

Notice of Outcome of Police Misconduct Hearing (Regulation 43 Police (Conduct) Regulations 2024)

Chair Persons Account

Officer Concerned: DC Maria McInerney

Date of Hearing: 29th October 2024

Name of person Chairing: Mr M Simmons

Names of Panel members: Ms A Gill, Ms K McArthur

Legally Qualified Advisor: Ms H Norris

The Decisions of the Hearing

Allegations

On or about 10th February 2023, you conducted intelligence checks on PNC and/or IIP and/or CRIMINT in respect of a male known as Mr A.

You did not access the information in the proper course of police duties and/or you did not have a legitimate or authorized policing purpose for the accessing the information.

In accessing confidential information without a proper policing purpose, you behaved in a manner which discredits the police service and/or undermines public confidence in it.

Accordingly, you have breached the Standards of Professional Behaviour pertaining to

- a) Discreditable Conduct.
- b) Confidentiality

Background

This Misconduct Hearing was convened to decide whether the officer who is the subject of the allegations, DC McInerney, breached the Standards of Professional Behaviour in that on 10 February 2023, she conducted checks on a member of the public without a policing purpose. If proven, the alleged conduct was said to amount to a breach of the standards relating to confidentiality and discreditable conduct and to be so serious as to justify dismissal and hence to amount to gross misconduct.

DC McInerney admitted in the Regulation 31 notice that she conducted the checks when she should not have done, that she thereby breached the Standards and that her conduct amounted to gross misconduct.

This matter was case managed at a Misconduct Pre-Hearing on 5 September 2024. The Misconduct Hearing was set down for one day on 29 October 2024, which was considered adequate to complete the Misconduct Hearing, and was listed to the convenience of DC McInerney and her legal representative but not to the convenience of the AA's Counsel. The venue was subsequently confirmed as the IDRC.

The hearing was considered suitable to be heard in public. However, it was agreed that a cipher of "Mr A" would be used in any reported reference to the person about whom the searches were conducted.

The panel had before it a 69-page Misconduct Hearing bundle and the Appropriate Authority's opening note sent in on 22 October 2024 in accordance with the directions given at the Pre-Hearing. There was also a 196-page bundle containing the Report into the Bichard Inquiry and a 1,623-page bundle of Policies and Training Material, all of which the panel had seen in advance. We had an eight-page bundle of character evidence.

Ms Adams having opened the case by reference to her opening note (which was taken as read), the panel deliberated briefly before concluding that the conduct amounted to gross misconduct. We heard evidence from DC McInerney via a series of panel questions, there being no questions from the Appropriate Authority. For a brief period, the hearing moved to private session while we heard evidence about a vulnerable person known to DC McInerney (to whom we refer in this decision as "B"). We then heard submissions on her behalf before deliberating as to sanction. We took several short adjournments during the morning and released the parties for a longer period during our deliberations. Finally, the panel gave its outcome as to sanction in summary.

Findings of Fact

DC McInerney has been a police officer with the MPS since 2008. She and her partner, whom she met in February 2010, have a mutual friend, Mr A. They have known Mr A since around 2019 and would meet at the pub as part of a larger group.

Their socialising with Mr A ceased after DC McInerney became concerned at the amount of attention Mr A was paying to her, including sending a voicemail telling her he loved her, telling people falsely that they were in a relationship and trying to kiss her. He told people, again falsely, that DC McInerney's partner was abusive towards her and disclosed to DC McInerney intimate details of his own marriage. Mr A admitted he felt he was getting too close to DC McInerney. On one occasion after DC McInerney had blocked Mr A on WhatsApp, he rang her from a landline and asked her for professional advice. He told her that the police were at his address in connection with the downloading of indecent images of children. DC McInerney immediately hung up.

When DC McInerney started reporting to her Line Manager in June 2022, she informed him about the issues with Mr A. At that time, her Line Manager advised her to report him to the local police force. DC McInerney did not do so then, because the behaviour had abated somewhat, but agreed that if there were further incidents, she would. She avoided using places

where she had seen Mr A, such as a supermarket, where they had sometimes met in the car park.

On 5 February 2023, DC McNerney was surprised to encounter Mr A in an isolated spot while she was out walking her dogs. Mr A asked DC McNerney why she was not talking to him. She told him to go away and the following day, emailed her Line Manager, telling him about this incident and expressing concerns about Mr A's behaviour. On his advice, she reported the encounter to her local police force. They subsequently told her that they had spoken to Mr A and given him words of advice, but that no further action would be taken.

DC McNerney was concerned for her own safety and that of B, being aware from something Mr A had said that he knew B and could identify B's vehicle; he had commented about its location. DC McNerney had warned B about people approaching them but did not want to worry B. DC McNerney was afraid that Mr A might retaliate against her via B when he found out about the report, knowing the carpark location with access via an alleyway added to DC McNerney's anxiety. She decided to use the police indices to see if Mr A was known to police, so that she could potentially anticipate any reaction that he might make to her report, and to establish if there was intelligence to suggest that Mr A was violent and/or had been involved in domestic abuse. Over the space of a few minutes, on 10 February 2023, she accessed CRIMINT, PNC and IIP, searching for Mr A.

On 20 February 2023, DC McNerney received a random CRIMINT audit request in relation to the search she had done. She forwarded the audit request to her Line Manager the following day and made an admission to having performed the search. She also admitted having done the searches on the PNC and IIP. Her Line Manager reported the matter to the Directorate of Professional Standards.

In accessing the systems, DC McNerney accepts she was warned that unauthorised use or misuse thereof is prohibited and constitutes an offence under the Computer Misuse Act 1990 and/or the Data Protection Act. She was also warned on logging in and accepted that access to the information contained in the systems is on a *"strict need to know"* basis meaning *"that it should be accessed for a policing purpose and made available to those with a legitimate reason to view the information"*. She accepted the conditions of use which include an acknowledgment that *"Any misuse... of Met information and/or ICT systems may result in... disciplinary proceedings being taken against you, which may lead to summary dismissal..."*. She again agreed in making the IIP search that browsing other than for a legitimate policing purpose is not permitted under any circumstances, and that she was not permitted to use the system for private or personal purposes.

It has not been suggested that DC McNerney has received inadequate training or was unaware of her responsibilities and obligations when conducting the unauthorised system checks. Her training record shows that she has attended courses in relation to the use of the systems starting in 2008 and thereafter with what appear to be relevant refreshers.

There are no disputed facts.

Findings as to Outcome

Discreditable Conduct

The Code of Ethics in place at the time explains that this standard requires officers to behave in a manner, whether on or off duty, which does not bring discredit on the police service or undermine public confidence in policing. In particular, they must, therefore, always think about how a member of the public may regard their behaviour and ask themselves whether a particular decision, action or omission might result in members of the public losing trust and confidence in the policing profession.

Examples of meeting this standard include when an officer avoids any activities – work-related or otherwise – that may bring the police service into disrepute.

We find that DC McInerney is in breach of this standard, as she has admitted.

Confidentiality

The Code of Ethics in this regard sets out the standard as follows: “I will treat information with respect, and access or disclose it only in the proper course of my duties”. According to the standard, officers must be familiar with and abide by the data protection principles of the Data Protection Act 1998, they must access police-held information for a legitimate or authorised policing purpose only and they must understand that by accessing personal data without authorisation they could be committing a criminal offence, regardless of whether they then disclose that personal data.

We find that DC McInerney is in breach of this standard, as she has admitted.

Gross misconduct is a breach of standards so serious that dismissal would be justified. These are objective standards and the standard of proof is the balance of probabilities. We are mindful that the purpose of the police misconduct regime is threefold: to maintain public confidence in and the reputation of the police service, to uphold high standards in policing and deter misconduct and protect the public. We are further reminded that our function is not punitive.

We consider that a properly informed member of the public would consider the objective standards to have been breached as set out above in relation to the standards. The breaches have the potential to undermine the service in the eyes of a reasonable member of the public.

We return to culpability, harm caused and the aggravating and mitigating features of the case in our findings on sanction, below. For these purposes it suffices to say that there was very little, if any, actual harm done as a result of DC McInerney’s conduct. Further, while there was culpability, there was considerable mitigation.

We find that DC McInerney accessed the three indices in succession over a very short period of time on one occasion. We find that she did so in a state of panic. She did not repeat the conduct subsequently and she gave what we find to be a compelling reason in her statement about the reason why she perceived the need to do it, taking into account her concerns about Mr A. It was something relevant to her, having a significant impact, not mere idle curiosity. She reported the audit (and the searches that it had not flagged) to her Line Manager fairly close to when the

incident happened, thereby admitting to the conduct at the earliest opportunity once it was discovered. Since 20 February 2023, DC McInerney's behaviour cannot be faulted. She has been very open and upfront and has fully engaged in the process.

Nonetheless, the misconduct was serious. There is training for officers on usage and the purposes for which such searches may be made. Clear warnings come up before the main login and before logging into IIP or into PNC via Connect. DC McInerney looked at three separate databases and would have had to override the warnings in each case to do so. Had it not been for the audit, the panel is not persuaded that she would have confessed to the searches.

It is also significant that the conduct to which DC McInerney has admitted was potentially criminal in nature. She was not prosecuted because that was not considered to be in the public interest. It does however mark the seriousness of the conduct. DC McInerney admits, and we so find, that the breaches in question do amount to gross misconduct.

We have had regard to culpability, harm caused and the aggravating and mitigating features of the case. We have taken into account the submissions made on DC McInerney's behalf as to outcome.

Culpability

The College of Policing guidance indicates that "culpability" denotes an officer's blameworthiness or responsibility for their actions: the more culpable the conduct, the more serious it is and the more severe the likely outcome. Intentional, deliberate, targeted or planned conduct will generally be more culpable than conduct which has unintended consequences.

The guidance sets out some categories of conduct which should be considered especially serious. This includes the category "data protection and misuse". The guidance says:

"The misuse of police computer systems ... is a particular concern for the police service. Police computer and manual systems hold a significant amount of information about members of the public. ...[I]t is both a public expectation and a legal requirement that information obtained during the course of policing duties should be treated in strictest confidence, properly protected and only used for legitimate policing purposes".

It continues: *"Personal reasons for accessing confidential police information such as general curiosity or a desire to check on criminal activity near an officer's home, are not acceptable. ... Accessing confidential police information without a legitimate policing purpose is an abuse of an officer's position and may merit dismissal in serious cases"*. It distinguishes such cases from the accidental accessing of such information.

Factors supporting a more serious outcome include:

- that information accessed is a secret nature or high classification
- onward disclosure of the information
- malicious motive for accessing or disclosing the information

- personal gain
- actual or potential compromise to a police investigation
- breaches of personal privacy where the data is very sensitive
- attempts to cover up improper accessing of data
- altering information held by the police.

The panel must also take into account proven conduct that is criminal in nature when considering culpability, even where there has been no conviction (as in this case, where there has been no prosecution).

Harm

The Appropriate Authority does not allege that any particular individual has been caused harm. However, the college of policing guidance notes that harm does not need to have been suffered by a defined individual or group to undermine public confidence. The panel must take into account a situation where an officer commits an act which would harm public confidence if the circumstances were known to the public, even if it does not result in harm to individual victims.

Where no actual harm has resulted, the risks must be considered of the likelihood of harm occurring and the gravity of harm that could have resulted, how such behaviour would have been perceived by the public whether or not it was known at the time and the scale and depth of local or national concern if applicable.

Aggravating factors

Aggravating factors are those which tend to worsen the circumstances of the case either in relation to culpability or to harm. The list of such features, which the panel has been careful not to “double count” in the sense of taking into account the same feature of the misconduct as more than one aggravating factor, includes:

- premeditation, planning, targeting or taking deliberate or predatory steps
- malign intent including personal advantage
- abuse of trust, position, powers or authority
- deliberate or gratuitous violence or damage to property
- concealing wrongdoing in question and/or attempting to blame others
- regular, repeated or sustained behaviour over a period of time
- continuing behaviour after the officer realised or should have realised that it was improper
- serious physical or psychological impact on the victim
- vulnerability of the victim
- multiple victims
- additional degradation
- any element of unlawful discrimination
- significant deviation from instructions, whether an order, force policy or national guidance
- failure to raise concerns or seek advice from a colleague or senior officer
- scale or depth of local or national concern about a particular issue

- multiple proven allegations and/or breaches of the standards of professional behaviour

Mitigating Factors

By contrast, mitigating factors are those which tend to reduce the seriousness of the misconduct. The list of such features includes:

- where the misconduct is confined to a single episode or brief duration
- limited involvement by the officer in the misconduct
- any element of provocation, threat or disturbance which may have affected the officer's judgement
- acting in good faith i.e. with a genuine belief that there was a legitimate purpose but getting it wrong
- mental ill health, disability, medical condition or stress which may have affected the officer's ability to cope with the circumstances in question
- the officer being required to act outside the level of experience and/or without appropriate training or supervision
- making open admissions at an early stage
- taking early actions to reduce the harm caused
- showing evidence of genuine remorse, insight and/or accepting responsibility for their actions.

Assessing culpability, harm, aggravating and mitigating factors

In referring the matter to the DPS, it is noteworthy that a senior Officer made the following comments: *"Although I submit this matter ... as [gross misconduct] due to the nature of the breach, I note the real and current mitigation in these circumstances. ... the officer is not believed to have any previous history in terms of standard[s] breaches and is the victim in a live investigation of stalking and harassment and therefore welfare and support of staff as victims of VAWG should be considered"*.

In response an Acting Inspector endorsed the decision to refer it as gross misconduct for reasons which in summary were: the catalyst for the searches (the encounter with Mr A) occurred on 5 February 2023, five days before DC McInerney conducted the searches; she then delayed ten days before reporting the breaches to her Line Manager and only did so when "caught out" by the audit on 20 February; she had received thorough training; she checked more than one system. She had not, in his view, acted impulsively while not in her right state of mind or come forward of her own volition to confess to what she had done.

The panel's findings as to culpability, harm and the aggravating and mitigating factors are as follows:

We find that this was not intentional, deliberate, targeted or planned conduct. It was a single incident, born of panic and triggered when DC McInerney realised that her reporting of Mr A to the local force could have repercussions for her and/or for B. None of the factors supporting

a more serious outcome, as set out at 5.2.3 above, is present in this case.

We found in assessing misconduct/gross misconduct that little or no actual harm was done. The harm lies in the potential damage to public confidence if the conduct was made known. We note that matters of data protection are very much in the public eye. Members of the public have a right to be confident that information kept on police systems will be kept confidential, without the risk of it being used for personal reasons. It is extremely important that that confidence is upheld. Nonetheless, we accept the submission that a member of the public would be assumed to be fully informed of all the circumstances of a particular matter. As was submitted, context, in this case, is everything. Part of that context is the understandable public concern about VAWG (Violence against Women and Girls).

None of the aggravating factors set out in the list was present here save that DC McInerney abused her position as a police officer to make the checks (we note it is not an exhaustive list but no other factor was relied on).

So far as mitigation is concerned, we accept that this was a brief incident arising from legitimate concerns on DC McInerney's part. It is not disputed that she had been the victim of unpleasant and potentially criminal behaviour over a long period, something she had been encouraged to report as such when she raised it with her line manager. We understand why DC McInerney delayed in the reporting, since we accept her evidence that she thought/hoped Mr A's behaviour had abated. She had put in place steps which she reasonably thought would minimise their interaction.

We accept that it may have been difficult for DC McInerney to see herself in the light of "victim", when her role for many years has been to be the person who investigates and deals with such behaviour. We emphasise that as the victim of harassing behaviour, she had no cause for embarrassment or humiliation, but we accept that she felt both. There was also the particular vulnerability of B. It is not necessary for us to elaborate on that further, but we are satisfied it was a significant factor in DC McInerney's conduct. We have no doubt the circumstances taken as a whole took a significant mental toll and may well have affected her ability to cope.

We further accept that DC McInerney made open admissions at an early stage and that she has shown genuine remorse from the time she notified her manager and throughout. She has accepted responsibility for her actions. We are satisfied she has insight into the seriousness of her conduct and the reason for the misconduct proceedings. We are confident she has learned a lesson from the process and would not repeat the conduct again if the situation arose once more.

Personal Mitigation

The panel has also considered DC McInerney's personal mitigation and her disciplinary record.

Of particular note is the following: overall, DC McInerney has a record of good performance and sound character and she has continued to deliver even against the background of the fear

of losing her job. Specifically:

A Detective Sergeant has been line managing DC McInerney for more than eight months. He observes that this process has “consumed” her, yet he has also recognised that she continues to perform despite all the stress she has been under.

Another Detective Sergeant was DC McInerney’s supervisor for two years. He describes her as consistently hardworking, conscientious, reliable, open and honest.

A statement by a lay friend of DC McInerney describes her as honest, dedicated and stable.

There is also a personal statement by DC McInerney’s partner, which we have taken into account.

We note that DC McInerney has two commendations, one for her work with Operation Withern in 2011 and one for leadership, professionalism and determination in the arrest of a violent individual responsible for a linked series of sex attacks across the Borough of Hillingdon, awarded by the Borough Commander in April 2017.

We have borne in mind that we may take into account factors such as the officer showing remorse or acting out of character, though with the reminder that the weight of personal mitigation is necessarily limited where serious misconduct has been proven. We remind ourselves that if the misconduct is so serious that nothing less than dismissal will be sufficient to maintain public confidence, personal mitigation will not justify a lesser sanction. The interests of the profession and the protection of the public are more important than those of the individual officer.

Outcome

In summary, this was a one-off gross error of judgment by DC McInerney. Without the specific context of this matter, the outcome might well have been very different. But we ask ourselves whether the reasonable and fully-informed member of the public would expect us to demonstrate compassion and even more so given the importance of addressing Violence Against Women & Girls. We believe that they would. It would be unjust to dismiss someone who is themselves a victim, for conduct that lies at the lower end of the scale, notwithstanding the scale is one of levels of gross misconduct.

We have said that the fact the conduct amounts to gross misconduct and has a potential criminal aspect marks it as serious. We consider that we should strike a balance between giving the appropriate signal to other police officers and the public of that seriousness with empathy for the situation in which DC McInerney found herself. In all the circumstances it is our decision to impose a final written warning for three years.