

# **Notice of Outcome of Police Misconduct Hearing (Regulation 43 Police (Conduct) Regulations 2020)**

## **Officer Concerned**

Officer X

## **Date of Hearing**

11<sup>th</sup> – 13<sup>th</sup> November 2024

## **Name of Person Chairing**

Ms Morag Rea

## **Names of Panel Members**

Superintendent Martin Rolston

Mr Gaon Hart

## **Allegations**

- 1) Officer X was alleged to have made generalised comments about ‘black guys’ at a VAWG meeting.
- 2) Officer X was alleged to have told PC A that he would be promoted on the basis of a ‘tick box’ exercise by reference to his ethnicity

It was further alleged that this conduct amounted to breaches of:

- *Standard Nine; “Discreditable Conduct” states that: “Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.”*
- *Standard Three; Equality and Diversity, states that “Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly”.*

## **Preliminary Rulings**

An application was made at the second prehearing meeting seeking anonymity for the complainant officer, by the AA. The application was not opposed. After hearing submissions from the AA, it was determined that while derogations from open justice are exceptional, require clear justification and should be made only when strictly necessary to secure the proper administration of justice, for the reasons submitted in respect of PC A's welfare, the application was granted.

Following a change in circumstances in respect of Officer X, an application was made at a prehearing meeting to hold the hearing in private, for there to be anonymisation of the subject officer and that there should be no publication of these proceedings. Following submissions, and considering the HOG at 11.75 which requires that *'the welfare of the officer should also be considered, particularly where there may be a severe adverse effect on the officer's health or there are dangers or threats to the officer that might arise from being named publicly'* it was determined that the hearing would be held in public but that the Officer should be anonymised to secure the administration of justice for reasons of their health and welfare. Publication of both the hearing and determination should be anonymised.

## **Background**

Officer X is a serving officer having joined the force in 2018 and at the time of the incidents alleged was stationed in the Volent Crime Task Force within the Metropolitan Police Service. She joined that team in January 2021 and her colleague PC A had joined a couple of months before that.

The incidents alleged took place on two dates, one unspecified, but thought to be in the late summer of 2022 and the other on the 7 December 2022.

In the first incident, during what is variously described as a VAWG discussion or meeting, PC A recalls in his statement dated 10 March 2023 that one of the topics of conversation related to the situation where a lone female is attacked by a male at night. PC A said he did not join in with any of the conversation but was clearly able to hear the comments made by colleagues. As part of the discussion, PC X was heard by PC A to say "imagine if I am walking by myself at night and a big black boy attacks me." PC A could not remember the date of the meeting or conversation or who else was there. PC A said he talked to a colleague DC Ly about it and decided to take it no further.

The second incident occurred when PC A, PC X and five other officers went to MADS café in Sutton after a planned police operation earlier in the morning. Whilst at breakfast, the subject of the recent sergeants' exam came up and was a point of discussions amongst the group.

PC A said that he hoped and was confident that his promotion board had gone well. Officer X made a comment which PC A recalls as having been "*the only reason he would pass is to fill the Met's quota*".

PC A submitted a complaint following that discussion via email to his line managers explaining what he recalled Officer X had said to him. PC A expressed his upset and disappointment to be the subject of racial discrimination and commented that this detracted from the hard work ethnic officers had to put in to make the same headway as their colleagues. PC A said that Officer X had apologised to him but that he did not think the apology was genuine. PC A did not refer to the earlier incident at this time.

Officer X was told about the allegation the following day by DI Tom Jones and her reaction was that she was very upset. She explained that what she had said was that it "was a tick box exercise" and what she had meant by the comment, was that he would get the promotion as he had ticked off all the requirements for it, and that she had said it to be encouraging not hurtful.

An investigation was undertaken and Officer X served with a Reg 17 Notice in respect of allegation 2 on the 25 January 2023.

Following that, as a result of PC A reporting the incident which is the subject matter of allegation 1(a) to PSD on or around 10th March, Officer X was served with a further Regulation 17 Notice which included both allegations on 14 June 2023.

Officer X denied the allegations, the first in full in that she denied that it had ever happened. The second allegation was accepted in so far as she had said to PC A that his promotion was a "tick box exercise" but denied that this was anything to do with his ethnicity.

## **Findings on Fact**

The Panel has taken into consideration that the burden is on the Appropriate Authority ("AA") to prove on the balance of probabilities that Officer X behaved in the manner that is alleged and that in doing so, she breached the Standards of Professional Behaviour and that the manner of the breach is of

such a nature or degree that it amounts to misconduct or gross misconduct. The Panel has reminded itself that it need only make findings on those facts which it believes are relevant and material to the allegation.

The hearing was conducted in person in public. The Officer was represented by Amina Graham. The Appropriate Authority ('AA') was represented by James Halliday.

The Panel heard oral evidence from PS A, DC Harriette, PC Gascoigne, PSI Butler (PM)

PC Cox, TDC Wojkowski as well as from the Officer. DC Ly's statement was presented as agreed. The Panel also took into account the agreed redacted bundle of 137 electronic pages, which included the Officer's regulation 31 Response. The Panel was also provided with a bundle of character references of 12 pages including one from Officer X's sister, three from former colleagues, two of whom managed her and one whom she had encouraged when he joined the force.

The Panel gave due consideration to the Standards of Professional Behaviour as set out in the Police (Conduct) Regulations 2020 and the relevant Home Office Guidance. In addition, the Panel reminded itself that the overriding concern is fairness, and that the purpose of professional disciplinary proceedings is not, primarily punishment, but to protect the public and to maintain the high standards and good reputation of the Police Service. The allegations in this case are serious and the Panel bore in mind the Police Race Action Plan 2022, and specifically the important commitment that:

*'Reports of racist behaviour or action by officers and staff will be thoroughly investigated and will be dealt with swiftly and robustly, with appropriate support for victims and those reporting racist behaviours. The police service will not only deal with racism and discrimination where it occurs, but will be proactive in preventing it from happening in the first place'*

The Panel considered each allegation in turn as they are particularised. The Panel noted that that the allegation in 1(a) referred to generalisations about "black guys" rather than specific wording. This reflected the different formulations of the words alleged throughout the evidence.

The Panel considered whether the evidence submitted in respect of 1(a) was sufficient to discharge the burden of proof on the AA. The fact that it could not

be particularised to a specific date or time was not fatal to the allegation. However, although PC A told DC Ly about the first incident at the time, the Panel noted that it had not been reported to his line manager at the time or to either PC A's line manager or to the PSD when they investigated the incident on the 7 December. The first reference to it appears in a statement dated 10 March 2023, three months after the Reg 17 Notice was served in respect of allegation 1(b). The Panel found it difficult to understand that an officer who had overheard that kind of racist comment would not refer to it when making a complaint about racist attitudes or unconscious bias in respect of the same colleague three months or so later. The Panel considered that PC A's proper reference in his email complaint about the derogatory reference to his promotion on 7 December 2022 that: "*my main worry is if Officer X feels comfortable to say something like this to me, could it have wider implications to how she does her day job when dealing with other members of the community.*" would directly apply to the previous comment she is alleged to have made at 1(a).

It concluded therefore on a balance of probability that PC A would have been likely to refer to that incident in his early complaint in respect of the second incident. Additionally, in oral evidence PC A said that he had a good working relationship with Officer X prior to the second incident. The Panel found this surprising considering Officer X had made allegedly made such a heinous racist comment only three months earlier. The Panel had the statement of DC Ly dated 15 June 2023, who did not attend to give oral evidence which stated that PC A had told her about the first incident in a conversation which she thought had occurred in the Autumn of 2022. The detail of what DC Ly recalled of the conversation differs markedly from PC A's evidence, even allowing for the passage of time and the effect which that has on memory. DC Ly's statement refers to a conversation about single crewed patrols rather than a conversation about VAWG. Most significantly, DC Ly stated that PC A had told her that he had challenged Officer X about her comment. The Panel noted that her statement was hearsay. PC A said that he did not challenge Officer X.

DC Ly stated that PC A said he wouldn't report it because he couldn't remember the other officer present and that it would be a 'he said / she said' situation. PC A in his statement of the 28 June 2023 articulates three reasons for not reporting this incident, none of which was the lack of corroboration. PC A refers to an accumulation of micro aggressions leading him to make the complaint, which is readily understood, but is difficult to reconcile with only

raising the first incident in time, three months after the initial complaint in respect of the second allegation.

In August 2023 following an enquiry by the PSD, about whether there were any witnesses to the comment, PC A stated that he now believed a colleague DC Wojowski may have either witnessed it or that he had discussed it with him afterwards. This witness had no recollection of either the incident or a discussion thereafter.

The Panel also considered PC A's evidence about his friendly professional relationship with Officer X. He had stated in response to a Panel question that he had no issue with her and that as professionals they got on well, they did discuss their personal lives to the extent that they discussed buying a house and their relationships, but they did not see each other outside work. Given that friendly professional relationship and the culture on the Team to challenge and speak out about inappropriate language or behaviour (the 'Not in my Met' campaign) the Panel struggled to see how he or any other officer present at the time had not challenged their colleague if she had expressed that racist view.

The Panel found that taking into account its findings in respect of:

- The timing of the complaint
- The paucity of detail surrounding the incident
- The factual discrepancies in DC Ly's statement which diminished its corroborative nature
- The hearsay nature of DC Ly's statement
- The lack of reaction to the alleged racist words given the good working relationship between PC A and Officer X.
- The different phraseology alleged to have been used by Officer X
- The lack of other corroborative witness evidence

that allegation 1(a) could not be made out on the balance of probabilities.

The Panel went on to consider allegation 1(b) and noted that the words stated in the allegation are accepted by Officer X. All the witnesses present, who had overheard the conversation, confirmed that those were the words that Officer X had said to PC A, that his promotion was a 'tick box' exercise.

The Panel noted that PC A did not agree that Officer X had said the words which formed the allegation. He had heard a different formulation “*the only reason he would pass is to fill the Met’s quota*”. The Panel considered that if PC A had misheard the word “quota” then the Panel thought it would be an unambiguously racist comment and that there would be little potential for an alternative interpretation by the witnesses and Officer X. The Panel was grateful to PC A for having the courage to escalate such a comment.

The Panel considered the objective facts and contemporaneous documents from which to determine what was said, and the intention of Officer X.

The Panel considered that the record closest in time to the incident was a WhatsApp message sent at 10:21 to DC Ly in which PC A said that he was tempted to make a complaint against Officer X because she had said “I’m only going to pass cos I tick the quota”

DC Ly queried whether this was about Officer X herself, or about PC A and on learning it was about PC A said that it was racist and a horrible thing to say. The Panel took into account that neither PC A nor DC Ly indicated that this was the second incident or part of a course of racist language and attitude, displayed by Officer X referred to in those WhatsApp messages.

The Panel considered the evidence of those sitting closest to Officer X and PC A during the conversation in Mads café on 7 December 2022. DC Harriette was sitting closest to both officers, next to Officer X and opposite PC A. He gave evidence of both the context of the comment and intention behind it, from his perspective. He said that they were all joking about PC A saying that he already knew he had passed his Sergeant’s Board. He said that he had made jokes about nepotism and corruption and had googled a definition of nepotism for Officer X as she did not know what that meant. He said that she had made the comment about tick box as a direct result of him saying that PC A must have friends in high places for him to know the outcome before other candidates. He stated categorically that he did not find the words racist, but the Panel is cognisant that it is the impact on PC A that is significant, rather than his colleagues whether they are officers of colour or not.

Officer X said in oral evidence that what she meant by the phrase was that PCA had worked hard and had it on good authority that he had passed the exam, and he had completed the board, so he had ticked all those boxes and he will be passed to be a sergeant. Officer X said that she apologised immediately, but only because she was concerned that the comment may have been misinterpreted to imply that his promotion was a formality because he had ‘the

nod' that he had passed. Both PC Cox and PC Gascoigne heard Officer X's comment and her apology.

This evidence accorded with the first explanation provided by Officer X when she was first told of the allegation on the morning of the 8 December by DI Tom Jones, as recorded in his email to the PSD immediately after that meeting.

Officer X's evidence is that she apologised because she had said something which might have hurt or undermined PC A, that his promotion was a formality because it was a foregone conclusion. The Panel accepted her evidence that she had worried about overnight on the basis that she had undermined all the hard work he had done in passing the exam, having a tutor and working with a mentor and that she had wanted to be supportive. The Panel considered she had been aware that she had put him down in front of colleagues and demeaned his efforts and wanted to put that right. Her comment had caused offence whereas those made by DC Harriette about nepotism and corruption had not. The Panel considered that in a noisy environment where there were lots of conversations going on, and particularly where PC A was sensitive and nervous about whether he would pass the board, that PC A could have misheard what Officer X said. The Panel accepted the evidence of all those present on the 7 December, that if they had heard a racist comment, they would have challenged it immediately as the culture of the team was to speak up.

The Panel also took into account that Officer X was consistent in her explanation from the first. The Panel also considered her credibility and propensity in the light of her good character. The Panel determined that it would be highly unusual if Officer X was racially biased and held subconscious racist views, that this would not have been evident to her colleagues both at the VCTF over the two years she had worked there or during her previous postings undertaking sensitive work in diverse communities.

The Panel recognised how upset PC A had felt at Officer A's comment and accepted that it had been hurtful and undermining of his efforts but concluded on the balance of probabilities that it was not racist. The Panel concluded that her intention though, was to put him down for his confidence that he had passed the board, rather than from a racist motivation.

The Panel therefore concluded that where the facts were not found proved, there was no breach of the Standards of Professional Behaviour as alleged and neither misconduct nor gross misconduct.



The Panel considered that Officer X could reflect on how over confidence in a colleague could be disguising insecurity, in this case about passing the Sergeant's Assessment process and consider the impact of what she says, and how it might be interpreted.

### **Finding on Outcome**

There was no finding on outcome as the facts were found to be not proven