

Misconduct Hearing of Detective Constable Nicholas Strachan held 24th – 25th October 2024

Allegations

On the 31st of March 2023 while on duty at the Criminal Central Court made a comment in the presence of colleagues to the effect of ‘who’s the barrister that looks like a Taliban Leader’ and you breached the standards of Equality and Diversity, Authority, Respect and Courtesy and Discreditable Conduct.

This was found proven only in respect of the Standards of Authority, Respect and Courtesy and Discreditable Conduct.

Background

On the 31st of March 2023 while on duty at the Criminal Central Court as a Family Liaison Officer in a long, multi defendant murder trial, the Officer made a comment in the presence of three colleagues while eating lunch in their private designated room on the lower ground floor, to the effect of ‘Who’s the barrister that looks like a Taliban Leader?’

With regard to the Allegations as contained in the Regulation 30 Notice; the Officer in his Regulation 31 response admits the fact of the allegation but denies that he breached the Standards of Professional Behaviour.

Burden and Standard of Proof

The Panel has taken into consideration that the burden is on the Appropriate Authority (“AA”) to prove on the balance of probabilities that the Officer behaved in the manner that is alleged and that in doing so, he 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 need only make findings on those facts which it believes are relevant and material to the allegation.

The hearing was conducted in person and in public. The Officer was represented by his Federation Representative Mr Joseph Farrell. The Appropriate Authority (‘AA’) was represented by Ms Kirsty Day. The Panel heard oral evidence from DS Hanford; DC Starr and DC Malone as well as from the Officer. The Panel also took into account the agreed redacted bundle of 58 electronic pages, which included the Officer’s regulation 31 Response.

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 to the Officer and the AA, 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.

Findings of Fact

1. The Panel accepts the officer's admission that he stated words to the effect of 'Who's the barrister that looks like a Taliban Leader?' and the Panel finds on the balance of probabilities the following:
2. The Officer spoke these words while on a lunch break in a private police designated room with three fellow officers.
3. No other persons were present in the room and the Officer's words were not overheard by any other person.
4. The words were unprompted and said during a general conversation about the ongoing murder trial for which the Officer acted as the Family Liaison Officer.
5. The Officer stereotyped the appearance of 'Mr A' about whom the words were spoken, with a member of the Taliban, due to Mr A's Middle Eastern appearance with long dark hair and a long dark beard and who was dressed in the wig and gown of a senior barrister (K.C.) The Officer knew his words had a negative connotation having regard to the political views held by and the practices of the Taliban.
6. The Officer knew his fellow officers DC Starr and DC Malone were shocked and offended by his words because they immediately rebuked him for having said them. The Officer subsequently became aware that DS Hanford had also found his words shocking and inappropriate.
7. Mr A did not know what had been said about him until many months later, when he was informed of them as part of the preparation for the misconduct hearing.
8. The words spoken by the Officer were disrespectful, discourteous and demonstrated a lack of self-control on the part of the Officer, who is an experienced officer and said while in the company of two much younger and less experienced officers. The Panel finds it is proven that the Officer breached the Standard of Authority, Respect and Courtesy.
9. However, the AA brought forward no evidence that the Officer treated Mr A in a direct discriminatory manner. The Panel finds none of the officers gave evidence that their opinion of Mr A had changed, or that they or any other person treated Mr A differently or unfavourably because of the words spoken by the Officer, although Mr A exhibited protected ethnic characteristics because of his ethnicity and the use of the word Taliban could be used

as a racial term. Therefore, the Panel finds the breach of the Standard of Equality and Diversity is not proven.

10. The Panel finds the words used by the Officer did not reflect favourably on the Police Service and served to further undermine public confidence and the diverse communities it serves. The Panel finds the breach of the Standard of Discreditable Conduct is proven.

Findings on Gross Misconduct/Misconduct

In considering whether the proven breaches of the Standards of Authority, Respect and Courtesy and Discreditable Conduct amounted to cumulatively to misconduct or gross misconduct, the Panel assessed the seriousness of the breaches by reference to:

- (i) Culpability
- (ii) The harm caused
- (iii) Any aggravating factors
- (iv) Any mitigating factors

Culpability

The Panel finds the Officer was solely responsible for the offensive words spoken and were spoken deliberately and unprovoked.

The harm caused

The Panel finds the words spoken were offensive and disrespectful and are likely to undermine confidence in the ability of the Police Service to provide a fair, respectful and effective service to all members of the diverse communities it serves. The Panel finds the Officer should have known about the ongoing lack of public confidence in the Police Service and should have been diligent in ensuring he said nothing that could further damage its reputation.

Any aggravating factors

The Panel finds the proven breaches were aggravated by the fact they were spoken by an experienced officer while on duty in a role that required sensitivity and respect and who not only should have known, but did in fact know the words were offensive and disrespectful.

Any mitigating factors

The Panel finds mitigating factors as the words spoken were not planned or premeditated and were a 'single event' and not repeated. The Officer has no previous disciplinary matters on his records and spoke the words in a private setting and only when no members of the public were present or could overhear them. The Officer apologised to his fellow officers for any offence he had caused and indicated a wish to apologise to Mr A although was discouraged from doing so. He has shown that he has reflected on the matter and is remorseful.

Therefore, taking all of the matters above into consideration, the Panel finds the culpability of the Officer, the harm caused by the proven breaches and the aggravating factors outweigh any of those that mitigate it. Therefore the Panel finds the proven breaches taken cumulatively, amount to gross misconduct.

Findings on Outcome

The College of Policing Guidance on Outcomes in Police Misconduct Proceedings is a document that clearly sets out the stages of the decision-making process. The Panel has applied those Guidelines and that process to our decision-making today and the process set out in *Fuglers LLP V SRA (2014) EWHC*. The first stage of deciding on the outcome is to assess the seriousness of the conduct. The second stage is to keep in mind the purpose of the police misconduct regime. This has three elements: to maintain public confidence in and the reputation of the police service, to uphold high standards and deter misconduct, and to protect the public.

The police misconduct regime is not designed to punish police officers – it is about the reputation and standing of the profession as a whole. The third stage is to choose the outcome that most appropriately fulfils the purpose, given the seriousness of the conduct in question.

The Panel also took into account the importance of following the structured approach as set out in the CoP guidance.

In assessing the seriousness of the conduct the Panel adopted its findings and assessment as detailed above.

The Panel then went on to remind itself of the purpose of police disciplinary proceedings which is to maintain public confidence in and the reputation of the police service, to uphold high standards and deter misconduct, and to protect the public.

The Panel recognises the distress that is likely to have been caused to Mr A as a result of being informed that he was the subject of the officer's comment. The panel also acknowledges the impact of the officer's comment on other colleagues who were present at the time, and shocked by what they heard.

The Panel has considered the purpose of the misconduct regime, and having had due regard to all of the circumstances, including, but not limited to the risk of undermining public confidence in the police service, the specific context in which the comment was said, and the officer's experience, previous good record and character references.

The Panel finds that it is disproportionate in all the circumstances to dismiss the officer, and that the necessary and proportionate outcome is a final written warning for a period of three years.