

UNDER THE POLICE (CONDUCT) REGULATIONS 2012

IN THE MATTER OF

POLICE CONSTABLE HOLLOWAY

and

GLOUCESTERSHIRE CONSTABULARY

Appropriate Authority

DECISION OF
THE CONDUCT PANEL

LEGALLY QUALIFIED CHAIR: Alex Lock
PANEL MEMBERS: Superintendent Bridget Woodhall and Ms Jill Withey
REPRESENTATIVES: Mr Stephen Morley (counsel) (Appropriate Authority)
Mr Mark Ley-Morgan (counsel) (Police Constable Holloway)
HEARING: 12 & 13 October 2017
DECISION: **The decision of the Panel is that Police Constable Holloway is guilty of the allegations pursued; that such conduct constitutes gross misconduct; that she is guilty of dishonesty; and that a final written warning is the appropriate sanction.**

1. This is the decision of a Police Misconduct Panel held under the Police (Conduct) Regulations 2012 in relation to Police Constable Holloway. Numbers in brackets are references to page numbers in the agreed bundle of documents. It is alleged that PC Holloway breached the standards of professional behaviour as set out in the regulation 21 Notice at page 2 of the bundle, in relation to Allegation 1 only, following the withdrawal of allegation 2 by the

Appropriate Authority:

“Allegation 1

On 24th August 2016 the officer stopped a vehicle, the driver of which did not have valid insurance. The officer was present when the driver telephoned his insurance company. During that telephone conversation the driver pretended to be his father. When the insurance company representative spoke to the officer to ask whether he was speaking to the driver or his father, the officer confirmed that both the driver and his father were present, which was untrue. The officer also confirmed that the insurance company representative was talking to the driver’s father which was also untrue.”

Facts

2. PC Holloway has admitted the facts set out at page 2. She set out her explanation and personal mitigation to those admitted facts in her regulation 22 response (not included in the bundle but submitted separately), as well as her written response to the regulation 15 notice (pages 73 to 75) and supporting statement (pages 76 to 85). In the light of the withdrawal of Allegation 2, those written statements are largely not challenged by the Appropriate Authority and we have accepted the factual assertions therein.

3. PC Holloway has also admitted that her conduct has breached the Standards of Professional Behaviour in relation to integrity; duties and responsibilities; and discreditable conduct. She admits she has committed gross misconduct. She denies, however, that she has breached the standard requiring honesty. That was the first issue that we had to determine.

Dishonesty

4. The Code of Ethics sets out standard of professional behaviour for police officers. The first standard is Honesty & Integrity and this sets out the following:

“Honesty & Integrity

I will be honest and act with integrity at all times, and will not compromise or abuse my position.

1.1

According to this standard you must:

- *act with honesty and integrity at all times*
- *use your position, police identification or warrant card for policing purposes only, and not to gain a personal advantage that could give the impression you are abusing your position.*

1.2

In abiding by this standard you gain and maintain the trust of the public, your leaders, your colleagues and your team. You are dependable and a role model.

Examples of meeting this standard

are when you:

- *are sincere and truthful*
 - *show courage in doing what you believe to be right*
 - *ensure your decisions are not influenced by improper considerations of personal gain*
 - *do not knowingly make false, misleading or inaccurate oral or written statements in any professional context*
 - *neither solicit nor accept the offer of any gift, gratuity or hospitality that could compromise your impartiality*
 - *do not use your position to inappropriately coerce any person or to settle personal grievances.”*
5. Both counsel are in agreement as to the correct approach in considering dishonesty, namely by two stages (taken from *R –v- Ghosh [1982] 3 WLR 110*). The first stage is an objective test, looking at what the reasonable and honest man or woman would consider to be dishonesty; with the second stage being a consideration of the individual’s subjective view as to whether their conduct would be regarded as dishonest by those same standards. We see no reason to depart from such an approach.
6. In considering PC Holloway’s conduct we note that she made two untrue statements to the insurance advisor on the telephone: *“Um, yeah, we’ve got um, the driver and his son here”* and *“Fungai, Fungai”* (the father’s name was given by PC Holloway in response to the question as to whom the insurance advisor was speaking to) (page 45). In addition, she carried on the deception by saying to Mr Shoniwa regarding the suggestion of the transfer of ownership of the car to the father, *“That would be the best way. Put it in your name whilst your son’s at*

university.”

7. We can see that her conduct was to make statements she knew were untrue with the intention of misleading the insurance advisor in order that Mr Shoniwa could obtain insurance for his car which we would not otherwise have been able to do at that time. We accept that PC Holloway may have acted with the motive of assisting Mr Shoniwa, about whom she felt sorry, and that there was no personal gain to her. Nevertheless, lies were told by her in order to deceive.
8. In determining whether this amounts to dishonesty, we considered whether an honest and reasonable member of the public would consider a police officer to be acting dishonestly if she made statements that she knew were untrue with the intention of misleading or deceiving. We have concluded that the unequivocal answer would be yes.
9. We then considered whether PC Holloway herself would understand her conduct to be regarded as dishonest by that standard – regardless of her own definition of dishonesty - and we have concluded she would. She knew what she had done was wrong; she regretted it; she was remorseful and felt guilty; and she reported herself to her supervisor.
10. Therefore we concluded that PC Holloway had committed gross misconduct by her actions, including by breaching the standard of honesty and integrity.

Sanction

11. The issue before us on the second day was what the appropriate sanction should be, considering PC Holloway’s admitted gross misconduct, admitted breaches of standards of professional behaviour, and our finding the previous day of dishonesty on her part.
12. We are mindful of our role and the need to:
 - (a) protect public confidence in and the reputation of the police service;
 - (b) maintain high professional standards; and
 - (c) to protect the public and officer and staff by preventing officers from committing similar

misconduct again, by giving an appropriate sanction.

13. We are also mindful of the judgment of the court of appeal in the case of Salter –v- Chief Constable of Dorset Constabulary [2012] EWCA Civ 1047. This case concerned a dishonest officer and the gravity of a finding of dishonesty. Kay LJ held (at paragraph 21) that:

“Although police officers do not have a fiduciary client relationship with individual members of the public or the public at large, they do carry out vital public functions in which it is imperative that the public have confidence in them. It is also obvious that the operational dishonesty or impropriety of a single officer tarnishes the reputation of his Force and undermines public confidence in it.”

He quoted Underhill J (as he then was) in the case of R (Bolt) v Chief Constable of Merseyside Police [2007] EWHC 2607 (QB) (para. 23):

“While I would certainly accept that not every untruth or half-truth told by a police officer, however trivial and whatever the circumstances, would necessarily constitute misconduct justifying dismissal, the misconduct found by the Panel ... constituted deliberate dishonesty in an operational context. As para 1 of the Code rightly emphasises, integrity is a fundamental requirement for a police officer. I should, frankly, be dismayed to think that such conduct was not of a kind which was normally thought to merit dismissal.”

Burnton LJ stated, at para. 28:

“In cases in which the concern is with the abilities of an officer, it may be sensible, and perfectly rational, to consider that he is unfit for a supervisory role, but fit to act as a constable. In this case, however, the concern did not relate to the abilities of the officer, but to his integrity. An actual or perceived lack of integrity disqualifies a person from acting as either a constable or in a police supervisory role.”

14. The Court of Appeal recognised that there may be a very small residual category of honesty and integrity cases where dismissal is not be appropriate (para.23). Little or no guidance is given, beyond the example of a ‘white lie’ told for humane reasons that did not involve the destruction of evidence or interference with proceedings. Those particular circumstances do not apply to the present case, but are suggestive of there being cases with exceptional

circumstances that would justify a derogation from dismissal.

15. Mr Ley-Morgan, on behalf of the officer, has asked us to take into account the following factors:
 - (a) the numerous difficult personal circumstances that PC Holloway was subject to over a relatively short period of time;
 - (b) the undoubted stress and anxiety she suffered as a result;
 - (c) the fact she self-reported her misconduct and did so in circumstances where it would not have been otherwise discovered;
 - (d) the fact that no submission or suggestion has been made by the Appropriate Authority that she would not be able to undertake valuable duties and responsibilities for the constabulary if she remained as an officer
 - (e) the very strong and positive personal character references she has received.

16. We have considered each of these factors in detail and at length over the course of this hearing. In relation to them, our conclusions are:
 - (a) we accept and are sympathetic to the very difficult personal circumstances PC Holloway found herself in. There is no need to recite each of them in this decision, but any one or two of them would be difficult for an individual to deal with, but a combination of relationship, financial, health, child-rearing and housing difficulties, all in a relatively short period of time, would have a negative and material impact on any one of reasonable fortitude.
 - (b) We accept that these various factors caused the officer considerable stress and anxiety. We accept that the consequent stress and anxiety had an impact on her judgement and decision-making and was material in the way that she conducted herself on 24 August 2016. Such conduct was entirely out of character.
 - (c) There is no question that PC Holloway recognised her error and reported it to her supervising officer as soon as she could. She knew that it would spell trouble for her and she also knew that, if she said nothing, it would not be found out. It is to her credit that she did and we are very mindful of the fact that, too often in the past, the culture in many organisations (including the police service) has been such that there are strong incentives

to individuals not to own up to their mistakes and that is not something that we wish to encourage.

(d) We note that PC Holloway would be welcomed back to the Tri-Force where she was working and would have a meaningful role to fulfil.

(e) We recognise that the personal mitigation we have read and heard is a factor to consider and take account of. However, as was said in Salter at paragraph 23:

“As to personal mitigation, just as an unexpectedly errant solicitor can usually refer to an unblemished past and the esteem of his colleagues, so will a police officer often be able so to do. However, because of the importance of public confidence, the potential of such mitigation is necessarily limited.”

17. Our conclusions are that there is a strong presumption that PC Holloway should be dismissed for her conduct and for the likelihood of that having brought discredit to her and the police service and undermined public confidence in it. We have weighed against that presumption the various factors outlined above and concluded that none individually would make us step back from the sanction of dismissal without notice. However, we have concluded that there is an exceptional combination of factors here, the two most powerful being the stress PC Holloway was suffering, that undoubtedly impaired her judgement, and the fact that she reported her own misconduct.

18. We have formed the view that whilst the public's confidence will have been damaged by PC Holloway's actions, it will also have taken some comfort from the fact that those actions were truly out of character and that PC Holloway had the insight and courage to report herself for what she had done. That will go a long way towards restoring public confidence in the police service. We have concluded that it is important for public confidence that those two factors are clearly recognised and that tends against dismissal.

19. We have considered whether the imposition of a sanction short of dismissal will maintain or undermine high professional standards. We believe it will maintain them, by recognising that PC Holloway acted with integrity and honesty in reporting herself and that credit should be given to

her for that. It is also the case that these proceedings will serve as a salutary reminder to police officers of the seriousness and potentially grave consequences of acting in a dishonest manner.

20. Finally we had no doubt that PC Holloway will not conduct herself in a similar way in the future and therefore we did not conclude that other officers, staff and the public would need to be protected by the sanction of dismissal.

21. Accordingly, we have decided that the appropriate sanction in all of the circumstances is to impose a final written warning on PC Holloway as to her future conduct.

23. We thank both counsel for their cogent and helpful submissions and assistance throughout the hearing.

Dated: 13 October 2017