

IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020

CONCERNING

MSC Ben Smith

Date of Hearing: 17 September 2024 – 20 September 2024

LQC: Mr Maurice Cohen

IPM: Ms Sadhana Patel

Assessor: Det Supt Pete Thackray

Mr Josh Bibby represented the Appropriate Authority (AA) and Metropolitan Special Constable Police Sergeant Ben Smith (MSC Smith) was represented by PC Conner O'Shea, Police Federation Representative.

The panel were provided with a bundle of papers comprising 148 pages which included the regulation 30 notice; witness statements from [REDACTED]; [REDACTED] (x2); Special Inspector [REDACTED]; [REDACTED] and [REDACTED]. The bundle additionally contained the investigation report; Regulation 17 notice; CRIS printout; public order log and record of interview under caution dated 30 March 2022. The panel were provided with a defence bundle comprising letter from MSC Smith's criminal solicitors advising him that he was found not guilty in his criminal trial at Woolwich Crown Court following the Crown Prosecution Service offering no evidence in the case; Facebook messenger exchanges between MSC Smith and [REDACTED] [REDACTED] dated between 8 June 2019 and 15 February 2022; MSC Smith's P45's from Millwall Football Club; handwritten statement from [REDACTED] to [REDACTED] dated 24 April 2017 and typed statement (undated) from [REDACTED] to [REDACTED]; defence bundle of witness statements from PC [REDACTED]; PC [REDACTED]; Superintendent [REDACTED]; PS [REDACTED]; PC [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED] and emails from Inspector [REDACTED] and PC [REDACTED]. The panel received a video recording of the interview undertaken of MSC Smith. The regulation 31 notice of MSC Smith was provided. The panel were provided with 13 character references for MSC Smith. Following a direction from the Chair, the panel were provided with the hearing transcript from the Crown Court trial for [REDACTED]. At the hearing, the panel were provided with MSC Smith's CARM record and Duty Sheet for 23 April 2017.

MSC Smith indicated that he previously unsuccessfully applied to join the Metropolitan Police on 2 occasions. He subsequently qualified as an [REDACTED] [REDACTED] and worked in that capacity for 14 years. He is a Millwall Football Club (Millwall FC) fan and worked for the club part-time for 13 years during which time he was promoted to the role of stadium supervisor for the west stand. MSC Smith was appointed as a Special Constable in 2015. He was subsequently promoted to the rank of special Police Sergeant.

[REDACTED]

The allegations arise out of events which occurred during the course of a social drinks event involving employees of Millwall FC and police officers who were tasked with supervising games and events at the club. The event followed the last league game of the season. The panel heard that following the game a number of employees met in one of the hospitality lounges at the ground and started drinking. It was planned for there to be a gathering that night at Wetherspoon's in Greenwich. The panel heard differing evidence concerning whether Millwall FC made a payment to the bar making a contribution towards employee's drinks or not.

MSC Smith states, and it is not disputed, that he did not attend drinks in the lounge of the club but instead went home and changed and then travelled to Wetherspoon's by minicab. The panel has received varying evidence concerning whether MSC Smith was drinking substantial quantities of lager or alternatively Beck's Blue non-alcoholic beer. Different groups of those present appeared to have been sitting in different areas of a section of the pub with stewards sitting on stools near the bar area and at a table on the other side of the bar and police officers sitting in a different area. However, again the panel received widely discrepant evidence concerning who was sitting where and in respect of interaction and movement of individuals between the various tables.

During the course of the evening, it is alleged that there was a sexual discussion by [REDACTED], [REDACTED] and [REDACTED] and sexual assault/touching of [REDACTED] and [REDACTED] undertaken by MSC Smith. [REDACTED], who was a manager at the club, became aware of allegations in respect of events that had occurred on the evening. It is stated that he asked MSC Smith to leave the club, which he did. [REDACTED] states that neither [REDACTED] or [REDACTED] wished to take the matter further. They both made statements which remained on file. MSC Smith left the club in any event.

On 26 February 2022, MSC Smith attended Millwall FC, where he was assigned to work as a Special Constable. He encountered [REDACTED] who indicated that he had made it clear to MSC Smith that he was not to return to the ground. He went to see the match commander, Chief Inspector [REDACTED] and made him aware of previous events and MSC Smith was escorted by Inspector [REDACTED] to the Traffic Patrol Base where he was kept in a locker room for several hours, before being read an email from CI [REDACTED] placing restrictions upon him and then being allowed to go.

The above matters were subsequently investigated and led to the present misconduct proceedings as well as the criminal prosecution referred to above.

MSC Smith is alleged to have groped [REDACTED]'s breasts. She indicates that she told him to stop touching her but he did not listen and touched her breasts again and her bottom. She was upset. [REDACTED] is alleged to have witnessed the above assault and intervened. She challenged MSC Smith and told him to stop. He is then said to have groped her breast and stroked her leg with his hand which she immediately pushed away.

MSC Smith denies all of the above. He states that [REDACTED] and [REDACTED] pinched him repeatedly on the thigh leaving marks. He pinched [REDACTED] on the inner elbow and [REDACTED] on the hip in retaliation and to make them stop. He indicates that there were inappropriate discussions of a sexual nature by some of the females present including relating to how they liked to [REDACTED]. He concedes that in response to [REDACTED] saying that she was too old to be attractive to men for sex, that he said in jest, "don't be silly [REDACTED], you are not past it, I'd give you one" which was said to be in earshot of [REDACTED] husband who was behind her and in front of others at the table.

In her first statement to [REDACTED], [REDACTED] provided a brief account of what had happened at Wetherspoon's. She indicated that MSC Smith had grabbed her boob. She told him not to do it and he then repeated it. She then spoke to a colleague, [REDACTED] for assistance. She then spoke to [REDACTED] who told her that MSC Smith had grabbed her boob twice. During this conversation, MSC Smith pinched her bottom. [REDACTED] challenged MSC Smith's behaviour whereupon he lent forwards and grabbed her boob. [REDACTED] then spoke to [REDACTED] who spoke to MSC Smith.

In her witness statement, [REDACTED] reiterated her account of having been sexually assaulted on the night. She indicated that the incident brought back memories [REDACTED]. Learning that MSC Smith had started attending the club again put her in fear and brought back memories of the assault.

[REDACTED] in her witness statement provided an account of being sexually assaulted by MSC Smith. She indicated that she was [REDACTED] years old at the time felt ashamed and embarrassed concerning the incident. She told her husband but not her children.

[REDACTED] indicates that he held the position of steward supervisor. He states that during the course of the evening at Wetherspoon's that [REDACTED] and [REDACTED] made him aware of incidents of MSC Smith sexually touching/assaulting them. They did not want to take matters further. He told MSC Smith that he needed to leave the pub and not return to Millwall FC. One handwritten record and one typed record were prepared and placed on file for [REDACTED] and [REDACTED]. On 12 February 2022, he encountered MSC Smith working at the club as a special constable. He spoke to various police officers and indicated that MSC Smith was not welcome at the club due to the previous events/allegations. He was then removed from the stadium.

[REDACTED] in her witness statement indicates that she observed MSC Smith put his hand up [REDACTED]'s top and grabbed her boob saying, "beep beep". She indicates that she heard [REDACTED] challenge him telling him not to do it. He kept doing it and on one occasion said, "not very big, not like your daughters". It is stated that MSC Smith knew [REDACTED]'s daughter as she worked at the club. She states that [REDACTED] tried to hide behind her but MSC Smith kept trying to touch her. She indicated that MSC Smith tried to grab [REDACTED]'s breasts around 15-20 times throughout the night. She intervened to tell him to stop but he retorted that she was just jealous.

Inspector [REDACTED] gives an account of being requested to accompany MSC Smith back to the police station from the club. He indicates that during the journey, MSC Smith indicated that he had had a run-in with the club and that they were

getting their own back on him. Whilst they were back at the station, in the locker room, MSC Smith stated that whilst on the “drinks do” he told a [REDACTED]-year-old lady that he would “fuck her”. He also stated that a lady pinched his leg which left him with marks.

The panel received the public order log and crime report created after police officers were advised of the allegations at the game on 12 February 2022.

MSC Smith was interviewed in connection with the allegations on 30 March 2022. The interview was undertaken voluntarily under caution. MSC Smith gave some responses during the course of the interview, denying having sexually assaulted either [REDACTED] or [REDACTED] and indicating that [REDACTED] and [REDACTED] were tipsy, acting childishly and pinched his leg leaving him with bruises.

In his interview, MSC Smith indicated that he had drunk 6-8 pints of lager. He indicated that he knew his limit and could not drink one more drink. He denied being intoxicated.

In his regulation 31 notice, MSC Smith again denied sexually touching either [REDACTED] or [REDACTED]. It was indicated that MSC Smith purchased a drink for [REDACTED] and her husband at their request. In respect of his interactions with [REDACTED], he indicates that he had said that MSC Smith was not welcome back at the club and that if he returned that, [REDACTED] would ruin his career in the MPS.

MSC Smith has submitted a defence witness statement bundle. The majority comprise witness statements from individuals who were present at Wetherspoon’s and did not witness anything untoward happening on the night or were not advised of the same. This is true of Superintendent [REDACTED] who gave evidence before the panel.

[REDACTED] indicates that he is the head of health and safety and security operations at Millwall FC. He indicates that he saw MSC Smith in a group where there was laughter and that he saw MSC Smith grab [REDACTED]’s breast. He was shocked at this. He did not know what happened after but he was aware that [REDACTED] spoke to MSC Smith. He indicated that [REDACTED] had a conversation with MSC Smith and that the atmosphere changed in the pub after these events. He recalls that MSC Smith was drinking Beck’s Blue. He indicated that he would describe MSC Smith as a funny character who would tell jokes and appeared very confident.

MSC Smith has produced an extract of Facebook messenger messages passing between him and [REDACTED] indicating that they were on extremely friendly terms and discussing children, MSC Smith’s [REDACTED] and other life events.

[REDACTED] indicates that she started working at Millwall FC in March 2019 as payroll manager and was subsequently promoted to Head of HR and Payroll. When she joined there was no filing system or anything in place to keep records. She indicated that [REDACTED] had dealt with the incident at the time; told MSC Smith to leave and requested written statements from 2 females involved. She states that any records that may have been generated by the club would have been destroyed due to the timespan. She did not know if there were any or what happened to them or

how they were destroyed. She had introduced new processes at the club. [REDACTED] suggested that she checked with [REDACTED] [REDACTED] about any previous records and any existing files on MSC Smith and he advised that all records had been destroyed and shredded.

The letter from MSC Smith's criminal solicitors indicated that the jury returned not guilty verdicts as directed by the trial judge for the following reasons.

There was evidence heard that the 2017 statements could not have been on the file when [REDACTED] [REDACTED] said that they were. This cast doubt on the credibility of all relevant witnesses that complaints were made at the time. Secondly, there was said to be a number of inconsistencies in the civilian statements including a denial that any police officers were in attendance at the drinks. Based upon these factors the prosecution reviewed their decision to prosecute the matter and decided to formally offer no evidence. This resulted in the judge directing the jury formally to return a verdict of not guilty.

Preliminary issues

Application to admit hearsay evidence.

The chair considered an application by the AA to admit hearsay evidence in respect of [REDACTED] [REDACTED], [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. The chair was advised that these witnesses were unwilling to attend and give evidence before the misconduct hearing as a result of their negative experiences giving evidence in the course of the criminal trial and the anxiety and distress this had caused to some of them. The chair allowed their testimony as given in the criminal trial to be admitted by way of transcripts with the proviso that the panel would in due course decide how much weight to attach to that evidence. However, during the hearing, it transpired that only the evidence of [REDACTED] [REDACTED] was available. Mr Bibby indicated that numerous steps had been taken to attempt to obtain the transcripts of the other 2 witnesses, including of police officers attending the premises of the transcribers but to no avail. In these circumstances, he invited the panel to proceed based upon the evidence before them.

Oral evidence

The panel heard from a number of witnesses.

Inspector [REDACTED] gave a consistent account of accompanying MSC Smith to TDP police station and of him admitting that he had jokingly indicated to [REDACTED] that she was still attractive and that he would sleep with her.

Superintendent [REDACTED] gave straightforward evidence concerning events at Wetherspoon's. She indicated her recollection of who was sitting where. Her timetable was at variance with that provided by other witnesses.

PS [REDACTED] evidence did not assist the panel. He appeared to have virtually no recollection about the evening in question other than helping a colleague search for his wedding ring.

██████████ indicated that he was diabetic and drank 8-9 pints of lager on an empty stomach. He was adamant that MSC Smith had been drinking Beck's Blue. He indicated that MSC Smith had driven to the venue whereas the officer indicated that he had used a minicab in both directions.

In respect of MSC Smith's evidence the panel noted that there were some significant discrepancies contained in the same. In his interview he indicated that he had been drinking pints of lager and that he could not drink any more without there being the risk of becoming inebriated/ill. Before the panel he maintained that he had been drinking Beck's Blue. He attempted to claim that in the interview he was providing evidence concerning what he might drink on a typical night out when he was specifically being asked about that night. He advised that he typically drank Beck's Blue in any event. He indicated that he would not have been drinking because he was on duty from 4 AM the next day as it was the London Marathon but the panel noted this was a new addition to his evidence not previously relied upon. The panel considered that he had to some extent sought to amend his evidence to fit the evidence provided by other witnesses in their witness statement post-event. The panel did not find MSC Smith's oral evidence to be particularly reliable as it was at odds with his interview and regulation 31 notice.

The panel heard submissions from both parties.

Reasons

The panel reminded itself that the burden rests with the AA and the standard of proof is the civil standard being the balance of probabilities.

The panel found that there were significant discrepancies permeating the evidence before them.

Perhaps the most concerning discrepancy, as appears to have been relied upon in the Crown Court, as being one of the matters leading to the prosecution offering no evidence and the jury returning a verdict of not guilty is the evidence of ██████████, Head of HR and Payroll at Millwall FC, who indicated that HR and filing systems were sadly lacking at the time she joined the club and that historic evidence had not been retained and beyond that ██████████ advised her that it had in fact been shredded. This is totally at odds with the witness statements that have been produced and relied upon from ██████████ and ██████████ purportedly from 2017 although in the case of ██████████ undated in any event. The panel finds that the witness statements both handwritten and typed from that date are unreliable and attaches no weight to them.

The panel notes that this is against a backdrop of being informed by witnesses including ██████████ that ██████████, who was in effect the manager of stewards at the club appeared to rule over matters with an iron fist. Mr ██████████ indicated that ██████████ attitude was very much "my way or no way". In the light of the above, the panel has significant concerns with the statement of ██████████ in his witness statement dated 15 March 2022 where he indicates that written statements were taken from ██████████ and ██████████ and placed on their files which remained sealed until the weekend of 26 February 2022 which is how he knows that the incident occurred in

April 2017 as it was noted in the records. The panel finds this evidence to be totally discrepant with the evidence of ██████████ and therefore attaches no weight to the evidence of Mr ██████████.

As a further observation, the panel notes that Mr ██████████ according to Mr ██████████ demanded "total loyalty". MSC Smith indicates that Mr ██████████ took umbrage at him prioritising his career with the MPS over his work at the club and it was in these circumstances that he resigned from the club. MSC Smith indicates that he attended the ground on numerous occasions after April 2017 as a spectator without issue. However, when he attended the ground on 26 February 2022 in his capacity as a special constable, it appears that Mr ██████████ took exception to this and subsequent events unfolded.

The panel notes significant discrepancies in other evidence before it. MSC Smith indicated in his interview under caution that he was drinking lager and that he could not risk one more drink without the risk of becoming intoxicated. Mr ██████████ however indicated that he had been drinking Beck's Blue all night. Mr ██████████ however was adamant that MSC Smith had driven to Wetherspoon's whereas MSC Smith indicated that he had taken a minicab to the venue. Additionally, Mr ██████████ indicated that despite it being a Saturday night that Wetherspoon's was not busy and he had a clear sight to the table on the other side of the bar where ██████████ and ██████████ were sitting. This is discrepant with the evidence of other witnesses including , Superintendent ██████████, who indicated, as would be expected, that the pub was busy on the night in question and that there would not have been such a clear view. The panel note that Mr ██████████ was diabetic, had drunk 8-9 pints on an empty stomach and left the pub early, returning home, as he was feeling ill. In these circumstances, the panel attaches little weight to the evidence of Mr ██████████.

In respect of ██████████ ██████████ the panel notes that he indicates that MSC Smith was drinking Beck's Blue whereas MSC Smith in his interview under caution indicated that he drank 6-8 pints of lager. In addition, the panel notes that in his witness statement he indicates that he observed MSC Smith grabbing the breast of ██████████ ██████████. However, the panel has been provided with Facebook messenger exchanges between Mr ██████████ and MSC Smith between 2019 and March 2022 indicating that they have a friendly and close relationship, which causes the panel concern, particularly in the light of its findings in respect of Mr ██████████ who was in fact Mr ██████████ manager. The panel additionally notes that ██████████ comment in his statement, that he had no recollection if MSC Smith contacted him after the incident, is directly contradicted by the substantial messages passing between them which are referred to above. In these circumstances, the panel attaches little weight to the evidence of ██████████ ██████████.

Superintendent ██████████ indicated that there were 3 tables occupied by their group and that the tables were delineated by occupation with the police officers being on one table and Millwall staff on others and that there was very little interaction between the tables. She did not observe ██████████ or ██████████ going over to the table of MSC Smith or vice versa. This appears at odds with evidence of other witnesses including MSC Smith of there being significant interaction between him and ██████████

████ and █████ █████ and of those witnesses and others. MSC Smith indicates that he overheard personal conversations of a sexual nature in relation to sexual preferences and so on. He indicates that he purchased drinks for █████ █████ and her husband. This is discrepant with the evidence of Mr █████ who indicated that there had been a whip and that █████ had control of the whip and that he and █████ were going round taking orders and buying drinks for everyone.

The panel noted discrepancies in respect of how drinks were paid for on the night. Mr █████ indicated that there was a whip and that everyone put £20 in the same and that Millwall FC had not contributed to drinks, whereas other witnesses indicated that Millwall put a credit card behind the bar which covered drinks for the first 3 hours. The panel finds the latter to be more likely and considers that many of the persons present drank significantly on the night concerned, which may well have had an impact upon behaviour and recollection.

MSC Smith gives an account of █████ █████ and █████ █████ pinching him repeatedly on the thigh irritating him and causing him bruising and to which he eventually retaliated by pinching █████ █████ on the elbow and █████ █████ on the hip and telling them to “piss off”. However, the panel notes that none of the witnesses make any reference to these matters. The panel has no reason to disbelieve these claims but finds this to be indicative of the fact that it was a lively evening fuelled by drink in a busy pub and that many events could have occurred, unobserved by others.

The panel notes discrepancies in the evidence before it concerning who was sitting at which table and where the tables were situated in relation to the bar. The panel find this to be further indicative of the confused nature of the evening and the failure of witnesses memories after a significant passage of time and then no doubt being other club social events in the interim.

The panel notes that there appears to be a significant discrepancy in that witnesses before them indicates that multiple police officers were present at the evening and indeed Superintendent █████ was present and confirms that fact and that she was sitting on a table populated by police officers, whereas it appears from the evidence given before the Crown Court that some witnesses denied that police officers were present.

In addition to the above, the panel notes that there are discrepancies in the evidence before them concerning timing on the evening. MSC Smith in his interview indicated that he stayed until the pub closed on the night in question, whereas other witnesses indicate that █████ █████ had words with him and asked him to leave and that he left early.

The panel notes that MSC Smith and some other witnesses indicate that he made an unwise comment to █████ to the effect that he would still sleep with her despite her age, with the remark being said in jest and in front of her husband and yet other witnesses who were in attendance and in the vicinity of that table do not recall hearing this remark which might be considered noteworthy. The panel find this

comment to be inappropriate, misogynistic and not befitting of someone holding the office of a special constable.

The panel note that there is a late introduction in the evidence of MSC Smith of him working a very early shift on the following day as it was the London Marathon, said to commence at 4 AM and leading to him not drinking, but that he did not raise this matter at an early stage including in his interview under caution.

The discrepancies in the evidence before the panel are significant in number and effect. The panel find that they go to the very core of the allegations in this hearing. The panel finds it extremely regrettable that core witnesses in this case did not attend in order to give evidence before them meaning that their evidence could not be tested and that the transcripts, in the case of [REDACTED] and [REDACTED], were not even available to be put before the panel for them to consider.

The panel reminds itself that the burden of proof rests with the Appropriate Authority and that the standard of that proof is the balance of probabilities.

In the light of the significant and substantial discrepancies which permeate this case, the panel are not satisfied that either Allegation 1 or Allegation 2 are found proven.

The panel has no need to go on to consider outcome.