into account any aspect of the previous hearing and the appeal in coming to this judgment, save to note the need to give reasons for any factual findings that it made, as it would do in any other case. The Panel approach the case afresh.

7. Copies of the transcript of evidence were available in the event that the parties wished to put previous answers in cross examinations to any witness, but no party chose to do so. Accordingly, the Panel did not refer to the transcripts when coming to its factual findings.
8. Following an application by *[name redacted]*, with supporting medical evidence, he gave his evidence via video link in order to give his best evidence. There was no objection from the Defence. Notwithstanding he gave his evidence via video link, the Panel approached his evidence in the same way as it did every other witness in the case.

Regulation 30 Notice

9. On the morning of the hearing the Regulation 30 notice, as set out above, was read out.

Response to Regulation 30 Notice/ Regulation 31 response

10. The notice was denied in the same terms as per his Regulation 31 notice (3pages), by his Counsel on his behalf.
11. In summary, the Officer disputed the allegations in their entirety:
 - a. He indicated the incident was a source of regret, although what occurred in relation to the incident had not been his intention.
 - b. That the incident was fast paced and evolved as a result of the complainant failing to identify FPC Binala as a police officer, because he was in plain clothes and unmarked police vehicle. The complainant believed he was being robbed. His reaction to events presented

differently to the officers concerned, who considered it could relate to criminal activity. His denial of the breach of the standards relates to his perception at the time. He “did his best in the circumstances as he believed them to be...”

- c. In relation to the particular allegations, he contended as follows:
- i. FPC Binala believed he could smell cannabis and he suspected it came from the complainant’s vehicle. PC Dunne also noted there was a smell of cannabis, albeit did not link it to the complainant’s vehicle. The complainant agreed that there was a smell of cannabis prevalent in the area. The Officer was not dishonest.
 - ii. His lack of BWV was because it was a spontaneous incident and he was unable to activate it. He had only planned to speak to the individual but the situations rapidly escalated. His body worn video was not attached to his body so that he could remain covert. He had to act quickly to stop the complainant, who he believed was trying to escape. It did not amount to dishonesty for the FPC to say the incident was spontaneous. The details were not false.
 - iii. In relation to acting without lawful authority, FPC Binala had a genuine suspicion and objective reasonable grounds, given the location of the incident, that the complainant was a single male sitting in a high value car, the behaviour of the complainant, the smell of cannabis near the vehicle and the opening of the complainant’s car door.
 - iv. In relation to identification, the former officer identified himself as a police officer, showed his warrant card and informed the complainant of the grounds for a search. He was prevented from

doing more due to the complainant's actions. The complainant accepted in his statement that the former officer said something to him.

- v. In relation to verbal abuse, he apologised for using the words in question which had occurred in the course of violent incident. The facts were admitted but that it did not amount to a breach of the standards. Chatting shit was a colloquialism.
- vi. That there were reasonable grounds to arrest, in that he was obstructing a lawful search for drugs.
- vii. FPC Binala accepted he would have preferred to have removed the handcuffs at an earlier point but was under the supervision of PS Cathcart, who was directing matters. The handcuffs belonged to PS Cathcart. Further enquiries were conducted that reduced the level of risk that allowed the handcuffs to be removed.
- viii. In relation to the aftercare provided to Complainant, including any trip to hospital, matters were being directed by PS Cathcart. The complainant's wounds were washed and he was provided with information about the PAVA spray. The delay in taking him to the hospital was due to discussions with his family, which the complainant had asked to be present.
- ix. There was no knee strike to the chest. The complainant had made no reference to it. The Officer had tried to push him back into the vehicle and then tried to detain him out of the vehicle. The complainant actively resisted arrest. He accepted to his parents that he had attacked and started a fight. He had used distraction blows while shouting stop. The strike to the face was accidental and had been aimed at the shoulder. The

complainant was being told to calm down. The force used was necessary and proportionate.

The Panel's Approach

12. The Panel determined it was: -
 - a. Required to consider the facts of the case and to make its findings of fact in relation to each of the allegations;
 - b. Determine whether those findings of fact found constitute a breach of the relevant standards;
 - c. Determine whether the conduct found proven against the Officer amounted to misconduct or gross misconduct.

The Law

13. The Panel reminded itself that the burden of proof is on the Appropriate Authority throughout and the standard of proof is the balance of probability, namely what is more likely than not.
14. The Panel also reminded itself of relevant guidance from the Home Office: -

*"2.265. The more serious the allegation of misconduct that is made or the more serious the consequences for the individual which flow from a finding against him or her, **the more persuasive (cogent) the evidence will need to be in order to meet that standard (bold added)**. This does not mean that the standard is higher. It means only that the inherent probability or improbability of the conduct occurring is itself a matter to be taken into account when weighing the probability and deciding whether on balance the conduct occurred."*
15. The weight to be given to any eventual issue is a matter of fact to be decided on the basis of common sense (Lord Advocate v Lord Blantyre (1879) 4 App Cas 770, 792 (HL)).

Dishonesty

16. The Panel also noted the law in relation In Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67. The Supreme Court held that where dishonesty is in question, a fact-finding tribunal should ask itself two questions (§74):

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

Former Officers

17. In relation to former police officers, the Panel noted the appropriate tests for findings of gross misconduct and misconduct.

“Schedule 1 of Regulation amends those definitions in respect of former officers as follows:

“In the definition of “gross misconduct,” for “as to justify dismissal” there were substituted “that the officer concerned would have been dismissed if the officer had not ceased to be a member of a police force ...” 93.2.

In the definition of “misconduct” ... for “so serious as to justify disciplinary action” there were substituted “not so serious that the officer concerned would have been dismissed if the officer had not ceased to be a member of a police force...”

The Standards

18. In relation to the standards, the Panel noted the following. The Panel also noted the caselaw set out in the AA's opening note.

"Honesty and Integrity

"I will be honest and act with integrity at all times, and will not compromise or abuse my position." Officers will "not knowingly make false, misleading or inaccurate oral or written statements or entries in any record or document kept or made in connection with any police activity".

Authority, Respect and Courtesy

"I will act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy. I will use my powers and authority lawfully and proportionately and will respect the rights of all individuals" Officers must carry out their duties in a "professional manner", "avoid any behaviour that might impair your effectiveness or damage either your own reputation or that of policing" and "ensure your behaviour and language could not reasonably be perceived to be abusive, oppressive, harassing, bullying, victimising or offensive by the public or your policing colleagues." Officers must "remain composed and respectful, even in the face of provocation".

Use of Force

"I will only use force as part of my role and responsibilities, and only to the extent that it is necessary, proportionate and reasonable in all the circumstances".

Duties and Responsibilities

Officers must, “take full responsibility for, and be prepared to explain and justify, [their] actions and decisions...” and officers must be “diligent in the exercise of their duties and responsibilities.” This includes ensuring that accurate records of actions are kept, and all duties are carried out to the best of their ability.”

Use of BWV

19. In relation to the use of BWV, the MPS states that BWV should be used in any circumstances where

“It may assist in providing a record of evidence in respect of the investigation of any offence or suspected offence. When the use of BWV would provide transparency of an encounter (for example attending an address to prevent a breach of the peace). When users would have been expected or required to have completed a written record or report of an encounter or incident. Any other occasion when the user thinks a recording relates to a clear policing purpose; may be of evidential value in the future and to make a recording is proportionate and lawful in the circumstances”.

20. It further provides *“Notwithstanding the general situations where recording should take place as detailed above, the MPS expectation is that **users must activate Body Worn Video to record events in the following specific circumstances** unless there are legal or operational reasons not to do so. This includes **“When effecting an arrest;** prior to entering any land, premises, vehicle, vessel or aircraft in pursuance of any legal power in order to search those premises and for the duration of the search; **when a user decides to conduct a search of a person,** premises, land, vehicle, vessel or aircraft in accordance with PACE code A or any other statutory search power; where a user exercises the use of force against persons or property; Where a user gives a direction to an individual or group under any statutory power”.* The guidance states *“If BWV is not used in these circumstances the user must record why in*

their statement/EAB/pocket book or other record of the incident and they must inform a supervisor as soon as practicable”.

Stop and Search

21. In relation to lawful authority, the College of Policing's APP on Stop and Search explains that the four core elements that underpin any stop and search are:

- a. The decision to stop and/or search a person must be fair
- b. The search must be legal in basis and in application
- c. Interaction with the public during the encounter must be professional
- d. Police use of stop and search powers must be transparent and accountable

22. The Stop and Search APP includes the following passage. *“To maximise the person’s understanding before starting the search, officers exercising stop and search powers must adopt the following steps in accordance with GOWISELY:*

- a. identify themselves to the person*
- b. show their warrant card if not in uniform*
- c. identify their police station*
- d. tell the person that they are being detained for the purpose of a search*
- e. explain the grounds for the search (or authorisation in the case of section 60 searches)*
- f. explain the object and purpose of the search*
- g. state the legal power they are using”*

23. §40 PACE Code A states that officers must have a genuine suspicion and an objective basis for that suspicion before exercising a search under section 23 of the Misuse of Drugs Act (MDA), and that reasonable grounds mean *“there must be an objective basis for that suspicion based on facts”*. It states that the search is more likely to be effective, legitimate and secure public confidence if reasonable grounds for suspicion are based on a range of objective factors.

Where grounds are not based on specific intelligence, an officer *“must be able to provide a clear, full and sufficiently detailed explanation as to what it was about the person’s specific behaviour that meant they genuinely suspected they would find a particular item on that person”*. It further states that any use of these powers must be proportionate to the circumstances and be conducted fairly and respectfully.

Use of Force

24. The College of Policing Authorised Professional Practice (APP) – Use of Force recommends that questions related to the force used by police officers are considered in line with ten key principles that govern the use of force by the police service. Relevant principles include the following:

- a. *“Police officers owe a general duty to protect persons and property, to preserve order, to prevent the commission of offences and, where an offence has been committed, to take measures to bring the offender to justice;*
- b. *Police officers may, consistent with this duty, use force in the exercise of particular statutory powers, for the prevention of crime or in effecting a lawful arrest. They may also do so in self-defence or the defence of others, to stop or prevent an imminent breach of the peace, and to protect property;*
- c. *Police officers shall, as far as possible, apply non-violent methods before resorting to any use of force. They should use force only when other methods have proved ineffective, or when it is honestly and reasonably judged that there is no realistic prospect of achieving the lawful objective identified without force;*

- d. *When force is used it shall be exercised with restraint. It shall be the minimum honestly and reasonably judged to be necessary to attain the lawful objective”.*

25. In relation to handcuffing, the PSM on handcuffing (module 8) provides the following relevant extract: *“If violence had already been displayed in the circumstances that led to the detention, regardless of whether or not the detention was for an offence involving violence this could constitute adequate objective grounds for handcuffing. Verbal and non-verbal indications from a person of a possible likelihood of violence can provide grounds for making an objective decision. When a person is known or is believed to be likely to use violence, based on previous experiences of such (perhaps particularly at the point of detention or while in custody), this would also assist an officer to develop an objective basis for a decision to use handcuffs.”*

Evidence

26. The Panel was referred to a bundle of documentary evidence (615 pages). While the Panel noted the contents of the IOPC report, the Panel wishes to make it clear that any opinions contained therein were not relied upon by the Panel, which approached matters afresh and came to its own conclusions.
27. The Panel was also provided with the following items:
- a. BWV from the night in question;
 - b. 6 Mobile phone clips.
28. The Panel heard from the following witnesses: -
- a. *[name redacted]* He was assisted by an interpreter due to his limited command of English. He is referred to herein as the complainant.
 - b. FPC Binala
 - c. DCI Thrower

Character

29. The Panel noted the bundle of good character evidence (9 pages) submitted by FPC Binala. They spoke as to his qualities as a police officer and person, among other matters.
30. FPC Binala had not been the subject of any adverse disciplinary finding or complaint in his 8 years of service. Prior to joining the police, he worked as a support worker to adults with learning difficulties and complex needs. In his free time, he works with boys aged 11 – 18, coaching them to take the right paths in life. The Panel agreed that his character was exemplary prior to this incident.
31. The Panel took account evidence of any good character in two ways, namely in respect of that Officer's credibility and in respect of the Officer's propensity to behave in the way alleged, per Collins J in Wisson v Health Professions Council [2013] EWHC 1036 (Admin) at [44]: *"As it seems to me, good character must always be likely to be relevant for the panel where there is a substantial issue of fact to be decided and where credibility of the registrant in the evidence that he gives, is an issue and it can also go to whether it is likely that he did what is alleged against him. Both aspects were prima facie material in relation to the findings that the panel had to make and the circumstances of this case."*

The Facts

32. In considering the facts, save for the matters set out above we make it plain that the Panel reviewed and considered the entirety of the evidence presented to us.

Background Facts

FPC Binala

33. FPC Binala joined the MPS in April 2018. He thereafter spent most of his time on the response team before joining the violence suppression unit in December

2020. The Unit focused on targeting gang offenders through engagement and patrol of high crime areas, including covert patrols and stop/ search activity.

34. From the IOPC report, FPC Binala has attended the following relevant training as set out below:
- a. June 2021 Combined Officer Safety Training (OST) and Emergency Life support (ESL)
 - b. Feb and March 2021 Combined OST and ELS refresher courses
 - c. July 2018 Dynamic risk assessment
 - d. May 2018 National Decision-making Model (NDM)
 - e. March 2018 Stop and search an introduction
 - f. National Centre for Applied Learning Technologies (NCALT) on BWV approximately in 2018
35. PS Cathcart, PC Binala and PC Dunne all stated that they had not received any additional or specific training to perform in their roles. When asked specifically about any relevant training the officers might have completed to integrate the VSU, DCI Thrower said, *“UPT teams do not receive any training which is specifically aligned to the role...”*
36. Criminal proceedings were not instituted against any of the officers involved.
37. FPC Binala’s last day of service was on 25 September 2025.

[name redacted] – the Complainant

38. *[name redacted]* the complainant, was aged 26 years of age at the time of the incident. He is a Polish national, and his first languages are Polish and Armenian. *[name redacted]* stated that he would estimate his command of English to be at the “60% level”. Parts of the BWV had to be translated from Armenian to English. No party raised any issue with the accuracy of any translated passages.

39. *[name redacted]* had no previous experience with the Police prior to the incident which resulted in his complaint. *[name redacted]* is employed. He lives with his parents and grandfather, in a home where they have resided for six years.
40. The evidence from the intelligence search relating to the complainant was included in the bundle. An email from DPS confirmed the complainant's address is *"not mentioned on any intelligence or for any crimes"*. Furthermore, *[name redacted]* is not listed on relevant documents as a person of interest to the police.
41. There are no briefing slides relating to the complainant in this matter. Accordingly, there were no offenders with a description that resembled *[name redacted]* , his car, or that *"placed any of the named people in the close vicinity of Albion Road/Nicholes Road, TW3"*.

The Events in Question

42. In his statement the complainant explained that on the evening of 12 September *"I had dinner with my family. I was with my parents and my brother's wife and her 2 children. My brother's wife and kids live in Richmond so after dinner, I took them to their house in my car. It took about 15 minutes to drive them, I helped my sister-in-law take the pram into the house, then drove back. Again, it took around 15 minutes to get home. I drove my car which is a black Mercedes C Class. I came back straight away, to my home, from my brother's house"*. The BWV showed that *[name redacted]* wore a t-shirt, shorts and flip-flops at the time.
43. The complainant explained that *"When I came back to my house, I parked my car....to the road just opposite my parents' house. I was parked up with the engine off and I was gathering up my phone and keys, which were in the centre console of the car, while I was sat in the driver's seat. I was parked for no more*

than 1 minute while I was getting my things together. While I was doing this, I saw another car which pulled up and stopped next to my car. It was about 2 or 3 meters away from my car. It did not say on the car that they were police. The car was a dark brown/grey colour Ford with no markings on it."

44. The complainant recalled *"There were three men in the car, who I now know are police officers, but I didn't know that at the time. They started to look at me. I could see this as neither of our cars had tinted windows and there was good street lighting so I could see them. I believe their windows were closed. I also think all of my windows were closed."* BWV footage appeared to show that [name redacted] windows, and those of the police vehicle, were closed when the officers drove past him prior to reversing. The complainant's exterior car lights were on but the interior lights were not.

45. The complainant explained *"I looked away from them and kept gathering my things, I looked back and they were still looking at me. I could see them looking back and forth from me and then talking to each other quickly. I didn't know why they were looking at me; I was scared. When I saw them, I felt that they might be bad people. I told myself "it's ok, no worries, just go home", but I was worried because it was night-time and I felt like it's not safe."*

46. FPC Martin Binala, PS Andy Cathcart and PC Stuart Dunne were attached to the Violence Suppression Unit (VSU) in Southall. FPC Binala, PC Dunne and PS Cathcart stated that they were all in plain clothes driving an unmarked police vehicle. FPC Binala stated he was on duty from 2pm to 11pm.

47. FPC Binala wrote in his statement that they were *"conducting mobile proactive patrols around the Hounslow central area due to multiple intelligence reports about drug supply occurring in the area... At approximately 2030 hours...my attention was drawn to a black Mercedes...the area is a known drug hotspot for both supply and use with recent report of violence occurring in the area...we have driven past the black Mercedes...I see a male I now know to be [name redacted]"*

...sat in the front driver seat. I was sat in the front passenger seat of our police vehicle which was approximately 2 metres in front of [name redacted] vehicle”.

48. A PNC check was conducted on the vehicle at that time by FPC Binala, which revealed no trace. The first check was done at 8.36 pm, with further checks done at 8.43 and 9.18 pm. He used PS Cathcart’s laptop to make the checks.

49. On the BWV, FPC Binala could be seen wearing a dark blue or black track suit with a hood, a Nike small bag across his chest and trainers. PC Dunne wore a short sleeved white t-shirt with shorts and trainers; PS Cathcart wore a black t-shirt with shorts and trainers. PC Dunne and PS Cathcart both had visible tattoos on their arms.

50. PC Dunne told the IOPC that they did not have their high vis baseball caps identifying them as police officers at the time but that they were issued to them after the incident took place. No issue was raised by the AA as to the suitability of what FPC Binala was wearing.

51. FPC Binala explained in his statement they had reversed their vehicle so that they could approach the male. He observed the complainant look at the at the police vehicle and subsequently noted the driver side door open. FPC Binala took into account the way the complainant looked at them and subsequently the open car door. He inferred that the complainant may be about to run away.

52. Thereafter a significant struggle took place, which is largely covered in the BWV. The Panel relied on the BWV as the best evidence of what had taken place. PAVA spray was used on the complainant by PC Dunne.

53. The complainant was ultimately arrested and placed in handcuffs. A decision was subsequently taken to de arrest him and he was later conveyed to hospital, which his injuries were attended to. The Panel have seen photos of his injuries, which were very unpleasant.

Analysis

54. In considering this matter the Panel gave FPC Binala a wide margin of appreciation, to take into account the facts that matters were, after the incident developed until its conclusion, largely fast paced and he did not have the opportunity to carefully evaluate in his own time what was occurring.
55. The Panel determined the matters as follows on the balance of probabilities.

Strong Smell of Cannabis – allegation 5a

56. In relation to the allegation that the officer falsely recorded in his witness statement that he could instantly smell a strong smell of cannabis coming from the vehicle, the Panel determined that this was a false statement of what took place. The Officer conceded in his evidence that he could smell cannabis on getting out of his vehicle and made the assumption that it came from the complainant's vehicle, not that he could actually smell it coming from the complainant's vehicle. This aligned with the evidence of PC Dunne, who said he could smell cannabis generally but did not link it to the complainant's vehicle. It also aligned with the evidence of the complainant, who agreed there was frequently a smell of cannabis in the area generally.
57. The Panel noted that there was no evidence of cannabis or cannabis paraphernalia being recovered from the vehicle. Furthermore, no officer recorded a smell of cannabis coming from the vehicle or the complainant after they had been searched, as one may have expected to have occurred if there had been. The absence of any evidence of cannabis or smell of cannabis from inside the vehicle or on the complainant, taken together with FPC Binala's account in evidence, pointed to the fact that his statement was not accurate.

58. However, the Panel determined the former officer's statement about the origin of the cannabis was not dishonest. FPC Binala had made an assumption, taking into the circumstances at that time, including the complainant acting in a suspicious manner and the door opening of the complainant's vehicle, that it came from the vehicle. What happened should have been recorded accurately by FPC Binala. While this pointed to a performance issue, it was not dishonest, per the allegation. Accordingly, while the Panel found the allegation proven, in that what was recorded was not true, it did *not* amount to breaches of the standards of integrity and discreditable conduct. The Panel took into account FPC Binala's good character in his favour when considering this allegation, although it was only a factor and not determinative.

Spontaneous Incident – allegation 5b

59. In relation to the second allegation, namely he falsely stated in his use of form that he was unable to use his BWV (due to the incident being spontaneous and that he was unable to activate it due to restraining the subject), the Panel determined that the statement was not true and thus false.
60. This was because FPC Binala could have activated the BWV on two earlier occasions prior to the incident developing rapidly. First, he could have activated while slowly approaching the suspect car, when the undercover vehicle then reversed in order to speak to the complainant. It would have been apparent to him that an incident was developing and it would have been appropriate to turn on his BWV, particularly as the car was unmarked and he was in plain clothes. Second, he could and should have activated the BWV the moment he got out of the vehicle and smelt cannabis. As explained by FPC Binala, the action of putting on his camera would have been very quick.
61. Accordingly, the Panel determined that the statement was not true and should have accurately recorded the position, namely that he could have activated it an

earlier stage but chose not to do so until he had actually started speaking to the complainant. The Panel agreed that the incident developed quickly but at the start the incident was not spontaneous.

62. However, the Panel determined this again pointed to a performance issue in relation to the way FPC Binala recorded what had taken place in his statement. It did not amount to a breach of either of the pleaded standards. The Panel again took into account his character in this regard. The Panel in particular did not consider it dishonest, applying the test from the case of Ivey. The incident had developed very quickly and he was certainly unable to activate it once a struggle had started. He had incorrectly but honestly assessed the correct point when he should have activated it and this is what he had recorded. The Panel did not consider it was objectively dishonest.

Lawful Authority – Stop and Search – allegation 6a

63. In relation to the third allegation, namely that FPC Binala acted without lawful authority in conducting a stop search, the Panel determined that the allegation had not been proved. The Panel noted in particular that while there was no specific evidence of cannabis in relation to the complainant or his vehicle, he was acting as part of covert patrol team to disrupt illicit activity in the area. He observed a male individual in a vehicle, which was not moving but had its exterior lights on. The male then appeared to look intently at their vehicle. When exiting their vehicle FPC Binala smelled cannabis, which he assumed was coming from the subject vehicle. Having got out of his vehicle, the complainant then opened his own vehicle door, which may have indicated that he was intending to leave the area.
64. In the above circumstances the Panel determined that FPC Binala did have lawful authority to carry out a stop and search. FPC Binala had in the Panel's judgment sufficient grounds to form a genuine suspicion to provide authority to

engage in a search. In coming to this conclusion, the Panel also took into account the evidence of DCI Thrower, who confirmed that in his experience that seeing an individual in a parked vehicle in an area linked to criminality would have justified further investigation.

Failure to effectively Identify – allegation 6b

65. In relation to the fourth allegation, that FPC Binala had failed to effectively identify himself as a Police Officer, the Panel determined that, taking matters as a whole, that the allegation was proved. It also amounted to a breach of the standards pleaded.
66. In coming to that finding, the Panel noted that, per his evidence, FPC Binala had significant experience of conducting stop and searches, including those where he had been in plain clothes. The Panel concluded that FPC Binala would have been aware of the need to clearly and effectively identify himself as a Police officer, particularly because he was operating in an area involved with criminality, where he came from an unmarked police car and in plain clothes.
67. Having reviewed the transcript of the BWV, and in particular the translated passages from the BWV, the Panel determined that FPC Binala did identify himself as a police officer when he approached the car. The Panel relied in particular on what the complainant had said to his parents about the incident.
68. While giving the complainant significant leeway as he had just been involved in a violent incident in which he had sustained unpleasant injuries, including a head injury, and FPC Binala in particular was relaying to the complainant his version of events, he was lucid enough on two occasions to indicate to his parents in his native language that he he was aware that he was dealing with police officers, but did not believe that they were.
69. At one point he says to his father - *"I thought they were trying to rob from my car...These cops. **They wanted to check.** So I attacked and had a fight. And*

they beat me up." A little later he added "***They came and said police as if they were trying to check me...I thought they are trying to rob phone, something else from the car. I started fighting with them.***" In a further discussion he added this "*I thought they are going to rob me. I didn't hear anything that they are police. I started to fight. So they have beaten me up.*" This later version clearly differed to his earlier accounts. When asked by his father if they showed any identification he responded "*I don't remember.*" At no point does he positively state that he was shown a warrant card.

70. In his statement he confirmed hearing the Officer say something to him which he did not understand but there was no warrant card. In his report made after the incident, the complainant indicated that '*showing a badge is not enough as it is not genuine proof (sic) of them being a police officer*'. The Panel did not agree that this amounted to an admission that FPC Binala had shown his badge, particularly when this was clearly denied in the complainant's statement and in his evidence and he was aware that FPC Binala was saying that he had showed his warrant card to the complainant. The Panel considered the complainant was pointing out that even if he had shown his warrant card, it would not necessarily prove he was a police officer. It was an observation but not in the Panel's view an admission, which had been made sometime after the events in question.
71. FPC Binala explained to the parents what had occurred – "*okay listen we see your son sat in the car and we could smell something, we tried to tell him he was being detained, we wanted to search your son, we wanted to search your son but your son started fighting with us.*" The Panel noted that there was no reference to identifying himself as a police officer and showing his identification in this particular passage, although he did refer to it elsewhere, including in his statement.
72. However, while the Panel determined that it was more likely than not that he identified himself as a police officer, the Panel determined that FPC Binala did

not identify himself using his warrant card. The Panel noted that FPC Binala gave two different accounts about what had happened in terms of his producing his warrant card. In those circumstances the Panel preferred the evidence of the complainant, which made it clear that no warrant card had been produced.

73. FPC Binala indicated in his interview that he had got out his warrant card from his right pocket, showed it for a couple of seconds and then put it back in his pocket. When giving evidence before the Panel, he gave an account that he had got out his warrant card and then leant forward to seize the complainant's mobile phone with the warrant card still in his hand, before placing the mobile phone on the dash of the complainant's car. He then returned the warrant card to his pocket. Upon being questioned in detail about that sequence of events before the Panel, he physically demonstrated what had taken place to the Panel, showing the Panel in the clearest possible terms, per the second account above. At no point did he indicate that he was struggling with his recollection or doing his best to recollect – he was absolutely clear about what had taken place. The Panel were left in no doubt following this demonstration that his second version of events had in fact occurred.
74. However, in cross examination his answers in interview were put to him and he abandoned his second account, reverting to the account that he had given in interview. In those circumstances, where the former officer had given a clear and compelling account of what had taken place but had then abandoned it, the Panel preferred the account of the complainant, that no warrant card had in fact been produced.
75. The Panel also determined that FPC Binala not showing his warrant card was more likely to have occurred due to the subsequent sequence of events. The complainant made it clear in his evidence that when approached he had made the decision to leave. FPC Binala indicated in his interview that he had formed the view that the complainant was about to run away and wanted to stop him. It

follows that having approached the vehicle and identified himself as a police officer, FPC Binala was then forced to deal with the complainant trying to leave. In those circumstances the Panel determined that it was more likely he did not produce his warrant card.

76. Furthermore, as set out above, his lack of clarity over what took place made it more likely that he did not produce his warrant card. Had he done so, the Panel would have expected him to have a clear recollection over what took place and the actual sequence of events.
77. The Panel determined that what should have happened is that when he got out of his unmarked vehicle and confronted the complainant FPC Binala should have produced his warrant card clearly in front of him, while identifying himself as a police officer. This was particularly needed as he was in plain clothes. The Panel determined that this did not happen, which increased the risk that the complainant would form the view he was not dealing with a Police Officer and that he would try to escape.

Verbal Abuse – allegation 6 c

78. The Panel determined that the allegation was proved. The Panel determined that the swearing during the course of the struggle and the chatting shit comments said afterwards were made. This was admitted by FPC Binala and was apparent from the BWV/ transcript.
79. In relation to the language used in the course of the struggle, the Panel determined that the bad language used was offensive but its use did not however amount to a breach of the standards. This was because it was used during the course of a heated struggle while trying to arrest the complainant. While directed at the complainant it was a reaction to the force that was imposed on FPC Binala.

In the circumstances the Panel determined it did not amount to a breach of the standards.

80. The Panel acceded to the submission that “chatting shit” was a colloquialism but the context in which it was used were relevant as to whether it was abusive or not. Here, the comments were made after the struggle, where the complainant was attempting to explain his version of events and where he had been injured in the course of the struggle. It related to a critical detail at the start of the incident, with the complainant indicating he did not know they were police. FPC Binala had responded that *“he had his identification in his hands, so stop chatting shit, okay, stop chatting shit”*.
81. It was abusive because it implied that the complainant was not being honest in his recollection of what had taken place. The Panel considered it was intentionally used. The comment was not made during the heat of the struggle but after matters had calmed down, when the officer was able to more carefully choose his use of language. It was inappropriate and insensitive and amounted to a breach of the pleaded standards.

No Lawful or reasonable grounds for arrest or continued detention without reasonable grounds – allegation 6d

82. The Panel determined that the allegation was not proven, as in their judgment there were lawful grounds to arrest the complainant. Having had reasonable grounds to stop and search the complainant, for the reasons set out above, the complainant then attempted to leave the scene using force and thus obstruct a lawful search for drugs. The Panel determined in those circumstances FPC Binala had reasonable grounds to make an arrest.

Left him handcuffed for longer than was necessary, proportionate or reasonable – allegation 6e

83. The Panel determined that the allegation was not proven for the following reasons. First, while FPC Binala was the arresting officer, the handcuffs applied belonged to PS Cathcart. Second, as the supervising officer at the scene PS Cathcart was directing matters and was supervising FPC Binala. Third, that the Panel did not consider that leaving the complainant with handcuffs for the period of time that he did was unreasonable. The complainant had resisted arrest for a relatively lengthy period of time, despite being told that there were police and that he should calm down. It had required numerous distraction blows and the use of a PAVA spray to ultimately subdue him. Fourth, further enquiries had to be made in relation to the vehicle and intelligence checks before any action could be taken. Lastly, the complainant had asked that his family attend. Having eventually located them, Officers spent some considerable time explaining what had taken place to the family and speaking to the complainant. This was evident from the lengthy BWV transcript. Taken all of those matters together, the Panel did not consider the amount of time that he spent in handcuffs was unreasonable and/or disproportionate.

Failing to provide adequate aftercare, failing to ensure prompt medical attention and/or delay in requesting an ambulance – allegations 6f and 6g

84. The Panel determined that the allegation was not proven, for the following reasons. First, as set out above, PS Cathcart was the senior officer and was supervising FPC Binala. In those circumstances the Panel considered that it was reasonable for FPC Binala to rely upon the instructions given by PS Cathcart. Second, that the Panel did not consider that officers had failed to provide

adequate aftercare. They had applied water to his wounds and tried to clean them up. They had advised him not to apply water to his eyes, which would worsen the effects of the PAVA spray. While they could have obtained the first aid kit from the vehicle, it was not clear to the Panel how the first aid kit would have significantly improved the treatment of his injuries. Third, that the delay in ensuring prompt aftercare in terms of medical treatment was caused by carrying out further checks after the incident but in particular speaking to the complainant's family, as set out above. The Panel noted that he was eventually conveyed to hospital, where he received medical treatment. In all the circumstances the Panel did not consider the allegations proved.

Force – Use of a Knee Strike – allegation 7a

85. The Panel determined that the allegation was proven and amounted to a breach of the pleaded standards. While the complainant may have not made reference to the knee strike in his statements, having reviewed the BWV it was apparent to the Panel that FPC Binala had deployed a knee strike to the chest of the complainant while grappling with him, while the complainant was in part still inside the vehicle.
86. This was observed while viewing the BWV at normal speed, although the Panel did not accept that it distorted the image playing it at a slower speed. The Panel did not take into account the investigator's views as to what took place, relying on its own viewing of the video.
87. FPC Binala did not accept that it could be seen on the video and thus offered no explanation as to why it occurred. While a knee strike can in certain circumstances be appropriate, the Panel determined that at the time it occurred it was neither necessary nor proportionate. The force was excessive. The use of force at that point by FPC Binala in the Panel's judgment escalated matters

considerably. FPC Binala should have been trying to deescalate matters with the complainant, not by using an excessive knee strike.

Excessive Force – Beating – allegation 7a

88. Save for the knee strike, the Panel determined that force was used during the incident but that this was necessary, proportionate and reasonable in all the circumstances. The force in question was repeated distraction blows to the complainant from FPC Binala, used in an attempt to make him compliant and to effect an arrest. While spray was used on the complainant by one of the Officers, this was not deployed by FPC Binala and done in the presence of PS Cathcart.
89. At the time that the force was used the Panel determined that the complainant might have been aware that FPC Binala was a police officer, as he had verbally identified himself as such. Notwithstanding his doubts about the legitimacy of what he was told, which had worsened following the failure by FPC Binala to properly identify himself with his warrant card and the use of a knee strike, he was aware that he may be dealing with police officers. Furthermore, during the course of the struggle officers repeatedly stated that they were police officers and for him to calm down/ stop struggling, which would have made it more likely to the complainant that he was dealing with police officers. While not attempting to strike any of the officers, he used considerably force in attempting to get away from them. This was evident from the BWV.
90. From FPC Binala's perspective, he had identified himself as a police officer and the complainant had then attempted to make his escape. He had thereafter heard his fellow officers repeatedly tell the complainant that they were police officers and to calm down. Notwithstanding this the complainant continued to forcibly struggle. Accordingly, the Panel determined that use of force to prevent his escape and effect an arrest was both necessary and proportionate. The

Panel noted that while there was a strike to the head, that this had occurred by accident while attempting to effect a distraction below to the shoulder area, accidentally hitting the complainant's head in the course of the struggle. The Panel also noted that all of the techniques used were approved techniques in terms of his training. The force he used was not excessive to the level of threat posed. In coming to this finding, the Panel took into account that FPC Binala could not have been expected to weigh up what was occurring and had to respond to a very fast developing situation. Furthermore, the Panel took into account his character, and the absence of any suggestion that he had previously engaged in the use of excessive force.

Gross Misconduct or Misconduct

91. Having found breaches of the standards as set out above, the Panel has carefully considered whether the breaches amounted to gross misconduct or misconduct.¹
92. We have again reminded ourselves of the full circumstances of this case and the breaches of the standard that we have found.
93. The Panel determined the breaches as follows:

a. Failing to effectively identify himself as a police officer- allegation 6b.

The Panel determined this amounted to gross misconduct. The Panel determined that the need to produce his warrant card was particularly important when in plain clothes and when coming out of an unmarked police car. He should have got out his warrant card and clearly showed this to the complainant when he approached him. This was a contributory factor in the complainant refusing to co-operate with

¹ Under the 2020 Regulations, "misconduct" means a breach of the Standards of Professional Behaviour not so serious as to justify disciplinary action" and "gross misconduct" means a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal";

officers and attempting to escape, which in turn led to him being injured in a violent struggle.

b. *Verbally abusing him - allegation 6c.* The Panel determined that this amounted to misconduct. At that point the incident had calmed down and there was no basis for FPC Binala to say to the complainant to stop “chatting shit”, when the complainant was only trying to explain his version of events.

c. *Excessive Force – Knee Strike – allegation 7a.* The Panel determined that this amounted to gross misconduct. The use of a knee strike at that point in the incident was plainly excessive. The Panel were able to see the strike on the BWV. The use of the knee strike was likely a contributory factor in the complainant’s efforts to get away from officers, which in turn led to him being injured in a violent struggle.

94. The Panel concluded that the facts and multiple breaches of the standards as set out above individually in relation to two of the allegations and cumulatively in relation to all matters amounted to gross misconduct and were arguably so serious as to justify dismissal.

Cameron Brown KC (Chair)
Commander Beehag-Fisher
and
Deborah Fajoyed

25 June 2026

