

POLICE APPEALS TRIBUNAL

**IN THE MATTER OF POLICE ACT 1996
AND IN THE MATTER OF POLICE APPEALS TRIBUNAL RULES 2012
AND IN THE MATTER OF EX PC ZOË CULLEN**

Heard at Moat House Hotel, Stoke-on-Trent

On 26 February 2019

Before: Ms S Fenoughty (Chair), Assistant Chief Constable J Gilmer and Mr S Douglass

Between

EX PC ZOË CULLEN

Appellant

AND

THE CHIEF CONSTABLE OF STAFFORDSHIRE CONSTABULARY

Respondent

Representation

For the Appellant: Mr C Banham

For the Respondent: Mr N Walker

DECISION AND REASONS

1. This is a determination made in accordance with The Police Appeals Tribunals Rules 2012 which provides for the hearing of appeals made by a police officer against a decision made under the Police (Conduct) Regulations 2012.
2. This decision is made in the appeal of Ex PC Zoë Cullen who appeals against the decision dated 19 October 2018 that she be dismissed from the Staffordshire Police Service without notice.

BACKGROUND

3. The allegations before the Chief Constable Gareth Morgan at the Special Case Hearing on 17 October 2018 were set out in the investigation report dated 17 August 2018:

“Following investigations into an offence of PC Cullen driving a motor vehicle on a road having consumed excess alcohol, on Thursday, 9 August 2018 she attended Derby Magistrates’ Court where she pleaded to and was found guilty of the offence detailed.

This is a recordable criminal offence and as a result provides sufficient cause to present that PC Cullen has breached the standards of professional behaviour in respect of discreditable conduct.”

4. PC Cullen had pleaded guilty to an offence of driving with excess alcohol, was ordered to pay a £492 fine, £620 costs and a victim surcharge of £49. At the outset of the Special

Case Hearing, on her behalf, her representative admitted that the matters amounted to gross misconduct and breach of the standard of discreditable conduct.

5. Chief Constable Morgan determined, in a decision dated 19 October 2018 that the breach of the standards of professional behaviour was so serious that dismissal without notice was the appropriate and proportionate outcome.
6. Prior to the hearing, the appellant's representative had made submissions regarding the admissibility of material in the bundle before the Chief Constable. It was agreed that the redactions should be made, and the Chief Constable made it clear that he would disregard the redacted information, which he had seen, but regarded as irrelevant.
7. The Chief Constable did not have to make any findings of fact in order to reach the conclusion that the appellant's actions amounted to gross misconduct. This was because she had admitted the allegations, and acknowledged that her actions amounted to gross misconduct, and breach of the standard "Discreditable conduct".
8. During the hearing on 17 October 2018, the Chief Constable had heard submissions on outcome from both parties, and evidence from the appellant.
9. In his decision, the Chief Constable said he had taken into account the record of service and testimonials, the written and oral submissions made by and on behalf of the appellant; he accepted that she was in an abusive relationship when she committed the offence, it had taken place when she was off duty, and he said that the mitigation of context in this case had been well rehearsed.
10. He stated that the issue of consequential thinking skills had been raised in mitigation as a possible explanation for her conduct. She had called a taxi, recognising the amount of alcohol she had consumed; later that evening she made a different decision.
11. The Chief Constable stated that this was not about a mistake in isolation, it was about discreditable conduct following a criminal conviction amounting to gross misconduct.
12. The Chief Constable said it did not inevitably lead to dismissal, and the conduct regulations do not exist solely to punish, but set a framework of standards for the profession. He said the public had a right to expect that those standards would be properly adhered to.
13. The Chief Constable said he had to balance the appellant's position with the expectation placed on officers to uphold the law and bring no discredit on it. He acknowledged that the situation was difficult and traumatic for the appellant and her family, but did not consider that a final written warning would reflect the gravity of the circumstances, and could undermine the public confidence in these proceedings. He said that, notwithstanding the context of mitigation, the breach was sufficiently serious that the only outcome could be dismissal without notice.

14. LAW

The Police Appeals Tribunal's Rules 2012

Circumstances in which a police officer may appeal to a tribunal

Rule 4.—(1) Subject to paragraph (3), a police officer to whom paragraph (2) applies may appeal to a tribunal in reliance on one or more of the grounds of appeal referred to

in paragraph (4) against—

(a) the finding referred to in paragraph (2)(a), (b) or (c) made under the Conduct Regulations; or

(b) the disciplinary action, if any, imposed under the Conduct Regulations in consequence of that finding...

(2) This paragraph applies to—

(a) an officer other than a senior officer against whom a finding of misconduct or gross misconduct has been made at a misconduct hearing; ...

(4) The grounds of appeal under this rule are—

(a) that the finding or disciplinary action imposed was unreasonable; or

(b) 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

(c) that there was a breach of the procedures set out in the Conduct Regulations, the Police (Complaints and Misconduct) Regulations 2012(a) or Schedule 3 to the 2002 Act, or other unfairness which could have materially affected the finding or decision on disciplinary action.

The Home Office Guidance (June 2018) covers the Standards of Professional Behaviour for police officers and sets out procedures for dealing with misconduct and for appeals to the Police Appeals Tribunal. The Guidance refers to the Standards of Professional Behaviour set out in Schedule 2 of The Police (Conduct) Regulations 2012. It states:

1.7 Where these standards of professional behaviour are being applied in any decision or misconduct meeting/hearing, they shall be applied in a reasonable, transparent, objective, proportionate and fair manner. Due regard shall be paid to the nature and circumstances of a police officer's conduct, including whether his or her actions or omissions were reasonable at the time of the conduct under scrutiny...

1.9 Where the misconduct procedure is being applied, it is important to identify the actual behaviour that is alleged to have fallen below the standard expected of a police officer, with clear particulars describing that behaviour....

Discreditable Conduct

1.24. Police officers behave in a manner which does not discredit the police service or undermine public confidence, whether on or off duty.

1.25. Police officers report any action taken against them for a criminal offence, conditions imposed by a court or the receipt of any penalty notice.

1.26. Discredit can be brought on the police by an act itself or because public confidence in the police is undermined. In general, it should be the actual underlying conduct of the police officer that is considered under the misconduct procedures, whether the conduct occurred on or off duty. However where a police officer has

been convicted of a criminal offence that alone may lead to misconduct action irrespective of the nature of the conduct itself. In all cases it must be clearly articulated how the conduct or conviction discredits the police.

APPEAL

15. The appellant's representative, Mr Banham, submitted written grounds of appeal dated 20 November 2018. A response was submitted by Mr Walker for the respondent on 20 December 2018, which made reference to redacted material. Mr Banham submitted further submissions on 31 December 2018. In consequence, Mr Walker submitted a revised response dated 10 January 2019.
16. Mr Banham argued that the outcome was unreasonable within the meaning of Rule 4(4)(a), and the Chief Constable's approach was characterised by unfairness, within the meaning of Rule 4(4)(c), which could have materially affected the decision on disciplinary action.
17. Mr Banham set out the background to the case, and the circumstances leading to the appellant's conviction. He set out the legal framework, referring to the Home Office guidance on misconduct and the College of Policing Guidance on determining outcomes in misconduct proceedings.
18. Mr Banham said the Chief Constable had failed to take into account the following factors:
 - i. Ms Cullen was in a coercive and controlling relationship;
 - ii. She had previously been assaulted by XXXX;
 - iii. On the date in question, she was fleeing domestic assault by XXXX;
 - iv. The vehicle was driven less than 500 yards;
 - v. Ms Cullen stopped and waited for the police to arrive;
 - vi. Ms Cullen spoke to the police when they arrived, co-operated with the investigation and willingly provided a breath specimen;
 - vii. Ms Cullen pleaded guilty to the allegation of driving with excess alcohol. She received, in effect, the minimum sentence/disqualification;
 - viii. This mitigation had been accepted by the Magistrates' Court in public proceedings;
 - ix. The sentence by the Magistrates' Court was the minimum that could be given in the circumstances and pointed to the specific nature of the offence;
 - x. Prior to the offence, Ms Cullen was of effective, previous good character;
 - xi. This was an off-duty incident;
 - xii. The officer had made an attempt on her life just three months before this incident;
 - xiii. This was a specific period of her life where she was going through a personal crisis. She had got through that period and so there was little chance of repetition;
 - xiv. The only harm caused was to Ms Cullen and, potentially, to the general reputation of policing
19. Further he stated that insufficient weight had been given to the following factors:
 - i. The appellant had been off duty when the events took place;
 - ii. She had shown insight and remorse, pleading guilty to the offence;
 - iii. The appellant's previous good character, lengthy career, good work and reputation;
 - iv. It was an isolated mistake;

- v. That public confidence can be maintained by a proportionate response;
 - vi. The appellant's colleagues were supportive of her;
 - vii. The appellant was suffering from difficulties with her mental health, which had an effect on her consequential thinking and behaviour;
 - viii. The appellant was suffering from the breakdown of her marriage and an abusive/coercive relationship with Mr Scragg;
 - ix. The punitive financial effect of dismissal upon the appellant by reference to her pension.
20. In his further submissions, Mr Banham referred to another recent case in which an officer had been convicted of causing death by dangerous driving, but had not been dismissed. Mr Banham submitted that right minded members of the public, with full knowledge of her case, would consider that dismissal of the appellant was neither fair nor proportionate. He said it was insufficient simply to state that matters were considered, and he submitted that the outcome was unfair and/or outside the range of reasonable responses.
21. In his submissions to the tribunal, Mr Banham expanded on the grounds of appeal, and rehearsed the matters listed in Mr Walker's response, submitting in each case that they were neither aggravating factors nor were they separate heads of misconduct. In some instances, he considered the circumstances to be mitigating factors.
22. Mr Banham said the appellant had been in a relationship in which she was the victim of domestic violence and coercion, and she had ended this relationship soon afterwards. She had been assaulted more than once in the weeks before her conviction, which resulted from circumstances in which she had fled after realising she had been assaulted, when she awoke. He said that driving her car down her private driveway did not amount to drink-driving, but she had driven 500 yards along a country lane, which led to her guilty plea. He said that the possibility of harm was not the same as the likelihood of harm, and in the appellant's case, she was driving at night when there was very little traffic on the road, and the police were aware of her whereabouts. He contrasted this with the other case in which the officer pleaded guilty to causing death by dangerous driving, a case in which there was high harm and high culpability.
23. Mr Banham said the appellant showed significant insight and learning as a consequence of this salutary experience, she had accepted that her actions amounted to gross misconduct, and he submitted that the Chief Constable had not taken this into account.
24. Mr Banham said the Chief Constable had failed to take the circumstances of the conviction into account, and this failure in his approach meant that his decision was outside the reasonable range of decisions. He said it was insufficient for the Chief Constable to say he had read all the information and taken it into account.
25. Mr Banham said the Chief Constable took an unreasonable approach to mitigation, and his decision does not distinguish the appellant as a recent victim of domestic violence who was close to a mental breakdown, had been on medication, had been near suicidal, and who should be supported to the hilt.
26. Mr Banham submitted that a number of factors had accumulated to contribute to the appellant's behaviour, which, given her background, was entirely out of character. He said the argument with her former partner was a matter of her private and family life, but it provided background evidence about her mental well-being. He said it was her unchallenged evidence that she had telephoned PC XXXX, when she was clear of the property, and she could not realistically telephone from inside the property because of her fear of waking her assailant.

27. Mr Banham submitted that the Chief Constable did not make a proper assessment of the seriousness of the misconduct in this case, in contrast to the other case, in which the various relevant facts had been set out and taken into consideration. He said that drink-driving does not result in automatic dismissal, and although the appellant was not being attacked at the time she did drink drive, there were many mitigating factors in her case.
28. Mr Banham submitted that, in contrast to the other case, the Chief Constable did not consider the extent to which the appellant posed a danger to the public, whether the public would expect him to exercise his discretion so that she could continue as a serving police officer, and the extent to which public confidence in the police could be upheld if she did.
29. Mr Banham referred to the case of **Cleveland Constabulary, R (on the application of) v Police Appeals Tribunal [2017] EWHC 1286** (Rukin) in which an officer's off duty conduct had led him to lie to his senior colleagues, but it was found that his right to a private life was relevant, and mitigated the seriousness of his lies. He said that an officer's off duty conduct could amount to a breach of professional standards, particularly when there is a conviction, but he said the Chief Constable had not properly taken into account the fact that the appellant's misconduct had occurred whilst she was off duty.
30. Mr Banham said the Chief Constable did not properly take into account supportive character references that were before him. There was no breach of the standards of honesty and integrity, in which case dismissal might be inevitable, and the appellant had 27 years' experience as an officer in whom the public could have confidence.
31. Mr Banham said the Chief Constable was wrong to conclude that this was not a mistake in isolation, albeit a serious mistake, made when her mental well-being was affected because she was fleeing an abuser, in fear of her personal safety. He submitted that it was an isolated mistake, it was out of character, and her mental health had not been properly considered, although it was mentioned. He referred to **Commissioner of Police for the Metropolis, R (on the application of) v Police Appeals Tribunal & Anor [2013] EWHC 1684** (Naulls) in which it was held that the Appeals Tribunal was entitled to consider that Inspector Naulls' mental state was part responsible for his gross error of judgement in giving dishonest explanations.
32. Mr Banham submitted that the effect of the decision on the appellant would be highly punitive because of the loss of pension rights. He said that in the case of a very serious breach, this could not justify the retention of an officer, but he submitted that the Chief Constable failed to take it into account.
33. Mr Banham said the main thrust of the appeal was the insufficiency of the reasons in the decision, and the failure to address relevant factors. He said it was not reasonable to provide a document in summary form for a person who has lost her office, and does not know the principal findings. He said it was unreasonable not to find information which could be expected in the decision document, and to be obliged to read into the Chief Constable's document. He said that may not even be possible, given the paucity of reasons in the decision to dismiss the appellant.

RESPONSE TO APPEAL

34. The respondent's representative, Mr Walker, submitted an amended response to the appeal, dated 10 January 2019.

35. Mr Walker accepted that the list of factors in paragraph 16 of the appeal were accurate, but submitted that the likelihood of harm has to be taken into account as well as actual harm. He said that harm could have been caused to anyone using the roads that night.
36. Mr Walker said the Chief Constable had been entitled to consider the underlying facts of the conviction, and had relied on the factors in paragraph 16 of the appeal, in recognising that conduct surrounding the conviction was relevant to the outcome, in accordance with paragraph 4.18 of the Guidance.
37. Mr Walker said the Chief Constable's comments demonstrated that he had taken into account the whole of the circumstances placed before him. He said that to consider the case in a vacuum would be unfair, and would serve to defeat the spirit of the misconduct procedure and outcomes document.
38. He said the case papers showed that:
- i. The appellant had sent Mr Scragg nasty messages hoping he would not turn up;
 - ii. She had drunk Baileys, whiskey, and a bottle of Prosecco;
 - iii. The appellant's husband had received a call from their daughters asking him to collect them because their mother was drunk, Mr Scragg was there, they had fallen out, and they had been subjected to verbal abuse;
 - iv. The appellant turned up at her husband's house, banging on the front door and wanting the girls;
 - v. The appellant left the house when Mr Scragg was asleep; she saw that two work colleagues had tried to phone her and she called one of them as she drove away. He said it followed that she could have phoned either of them for help before she got into the car and drove.
39. He submitted that these were relevant factors which balance the mitigation, without alleging misconduct under new heads. He said the Chief Constable considered the mitigation in the circumstances of the offence, and was well able to make an assessment of seriousness in the circumstances.
40. Mr Walker said the Chief Constable considered the least sanction first but was unable to reconcile a final written warning with the gravity of the offence. He had followed paragraph 4.65 of the guidance which states...
- "Where gross misconduct has been found, however, and the behaviour caused or could have caused, serious harm to individuals, the community and/or public confidence in the police service, dismissal is likely to follow. A factor of the greatest importance is the impact of misconduct on the standing and reputation of the profession as a whole."*
41. Mr Walker submitted that the outcome was therefore within the range of reasonable responses and was neither unfair nor unreasonable.
42. Mr Walker said that the appellant's admissions and insight were given sufficient account; her evidence was described as *"heartfelt and genuine"*. He said the weight attached to personal mitigation cannot justify a lesser sanction than dismissal when the episode of misconduct is "so serious". He said the Chief Constable viewed the conduct as grave.
43. Mr Walker submitted that the appellant's loss of pension rights had not been developed as an argument at the hearing, and it was reasonable for the Chief Constable not to refer to it expressly in his remarks on outcome.

44. Mr Walker said it was unhelpful to make a comparison with the officer who was convicted of death by dangerous driving. That officer's criminality was not intentional. The appellant had driven after drinking excessive alcohol, when help was available to her and Mr Scragg was asleep. He submitted that the Chief Constable had considered culpability in the circumstances presented to him according to paragraph 4.18, and that the criminal offence is never determinative.
45. Mr Walker submitted that the approach taken and the outcome imposed was fair, proportionate and within the range of reasonable outcomes. He said there was no breach of procedure.
46. In his submissions to the tribunal, Mr Walker said that each case had to be decided on its facts, and, whilst guidance cannot prescribe an outcome, the decision was faithful to the overriding principles. He referred to the purpose of police misconduct proceedings, and submitted that all three elements were engaged in this case: maintaining public confidence in and the reputation of the police service, upholding high standards in policing and deterring misconduct, and protecting the public.
47. Mr Walker said that the factors listed in his written document were not aggravating or mitigating features, they were discernible features which the Chief Constable could take into account in his assessment of the whole of the conduct.
48. Mr Walker said that, before 5.10am, the appellant was nearly twice the legal limit for driving, and she had taken responsibility for her drunken state earlier in the evening when she took a taxi. He said she chose to antagonise Scraggs, inviting him to her home, then sending nasty messages to stop him coming. He said this affected her family members, not just her; he said she had not been facing immediate danger, she fled whilst he was asleep, and she was aware that her colleagues had attempted to contact her.
49. With regard to the danger to the public, Mr Walker referred to the College of Policing Guidance, and said the tribunal should look at the common sense consequences of the appellant's conduct. She was driving in thick fog, on rural roads, in freezing weather; he said she posed a significant danger to the public, it was a serious case, and she was culpable for her actions, notwithstanding the appalling relationship.
50. Mr Walker said that, taking into account the circumstances of the conviction, the Chief Constable formed a view of the seriousness of the misconduct. He said the outcome may be at the top of the range, but it was not outwith the range of reasonable responses. He said that because of the conviction it was an especially serious case, the fact that it took place off duty does not lessen the seriousness in the circumstances, and the appellant's behaviour discredited the police as a whole.
51. Mr Walker referred to the Chief Constable's decision, in which he described the appellant's submission as "*heartfelt and genuine*", and said it was evident that sufficient weight had been given to insight. With regard to giving credit for her plea, he said she had very little alternative, given that she was on the telephone to a police officer whilst she was drink-driving.
52. With regard to the potential effect of the loss of pension, Mr Walker said that every police officer of long-standing knows what is expected of them, and whilst the primary aim of misconduct proceedings is not to punish, there may be an adverse effect on an individual which is a necessary consequence of the overriding objective of the misconduct regime.

53. Mr Walker said the Chief Constable did take into account the abusive relationship in which the appellant was involved. He said that in the case of **Naulls**, there was medical evidence supporting the officer's health issues.
54. Mr Walker said the Chief Constable considered whether a final written warning would be adequate, and determined that it did not reflect the gravity of the situation as he saw it. He said it was unrealistic to suggest that the Chief Constable's conclusion was outside the range of options available, and the appellant had recognised, in her evidence, that she may lose her job. He said this was also recognised by her representatives, who said that leniency would be required if she were not to lose her job.
55. Mr Walker said that the other case which had been mentioned was not a precedent, and it concerned exceptional and unprecedented facts. He accepted that the reasoning was more fulsome than in the appellant's case, but submitted that there was not the same expectation of the Chief Constable in Stage 5 proceedings to produce a fully reasoned legal determination. He said the Chief Constable was able to assess harm, culpability, aggravating and mitigating features, to consider the seriousness of the misconduct, and he said that many factors contributed to the decision.
56. Mr Walker said that the decision in the appellant's case might have been clearer and more detailed, but the Chief Constable considered all relevant factors in a fair and reasonable way. He said the sentence regarding the "*mistake in isolation*" might be clumsy, and the Chief Constable may have taken account of the hours around the event.
57. Mr Walker said it was clear from the decision that the Chief Constable did not regard dismissal as inevitable, and he reminded himself that the purpose of misconduct proceedings is not just to punish. He referred to the framework within which he must make his decision, the public expectation that police should uphold the law, and that standards should be adhered to. He was aware of the position in which the appellant found herself, and that he had to carry out a balancing act.
58. Mr Walker said the Chief Constable was aware that the events would have been traumatic to the appellant and her family, he had taken into account culpability, harm, and the circumstances of the conviction, and it had led him to the view that it was serious case. Properly applying the Guidance, starting with the least sanction, he had been unable to step back from the decision to dismiss the appellant, and this had not been an unfair or an unreasonable conclusion in the circumstances. He said it was a predictable and proper exercise of his function at a Special Case Hearing.

EVIDENCE

59. The evidence before the tribunal included the documents available to the Chief Constable at the Special Case Hearing, the outcome of the hearing, transcript of the hearing, appeal documentation and the response to appeal. The redactions agreed at the hearing had been made to the documents that were before the tribunal.

DECISION

60. The appellant regards the outcome of the Special Case Hearing to have been unreasonable and unfair, and this constitutes valid grounds for an appeal under Rules 4(4)(a) and (c) of the Police Appeals Tribunals Rules.
61. In determining whether the outcome is unreasonable, the tribunal adopted the approach set out in **R (The Chief Constable of Durham) v Police Appeals Tribunal [2012] EWHC 2733 (Admin)**, at paragraph 7:

"It follows therefore, to my mind, that the test imposed by the rules is not the Wednesbury test but is something less. That does not mean that the Appeal Tribunal is entitled to substitute its own view for that of the misconduct hearing Panel, unless and until it has already reached the view, for example, that the finding was unreasonable. Nor, should I emphasise, is the Police Appeals Tribunal entitled, unless it has already found that the previous decision was unreasonable, to substitute its own approach. It is commonplace to observe that different and opposing conclusions can each be reasonable. The different views as to approach and as to the weight to be given to facts may all of them be reasonable, and different views may be taken as to the relevance of different sets of facts, all of which may be reasonable. 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..."

62. The tribunal did not accept Mr Walker's submission that reference to some of the factors raised in the case did not amount to aggravating or mitigating features, but were features which the Chief Constable took into account. Although they were before the Chief Constable, it was not clear from the face of the decision document which matters he regarded as aggravating, mitigating or neutral. Neither did the tribunal accept the submission that a different standard of decision document was to be expected in Stage 5 proceedings. It accepted Mr Banham's submission that the factors leading to a decision to dismiss a police officer, which are fully set out in the College of Policing Guidance, should be clear from the face of the document.
63. The tribunal found that, although the Chief Constable had referred to a number of relevant factors and the framework in which he had to make that assessment, it was not possible to infer from the decision document that a proper assessment had been made of the seriousness of the misconduct and its effect on public confidence.
64. Although the relevant matters were before the Chief Constable, the tribunal found his approach to be unreasonable, in that he gave insufficient explanation of how he assessed the seriousness of the misconduct, matters of harm, culpability and insight, which matters were aggravating or mitigating factors, and which were simply part of the factual matrix, and were neutral in his decision making. Having found that the Chief Constable had taken an unreasonable approach to determining the sanction in the appellant's case, the tribunal found in consequence that the outcome was unreasonable.
65. Having reached the view that the Chief Constable's decision was unreasonable, the tribunal considered whether to substitute its own decision, or to remit the matter for hearing. It considered it had sufficient information to make a fair decision in this case.
66. The tribunal took into account the comments in **Williams, R (on the application of) v Police Appeals Tribunal & Ors [2016] EWHC 2708**, in which the court said:

"66. In my judgment, the importance of maintaining public confidence in and respect for the police service is constant, regardless of the nature of the gross misconduct under consideration. What may vary will be the extent to which the particular gross misconduct threatens the preservation of such confidence and respect. The more it does so, the less weight can be given to personal mitigation. Gross misconduct involving dishonesty or lack of integrity will by its very nature be a serious threat: save perhaps in wholly exceptional circumstances, the public could have no confidence in a police force which allowed a convicted fraudster to continue in service. Gross misconduct involving a lack of integrity will often also be a serious threat. But other forms of gross misconduct may also pose a serious threat, and

breach of any of the Standards may be capable of causing great harm to the public's confidence in and respect for the police.

67. This does not mean, of course, that personal mitigation is to be ignored. Nothing in the Salter principle suggests it must be ignored. On the contrary, it must always be taken into account. I therefore reject the submission that the effect of the Salter principle is that dismissal will invariably be the sanction whenever gross misconduct is proved. But where the gross misconduct threatens the maintenance of public confidence and respect in the police – as gross misconduct often will - the weight which can be given to personal mitigation will be less than would be the case if there were no such threat, and if the disciplinary body were a court imposing a punishment. Whether the circumstances are such that the sanction of dismissal is necessary will be a fact-specific decision: where the facts show dishonesty, case law establishes that dismissal will almost always be necessary, and dismissal will often also be necessary where there the misconduct involves a lack of integrity; where the facts show that one of the other Standards has been breached, the appropriate outcome will depend on an assessment of all the circumstances, with proper emphasis being given to the strong public interest in the maintenance of respect and confidence.”

67. In assessing the extent to which the gross misconduct in the appellant's case threatens the preservation of confidence and respect for the police service, the tribunal had regard to the Guidance:

4.15 The following types of misconduct, however, should be considered especially serious.

Conviction or caution for a criminal offence

4.16 It is entirely unacceptable for police officers, who are responsible for enforcing the law, to break the law themselves.

4.17 The level of culpability depends on the seriousness of the offence. The sentence imposed by the criminal court is not necessarily a reliable guide to seriousness in misconduct proceedings, which are principally directed towards maintaining public confidence in the profession. A relatively minor criminal offence may be of the utmost gravity in the professional context.

4.18 The conviction or caution may relate to on or off-duty conduct. While the person(s) conducting the proceedings cannot question the conviction or the sentence imposed, they can consider the circumstances of the offending and form their own view of the gravity of the case.

68. The appellant had a conviction for drink-driving, which is serious. In assessing the degree of seriousness, the tribunal had regard to paragraph 4.4 of the Guidance, and considered her culpability, the harm that her behaviour caused or could have caused, and the existence of aggravating or mitigating factors. The tribunal found that some of these factors overlapped.

69. As to culpability, the appellant had taken a taxi to her former partner's house, and later returned home by taxi. It can be inferred from this that she recognised that she was not safe to drive because of the amount of alcohol she had drunk, and made the appropriate decision not to drive at that time. However, the circumstances had changed by the time she made the decision to drive her car from her home and onto the public road.

70. The tribunal accepted that the appellant's actions had been spontaneous. It took into account that she had just woken up, her assailant was asleep, she was not in immediate danger, she had been drinking significant amounts of alcohol, and as a police officer, would have a heightened awareness of the consequences of drink-driving. However, it also took into account that, on waking, she realised she had been assaulted, she had been, for some time, in an abusive relationship, and her home was in an isolated country area; these factors evidently contributed to her state of fear.
71. The evidence before the tribunal showed that, at this time, her husband and her colleagues were all concerned for the appellant's welfare. Her children had been sufficiently frightened of the situation to ask their father to come and collect them, her colleagues knew of her family situation and had concerns around self-harm, and they had been trying, unsuccessfully, to contact her. Shortly after she left her home, she did make contact with her colleague, who described her as "*very distressed*" and "*terrified*". The tribunal accepted Mr Banham's submission that it was impractical for the appellant to have made contact with her colleagues while she was in the house, for fear of waking her assailant.
72. Although there was no medical evidence to this effect, the tribunal considered it to be a natural consequence of her situation that appellant's judgement had been adversely affected by a number of factors above and beyond the alcohol she had drunk. She had shown, earlier in the evening that she had sufficient clarity of thinking to take a taxi, but this clarity of thinking was not evident later, when she made the decision to drive away from her home. The primary distinguishing factor was the realisation that she had been assaulted. There was evidence that her mental health had been a concern, and the tribunal found that the circumstances of the violent relationship and the particular incidents that evening were factors which were likely to reduce her ability to cope with the circumstances, affect the quality of her decision-making, accounting, in part, for her actions on 6 January 2018.
73. As to harm, the public road on which the appellant drove was remote, it was very late at night, dark, foggy and the conditions were freezing. Further, although she only drove for 500 yards on the public road, she had been intending to drive to her former partner's house, and it was her colleagues who told her to stop the car and wait for them. In the circumstances, even though no harm had been caused, and the likelihood of encountering another road user may have been low, there was nevertheless potential for significant harm to other road users. The tribunal considered that the public's confidence in the police would be harmed if it knew that a police officer was breaking the law, even in these extreme circumstances, without some action being taken.
74. Had the appellant broken the law whilst on duty, the tribunal might have regarded this as an aggravating factor. While she has a right to a private life, this is a qualified right, and does not extend to breaking the law. The fact that it happened whilst she was off duty does not mitigate the seriousness of the appellant's misconduct in the circumstances. The tribunal regarded the fact that it was an off duty incident to be neutral in its decision making. Similarly, it did not regard her decision to plead guilty to be a significant mitigating factor, as it was incontrovertible that she had driven her car whilst over the legal limit, and was talking to police officers on the telephone at the time.
75. The tribunal considered the mitigating factors in this case to be weighty. These included the stress caused by the appellant's domestic circumstances at the time, and the fearful and distressed state in which she had decided to leave her home. The tribunal accepted that her misconduct was an isolated incident; she was of previous good character and whilst it was a very serious error of judgement, there was no suggestion that it was part

of a pattern of behaviour. The tribunal did not accept, from the evidence, that there was any risk of harm to the public, should she remain as a police officer.

76. Whilst having a conviction for drink-driving is a serious matter of itself, the tribunal did not consider there to be any aggravating factors in the appellant's case.
77. The tribunal considered the impact of the misconduct on the public confidence in and the reputation of the policing profession as a whole. It recognised the emotive nature of a conviction for drink-driving, and the public interest in maintaining standards and confidence in and the reputation of the profession, particularly in the case of a police officer who has contravened the law. In the tribunal's view, a member of the public who was aware of all the surrounding matters would expect a severe sanction to be applied, but would not consider the misconduct to be of such a serious nature that nothing less than dismissal of the appellant would suffice to uphold their confidence in the profession.
78. Following the Guidance, at paragraph 6.2, the tribunal considered the personal mitigation in the appellant's case. This included her acceptance of responsibility for her actions, that she recognises the seriousness of her misconduct and has insight into its potential consequences, her expression of remorse, and that, until the events in question, she had a 26 year unblemished record. The tribunal also had sight of positive testimonials from a colleague and friends of the appellant. It was aware of the adverse financial impact of the potential outcomes in misconduct hearings, but did not consider this to be determinative factor in the appellant's case.
79. Notwithstanding the positive personal mitigation, the context in which the appellant had acted, and the absence of any aggravating factors, the tribunal was of the view that a severe sanction was necessary to mark the seriousness with which a conviction for drink-driving by a police officer is regarded, and to mark the importance of upholding standards. It did not consider there to be any issue of public protection in this case. It did not consider that the misconduct was of such a grave nature that dismissal was the only way in which it could uphold public confidence, given the particular circumstances of the appellant's misconduct.
80. The tribunal bore in mind that the purpose of sanctions is not to be punitive, although that can be the effect. It took into account the public interest in retaining the services of an experienced officer. It considered the possible outcomes starting with the least severe, but did not consider that a sanction lower than Final Written Warning would adequately reflect the gravity of the misconduct. It did not consider that dismissal would be a proportionate response in the appellant's particular circumstances.
81. The tribunal allows the appeal, and sets aside the decision of the Chief Constable to dismiss the appellant. It determines that the appropriate outcome in the appellant's case is a Final Written Warning.

Sara Fenoughty
Chair of the Police Appeals Tribunal

1 March 2019