

IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020:-

BEFORE:

Miss C Harrington, Mr I Christie and Detective Superintendent H Rance

**PC M THYBUCCUS**

[The numbers appearing within square brackets refer to pages within the agreed bundle.]

**Introduction**

- 1 The Panel is referred to a Regulation 30 Notice in respect of PC Thybuccus and allegations that the Officer's conduct amounted to gross misconduct.
- 2 In particular the Regulation 30 Notice states as follows,

*'On the 3<sup>rd</sup> and 5<sup>th</sup> November 2021, whilst driving a police minivan as a "Basic Driver" you:*

1. *Made unauthorised use of the safety equipment, namely flashing lights, and the siren.*
2. *Drove at excessive speed.*

*By acting in the way described above:*

*Discreditable Conduct*

*You brought discredit on the Police Service and undermined public confidence in the Metropolitan Police.*

*Orders and Instructions*

*You failed to abide by Police Regulations.*

*Based on the information available at this time the conduct described above, if proven or admitted, has been assessed as amounting to: Gross misconduct, conduct so serious as to justify dismissal.'*

- 3 The Panel has been referred to a bundle comprising 171 pages, a Regulation 31 response, a short clip of body worn footage, a bundle of character evidence

and a recording of the Officer's interview. In addition we received an opening note from Mr Rose, Counsel for the Appropriate Authority and two further emails (dated 16 September 2021 and 7 December 2021 from Inspector Hutton-Baber), which were added to the documentary evidence, as provided by Mr Ponte, Counsel for the Officer. Throughout this hearing, Mr Rose and Mr Ponte have represented the Appropriate Authority and the Officer respectively.

- 4 On Wednesday 15 May 2024, following an opening of the case by Mr Rose, the Panel heard oral evidence from Mr Reid (a former Police Constable and a student probationer with the Street Duties team at the material time) and PS Ryan, (PC Thybuccus' manager). In agreement with the parties, Mr Reid's evidence was heard via a videolink and PS Ryan's evidence was given in person. Yesterday, 16 May 2024, the Panel heard oral evidence from PC Thybuccus. During that session, the bodyworn footage was viewed again. The Panel then heard detailed closing submissions from both Counsel.
- 5 In essence, the Appropriate Authority refers to the Regulation 30 Notice and contends that PC Thybuccus' conduct amounts to a breach of the standards of Discreditable Conduct and Orders and Instructions.
- 6 PC Thybuccus accepts the entirety of the conduct referred to within the Notice. He accepts that on both 3<sup>rd</sup> and 5<sup>th</sup> November 2021, whilst driving the police minivan, he made unauthorised use of the safety equipment, namely flashing lights and the siren, and that he drove at excessive speed. He further accepts that this conduct breaches the two standards identified. He contends that the breach is to the level of misconduct and denies that his conduct amounts to gross misconduct.
- 7 The Panel is first required to consider the facts of the case and to make its findings of fact. The Panel has reminded itself that the burden of proof is on the Appropriate Authority and the standard of proof is the balance of probabilities, namely what is more likely than not.

## **The Facts**

- 8 In considering the facts, the Panel has carefully reviewed the entirety of the evidence presented to us.
- 9 By way of background, PC Thybuccus became a Special Constable in 2010 and a Police Constable in 2014. From 2019, he took on the role of Street Duties Instructor on AS BCU (Lambeth and Southwark Boroughs). It is of relevance to note the following about the role of Street Duties Instructor:
  - 9.1 The Instructor mentors probationers and oversees their completion of the OCP (Occupational Competence Portfolio). In particular, there are

12 competencies which a probationer is expected to complete over a period of approximately 8 - 10 weeks. Whilst a period of approximately 10 weeks is identified, there are options for a probationer to continue with completing the OCP for a short further number of weeks beyond this if necessary;

- 9.2 There are no targets or penalties given to an Instructor with regards to the numbers of students completing the entirety of the OCPs or the time period within which the probationers achieve their OCPs;
  - 9.3 The Probationers are at an important stage of their early Police careers when working with the Street Duties Instructors. It is the first time they are exercising their newly acquired policing skills away from the classroom and in uniform within the community;
  - 9.4 The Instructor overseeing this stage is properly to be seen as a mentor and role model to the probationers.
- 10 PC Thybuccus became a basic driver in 2015. It is agreed that this did not require the Officer to undertake any driver training. In addition to holding a civilian driving licence, the process of achieving this status was limited to an exam on the Highway Code and being provided with vehicle familiarisation, with reference to the Police vehicles which could be driven by a basic driver.
  - 11 It is agreed by the parties, and found as a fact by this Panel, that as a basic driver PC Thybuccus was only permitted to use blue lights and audio warning (commonly referred to as 'blues and twos') in order to stop or pull over a vehicle.
  - 12 Beyond a basic police driver, the levels of driver within the Service include a response driver and an advanced driver. Both of these roles require attendance, and the successful completion of, a rigorous training course – three weeks in duration for the role of a response driver and a further four weeks for an advanced driver.
  - 13 The Panel accepted the evidence it heard, again as agreed by the parties, that the training for a response driver includes focused training on hazard perception, driving at speed and driving different types of vehicles.
  - 14 As already stated, PC Thybuccus became a basic driver in 2015. Whilst on duty on 17 July 2016 he was driving in the Walworth Road. A colleague reported his misuse of blue lights to the Professional Standards Unit ('PSU') and, in due course, he was required to attend a misconduct meeting with T/CI McGarry. At that meeting, on 17 July 2017, PC Thybuccus was given a formal warning. This disciplinary sanction was given following a determination that the Officer had driven in a manner that, as a basic driver, he was not entitled to do.

- 15 Four months later, on 24 November 2017, a concern was raised about PC Thybuccus' use of lights and sirens when driving a police van. An investigation into the matter was started but not completed due to a procedural error. The Panel entirely accepts both the fact that no further action was taken against the Officer at this time and that the Officer was fully aware that, at least for a short time, his driving as a Police Officer was again under scrutiny.
- 16 In 2021, PC Thybuccus asked to go on the response driver course. In the event, he was not allocated a place. This was a question of limited resource and places available on the relevant course rather than any issue with the Officer. Further in 2021, the Street Duties team was moved from Walworth Road to Peckham Police Station. Shortly after arriving at Peckham, PS Ryan was posted to the team. The detailed working arrangements of the Street Duties Teams were referred to in the additional email of 16 September 2021.
- 17 Shortly after joining the team, PS Ryan became aware of a broad practice of basic drivers failing to drive in accordance with their classification and, in particular, using the blues and twos. In order to address this, PS Ryan organised for PSU to attend in October 2021 to carry out training on the issues and to show a video presentation. PC Thybuccus wasn't required to view the training video because he had already watched it. However, as accepted by PC Thybuccus in his oral evidence, he was spoken to by PS Ryan at the time, together with PC Beechey and PC Bunsell. Whilst the meeting was entirely cordial, PS Ryan emphasised the importance of following the rules which applied to being a basic driver and not to use the blues and twos. PS Ryan also expressly told the officers that if they failed to conduct themselves in this way, their police licence would be removed and the matter would be referred to PSU in order for disciplinary action to be considered.
- 18 It was very shortly after this discussion and entirely contrary to the instructions given by PS Ryan that, on 3 and 5 November 2021, PC Thybuccus drove in the ways set out in the Regulation 30 Notice.

19 In particular,

**3 November 2021:**

Journey one

19.1 Multiple uses of blue lights and sirens [see paragraphs 4.2.3, 4.2.7, 4.2.10, 4.2.13 and 4.2.18 of pages 116-118]

Journey two

19.2 Multiple uses of blue lights and sirens and excessive speed [see paragraph 4.3.7, 4.3.11, 4.3.14, 4.3.17 pages 119-120];

Journey four

19.3 Multiple uses of blue lights and sirens and excessive speed [paragraphs 4.5.3, 4.5.4, 4.5.5, 4.5.8 page 122];

Journey five

19.4 Use of blue lights [paragraph 4.6.2 page 123]

Journey seven

19.5 Multiple use of blue lights and excessive speed [paragraphs 4.8.1 - 4.8.6].

**5 November 2021:**

19.6 Between 17.05 and 17.06 hours, the vehicle illuminated blue lights and there was a short burst of the two tone warning system.

19.7 Between 19.04 and 19.05 hours, the blue lights were illuminated three times and the vehicle reached a speed of 46.5 mph [91-93].

20 The Panel did not hear detailed evidence from the Officer in respect of each part of the various relevant journeys made on 3 and 5 November 2021 and, for example, particular justifications for driving at a certain speed or for using blues and twos. Rather, PC Thybuccus expressly accepted that there was no justification for driving in the manner he did on these days.

21 For the avoidance of doubt, whilst there was some evidence given by the Officer about his activation of lights and a bull horn on the journey to London Bridge station, the Panel was entirely satisfied that his explanation did not adequately answer to his actions on that journey or, as he accepts, justify his breaching of the restrictions imposed on a basic driver. The Panel find as a fact that there were no circumstances which required him to use his lights to progress through red traffic signals, his lights to alert colleagues to his arrival at the scene and the use of the bull horn.

22 The Panel then proceeded to consider three further matters raised during the hearing and addressed by Counsel in their closing submissions:

23 Firstly, the Panel has carefully considered the entirety of the evidence relevant to Mr Reid's interactions with PC Thybuccus. Having heard oral evidence from both Mr Reid and PS Ryan, the Panel entirely accepts that Mr Reid reported to PS Ryan that he did not feel safe being placed with PC Thybuccus but he did not provide PS Ryan with further details.

24 Upon careful consideration the Panel is also satisfied, it is more likely than not, that prior to this discussion between PS Ryan and Mr Reid, Mr Reid had spoken to PC Thybuccus about how he was driving on more than one occasion over the period of approximately one month. In reaching this conclusion the Panel referred to the detail provided by Mr Reid in both his written statement from June 2022 and in his oral evidence to this Panel. In

particular, the Panel accepted the account given by Mr Reid of his discussion with PC Thybuccus in which the Officer replied, 'I can be whatever level you want me to be' and Mr Reid responded with reminding the Officer that he was a basic level driver. In accepting his evidence, the Panel noted Mr Reid's good level of recall of the relevant matters including the language used, location and those present. This contrasted with PC Thybuccus who, in relation to many of the pertinent matters including the journeys on the two relevant days, was unable to recall many important details although he flatly denied conversations with Mr Reid. Further, the Panel took into account the factual context namely, that Mr Reid was entirely new to policing whereas PC Thybuccus was an experienced instructor who was part of a culture of driving outside of the basic level restrictions. Accordingly, and taking into account the fact that Mr Reid is no longer in the Service, the Panel was satisfied that it would have been of note to Mr Reid that PC Thybuccus was driving in this manner and that there is no reason for him not to provide straightforward and honest evidence to the Panel.

- 25 The Panel also accepts that it is more likely than not than when Mr Reid discussed PC Thybuccus' driving with him, that PC Thybuccus referred to his seniority and greater experience in response.
- 26 Secondly, reference has been made to PC Thybuccus's contention that he felt under pressure in the performance of his role and it was this that led him to drive in the manner identified in the Regulation 30 Notice. During the course of the hearing, it has been clarified that it was PC Thybuccus who put himself under pressure rather than any pressure being exerted by PS Ryan or any other colleague. The Panel carefully considered this issue in the context of the evidence from the Officer and from PS Ryan, who we were entirely satisfied was a witness of truth. We find as a fact that the role of Instructor did not require PC Thybuccus to drive in the manner he did. As emphasised by PS Ryan, it was important for the probationers to be introduced to the realities of practical policing in a low level and measured way rather than with the expectation that high speed journeys in police vehicles was a typical way of attending at scenes and achieving their OCPs. The Panel was satisfied that PC Thybuccus was entirely misguided in his view that he needed to make strenuous attempts to be first at the scene and his repeated driving in the manner already described showed the extent of his poor judgment and, as he accepted, his complete failure to think about those around him.
- 26 Finally, the Panel has accepted the submission that the manner of PC Thybuccus' driving, as admitted to, was inherently dangerous. He drove too fast, through red traffic signals and used blues and twos. The Panel has not found it necessary or appropriate to proceed beyond this finding to a consideration of further allegations made in the course of evidence, for example, as to driving in pursuit of cyclists.

## **Breach of the Standards**

- 27 Turning to the Regulation 30 Notice and the allegations contained therein, the Appropriate Authority refers to the Standards of Discreditable Conduct and Orders and Instructions. The Panel has carefully considered these standards as relied upon within the Regulation 30 Notice and whether the conduct of PC Thybuccus amounted to a breach of those standards.
- 28 The standard of Discreditable Conduct requires police to behave in a manner which does not discredit the police service or undermine public confidence in the police service.
- 29 The standard of Orders and Instructions requires Police Officers to carry out lawful orders and instructions and to abide by Police Regulations, policies and lawful orders.
- 30 The Panel is satisfied that by driving in contravention of his status as a basic driver, in contravention of the policy setting out the limitations imposed on basic drivers and contrary to the express instruction given by PS Ryan, PC Thybuccus has breached both the standard of Discreditable Conduct and the standard of Orders and Instructions. The Officer behaved in a manner which discredits the police service and undermines public confidence in the police service. He accepts this.
- 31 Having found a breach of the standards of Discreditable Conduct and Orders and Instructions, the Panel has considered whether the breach amounts to gross misconduct – gross misconduct is defined in the Regulations as meaning a breach of the standards of professional behaviour so serious as to justify dismissal.
- 32 When deliberating, the Panel has reminded itself of the need to protect public confidence in and the reputation of the police service, the need to maintain high professional standards and the need to protect the public and officers and staff by preventing similar misconduct in the future.
- 33 The Panel has carefully considered the circumstances of the case and the breaches found. The Panel was particularly concerned by the following matters:
- 33.1 The Officer drove in an inherently dangerous way whilst with other officers, without thought about their safety (as he expressly accepted) or that of the public;
- 33.2 He has breached multiple aspects of the basic driver classification on multiple occasions including: driving in excess of the speed limit, through red traffic lights and using the blues and twos. In essence he

was without Police exemptions and acted contrary to road traffic laws which, in broad terms, he is tasked with enforcing;

33.3 The Officer acted in this way in the context of having received a formal disciplinary sanction for similar conduct some years before and following a recent talk with PS Ryan, during which it was expressly stated that care should be taken to drive in accordance with the classification of a basic driver;

33.4 The Officer was also rightly to be expected to set a good example and act appropriately as a role model to the probationers. In oral evidence, when addressing his relationship with Mr Reid, PC Thybuccus said words to the effect of,

*'I would ask him to take leadership to show newer students how things were to be done..'*

Of course what PC Thybuccus expected from Mr Reid was also rightly to be expected from PC Thybuccus. He was expected to take leadership and to show the students how things were to be done. He failed in this duty.

35 For these reasons, the Panel was entirely satisfied that the misconduct was properly to be categorised as gross misconduct.

### **Outcome**

36 The Panel has given consideration to the appropriate sanction in this case, following on from a finding that the standards of policing, namely Discreditable Conduct and Orders and Instructions, have been breached and the breaches amount to gross misconduct. The Panel was provided with a copy of PC Thybuccus' service history and character evidence. We also heard oral submissions from both Counsel.

37 The Panel again considered the full detail of this case and the entirety of the factual context. We have referred to the latest version of The College of Policing Guidance on outcomes in police misconduct proceedings ('the guidance'). We have also considered the three-stage, structured approach in Fuglers LLP v SRA [2014] EWHC 179 (Admin) when assessing outcome, as set out at paragraph 28.

*"There are three stages to the approach which should be adopted by a Solicitors Disciplinary Tribunal in determining sanction. The first stage is to assess the seriousness of the misconduct. The second stage is to keep in mind the purpose for which sanctions are imposed by such a tribunal. The third stage is to choose the sanction which most appropriately fulfils that*



*purpose for the seriousness of the conduct in question.”*

- 38 This three-stage approach is reflected in the guidance. As to the first stage (seriousness), the Guidance directs attention to four central reference points, as stated in Fuglers at paragraph 29 and now repeated in the Guidance at part 4:
- a. The officer’s culpability for the misconduct;
  - b. The harm caused by the misconduct;
  - c. The existence of any aggravating factors;
  - d. The existence of any mitigating factors.
- 39 As to the second stage, the purpose of the police conduct regime is threefold:
- a. maintain public confidence in and the reputation of the police service;
  - b. uphold high standards in policing and deter misconduct;
  - c. protect the public.”
- 40 As set out at part 4 - “The most important purpose of imposing disciplinary sanctions is to maintain public confidence in and the reputation of the policing profession as a whole. This dual objective must take precedence over the specific impact that the sanction has on the individual whose misconduct is being sanctioned”.
- 41 As to the third stage, choosing the sanction which most appropriately fulfils that purpose, we have reminded ourselves that the object of misconduct is not to punish Police Officers and that the Panel should consider less severe outcomes before more severe outcomes, choosing the least severe outcome which adequately addresses the issues identified while protecting the public interest.
- 42 We have considered the Officer’s culpability for the misconduct, the harm caused by the misconduct, the existence of any aggravating factors and the existence of any mitigating factors. Culpability denotes an officer’s blameworthiness or responsibility for their actions. The more culpable the behaviour in question, the more serious the misconduct and the more severe the likely outcome. In its consideration of both the aggravating and mitigating factors in this case, the Panel has also taken care not to ‘double count’ any particular feature.
- 43 The Panel assessed the culpability in this case as being high, taking into account the following factors:
- a. that PC Thybuccus is an experienced officer with a number of years service;

b. that he had received a previous warning for similar conduct and had been reminded of the need to adhere to his basic driver classification and the consequences of not doing so shortly before he committed the gross misconduct set out above;

c. that he held a position of some trust and responsibility being a Street Duties Instructor.

- 44 The Panel considered carefully the harm caused by PC Thybuccus' actions. The principle harm in this case is reputational harm. The public co-operate with enabling police vehicles to proceed on the understanding that this is necessary. By driving in the manner he did, PC Thybuccus was requiring this co-operation from other road users without good reason.
- 45 The Panel determined that the aggravating features in this case were the repeated nature of PC Thybuccus' conduct. The conduct was on two separate days and during multiple journeys. We have taken care not to double count other features including the previous warning, the Officer's leadership role and the deliberate nature of the conduct.
- 46 With regards to mitigation, the Panel acknowledges that PC Thybuccus has accepted the allegations against him and has expressed genuine remorse.
- 47 We understand the limited role of personal mitigation in these proceedings, as detailed by Counsel in their submissions. Mr Ponte has told us, and we accept, that the Officer has made changes to his life since these incidents including engaging with his Muslim faith. We have also read the entirety of the character evidence produced and note its supportive contents.
- 48 We have considered the entirety of the sanctions open to us beginning with the least serious to the most serious. The Appropriate Authority's submission is that the Officer should be dismissed.
- 49 The Panel is entirely satisfied that the principles of maintaining public confidence in and the reputation of the Service, to uphold high standards in policing, to deter misconduct and protect the public, cannot be served by any lesser sanction than the Officer being dismissed.
- 50 This is a matter of some regret for the Panel, particularly taking into account that the gross misconduct arises from one aspect of the Officer's policing and that he evidently has a variety of skills and strengths, most particularly language skills and a desire to be proactive in communities. However, on balance, the level of misconduct found and the features of that misconduct were simply incompatible with PC Thybuccus' continued service as a police officer.