

Before the POLICE APPEALS TRIBUNAL

PC Jack Thrumble

-v-

The Chief Constable of Hampshire

### **JUDGEMENT**

1. This Appeal arises from a Misconduct Hearing which took place between the 8<sup>th</sup> and 10<sup>th</sup> of April 2024. The Panel found the allegations proven and that the breaches amounted to Gross Misconduct. The outcome was that the Appellant was dismissed from the service.
2. This matter concerns a discussion on WhatsApp between the Appellant and two other SCs on the 16<sup>th</sup> of January 2021. The background to the discussion was that the Appellant had shared a photograph of someone who had 'liked' his profile via Tinder. The allegations before the Misconduct Panel were:

- '1. On 16th February 2021 you were a Special Constable with Dorset Police.*
- 2. On 16th February 2021 you were a member of a WhatsApp chat group consisting of yourself, REDACTED.*
- 3. On or shortly before 16th February 2021 you had received (or purported to have received) via a dating App a "like" from a third party. The photograph of that third party showed her to be a black female with braided hair or dreads/dreadlocks.*
- 4. You shared this image with REDACTED via the WhatsApp chat group. You followed up this message with a photograph of the fictional film character 'Elder Predator' (from the "Alien v Predator" science fiction films) with the comment, "Yeah naaa I'm alright thanks love."*
- 5. In response to REDACTED replying "Don't judge a book by its cover Jack. She could be a really nice person", you stated, "She could be but she's too black for me I'm not into that."*
- 6. You then stated, "If I wanted some hot chocolate in my life I would go to Costa."*

*7. Your posts as set out above were demeaning towards the third party, as they used as the basis for this comparison a physical characteristic of that third party, namely braids/dreads/dreadlocks, that are commonly associated with black women; would naturally be understood as you implying that black women with braids/dreads/dreadlocks resemble ugly non-humans.*

*8. Further or alternatively, in the context of your previous comments, the natural interpretation of your comment “she’s too black for me I’m not into that”, was that it was an assertion by you that black women are inherently less attractive than women of another ethnicity.*

*9. Further or alternatively, in the context of your previous comments, the use of the phrase “hot chocolate” was demeaning towards black women;*

*b) the natural interpretation of your comment “If I wanted some hot chocolate in my life I would go to Costa.” was that you were rejecting the idea of having a relationship with a black woman, on the grounds of her ethnicity.*

*10. Your actions as set out above were offensive and discriminatory on the grounds of race.*

*Accordingly, your actions were in breach of the Standards of Professional Behaviour for:*

- 1. Authority, Respect and Courtesy;*
- 2. Equality and Diversity; and/or*
- 3. Discreditable Conduct.’*

5. At paragraph 12 of the Grounds the Appellant submits and the Respondent accepts that:

“The panel took the view, having looked at the evidence overall, that the evidence pointed towards a lack of understanding on the part of PC Thrumble, that his actions were discriminatory. An absence of understanding has resulted in a lack of appreciation of the impact of the words used.”

6. The Appellant submits that both the findings and the outcome were unreasonable and (Grounds paragraph 61): “it is not enough to simply state that the panel considered the matters raised before it” but whether:

- a. The approach to finding and/or the finding itself, upon consideration of these matters, was outside of a range of reasonable responses.
- b. There was material unfairness in relation to the finding.
- c. The approach to outcome and/or the outcome itself, upon consideration of these

matters, was outside of a range of reasonable responses.

7. The Respondent submits overall (Response paragraph 40) that there is no “error in the decision making or reasoning identified in the Grounds of Appeal” and “no error in the structure approach to the determination of sanction”. Further the Respondent submits (Response paragraph 45) that the observations and conclusions reached by the panel were “well within the range of reasonable responses on outcome and cannot be faulted”.

## **Legal Framework**

8. The grounds of appeal that a Police Appeal Tribunal can consider are limited. The circumstances in which a police officer can appeal (Rule 4(4) of the PAT Rules 2020) are:
  - That the finding or decision to impose disciplinary action was unreasonable
  - That there is evidence that could not reasonably have been considered at the original hearing which could have materially affected the finding or decision on disciplinary action, or
  - That there was a breach of the procedures set out in the conduct regulation.....or unfairness which could have materially affected the finding or decision on disciplinary action.
9. When considering an appeal and the meaning of the word ‘unreasonable’ the task of the PAT is to review the decision taken, based on specific grounds, and determine whether the decision reached was unreasonable. A decision will be unreasonable if it is beyond the reasonable range of responses. In *R (Chief Constable of Wiltshire) v PAT and Wollard [2012] EWHC 3288 (Admin)* Wyn Williams J states (b/w paras 32 – 24) that “the issue of whether a finding or sanction was unreasonable should be determined by asking the question whether the panel in question had made a finding or imposed a sanction which was within the range of reasonable findings or sanctions upon the material before it”. See also *Chief Constable of Derbyshire Constabulary v PAT [2012] EWHC 2280*.
10. The standard to be applied has been described as lower than Wednesday unreasonableness (*R (Chief Constable of Durham v PAT & Cooper [2012] EWHC 2733 (Admin)* at 6-7) or Wednesbury unreasonableness “shorn of its technicality” (*Chief Constable of Hampshire v PAT [2012] EWHC 746 (Admin)*).

11. It is also settled that the *“The Police Appeals Tribunal is only allowed and permitted to substitute its own views once it has concluded either that the approach was unreasonable, or that the conclusions of fact were unreasonable”*; *R (The Chief Constable of Durham) v Police Appeals Tribunal [2012] EWHC 2733 (Admin)*.
12. In *R (app. of CC of Cleveland) v PAT & Rukin [2017] EWHC 1286 (Admin)*, it was stated:
- “(A) When considering whether a finding by a panel is unreasonable the PAT is not required to find it Wednesbury unreasonable as a prerequisite for overturning the decision of the panel.*  
*(B) The PAT is not entitled to substitute its own view for that of the panel unless and until it has already reached the view for example that the finding made by the panel was unreasonable or that there was another valid basis for appeal as provided by paragraphs 4(4)(b) and/or 4(4)(c) of the Rules.*  
*(C) The PAT is entitled to substitute its own view for that of the panel once it has concluded either that the approach the panel took was unreasonable or the appeal from the panel's decision is justified under grounds 4(4)(b) or 4(4)(c)*  
*(D) In other words, rule 4(4) provides a gateway for an appeal. If the appellant gets through the gateway because the PAT find that the decision of the panel was for example, unreasonable or unfair then it is open to the PAT to substitute its own views for those of the panel. Thus, once the gateway is negotiated, the PAT can deal with this matter on a clean slate basis and can make an order dealing with the appellant in any way in which he could have been dealt with by the panel whose decision is appealed.”*
13. The law in this matter has been revisited in *R (on the application of) Michel and Charnock v PAT [2022] EWHC 2711 (Admin)* in the judgement of Mrs Justice Heather Hallett DBE:

*‘Given the finality for the disciplinary proceedings if a PAT concludes that the Panel's finding of misconduct / gross misconduct was "unreasonable" it is important that the correct test is applied and that the test does not become diluted in its application because a PAT disagrees with aspects of a Panel's reasoning or feels that it would have arrived at a different conclusion if it had been sitting as the tribunal of fact’ [at 52].*

The correct approach was described as follows:

*“(i) The PAT must ask itself whether this finding was one that was within or outside of the range of reasonable findings that the Panel could have made;*

*ii) The PAT should keep in mind that the rule 4(4)(a) test is not met simply by showing a deficiency in the Panel's reasoning or a failure to consider a particular piece of evidence or similar error, if the finding of misconduct / gross misconduct was nonetheless one that the Panel could reasonably have arrived at. The question is whether that finding is unreasonable;*

*iii) The PAT will be careful not to substitute its own view as to what should have been the outcome of the charges. Whether the PAT agrees or disagrees with the Panel and whether it thinks it would have found the allegations proven if it had been hearing the disciplinary proceedings is not in point, as this in itself does not indicate that the Panel's finding was "unreasonable". In many circumstances, different and opposing views can both be reasonable; and*

*iv) The PAT should consider all of the material that was before the Panel, whether or not the Panel made express reference to it in the decision" [at 57].*

## **Private Life**

14. In this matter submissions have been made by the Appellant as to the extent to which the Misconduct Panel and the PAT should consider the legitimate expectation of privacy. The skeleton argument on behalf of the Appellant criticises the Misconduct Panel and states [paragraph 52]:

*"There was no acceptance in the panel's reasoning that unintentional discrimination may be more readily apparent off-duty and particularly in circumstances where the appellant did not understand the nature of his comments".*

15. In our view this submission was misconceived and perilously close to the suggestion that unconscious discriminatory behaviour or expression is somehow pardonable when 'off duty' in comparison to 'on duty'.

16. The Respondent [Skeleton argument paragraph 61] states:

*"Moreover, the Chief Constable does not accept that off-duty conduct is necessarily less serious than on-duty conduct. There are many situations where it would be, but if an officer acts in such a way that would raise a legitimate concern in a member of the public's mind about that officer's ability to treat all members of the community he serves fairly and without discrimination, it will make little difference whether the particular behaviour took place on or off duty."*

17. In our view the Respondent is right to suggest that that behaviour giving rise to a concern about an officer's ability to treat all members of the community fairly and without discrimination will not be treated differently whether that behaviour took place on or off duty. The Respondent's formulation that it will make "little difference" was perhaps to encompass the myriad range of possible cases that might be considered, in our view the better expression would have been 'no difference'.

### **Appeal Submissions**

18. The Appellant has made four primary submissions:

- i. Unreasonable/unfair finding of 'admissions' made by the Appellant that the words used in the Regulation 31 response "not just because of her braids/dreadlocks nor her ethnicity" was an admission [Panel Decision paragraph 24].
- ii. Unreasonable inference from the response within the WhatsApp chat that "Don't judge a book by its cover Jack" and "she could be a really nice person" were an opportunity "for PC Thrumble to pause and self-reflect on his behaviour" [Panel Decision paragraph 43].
- iii. Unintended discrimination/training, unreasonableness in that the Panel assertion that the Appellant 'ought to have known' that what he was doing was improper was inconsistent and unreasonable with its conclusions on the adequacy of training and are "entirely undermined" [Appellant's skeleton argument paragraph 33] by its finding that he did not understand that his comments were discriminatory in the first place [Panel Decision paragraph 34].
- iv. Unreasonable assessment of severity; that having found 'the most important aspect of the case in the Appellant's favour' [Appellant's skeleton argument paragraph 38] the panel went on to find Gross Misconduct and dismiss.

### **Submissions 1 -3**

19. The PAT has carefully considered the submissions and arguments from both parties; we have also considered all the material available to us and concluded that the issue complained of in the Appellant's submissions 1 – 3 were part of the consideration given by the Panel to this matter, but the Panel's decision was based on the facts underpinning these allegations .

20. The Panel's decision was expressed as follows:

"The Panel considered that the officer had demonstrated individual acts which were in breach of the standard of equality and diversity. However the Panel also considered the cumulative effects of the behaviours and language as a whole and were left with the finding that on the balance of probabilities, PC Thrumble's behaviour was discriminatory and unfair".

21. In short we do not need to reach any conclusions as to the rights and wrongs complained of by the Appellant in submissions 1 -3 as in our view the Panel was right to reach their conclusion as to the Appellant's behaviour as the messages at the heart of this matter contain references to ethnicity when the Appellant refers to the woman as "hot chocolate". The panel were entitled to conclude that this had the effect of "dehumanising her and reducing her to the status of an object or a thing" and the reference to her skin colour "amounted to her being treated unfairly owing to the membership of her ethnic group and therefore the behaviour was discriminatory".

22. But there remains the question, after this finding was made, whether the correct conclusion was reached as to the seriousness of the conduct. Seriousness must always be considered within a range. There will always be more or less serious behaviours and that is why Misconduct Panels have available for them findings of Misconduct or Gross Misconduct.

#### **Submission 4**

23. Having reached the conclusion that the Panel's decision that the Appellant's behaviour was discriminatory and unfair was within the range of reasonable decisions open to the panel, the next question is whether the panel was correct to consider that this behaviour was so severe as to decide that the behaviour amounted to Gross Misconduct and then dismissal.

24. The PAT has carefully considered all the material available to the Panel and has reached the conclusion that the Misconduct Panel's decision, that the behaviour amounted to Gross Misconduct, was outside the range of reasonable decisions available to the Misconduct Panel

25. In our judgement the Misconduct Panel's decision making on the question of Misconduct/Gross Misconduct failed to properly examine the factors which were needed to reach a decision on severity or seriousness of the behaviour. As can be

seen from reading the Panel decision under the heading of ‘Misconduct or Gross Misconduct’ [Decision paragraph 35 – 38] there is little factual analysis.

26. Before us in the PAT hearing (2<sup>nd</sup> May 2025), Mr Banham, on behalf of the Appellant submitted that the same considerations he gave to the issue of severity or seriousness of the behaviour, the finding of Gross Misconduct and outcome applied to all these issues and he therefore, sensibly, did not seek to repeat the same arguments. We agree with his approach.

27. In our judgement there are several facts which were of significance and deserved greater weight in favour of a finding of Misconduct over Gross Misconduct:

- i. The Panel’s own finding that the evidence pointed to a lack of understanding on the Appellant’s part, and this lack of understanding has resulted in a lack of appreciation of the impact of the words used [Decision paragraph 34].
- ii. His behaviour was “non-intentional” [Decision paragraph 34].
- iii. The training afforded to PC Thrumble and others at the relevant time was inadequate as had been accepted by the IOPC and this was also recognised by Mr Thrumble in his submissions [Decision paragraph 33].
- iv. The Appellant accepted that his behaviour was inappropriate, apologised and has reflected on his behaviour stating he was and “still remains absolutely devastated” and “he feels sick to the core” [Regulation 31 response, paragraph 33].
- v. No other offensive material has been brought forward from the examination of the Appellant’s phone.
- vi. His behaviour with the Dorset/Hampshire Constabulary has never given anyone any reason to question his conduct [Grounds of Appeal paragraph 10 o].

28. Having considered the points set out above, the written and oral submissions we have concluded that the Panel’s decision that the behaviour in this matter amounted to Gross Misconduct was outside of the range of reasonable decisions which could have been made. Having reached that conclusion in our judgement the appropriate finding should have been Misconduct.



## Outcome

29. It is important that both Misconduct Panels and the PAT do not ignore evidence relevant to whether behaviour at the level of Misconduct is a 'one off' or an embedded aspect of the Appellant's character.

30. The Appellant's supportive character statements which reflect on his behaviour, the Appellant's interaction with others within the police force and the public are impressive:

- i. During the pandemic "Jack remained a constant presence, steadfast supporting our team through the toughest of times" .... "his diligence, honesty and innate kindness were evident in his interactions with colleagues and the public alike"; T/Insp Mitchell.
- ii. He is "polite courteous and respectful" and "someone who wants to work hard and serve the public" and "I have found Jack to be a very genuine person in a world where those people are in the minority"; PS Hayward.
- iii. "Jack could talk to people from all different walks of life ..... often finding a common ground to establish trust"; PC Bunt.
- iv. The allegations are "wholly inconsistent" with the "character and ethics he has constantly displayed throughout his career with Hampshire Constabulary"; PC Royston.
- v. "He will always put others first and go out of his way to help people, both members of public and colleagues"; PC Flowers.
- vi. "always of a cheery disposition and eager to help his colleagues, despite him being limited in what he can currently do whilst on directed duties"; PS Harris.
- vii. "He has a dedicated attitude to every person he works with and deals with and to every task he undertakes", PC Gardner.

31. This evidence supports and reinforces the finding that the allegations amounted to a lapse of judgement by a young Special Constable and the overall circumstances show that this behaviour does not and will not be found in his dealings with colleagues or members of the public in the future.

32. In our judgement if a member of the public, of any gender or ethnicity, were to know the full facts of this case, which include how the Appellant has consistently dealt with public facing duties, through his career they would not be put off speaking to or having their matter dealt with by the Appellant.
33. We have considered *R (The Chief Constable of Dorset) v PAT and Salter* [2011] EWHC 3366 (Admin) ("*Salter*") where Burnett J (as he then was) said that the most important purpose of the sanction (dismissal) was to maintain public confidence in the police and maintain its collective reputation "*personal mitigation is likely to have limited impact on the outcome*" (para 24ii). This approach was endorsed on Appeal by the CA in *Salter* by Kay LJ noting that a police officer would often be able to refer to an unblemished past and references as to character but because of the importance of public confidence the potential "*of such mitigation is limited*" (para 25).
34. In our judgement the 'Character' references in this matter are important because they provide uncontested evidence that the behaviour complained of in these allegations is not how the Appellant thinks or deals with people.

### **Orders and Recommendations**

35. The following orders are made:

- i. A Finding of Misconduct is to be substituted for the finding of Gross Misconduct.
- ii. PC Thrumble is to be reinstated on receipt of this judgement in his previous role and rank as though he was never dismissed from the service.
- iii. PC Thrumble is to be subject to a written warning of 18 months duration beginning from the first day of his reinstatement.
- iv. PC Thrumble is to be removed from the barred list.
- v. PC Thrumble is to be paid, subject to normal deductions, for the period from his dismissal to reinstatement. The parties are to agree the amount to be paid which must be calculated and reduced to reflect earnings from other work he has undertaken in the 'gap'

period. The parties have 14 days to agree the figures from the date of receipt of this judgement and submit them to the PAT; this period is to have no effect on the date of reinstatement.

36. We recommend that:

- i. On reinstatement of PC Thrumble consideration is to be given to what aspects of his training may need to be repeated given the gap in his service.
- ii. The Dorset police service should, if this has not been dealt with already, review its equality and diversity training policies for Special Constables and ensure that training for 'Specials' is comparable with that for Probationary Officers. Whilst we have been provided with some training materials, for which we are grateful, we suggest that the question of a Police Officer's personal messaging is considered with care.

37. Lastly, the PAT is grateful for the comprehensive written submissions submitted by both parties and the skilful oral submissions from Mr Gold and Mr Banham.

Sam Stein KC

Commander Katie Lilburn

Amelia Riviere

13<sup>th</sup> May 2025