IN THE MATTER BEFORE THE MISCONDUCT HEARING

UNDER THE POLICE (CONDUCT) REGULATIONS 2020 (AS AMENDED)

CM/1283/25

COMMISSIONER FOR THE METROPOLITAN POLICE SERVICE

Appropriate Authority

- V -

DC FRANKIE MCCANN (1483CN)

Officer

OUTCOME REPORT

Unless otherwise stated, references to:

"Regulations" is to the Police (Conduct) Regulations 2020 (SI 2020/4) (as amended) (the Regulations);

"HOG" is to the Home Office, Conduct Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing (v.1.0);
"Outcome Guidance" is to the College of Policing, Guidance on outcomes in police misconduct proceedings (2023); and
"HB" Hearing Bundle.

1. In accordance with regs. 41(15) to (17); 42(1), (3) and (13) and 43 of the Regulations the following outcome report and decisions as issued.

The Panel

2. The Panel consisted of Chair Alan Tribe and IPMs Bernadette Leverton and Patricia Richardson.

Anonymity and reporting restrictions directions

3. Officer A, a witness, sought anonymity due to his current policing role. This was granted by the Chair and maintained throughout the hearing. Party submissions were obtained at the pre-hearing and before the close of the hearing. The Chair decided that the officer's anonymity would be maintained on publication. The reasons for anonymity have not substantially changed. The cypher "Officer A" was applied throughout the proceedings.

Allegation

4. The allegation before the Panel is that DC McCann failed to be diligent in the exercise of his duties and responsibilities when he:
    1. failed to present himself for duty at 07:00 on 1 November 2025;
    2. was unfit for duty at 07:00;
    3. failed to inform supervising officers/others that he was going to be absent from his shift;
    4. failed to ensure he was fit for duty;

5. failed to inform Officer A that he was or may be unfit for duty due to alcohol consumption the night before;
6. reported for duty when he knew, or should have known, he may be unfit to do so. (now referred to as P1 to P6)

Procedural Background

5. The Reg. 30 Notice was served on 26 July 2026.

6. A pre-hearing was held on 17 August 2026 and the hearing commenced on 21 September and concluded on 22 September 2026.

7. The live witnesses were:
    1. Officer A;
    2. DC Tina Baguena (gave evidence remotely);
    3. DC Anthony Fielden;
    4. DC Marci Katana;. and
    5. Inspector Elliott Mann.

8. DC McCann gave evidence.

9. During the hearing the CARMS record for DC McCann on 1 November 2025 was admitted as evidence with no objections from the AA or the Officer.

Law and Guidance

Standard of proof

10. The Panel adhered to the following:
    1. The standard of proof to be applied is on the balance of probabilities meaning that the allegation is more likely than not to have occurred [reg. 41(15) of the Regulations].

2. Irrespective of the seriousness of the allegation there is no variation of the standard of proof [The Home Office, *Conduct Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing* (v.1.0) (5 February 2020) at paras. 9.10 and 9.11; see also *R (oao IPCC) v Hayman* [2008] EWHC 2191 (Admin) at para. 16]

3. The burden of proof remains on the AA to prove an allegation as set out in the Reg. 30.

In essence, it is for the Panel to review the evidence applying common sense and their experience taking into account any inherent probabilities; but still ultimately applying the civil standard of proof.

11. Additionally, applying *Re B (Children)* [2008] UKHL 35 the civil standard of proof does not require that every fact in issue *has* to be decided in one or other party's favour, as the burden remains on the AA to prove their case:

> " If a legal rule requires a fact to be proved (a "fact in issue"), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened." [per Lord Hoffmann at para. 2]

Standard of Professional Behaviour (SPB)

12. The professional standard under the allegation is:

> "Duties and Responsibilities-
>
> Police officers are **diligent in the <u>exercise</u> of their duties and responsibilities.**

Police officers have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer when identified as a witness." (emphasis added) [Schedule 2 to the Regulations]

13. It is noted that the specific SPB on Fitness for Duty was not alleged as breached in the Reg. 30. this standard being:

    "Police officers **when on duty or presenting themselves for duty** are fit to carry out their responsibilities." (emphasis added) [Schedule 2 to the Regulations]

14. The Guidance for ethical and professional behaviour in policing (24 February 2024) states:

    "Wellness and wellbeing

    As policing professionals, we are expected to take all necessary steps to ensure that we are physically, mentally and emotionally fit to carry out our policing roles and responsibilities, and to do what we can to support our colleagues to do the same. We:

    ...

    ensure that when we believe we are unfit to undertake our role or are impaired for duty, we declare this to the appropriate person **as soon as practicable**

    …

    do not make ourselves unfit or impaired for work as a result of the misuse of substances – this includes the use of 'legal highs'" (emphasis added)

Substance Misuse Testing Standard Operating Procedure (SOP) v. 2 22 Dec 2024

15. This sets out the testing process officers have to undergo and the conditions that are applied, stating:

    "[Police Officers must] Be fit to carry out and fulfil their policing role and responsibilities. Not consume or be under the influence of alcohol when on duty." It is the responsibility of all staff to maintain a workplace that is "...free of drug and alcohol impacts…" [HB 56]

16. It goes onto state:

> "[4.0] Alcohol is a substance that can be misused and one that can impair judgement. … Police officers,… have a responsibility under the Code of Ethics and the [SPB] to present themselves fit for duty. If their behaviour or judgement in impaired by the consumption of alcohol, they are unlikely to be fit for duty." [HB 69]

17. Tests can be done "with cause" if it "appears that the police officer… is under the influence of alcohol,…". And:

> "There is a power to conduct tests 'with cause' if it appears that an on duty police officer,… Is under the influence of alcohol at that time."

A Sgt. or above can authorise a test. [HB 69]

18. The testing level thresholds are also set out:

> "The presumption is that any on duty police officer,… is unfit for duty if they have more than 13 micrograms ([micrograms symbol]) of alcohol in 100 millilitres (ml) of breath. This is significantly lower than the limit for driving [35 micrograms]…" [HB 70]

19. The procedure for the test states the mandatory questions to be asked about smoking or the recent consumption of food. And that a breathalyser calibrated to measure the level of 13 micrograms and above must be used. Two tests must be taken and the sample producing the lowest of the two outputs will be the one used in evidence. On a positive result, the officer will be subject to a gross misconduct investigation "which is likely to lead to dismissal". [HB 70-71]

Sickness Absence Management: What you need to know - Police Officer / Police Staff / MSC

20. States that any report should be before the shift start time with an explanation as to why the officer is sick and their expected return date. No fit note is needed if the period off does not exceed 7 days in a row [HB 46].

Regulation 30 Notice

21. The HOG states the importance of identifying and particularising the:

> "...actual behaviour that is alleged to have fallen below the standard expected,… with clear particulars describing that behaviour. Due regard shall be paid to the nature and circumstances of a police officer's conduct, including whether their acts or omissions were reasonable at the time of the conduct under scrutiny" [para. 2.11]

22. A Notice is required to set out how an allegation amounts to a breach of a particular Standard of Professional Behaviour and absent any good reasons this should be followed [*R (on the application of the Chief Constable of the Derbyshire Constabulary) v Police Appeals Tribunal [2012] EWHC 2280 (Admin) (Derbyshire*) per Beatson J at [41] to [43]]

Determinations

23. The Panel are required to:
    (a) review the facts in the case;
    (b) decide if the conduct amounts to:
        i. misconduct,
        ii. gross misconduct, or
        iii. neither. [Reg. 41(15) of the Regulations]

24. The relevant definitions are:

> Misconduct: "...means a breach of the Standards of Professional Behaviour that is so serious **as to justify disciplinary action**." [Reg. 2(1) of the Regulations]
>
> Gross misconduct: "...means a breach of the Standards of Professional Behaviour that is so serious **as to justify dismissal**,..." [Reg. 2(1) of the Regulations]

25. If the Panel determine the conduct amounts to misconduct or gross misconduct they must go on to impose a disciplinary action. [Reg. 42(1) and (3)]

26. The Panel note that for misconduct and gross misconduct there are two conditions under each definition. Mere breach of a SPB is insufficient to meet either definition. There must be a breach so serious that it, respectively, justifies either disciplinary action or dismissal. If both conditions under either definition are not proven then the conduct cannot amount to that defined finding.

27. In assessing when the misconduct minimum threshold is met, the breach would at least justify a written warning. The Panel should consider:

    "… for those cases where learning alone would not be sufficient given the gravity or seriousness of the matter which therefore warrants a formal sanction. The alleged conduct must be sufficiently serious that it is not appropriate for the matter to be handled through reflective Practice Review Process or through another performance or management process." [HOG at 4.36]

28. The fact that there is a blanket approach under the MPS, Substance Misuse Testing Standard Operating Procedure (v. 2) (22 December 2024) (SMT-SOP) to investigating any failure as potential gross misconduct and "likely to lead to dismissal"; does not determine or bind the Panel in reaching its own determinations on what the conduct amounts to and any appropriate sanction if proven to be misconduct or gross misconduct. The Panel can determine a lesser level of seriousness, if it considers the facts prove that.

29. The Panel must make these determinations on the standard of proof outlined above *or* can rely on an Officer's admissions that conduct amounts to misconduct or gross misconduct [Reg. 41(16) of the Regulations].

30. The Panel are not required to accept the Officer's admissions if it considers the AA has not discharged the burden of proof on review of the facts as required under Reg. 41(15) of the Regulations [see also paras. 9.11 and 11.115 of the HOG] . Reg. 41(16) does not mandatorily fetter the Panel's ability to make a determination under Reg. 41(15) of the Regulations so that any admission must be unconditionally accepted and relied upon. Rather it is a fetter to prevent the misuse of the discretion under Reg. 41(15) to determine the conduct does amount to misconduct or gross

misconduct in the absence of a proper legal basis which would be a procedural irregularity and unfair abuse of power.

31. Police misconduct proceedings are an inquisitorial process and not a pure adversarial process. The guiding purpose of police disciplinary proceedings is the three purposes set out at para. 2.3 of the Outcome Guidance:
    1. maintain public confidence in, and the reputation of, the police service;
    2. to uphold the highest standards in policing and deter misconduct; and
    3. to protect the public.

The College of Policing Guidance on Outcomes in Misconduct Proceedings

32. *[Paragraph references in this section are to the College of Policing Guidance on Outcomes in Misconduct Proceedings ("Outcome Guidance") unless otherwise stated]*

33. The Panel must have regard to the *Outcome Guidance* but it does not override the discretion the Panel have to assess each case on its individual facts [1.6] and [11.118 of the *HOG*].

34. The process set out under the *Outcome Guidance* is a guide where considerations may overlap and is not a structured approach that must be strictly followed. The Panel must consider the substance of the matters contained in the *Outcome Guidance* when considering the case before it. [see *R (on the application of Kristina O'connor) v Panel Chair (Police Misconduct Panel)* [2025] EWCA Civ 27 per Davies LJ at paras. 41 to 43.

35. The *Outcome Guidance* broadly sets out the three stages to determining the appropriate sanction:
    (a) assess the seriousness;
    (b) keep in mind the purpose of imposing sanctions;
    (c) choose the sanction that most appropriately fulfils the purpose of the proceedings and seriousness of the conduct. [4.2] [see also *Fuglers LLP & Ors v Solicitors Regulatory Authority* [2014] EWHC 179 (Admin)]

36. In assessing whether the conduct amounts to misconduct or gross misconduct the Panel should consider Stage 1.

Stage 1

37. Under stage 1, the seriousness of the proven conduct should be assessed with reference to:
    (a) the officer's culpability;
    (b) the harm caused;
    (c) aggravating factors; and
    (d) mitigating factors. [4.3]

Officer culpability

38. The greater the intentional targeting, planned or deliberate nature of the conduct the greater the culpability and this includes if the Officer could "reasonably have foreseen the risk of harm". [4.10- 4.11]

Harm

39. Harm is assessed after the determination of the facts and if the conduct breaches a standard of professional behaviour being either misconduct or gross misconduct.[4.72]

40. The types of harm are listed under para. 4.64 but in these proceedings includes: the harm likely to undermine public confidence.

41. Harm is assessed on the Panel's knowledge and experience. [4.71]

42. The Panel can consider the depth of national or local concern but objective evidence of harm should be distinguished from subjective media commentary. [4.70]

Aggravating factors

43. The *Outcome Guidance* lists factors that can be considered aggravating so to indicate a higher level of culpability or harm. The relevant one to consider in this case is: the scale or depth of local or national concern about a particular issue. [4.76]

Mitigating factors

44. This is different to personal mitigation as it goes to the actual conduct. [4.67]

45. In these proceedings there were factors that pointed to mitigation on the part of the Officer e.g. he mentioned to his colleague his realisation that he was not fit for duty and wanted to know where Officer A was, in order that he could inform him of such.

46. A non-exhaustive list of mitigating factors are set out at para. 4.81, the relevant ones to consider are:
    (a) misconduct confined to a single episode or brief duration;
    (b) open admissions at an early stage; and
    (c) evidence of genuine remorse, insight and/or accepting responsibility for one's actions. [4.81]

47. Finally, the Officer can claim credit for their conduct in the intervening time [4.82]

Stage 2

48. The purpose of the misconduct proceedings takes precedence and is:
    (a) to maintain public confidence in and the reputation of the police service;
    (b) to uphold standards in policing and deter misconduct; and
    (c) to protect the public. [2.3]

Stage 3

49. The Panel in considering outcomes must look at the least severe option that "adequately deals with the issues identified whilst protecting the public interest". [2.8]

50. However, the amended Reg. 42(3)(b) of the Regulations is in force for this case as it came to the AA's attention after the 28 May 2025 [see regs. 1(1), 15(3)(b), 64(1) and 67 of the Police (Conduct, Performance, Complaints and Misconduct) (Amendment) Regulations 2025 (SI 2025/558)]. This requires that where gross misconduct is found, the Panel must impose a sanction of dismissal without notice unless **exceptional circumstances** are shown for a lesser sanction.

51. Personal mitigation must be considered after assessing the seriousness of the conduct [4.5]. However, there might be an overlap between mitigating factors and personal mitigation depending on the conduct before the Panel.

52. The impact of personal mitigation is limited as the aim of these proceedings is the protection of the public and public confidence in the police, and not the punitive sanction of the Officer. [4.4, 6.1 and 6.5] [see also *Bolton v Law Society* [1994] 1 WLR 512 and *Salter*]. This applies not only to cases of honesty and integrity but all forms of gross misconduct. [*R (Williams) v Police Appeals Tribunal & Commissioner of Police of the Metropolis* [2016] EWHC 2708 (Admin), [2017] ICR 235]

53. The sanctions available will depend on the Panel's determination of whether misconduct or gross misconduct is proven. The Panel note the restriction on their discretion if gross misconduct is found proven as alternatives to dismissal without notice are only available in exceptional circumstances.

54. The option to find no misconduct or gross misconduct, but for the Chair to direct a referral of the matter to the Reflective Matter Process remained a live consideration in this case.

55. Reflective Practice is an option the Panel considered where Practice Requiring Improvement has been identified which in turn is defined as:

    "means underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service as set out in the Code of Ethics." [see HOG at 13.5]

56. The HOG goes onto explain the Reflective Practice Review Process is:

> "… more appropriate either for one-off issues or instances or where there have been limited previous attempts to address emerging concerns around performance." [at para. 13.22]

The evidence and the Panel's findings

57. The Officer admitted P1 to P5 of the Reg. 30 Notice in his Reg. 31 response and repeated these admissions at the hearing via his counsel.

58. The following statements were considered:
    (a) Officer A provided two MG11s dated 1 November 2025 and 17 August 2026;
    (b) Insp. Mann's MG11 and body worn footage dated 1 November 2025;
    (c) DC Fielden's MG11 dated 1 November 2025;
    (d) DC Baguena's MG11 dated 1 November 2026
    (e) DC Katana's MG11 dated 19 August 2026; and
    (f) DC McCann's MG14 dated 16 January 2026.

59. In his statement under caution and in live evidence DC McCann explained he had been drinking on the night of 30 October to 1 November 2025 celebrating two events: a friend's birthday and good news about the health of his mother who had been seriously ill [MG14, HB p43]. He accepts his intoxication was voluntary and did not seek to attribute contributory blame to any other person or event.

60. He was due to report for duty for a 07:00 shift at Islington Police Station and this is not contested.

61. Officer A described in his MG11s and live evidence how DC McCann failed to report for duty at 07:00. This raised concerns with Officer A and he attempted to contact DC McCann by calls and messages between 07:00 and 09:00.

62. DC McCann did not respond at the time, explaining that his phone was on the "do not disturb" setting during this period.

63. Officer A explained he contacted MetGrip to obtain DC McCann's home details and instructed DC Baguena to raise a welfare check entry on the CAD. The CAD record shows this was raised at 08:19:42 [HB 36]. DC Baguena confirmed this account and added in evidence it was she who had provided Officer A with the details to contact MetGrip.

64. Officer A then decided he and two other officers from the team would attend DC McCann's home address in **[REDACTED]** South London. Officer A instructed DC Fielden and Baguena to accompany him. In evidence he acknowledged the whole team amounted to five persons.

65. Officer A explained in evidence his decision making for the welfare check as follows. He was troubled by the experience of a friend who was a supervisor and had one of his officers fail to report. On investigation that officer was found unconscious from a stroke and had to be medically retired from the police. Officer A was taking two other officers in case he encountered a situation at the address where he would need support. He also chose those particular officers as they were not as close to DC McCann as other officers on the team, which meant it might be less embarrassing for DC McCann if an incident had befallen him.

66. All DCs Baguena and Fielden knew was that DC McCann had not reported for duty.

67. Officer A and the attending officers left Islington Police Station at 08:19. During the journey Officer A continued to try and contact DC McCann on his mobile. The journey took approximately 45 minutes.

68. Officer A and the attending officers arrived at the address at approximately 09:07 [MG11 of DC Baguena, HB 32]. DCs Fielden and Baguena gave fuller accounts than Officer A about attending the address. In summary all the officers approached the property. The first door the officers tried was not the main entrance and they moved

to a second door. There was no initial response from the occupants and DC Baguena recalls Officer A knocking on a window.

69. The door was eventually answered by DC McCann's father. He informed the officers that DC McCann was asleep, but he would rouse him. The officers waited at the door whilst DC McCann was being woken up upstairs.

70. All accounts detail how DC McCann then appeared at the door shortly afterwards and was immediately apologetic for not reporting to work stating that he had been out the night before, missed or forgot to turn on his alarm and overslept. None of the attending officers described any signs of intoxication from DC McCann. DC McCann in evidence described his appearance dressed in T-shirt and jeans.

71. It is uncontested that Officer A responded to DC McCann by asking if he was fit for duty, to which McCann replied that he was; and that Officer A would wait with the others in the car whilst DC McCann got ready. At this point all three attending officers returned to the vehicle and McCann went back into the property.

72. In questioning Officer A admitted he did not ask any further questions of DC McCann, despite the fact he was of a dishevelled and 'just woken up' appearance, being satisfied that he said he was fit in response to Officer A's question.

73. DC McCann's recollection and perception of the interaction with Officer A is different to that of Officer A's in key regards. DC McCann repeated his account in evidence that on presenting himself at the door he was embarrassed and shocked at seeing his three colleagues. He was the first to speak. In response he found Officer A's tone annoyed and aggressive. Officer A made the extra statement to the effect that it was a busy shift and he "did not need this" or words to that effect intimating annoyance of having to deal with McCann's absence.

74. About the statement of Officer A and the others waiting on DC McCann, McCann clearly recalls Officer A giving him "10 minutes" to get ready. Officer A in evidence denied giving a time limit. DC Fielden supports DC McCann's account on this point.

75. DC McCann in evidence considered this an instruction from a senior officer.

76. When asked in evidence why DC McCann confirmed he was fit for duty he gave two reasons. He was embarrassed and panicked by the interaction and this overrode any other feelings, and he did not recognise any signs of intoxication at this point. In his MG14 he had stated:

> "I was shocked, embarrassed, and panicked in that moment, having never found myself in such a situation before. I responded out of confusion and anxiety." [HB 43]

77. Whilst the others were waiting, DC McCann got ready by changing his clothes, but did not have time to shower.

78. The total time taken from Officer A arriving at the property and returning to the vehicle when DC Baguena updated the CAD at 09:13:52 was around 6 minutes.

79. Inspector Mann in his evidence confirmed to the Panel that his personal approach would include deeper questioning of how McCann felt and why he had not reported for duty.

80. As to why Officer A waited for DC McCann, his reasoning was that Islington Police Station was at least 1 hour away by public transport, and he was returning to the Station in any case.

81. The car journey back was described by DC McCann as awkward and with an "atmosphere", and during which he still felt shocked and embarrassed. The other officers did not describe it in the same way, only mentioning small talk.

82. DC Baguena sat beside DC McCann and when questioned did not recall him using the onboard system or being in possession of his work laptop, both being means he could have signed in for duty under CARMS.

83. DC Fielden did not recall smelling alcohol on the journey whilst he was driving. DC Baguena believed there was a smell of alcohol from DC McCann, but considered it

was not her place to raise it during the journey. Officer A did smell alcohol but attributed this to the clothes DC McCann was wearing – despite these being the fresh clothes he had changed into.

84. On arrival at the Station DCs Fielden and Baguena went back to their desks, and DC McCann went to his locker.

85. As to events which took place at Islington Police Station, accounts begin to diverge.

86. Officer A's account involves him coming across PC Baguena by chance at a tea/ coffee station where they got talking and Officer A read a physical expression on PC Baguena's face as indicating she wanted to talk about DC McCann in private. This led him into taking her to a side room in which she said to him that she had smelt a "strong" smell of alcohol from DC McCann whilst in the car and she considered he was intoxicated and presented a risk if he was dealing face to face with the public or driving a police vehicle. This is apparently the first time the issue of DC McCann's intoxication is expressly raised.

87. PC Baguena's account is significantly different. She did not just happen to speak to Officer A but was called into a side office after Officer A physically indicated with a nod of his head he wanted to speak to her privately. When in the room, in response to being asked whether she had smelt alcohol on DC McCann, she stated that she had, but had described the smell of alcohol from DC McCann in the car as "faint", and did not raise any concern about him dealing with the public or driving a car.

88. Officer A stated he wanted to ask the other members of the team before talking to DC McCann.

89. From the discernable timeline, he went to speak to Inspector Mann, who recorded Officer A informing him at around 10:50. Officer A explained the situation with DC McCann being suspected of being intoxicated, and Inspector Mann explained the process to test DC McCann and authorised the breathalyser test.

90. It appears Officer A then took DC Fielden into a meeting room, where he asked him if he had noticed DC McCann being intoxicated. DC Fielden stated he had not noticed any signs of intoxication from DC McCann. At this point Officer A told DC Fielden to wait in the room while DC McCann was being brought in for testing.

91. DC Fielden had gone back to his desk on arrival at the police station, and considered this interaction occurred shortly after their return.

92. While these events had occurred, DC McCann recounted going to his locker. He then went and sat at a desk opposite DC Katana. He was reminded by DC Baguena to book on and told the time they had arrived at the station - 10:00. DC McCann signed in on CARMS, an electronic record entered by means of a computer entry, at 10:25. By this time he was feeling the effect of the alcohol, viz a headache and dry mouth. He asked to speak to DC Katana and they moved away from their desks. He said to her that he felt unwell and thought he should not be at work. He asked if she had seen Officer A. She replied that she had not seen him.

93. DC McCann then decided to wait for Officer A's return. He did not message or call Officer A, and in hindsight accepted he could have done.

94. When Officer A came to DC McCann, he told him to follow him. DC McCann says he tried to speak to Officer A as they walked to the meeting room, but Officer A replied that he should wait.

95. DC McCann recounted being taken into the same meeting room where DC Fielden was waiting. Officer A immediately upon entering told him he was being tested for alcohol and left the room. DC Fielden gave evidence that DC McCann was visibly worried and upset and said words to the effect "I think I will fail that" whilst left in the room with DC Fielden.

96. Officer A returned with Inspector Mann who explained the test procedure and asked the standard questions as shown on the body worn footage. The footage shows DC McCann, Inspector Mann, and Officer A in the room. DC McCann took the test

twice. On the first fail DC McCann slapped the table in apparent frustration and distress.

97. Inspector Mann's account is that once the test results were downloaded by Officer A, they showed two readings with the lowest being 50 micrograms.

98. Officer A recalls then seeking to give DC McCann access to a Federation Rep and arranging his transport home.

99. DC Fielden remained in the room and only left whilst DC McCann consulted with the Federation representative. DC McCann also spoke with his father.

100. DC McCann was then transported home by two officers, including DC Katana.

101. When asked why he did not speak to DC McCann before taking him into the room for testing, Officer A answered he wanted to speak to the other attending officers first to get their accounts.

Credibility

102. The Panel had the opportunity to assess all the witnesses who gave live evidence and their responses to questions. DC Baguena gave evidence remotely by online link, but the Panel were equally able to form an impression of her.

103. The Panel considered DC McCann an honest and truthful witness. He was open with the Panel and accepting of the mistakes he had made.

104. Inspector Mann and DC Fielden came across also as honest and truthful witnesses.

105. DC Baguena came across as a predominantly reliable witness.

106. The Panel were not impressed by Officer A. They found his account evasive in places and irrational in others. At times the Panel considered Officer A gave unclear or generic answers, in order to avoid any blame or criticism of his actions.

Determinations

Facts

107. The Panel found the following facts proven on the balance of probabilities.

108. DC McCann had been excessively drinking when out with friends on the night of the 30 October 2025. His alcohol levels at 11:20 on 1 November give an indication of how heavily he had been drinking as he not only exceeded the limit for being fit for duty, i.e. no more than 13 micrograms, but also the legal driving limit of 35 micrograms, failing the test by producing an output of 50 micrograms.

109. DC McCann knew he was set to be on duty at 07:00 on 1 November 2025 and failed to report for duty, or notify any supervising officer that he would not be reporting for duty, at 07:00.

110. Officer A tried to contact DC McCann and raised a welfare check tasking. It was Officer A's decision to conduct the welfare check personally, take two other officers and consciously chose those officers as the most senior ones on the team. The Panel were not convinced by his rationale for taking two other officers, on a small team and a busy shift. No other welfare concerns for DC McCann were cited other than his non-attendance, and the CAD states there were no issues flagged. Officer A's partial reliance on the experience of a different officer at a different time, dealing with an individual who appeared to present quite different risk factors to DC McCann, was irrational.

111. The Panel accept DC McCann was still asleep when the attending officers arrived and had woken up just before he appeared at the door. The Panel can see how in the circumstances it would be unusual and stressful to see three colleagues, including a supervising officer, from one's team at one's address.

112. The Panel have no reason to doubt DC McCann's honesty at the door when speaking to Officer A and his colleagues. It is believable that DC McCann may not have had time to process whether he was still intoxicated. The Panel consider even a non-intoxicated officer in a similar situation would have been alarmed.

113. The Panel can see that the actions and decisions of Officer A escalated the situation for no apparent good reason. The fact that all the interactions before the attending officers returned to their vehicle took 6 minutes in total provide strong support for DC McCann's account of what was said, and his perception of the interaction; in particular, the attitude and tone of Officer A . The Panel consider it is more likely than not that Officer A was brisk, had little time to consider DC McCann's welfare, showed his annoyance; and importantly, if he did not give DC McCann the instruction to get into the car ready within 10 minutes, certainly created an atmosphere in which it was reasonable for DC McCann to interpret it as a formal instruction.

114. The Panel do consider that in interpreting Officer A's words as an instruction and complying with that instruction (real or perceived), DC McCann had effectively put himself on duty.

115. An officer by his actions can put himself on duty without the need to formally book on to CARMS. The fact Officer A did not consider DC McCann to "technically" be on duty on the car journey, or DC Baguena's view that it was necessary to book on via CARMS, bears little weight with the Panel.

116. The Panel consider DC McCann had not formed a belief he was intoxicated so as not to be fit for duty whilst at his home address.

117. DC McCann was rushed into complying and had little time to consider his position. The Panel accept the atmosphere in the car either was or felt awkward to DC McCann.

118. DC Fielden and Officer A either smelt no alcohol coming off DC McCann or did not attribute it to his intoxication. On this point the Panel found Officer A's reasoning irrational i.e. that the smell came from the clothes which McCann had just changed into.

119. It is unclear why the possibility of alcohol appears to have been ignored for the entire journey to Islington Station.

120. The Panel find there is no evidence that whilst on the car journey, DC McCann formed the belief he was or may have been unfit for duty due to intoxication.

121. On arrival at Islington Police Station McCann went to the lockers to retrieve some of his possessions for work.

122. Of the officers A, Baguena and Fielden, and their accounts of bilateral interactions with Officer A; the accounts of officers Baguena and Fielden are considered to be more credible. The Panel believes Officer A instigated those conversations, and certainly the one with DC Baguena.

123. The Panel consider in the interaction between Officer A and DC Baguena there is at least a misinterpretation of the conversation. For the purposes of these proceedings the Panel puts it no higher than that. The Panel notes the low threshold by which a "with cause" breathalyser test can be justified. It is clear DC Baguena did detect the smell of alcohol from DC McCann – irrespective of whether it was strong or faint. The Panel make no determination as to whether DC Baguena went on to suggest the risk of McCann driving a police vehicle or engaging with the public whilst intoxicated was raised by her or not.

124. At this stage Officer A then went to speak to Inspector Mann, and because of the circumstances of McCann being actively in the station and on duty the intoxication process inevitably began with little opportunity to reflect or consider the best course of action. The Panel note that under the SMT-SOP Officer A was of

sufficient rank to authorise the test, he did not require the authorisation of Inspector Mann.

125. After this, Officer A spoke to DC Fielden and then went to fetch McCann into the meeting room.

126. In the intervening period between Officer A speaking to DC Baguena and bringing McCann into the meeting room to be tested the Panel determine the following. DC McCann arrived in the open plan office space and sat opposite DC Katana and behind or close to DC Baguena. When he initially arrived at his desk he did not speak to DC Katana and was prompted to login for duty on CARMS with the time they arrived at the station being 10:00 by DC Baguena. The CARMS log shows McCann logging onto duty at 10:25.

127. It is at this stage that DC McCann mentioned doubts about his fitness to be at work and began to consider talking to Officer A. This is corroborated by DC Katana.

128. Officer A would have been the appropriate and obvious senior officer for DC McCann to speak to. At this time he was not in the office. The Panel consider the period of realisation and being approached by Officer A to come into the meeting room and be tested represents approximately 30 minutes.

129. The Panel consider there could have been actions taken by DC McCann during this time to message or speak to Officer A. He accepts he could have done more rather than just wait. Although desirable, the Panel only have to consider if his actions were reasonable in waiting for Officer A to return.

130. Once Officer A did return to the office space and approached DC McCann to follow him to the meeting room, the Panel consider the opportunity was not there for DC McCann to explain how he felt to Officer A. Based on Officer A's previous approach to managing the situation we accept he was short and to the point with DC McCann. Also unknown to DC McCann, the process had been started towards an inevitable conclusion that he would be tested.

131. Once in the meeting room and only in the presence of DC Fielden, the Panel accept DC McCann made a statement about failing the breathalyser which shows his awareness and belief about his fitness for duty had fully formed.

132. The Panel see no issue with the account of the testing process provided by Inspector Mann and recorded on body worn footage. The test was appropriately applied and the testing level before the Panel is a "fail" measuring 50 micrograms, when the pass is anything below 13 micrograms. This was a significantly high level of alcohol still in McCann's system.

Reg. 30 particulars

133. Of the six particulars under the allegation (see para. 4 above) the Panel consider all are proven and amount to a breach of the Duties and Responsibilities standard of professional behaviour.

134. DC McCann accepts particulars P1 to P5 are admitted.

135. Officers have a clear responsibility not to make themselves unfit due to intoxication, this includes acts done off-duty. DC McCann only finished drinking at approximately 00:00 and remained so intoxicated at 11:20 that he was still substantially over the 13 microgram limit nearly 4 ½ hours *after* he was due to be on duty.

136. It was his responsibility to report for duty, and he was aware of this duty when he became so intoxicated that he was unable to be ready and available at 07:00 or to inform a supervising officer or HR of his unavailability. With at least a 1 hour commute and going to bed at 01:00, as well as the level of intoxication it was unrealistic to believe he would be ready and available at 07:00. This shows a clear failure of diligence.

137. The intoxication was his own and DC McCann made no attempt to place the blame on anyone else.

138. Additionally, he failed in his diligence to inform Officer A about being unfit for duty as soon as practicable. DC McCann did not become aware of the level of his intoxication until he was at the police station. Even though he placed himself on duty when he entered the car outside his home, the circumstances of Officer A's interactions with DC McCann and the stress he experienced on the journey to the police station meant the Panel consider he lacked the required belief. This only crystallised once he had arrived at Islington Police Station and after he had logged onto CARMS. Waiting for around 30 minutes for Officer A to return was not acting as soon as practicably. He could have privately messaged or called Officer A.

139. On P6 and knowingly reporting for duty when he was unfit to do so, the Panel consider he had lacked the necessary diligence by placing himself on duty when responding to an instruction by Officer A at McCann's home to get ready and join the attending officers in the car. This only crystallised once he had arrived at Islington Police Station and after he had logged onto CARMS. The actions and atmosphere created by the handling of the situation by Officer A does not absolve DC McCann from the obligation to perform his duties and responsibilities in a diligent manner.

140. The Panel then examined harm, mitigation around the conduct and aggravating circumstances to further assess the seriousness and whether the breach would amount to misconduct or gross misconduct.

141. The Panel determined particulars P1, P3, P5 and P6 do not reach the threshold as to amount to either misconduct or gross misconduct. The Panel have borne in mind the minimum sanction for misconduct would be a written warning. In all these instances the Panel cannot see this being a suitable sanction for consideration, and so the threshold is not met. For completeness, the Panel did not consider the breaches individually or collectively could justify dismissal and amount to gross misconduct.

142. The failure to present himself at 07:00 or inform a supervisor about his absence was due to his voluntary intoxication, but this was a single instance in a 9 year career. Both are mistakes fit within the definition for reflective practice as one-offs that did not reflect a pattern of concerning behaviour by DC McCann, and the duration was limited to one shift.

143. The Panel did take into account the aggravating factor of the lack of one officer placing his team at 80% capacity on a busy day. The Panel consider the decision to divert a further 60% of the team's capacity to the welfare check lies with Officer A alone.

144. On not informing Officer A and reporting for duty, the Panel took into account the handling of the situation by Officer A which escalated the issues. Officer A's actions directly led to DC McCann placing himself on duty, being present at the police station and signing in on CARMS.

145. The Panel also noted that the harm was limited to a 30 minute window when DC McCann was at his desk. No evidence of him undertaking public facing duties has been shown and the Panel believe his account that he quickly realised he had to inform a supervisor (in this case Officer A) he could not remain at work.

146. Although highly intoxicated and taking into account the reputational impact on public confidence, the Panel consider the overall seriousness of the conduct does not warrant consideration of a written warning let alone dismissal.

147. The same was not determined for being unfit for duty at 07:00 and failing to ensure he was fit for duty (particulars P2 and P4). There is minimal mitigation around the conduct from consuming alcohol due to the relief DC McCann felt over the news of his mother's health which had been a source of stress.

148. The intoxication was voluntary and the levels at 11:20 were astounding and would have been even higher at 07:00. DC McCann's conduct therefore fell far below that of a reasonable and competent officer. On this basis the Panel considered

a written warning was within the range of justifiable sanctions but not dismissal, hence misconduct was found proven.

Outcome decision

149. The Panel heard submissions from both counsel, DC McCann's HR record and a significant number of character references.

150. His clean HR record, significant service and glowing character references showed DC McCann to be a conscientious, professional, and usually diligent officer who was seen as a credit and asset by his colleagues. This conduct was cast as a mistake, albeit one serious enough to amount to misconduct.

151. Personal mitigation holds limited weight compared to the purposes of the police disciplinary process; but has greater weight in findings of misconduct compared to virtually no weight attached to cases of gross misconduct.

152. The Panel started at the lowest sanction being a written warning and concluded this was a suitable and proper sanction to address the conduct.

153. For the remaining allegations where no misconduct or gross misconduct was proven reflective practice was felt to have little benefit considering the remorse and insight DC McCann showed during the hearing.

Conclusion

154. The Panel determine the facts as above and that for P1, P3, P5 and P6 of the Reg. 30 there is no finding of misconduct or gross misconduct. For P2 and P4 there is a finding of misconduct and imposing of the sanction: a written warning.

Alan Tribe
Chair
October 2026