

Re: Former PS 2972 Molly Edwards and Former PC 3525 Richard Paton

1. The misconduct hearing concerning former PS Molly Edwards (“ME”) and former PC Richard Paton (“RP”) took place at Surrey Police Head Quarters on the 17th and 18th August 2021. It was originally intended that the hearing would commence on the 8th June 2021. However, for reasons that are referred to in the Chair’s written record of the determination, dated the 9th June 2021, the hearing was adjourned on the application of ME.
2. Subject to certain restrictions imposed as a consequence of the on-going Covid 19 pandemic, the hearing took place in public. In the event, no members of the public attended the hearing in person or remotely.
3. At the hearing, the Appropriate Authority (“AA”) was represented by Mr John Beggs QC. ME was represented by DCI Richard Haycock, her Police Federation representative and Police Friend. RP was represented by DS Melanie Warnes, his Police Federation representative and Police Friend. The Panel wishes to express its appreciation of the assistance all representatives provided and of the clear and succinct manner in which they presented their respective cases. In particular, the Panel acknowledges that DCI Haycock has only recently taken over the representation of ME, following the retirement of her previous Police Federation representative and Police Friend, Inspector Simon Patter.
4. As is apparent from the previous paragraph, at the hearing neither ME nor RP (hereafter referred to, for convenience, as “the Officers” when being referred to together) was legally represented. It is right to record that at some stages of the proceedings, they had each been in receipt of certain legal representation. However, the Panel had been informed in advance of the hearing that neither would be legally represented at it.
5. The hearing arose from matters that occurred in the second half of 2019. RP resigned from Surrey Police on the 5th October 2020. ME resigned from Surrey Police on the 14th July 2021, *ie* between the date on which the hearing was originally intended to commence and the date on which it actually commenced. The power under which the Panel was able to consider the cases concerning both Officers, notwithstanding their resignation from Surrey Police, is derived from regulation 5(2) and (3) of the Police (Conduct) Regulations 2012 (“the Regulations”).
6. Save where otherwise indicated, references in this document to regulations are to regulations within the Regulations, as modified by Schedule 3 thereof where appropriate.
7. Save where otherwise indicated, page references in this document relate to pages in the hearing bundle.

Non-attendance of the Officers

8. As had been indicated beforehand, the Officers did not attend the hearing. It was, therefore, necessary to consider whether the hearing should proceed in their absence.
9. Having regard to the various communications from or on behalf of the Officers, including when they were legally represented, the Panel was satisfied that the Officers were fully aware of the proceedings and the potential consequences for them. Neither DCI Haycock nor DS Warnes suggested otherwise. Nor did they, on behalf of their respective clients, seek an adjournment of the hearing.
10. The Panel was satisfied that the Officers’ non-attendance was intentional and that an adjournment to a later date was most unlikely to secure their attendance. In the circumstances, the Panel determined in accordance with regulation 28(3)(b) to proceed in the Officers’ absence.
11. For the avoidance of doubt, the Panel did not regard the absence of the Officers in itself as any sort of implied admission of the respective allegations they faced.

The allegations and the Officers' Responses

12. The allegations faced by the Officers are set out in their respective Regulation 21 Notices which should be referred to for their detail. ME's Regulation 21 Notice appears at **pages 5 to 9**, while RP's Regulation 21 Notice appears at **pages 14 to 18**.
13. As already indicated, the allegations the Officers face arise from events that occurred in the second half of 2019. More specifically, they arise from events when they were "crewed" together during night shifts, in particular in September 2019.
14. While in no way seeking to detract from the detail of the allegations faced by the Officers, they may be summarised as follows:
 - i. Between the 21st June and the 29th September 2019, while on duty together in a marked police vehicle in a public place, ME and RP engaged in sexual activity together.
 - ii. By the very fact of their engaging in such sexual activity, they failed to discharge their police duties and, in particular, failed to respond to 2 specific calls for assistance in the early hours of the 29th September 2019 – the first call at about 04.17 was in connection with assaults that had occurred about an hour earlier in the vicinity of the TRU nightclub, Camberley; the second call at about 04.51 related to a burglary at premises of Currys in Woking.
 - iii. On the 26th and 27th September 2019, ME and RP misled Inspector Tom Renwick by denying they were in any kind of sexual relationship. In this respect, in general terms the allegations are that ME "took the lead" in misleading Inspector Renwick while RP, who heard what ME said, did nothing to correct the misleading impression created.
 - iv. On the 28th September 2019, when crewed together, RP had made certain racist comments about and arising from the resignation of a former Asian police officer and ME failed to challenge or report these comments.
15. By reference to the "groupings" listed in the previous paragraph, the AA alleges that:
 - In relation to group (i), both ME and RP breached the Standards of Professional Behaviour concerning Honesty and Integrity (Integrity only), Authority, Respect and Courtesy, Duties and Responsibilities and Discreditable Behaviour.
 - In relation to group (ii), both ME and RP breached the Standards of Professional Behaviour concerning Honesty and Integrity (Integrity only), Duties and Responsibilities and Discreditable Behaviour.
 - In relation to group (iii), both ME and RP breached the Standards of Professional Behaviour concerning Honesty and Integrity and Discreditable Behaviour. It is also alleged that RP breached the Standard of Professional Behaviour concerning Challenging and Reporting Improper Conduct.
 - In relation to group (iv), RP breached the Standards of Professional Behaviour concerning Authority, Respect and Courtesy, Equality and Diversity and Discreditable Behaviour; while ME breached the Standards of Professional Behaviour concerning Honesty and Integrity (Integrity only), Discreditable Behaviour and Challenging and Reporting Improper Conduct.
16. The AA further alleges that the Officers' respective breaches relating to each grouping amount to gross misconduct (*ie* a breach of the Standards of Professional Behaviour so serious that dismissal would be justified). Therefore, logically, it also alleges that, cumulatively, the Officers' respective conduct set out in the groupings amounts to gross misconduct.

17. ME's Regulation 22 Response appears at **pages 10 to 13**. However, this needs to be considered in conjunction with the document entitled "Response to the Directions of the 8th June 2021" drafted on behalf of ME by Ms Susannah Stevens of Counsel on the 9th July 2021. On behalf of the AA, Mr Beggs QC had identified what he considered to be an inconsistency in ME's Regulation 22 Response and her Regulation 16 Response dated the 13th February 2020 (**pages 75 to 82**) concerning the period over which ME admitted she had engaged in sexual activity in a marked police vehicle in public with RP. Consequently, the agreed directions that were issued on the 8th June 2021 included a direction that ME provide "further and better particulars" regarding the period over which she admitted she had engaged in such sexual activity. While "disputing" there was need for such further and better particulars, ME's case in this respect is set out in paragraph 15 of Ms Stevens' document, viz

"... it is denied [by ME] that there was any sexual activity on duty in June, July August or on the 18th or 19th September 2019."

18. In the circumstances, ME's response to the allegations she faced may be summarised as follows:
- She admits engaging in sexual activity with RP on the 28th and 29th September 2019 and that, in doing, she breached the Standards of Professional Behaviour concerning Honesty and Integrity (Integrity only), Authority, Respect and Courtesy, Duties and Responsibilities and Discreditable Conduct.
 - She admits the "general allegation" that, while engaged in sexual activity on duty, she was not discharging her police duties and therefore she breached the Standards of Professional Behaviour concerning Duties and Responsibilities and Discreditable Conduct. However, in relation to the 2 specific calls for assistance on the 29th September 2019, there were proper reasons for her and PC Paton not to respond. They had attended the scene of the TRU matter earlier and, therefore, if they attended Frimley Park Hospital to secure forensic evidence, there was a risk of cross-contamination. Regarding the break in at Currys, the call had been for Woking units, rather than Surrey Heath units, to attend. Woking units had done so. As such, she denies the allegations in paragraph 12 of her Regulation 21 Notice.
 - She admits that she created a misleading impression when she spoke to Inspector Renwick on the 26th September 2019. She had stated that she would never have sexual intercourse in a police car and, while this was factually true, it created the misleading impression that she would not engage in sexual activity in a police car. Similarly, she accepts that she created a misleading impression when she spoke to Inspector Renwick on the 27th September 2019. On this basis, she accepts that she breached the Standards of Professional Behaviour concerning Honesty and Integrity (Integrity only) and Discreditable Conduct.
 - She accepts that RP spoke the words that are the subject of the group (iv) allegations, however she "did not pick up on them at the time but should have done". She had "switched off" or, as she put it in her Regulation 16 Response "zoned out". In her Regulation 16 Response, she also stated that it was a private conversation and she did not believe the comments reflected RP's views. In these circumstances, she admits that she was on breach of the Standard of Professional Behaviour concerning Challenging and Reporting Improper Conduct.

However, it is necessary to state that the way in which ME's Regulation 22 Response was drafted does not make entirely clear the extent of her apparent admissions. While it is

the Standards of Professional Behaviour concerning Authority, Respect and Courtesy and Discreditable Conduct, but denies he breached the Standard of Professional Behaviour concerning Equality and Diversity.

21. [REDACTED]
22. [REDACTED]

The witness determination and the Panel's approach

23. No party sought the attendance of any witness to give oral evidence. However, for the reasons stated in his determination dated the 27th May 2021, the Chair determined that it was necessary in the interests of justice to hear oral evidence from Inspector Renwick and he duly attended the hearing.
24. Prior to the commencement of the hearing, the Panel had read all the relevant papers served in conjunction with the Regulation 21 Notice and the Regulation 22 Response. It had also considered documents served subsequently, in particular the personal statement of ME. For the avoidance of doubt, it gave due consideration to the matters set out in the written submissions of Ms Susannah Stevens of Counsel prepared on the 9th July 2021 and the documentation submitted with it in so far as they were relevant to the issues to be determined at the hearing.
25. The Panel has reminded itself that, in so far as matters have not been expressly and unequivocally admitted by the Officers, the burden of proving the allegations rests on the AA throughout. The Officers are not required to prove anything. An allegation will only be proved if the Panel is satisfied on the balance of probabilities (*ie* that it is more likely than not) that what is alleged occurred (see: regulation 33(14)(a)). The Panel has had due regard to paragraphs 2.264 to 2.266 of the Home Office Guidance (June 2018 Edition) ("HOG").
26. The Panel has been careful not to speculate. However, where appropriate, it has drawn proper inferences from the facts that are accepted or proved.
27. Throughout the hearing the Panel has borne in mind the need to ensure that the Officers receive a fair hearing in order that it might arrive at a correct assessment of the matters in issue. In this respect, it has had due and proper regard to the relevant provisions in the 2012 Regulations, the HOG and the Code of Ethics.
28. In particular, the Panel has had regard to:
- The "definitions" of the relevant Standards as set out in Schedule 2 to the Regulations;
 - Paragraph (c) of the Introduction to the HOG;
 - Paragraphs 1.12, 1.13, 1.14, 1.15, 1.19, and 1.24 to 1.26 of the HOG;
 - Paragraphs 1.1.1 to 1.1.4 inclusive, paragraph 1.3.2 and paragraphs 1.4.1, 1.4.2, 1.4.4 and 1.4.5 of the Code of Ethics;

- The Policing Principles in section 2.1 of the Code of Ethics and paragraph 2.1.1 thereof;
 - Paragraphs 1.1 to 1.3 in Section 1 Honesty and Integrity in the Code of Ethics;
 - Paragraphs 2.1 and the second bullet point of paragraph 2.3 of Section 2 Authority, Respect and Courtesy in the Code of Ethics;
 - Paragraph 3.1 of Section 3 Equality and Diversity in the Code of Ethics;
 - The first 2 bullet points of paragraph 6.1 in Section 6 Duties and Responsibilities in the Code of Ethics;
 - Paragraphs 9.1 to 9.3 of Section 9 Conduct in the Code of Conduct; and
 - Paragraph 5.1.1 of the Supplementary Notes to the Code of Ethics.
29. The Panel has reminded itself that in determining whether the Officers acted dishonestly as alleged in the respective Regulation 21 Notices, the test to be applied is that in **Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67**. It has also reminded itself that, while it may be difficult to conceive of a situation where an officer who acts dishonestly does not also lack integrity, an officer who has displayed a lack of integrity has not necessarily also acted dishonestly. In this regard it has reminded itself of the decisions in cases such as **Solicitors Regulation Authority v Wingate and Evans [2018] EWCA Civ 366** and **Chief Constable of Thames Valley Police v Police Misconduct Panel (White – Interested Party) [2017] EWHC 923 (Admin)**.

The Panel’s assessment of Inspector Renwick

30. Before setting out its findings, the Panel considers that it is appropriate to record its assessment Inspector Renwick who attended the hearing and gave oral evidence.
31. Inspector Renwick attended primarily to give evidence of the conversations that had occurred on the 26th and 27th September 2019. In this regard, he had provided a report dated the 17th November 2019 together with certain emails (**pages 191 to 196**). He had also provided a witness statement dated the 29th March 2020 and further emails which related to staff shortages in 2019 in West Surrey and, in particular, in D Rota Surrey Heath which was managed by ME (**pages 204 to 225**). (For completeness, it should be stated that witness statements and emails relating to staff shortages were also provided by Superintendent John Davies and Superintendent Graham Barnett – **pages 226 to 233**.)
32. In considering Inspector Renwick’s evidence, the Panel took full account of the fact that his report had been made nearly 2 months after the events referred to in it and, therefore, the “passage of time” may have led to a “dimming” of recollection. In this respect, Inspector Renwick himself was quite candid, accepting, for example that he could not be “100% certain” that on the 27th September 2019 RP, as well as ME, had stated they had talked about not working together any more but considered this make them look “guilty”.
33. Nevertheless, the Panel is satisfied that Inspector Renwick’s report and, accordingly, his evidence to the Panel is essentially accurate and credible. Indeed, there is little dispute over much of it.
34. The main area of dispute is whether ME referred to “sexual intercourse” rather than “sex” while on duty with RP. The Panel accepts Inspector Renwick’s evidence that ME referred to “sex” – indeed, the Panel considers it highly unlikely that ME would have carefully chosen to specifically deny engaging in sexual intercourse, as to do so in all likelihood would have led to her being asked if any other sexual activity had taken place. Indeed, in her Regulation 16 Response of the 13th February 2020, ME appeared to implicitly accept that she used the word “sex” rather than the phrase “sexual intercourse” (**page 81**).

35. The Panel recognises that, in his evidence to it, Inspector Renwick stated that when ME referred to “sex”, he took it to mean sexual intercourse. This, however, should not be regarded as his condoning other sexual activity while on duty – the Panel considers that, in the light of ME’s assertions, it simply did not occur to him that any sexual activity was taking place between the Officers.
36. In considering the allegations in group (iii), the principal issue for the Panel to determine is what ME and RP sought to achieve when they spoke with Inspector Renwick as they did.

Findings of fact

37. The Panel proposes to set out its findings by reference to the 4 groupings referred to in paragraph 14 above.

Group (i)

38. Having considered the evidence and, in particular, the transcripts of the covert recordings made on the 28th and 29th September 2019 (**pages 127 to 187**), the Panel is satisfied that the respective admissions by the Officers that they breached the Standards of Professional Behaviour concerning Honesty and Integrity (Integrity only), Authority, Respect and Courtesy, Duties and Responsibilities and Discreditable Conduct were both unequivocal and properly made. **As such, the allegations within this group may be considered proved by virtue of regulation 33(14)(b) on the Officers’ admissions.**
39. However, as a result of the matters referred to in paragraph 17 above, there is a factual dispute concerning the period over which the sexual activity took place that the Panel must determine – not least because this is relevant when considering the seriousness of the misconduct.
40. The Panel is not satisfied that the sexual activity commenced or was already ongoing on the 21st June 2019. The Panel is unable to identify any evidence that supports such a contention. Inspector Renwick refers to ME telling him in June or July 2019 that she had been accused at a “social night” of having an affair with RP, but the Panel does not consider that to be evidence to “confirm” that an affair was ongoing at that time.
41. However, the Panel is satisfied on the balance of probabilities that sexual activity did take place over a more extensive period of time than ME is now prepared to admit. It reaches this conclusion for the following reasons:
- In her Regulation 16 Response of the 13th February 2020, ME included a section under the sub-heading “**Richard and I**” (**pages 75 to 77**). She describes how they supported each other and states: “*We started to use 5am on night shifts when it was quiet as a time to offload. A relationship began from this time. It wasn’t always sexual in that sometimes it could be just holding hands.*” Later she states: “*I enjoyed the time we had together, but I became aware that what we were doing was wrong and would say to him that we should put a stop to it*” (**page 77**). The Panel regard this as indicative of a relationship involving sexual activity that took place over a period of time rather than, as ME now appears to contend, on just the 28th and 29th September 2019.
 - At about 06.14 on the 29th September 2019, the following is recorded (**page 186**):
 - “ME: How have we gone from three weeks ago to this?”
 - “RP: What do you mean?”
 - “ME: To
 - “RP: Nothing to full on?”
 - “ME: Yeah.”

Again, the Panel considers this as indicative of a relationship involving sexual activity that took place over a period of time rather than, as ME now appears to contend, on just the 28th and 29th September 2019.

- In her Regulation 16 Response of the 13th February 2020, ME states (**page 81**): *“I do not accept that I reported an untruthful account of my **relationship** with [RP] to Inspector Renwick. I said to him that we had not had sex and by that I meant sexual intercourse, which was true” (emphasis added)*. The Panel considers her use of the word “relationship” is also indicative that sexual activity that took place over a period of time rather than, as ME now appears to contend, on just the 28th and 29th September 2019.
- ME accepts that on the 26th September 2019, she misled Inspector Renwick about the nature of her relationship with RP. However, if as she now appears to contend, sexual activity did not commence until on the 28th September 2019, rhetorically the Panel asks: “In what way did she mislead Inspector Renwick on the 26th or 27th September 2019?” While the Panel recognises that ME appears to have become increasingly careful and particular in the way her responses have been drafted, scrutiny of the “duty sheets” (**pages 379 to 386**) indicates that there was little, if any, opportunity between the 1st September and the 26th September 2019 for the first occasion of sexual activity while on night shift duty to occur.
- In any event, having gone to such an extent to have the rumours quashed as she was concerned how they might affect her husband, it is implausible that, almost immediately, ME would engage in conduct that would substantiate the rumours.
- The Panel is entitled to have regard to RP’s Regulation 16 Response (**pages 87 to 89**) and his Regulation 22 Response (**pages 19 to 27**). While he is not specific on the dates of the period over which sexual activity took place, the Panel is satisfied that these Responses are indicative of period of time that exceeds that now apparently admitted by ME.

42. For these reasons, the Panel finds as a fact that sexual activity on duty between ME and RP took place from at least the beginning of September 2019.

43. Having made that finding of fact, it is unnecessary for the Panel to go into the detail of the sexual activity that the Officers engaged in. While some recorded passages are likely to be verbal expressions of sexual fantasies, others are clearly not – in particular the passages referred to in paragraphs 53 and 54 of Mr Beggs QC’s Opening Note. Suffice it to say that the Panel rejects the “explanations” put forward on behalf of ME in paragraph 16 of Ms Stevens’ written submissions dated the 9th July 2021. The Officers sexual activity clearly involved the removal of some of their clothing, kissing, the exposure of ME’s breasts and RP masturbating ME resulting in her climaxing.

Group (ii)

44. ME has admitted that, by engaging in sexual activity while on duty, she failed to discharge her duties as alleged in paragraph 10 of her Regulation 21 Notice (the “general” allegation) and consequently was in breach of the Standards of Professional Behaviour concerning Duties and Responsibilities and Discreditable Conduct. The Panel is satisfied that this admission is both unequivocal and properly made. **As such, this allegation is proved by virtue of regulation 33(14)(b) on the ME’s admission.**

45. As indicated above, RP must be considered to have denied the like allegation in paragraph 10 of his Regulation 21 Notice. The Panel, however, is in no doubt that by engaging in sexual activity while on duty, RP was not discharging his police duties. Given its findings and RP’s admission in

respect of the allegations within group (i), **the Panel is satisfied that this allegation is proved to the required standard.**

46. Regarding the Officers' failure to attend Frimley Park Hospital at about 04.17 on the 29th September 2019, the document at **page 359** indicates they were parked up less than 15 minutes' drive away. While it is correct that ME's subsequent entry on the relevant Occurrence report (**pages 306 to 309**) records the fact that the officers who did attend were unable to seize clothing due to the risk of cross-contamination, this is not the reason given by ME for their non-attendance in the relevant transcript (**pages 170 to 172**). Indeed, in ensuring that other officers were deployed, ME did not raise the issue of possible cross-contamination by them.
47. The Panel is satisfied that the AA has proved to the required standard that ME failed to attend Frimley Park Hospital simply because she did not want her sexual activity with RP to be interrupted. As is apparent from RP's remark at about 04.50 viz "*Aww, let's just get naked*", that activity continued.
48. Similarly, the Panel is satisfied that the AA has proved to the required standard that RP failed to attend Frimley Park Hospital simply because he did not want his sexual activity with ME to be interrupted. It rejects as disingenuous his assertion that he bears no "responsibility" as deployment was a matter for ME to decide.
49. Regarding the Officers' failure to respond to the call for assistance in relation to the Curry's burglary, the document at **page 360** indicates they were parked up less than 25 minutes' drive away at "normal" speed. The Panel is in no doubt that, had they responded to the call, the Officers would have arrived much more quickly as they would have been able to use the "blues and twos".
50. It is apparent from the call (**page 173**) that, while it was primarily to "Woking Units", it was a call "*to try and flood this area*". In these circumstances, available "non-Woking Units" would reasonably be expected to respond as well – as in fact happened with PD72, PD73 and TM50. (In this regard, the Panel is able to take account of the knowledge of the Police Panel Member that these are not Woking Units and come under Operations Command.) Therefore, the Panel is satisfied that the Officers should have responded to the call given their location and would have done had they not been engaged in sexual activity. It is self-evident from the transcripts of what occurred after the call (**pages 174 to 183**) that the sexual activity continued.
51. The Panel rejects ME's explanation for not responding to the call and it similarly rejects RP's explanation. It is satisfied to the required standard that the AA has proved that the reason they did not respond to the call was, again, because they did not want their sexual activity to be interrupted.
52. The AA has, accordingly, proved as alleged in paragraph 12 of the respective Regulation 21 Notices that **the Officers' failure to respond to the two calls breached the Standards of Professional Behaviour concerning Duties and Responsibilities and Discreditable Conduct. Furthermore, their failure to respond was undoubtedly a failure to do the "right thing" expected of serving police officers on response duties. As such, they were in breach of the Standard of Professional Behaviour concerning Honesty and Integrity as a consequence of their lack of integrity.**

Group (iii)

53. For the reasons set out above, the Panel has found as a fact that the sexual activity between ME and RP had been ongoing from at least the beginning of September 2019, in other words for over 3 weeks at least before the first conversation with Inspector Renwick. Again, as set out above, the sexual activity continued after the relevant conversations with Inspector Renwick.
54. It is common ground that rumours of a sexual relationship between ME and RP were circulating amongst other officers before the discussions with Inspector Renwick.
55. There is no dispute that the discussions with Inspector Renwick were instigated by ME.

56. The Panel can only infer that she did so to try and quash the rumours in order to:
- Prevent them reaching her husband;
 - Make Inspector Renwick, her supervisor, believe they were false should they reach him;
 - Hopefully get them to cease altogether by having Inspector Renwick to address D Rota Woking NPT; and
 - Allow the Officers to continue their sexual activity “in peace”.
57. The Panel has concluded that ME’s conduct in this respect was calculated, manipulative and deceitful. It is in no doubt that her conduct would be regarded as dishonest by reasonable and fair-minded members of the public.
58. Accordingly, the Panel is satisfied that the AA has proved to the required standard that, **in respect of the allegations in group (iii), ME breach the Standards of Professional Behaviour concerning Honesty and Integrity (both limbs) and Discreditable Conduct.**
59. Turning to RP, the first thing to bear in mind is that, as is apparent from Inspector Renwick’s report (**pages 191 to 193**), he made two telephone calls to ME on the 26th September 2019. While, as he admits, RP was undoubtedly present for the second when ME put the call on speaker-phone, there is no evidence that he was present during the first call. Indeed, given the time of the first call as remembered by Inspector Renwick, the duty sheets (**pages 379, 380 and 384**) cannot “confirm” that ME and RP would have been on duty together then.
60. The evidence of Inspector Renwick, accepted by the Panel, is that ME asserted that she would never have sex on duty in the first call. Inspector Renwick does not state that ME “repeated” the assertion in the second call. The substance of the conversation in the second call, to which RP “contributed”, concerned what Inspector Renwick had been told by PS Walton and that he still intended to address D Rota Woking at a briefing.
61. In these circumstances, the Panel has concluded that there is no evidence before it to prove the allegations set out in paragraph 3(c) and (d) of RP’s Regulation 21 Notice. Accordingly, **the Panel cannot find that RP’s “conduct” on the 26th September 2019 vis-à-vis Inspector Renwick breached any of the Standards of Professional Behaviour as alleged in paragraph 11 of his Regulation 21 Notice.**
62. Different considerations apply regarding the conversation with Inspector Renwick on the 27th September 2019 as RP admits he was present. While in the light of Inspector Renwick’s “concession”, referred to in paragraph 32 above, the Panel cannot be satisfied that RP “verbalised” that ME and he had considered not working together but had concluded this would be seen as an admission of “guilt”, he would have heard ME so stating and her assertion that she would never have sex on duty. He would also have heard ME’s assertion of her “high standards”.
63. As they were already in an ongoing sexual relationship, RP would have known these assertions were misleading, to say the least. He would have realised that they were intended to allow them to continue their sexual activity “in peace” – indeed, as such, he was likely to “benefit” from Inspector Renwick’s being misled. He did nothing to correct the misleading impression.
64. By no stretch of the imagination, does the Panel consider RP’s remaining silent was “doing the right thing”. Furthermore, to fail to correct the misleading of a senior officer, was clearly conduct that had the potential to discredit the police service – the public does not expect such behaviour from officers of any rank.
65. In the circumstances, the Panel is satisfied that the **AA has proved to the required standard that RP’s “conduct” on the 27th September 2019 vis-à-vis Inspector Renwick breached the Standards of Professional Behaviour concerning Honesty and Integrity (Integrity only) and Discreditable Conduct. The Panel makes no finding on the allegation that RP also breached the Standard of**

Professional Behaviour concerning Challenging and Reporting Improper Conduct because the allegation “adds nothing” to the findings made.

Group (iv)

66. It is appropriate, in considering this group of allegations, to deal with RP first.
67. RP has admitted that, by speaking the relevant words, he was in breach of the Standards of Professional Behaviour concerning Authority, Respect and Courtesy and Discreditable Conduct. The Panel is satisfied that this admission is both unequivocal and properly made. **As such, the breaches of the two Standards are proved by virtue of regulation 33(14)(b) on the RP’s admission.**
68. Given the nature of the allegation, it is necessary for the Panel to consider whether it has been proved that RP also breached the Standard of Professional Behaviour concerning Equality and Diversity.
69. To be in breach of this Standard, it is not necessary for the AA to prove that RP is, in fact, a racist. What the Panel is required to do is to consider the words used and the perception they might reasonably create. In considering the perception the words are likely to create, it is irrelevant that they were spoken “in private” or in a so-called “safe environment”. It is equally irrelevant, that RP did not believe ME would be “offended” by the remarks or, indeed, that she may not have been so offended.
70. **The Panel has no hesitation in finding that the AA has proved that RP breached the Standard concerning Equality and Diversity.** The words he used were disrespectful, to say the least, of Asian and “non-white” persons. In no way did they “promote equality and diversity” – quite the opposite. In short, the words used were discriminatory.
71. Turning to ME, at the outset the Panel has no hesitation in rejecting her contention that, when RP was speaking, she “*did not pick up*” on the words; she had “*switched off*”; or, she had “*zoned out*”. It is clear from the transcript (**page 128**) that she was an “active participant” in the relevant conversation. Indeed, it is implicit in her acknowledgment that she should have challenged RP that she must have heard what he said. If she did not hear what he said, the need for her to challenge RP did not arise.
72. Having heard the words, it was incumbent upon ME as RP’s supervisor to challenge them. In failing to do so, she did not “do the right thing” expected of supervisors by either the public or the police service.
73. In the circumstances, the Panel is satisfied that the AA has proved that, in relation to the allegations in group (iv), ME was in breach of the Standards of Professional Behaviour concerning Honesty and Integrity (Integrity only), Discreditable Behaviour and Challenging and Reporting Improper Conduct.
74. For the avoidance of doubt, the Panel finds these allegations proved under regulation 33(14)(a). It is unable to find ME’s breach of the Standard of Professional Behaviour concerning Challenging and Reporting Improper Conduct proved by virtue of regulation 33(14)(b) because it rejects the basis upon which ME advanced her “admission”.

Misconduct/Gross Misconduct

75. For obvious reasons, under this sub-heading, ME and RP must be considered individually.

RP

76. In his Regulation 22 Response, RP made a “cumulative” admission of gross misconduct on the basis of the breaches of the Standards of Professional Behaviour he admitted. The Panel considers

that, even on such a “limited” basis, RP’s admission of gross misconduct was unequivocal and properly made. As such, it would be open to the Panel to find gross misconduct proved against him by virtue of regulation 33(14)(b).

77. Given that the Panel has found proved most of the allegations he did not admit, logically it must follow that, under regulation 33(14)(a), the Panel is satisfied that **the cumulative finding in respect of RP is gross misconduct.**

78. For the avoidance of doubt:

- With regard to the **matters found proved in group (i)**, the Panel is in no doubt that the sexual activity RP engaged in on the 29th September 2019 alone amounted to **gross misconduct**. *A fortiori*, the sexual activity he engaged in from at least the beginning of September 2019.
- With regard to the **matters proved in group (ii)**, they can only be described as a serious dereliction of duty by RP that would be considered as outrageous by reasonable and fair-minded members of the public. They can amount to nothing less than **gross misconduct**.
- With regard to the **matters proved in group (iii)**, on the 27th September 2019 RP countenanced the active deception of a supervisor by ME. As an officer with over 15 years’ service including as an Acting Sergeant, he would have been under no illusion as to the seriousness of what had happened. He took no steps to correct what had been said, realising, as he must have, that it was to his “personal advantage” not to do so. His conduct amounted to **gross misconduct**.
- With regard to the **matters proved in group (iv)**, RP’s conduct was contrary to the Equality and Diversity training that he would have received throughout his service – including training seemingly undertaken as recently as the 31st January 2019 (**page 477**). The potential adverse effect upon the efforts of the police service, and Surrey Police in particular, to increase the confidence minority ethnic groups have in them is obvious. The Panel is clear that RP’s conduct amounted to **gross misconduct**.

ME

79. Prima facie, the Panel’s findings regarding ME should be the same as those in respect of RP viz cumulatively her proven conduct amounts to gross misconduct and individually her proven conduct in respect of each of the four groups amounts to gross misconduct.

80. The issue for the Panel to determine is whether the matters referred to in paragraph 19 “reduce” her proven conduct to misconduct.

81. For the record, in determining this issue, the Panel has given detailed consideration to all relevant material before it, including:

[REDACTED]

[REDACTED]

82. It is also appropriate to record that:

- Having received ME’s Regulation 22 Response in advance of the hearing bundle, on the 22nd May 2021, in an email to ME’s Solicitors who were then acting, copied to the AA’s Solicitors, the Chair made it clear that if any issue under the Equality Act 2010 was to be raised by ME, the issue(s) were to set out in writing in advance of the hearing and the AA was to have the opportunity to respond in writing to them.
- The Chair’s “email direction” was repeated and “amplified” in his written Pre-hearing Determinations dated the 27th May 2021.
- Further directions relating to the Equality Act 2010 were given, by agreement, on the 8th June 2021 when the original hearing was adjourned. The Chair’s written reasons, dated the 9th June 2021, for allowing the adjournment on the 8th June 2021 re-emphasised the need for relevant and “Hayat compliant” medical evidence/reports to be provided to the Panel.

83. In paragraph 9 of her document dated the 9th July 2021, Ms Stevens appears to assert that ME did not have the funding to obtain a relevant medical report and that, in fairness, the AA should obtain such a report first – something the AA subsequently declined to do.

84. In the Panel’s view, if an officer intends in misconduct proceedings to raise an issue under the Equality Act 2010, there is no obligation upon the AA to “pre-empt” the issue by first obtaining a medical report “in rebuttal”. Indeed, it may not be possible for the AA to do so because the relevant medical records, including any Force Occupational Health Records, can only be disclosed with the officer’s consent.

85. In any event, the Panel is bound to observe that Ms Stevens’ assertion that ME did not have funding appears to be contradicted by paragraph 14 of ME’s Regulation 22 Response, referred to in paragraph 19 above.

[REDACTED]

86. If an officer intends to raise an issue under the Equality Act 2010 to the effect that his/her conduct was in consequence of his/her disability discrimination under section 15 and/or that he/she is the “victim” of indirect sex and/or age discrimination under section 19, it is incumbent upon him/her to put before the Panel evidence that is capable of supporting the issue(s) raised. This does not “reverse” the burden of proof, because, if such evidence is before the Panel, it is for the AA to prove that the conduct was not in consequence of such disability and/or indirect discrimination.

(Although, Ms Stevens' document dated the 9th July 2021 focusses on disability discrimination, indirect age and sex discrimination have been obliquely referred to in correspondence from ME's former Solicitors).

87. For the avoidance of doubt, it is stated that the Panel is aware that, for conduct to be as a consequence of disability, it is not necessary for the disability to be the sole or main cause of the conduct. It is sufficient that it had some material, causative effect. Thus, where the issue is properly before a Panel, it is for the AA to prove that the disability did not have any material, causative effect on the conduct.
88. It is not sufficient for an officer, seeking to raise such an issue under the Equality Act 2010 regarding conduct alleged to have occurred in 2019, to merely, as in this case, produce for example:



89. Having carefully scrutinised all the relevant material before it, the Panel has concluded that there is no evidence before it that is capable of properly supporting the specific contention that ME's proven conduct may have been in consequence of her being disabled within the meaning of the Equality Act 2010. Nor, for the avoidance of doubt, is there any evidence before it that is capable of properly supporting the more oblique contentions that ME's proven conduct may have been in consequence of her having the protected characteristics of age and/or sex.
90. Accordingly, the Panel is satisfied to the required standard that the AA has proved that, **cumulatively, ME's proved conduct amounts to gross misconduct.**
91. For the avoidance of doubt, the Panel's cumulative finding would have been the same on ME's admitted breaches of the Standards of Professional Behaviour.
92. For the further avoidance of doubt:
- With regard to the **matters found proved in group (i)**, the Panel is in no doubt that the sexual activity ME engaged in on the 29th September 2019 alone amounted to **gross misconduct**. *A fortiori*, the sexual activity she engaged in from at least the beginning of September 2019.
 - With regard to the **matters proved in group (ii)**, they can only be described as a serious dereliction of duty by ME that would be considered as outrageous by reasonable and fair-minded members of the public. At the time, she was meant to be discharging supervisory duties, including matters involving the deployment of resources. The breaches can amount to nothing less than **gross misconduct**.
 - With regard to the **matters proved in group (iii)**, as has already been stated, the "degree" of the Officer's culpability is undoubtedly high. Her breaches can only be **gross misconduct**.
 - With regard to the **matters proved in group (iv)**, as has already been stated RP was plainly in breach of the Standard of Professional Behaviour concerning Equality and Diversity. His words were spoken in the course of a conversation in which, as the Panel has found, ME was an active participant. As a supervisor, ME should have challenged RP as she would be aware of the potential adverse effect

on the police service, and on Surrey Police in particular, such remarks could have. Her failure to do so, effectively condoned RP's remarks, thereby creating the risk that they might be repeated. The Panel is satisfied that the AA has proved that ME's breaches amount to **gross misconduct**. (For the avoidance of doubt, this determination is made on the basis of the Panel's findings, rather than on ME's "limited" admission.)

Outcome

93. The Panel has reminded itself that in ME's case the only disciplinary action available to it under the Regulations (as modified) is a finding that she *"would have been dismissed if [s]he had not ceased to be a member of a police force"*. In other words, were the Panel to determine that, had ME still been serving police officer, it would have given her, for example, a Written Warning, it would not be open to it to "impose" any disciplinary action on her at this hearing.
94. Similarly, the Panel has reminded itself that in RP's case the only disciplinary action available to it is a finding that he *"would have been dismissed if he had not ceased to be a member of a police force"*. In other words, were the Panel to determine that, had RP still been serving police officer, it would have given him, for example, a Written Warning, it would not be open to it to "impose" any disciplinary action on him at this hearing.
95. The fact of the Officers' resignations is not a matter to be taken into account by the Panel in determining outcome in each of their respective cases, save in so far as it might be indicative of remorse for and insight into their respective misconduct.
96. In considering the appropriate disciplinary action to be imposed, the Panel had regard to the Officers' respective records of service in accordance with modified regulation 35(3)(a).
97. On behalf of the AA, in accordance with modified regulation 35(3)(c)(ii), Mr Beggs QC submitted written submissions that expanded upon paragraphs 135 to 138 of his Opening Note. Meaning no disrespect to Mr Beggs QC, it is not intended to repeat or summarise his submissions because the Chair directs that copies of both documents be retained by the AA in order that they are available to any other tribunal called upon to consider this case. In short, Mr Beggs QC submitted that the only disciplinary action available to the Panel should be imposed on both ME and RP.
98. DCI Haycock made representations on behalf of the ME in accordance with modified regulation 35(3)(c)(i). He drew attention to the bundle of 11 "character statements" provided on behalf of ME. He reminded the Panel that the statements came from individuals outside the police service, as well as from serving officers of a variety of ranks. He drew particular attention to the statement from ME's husband. He also drew the Panel's attention to the commendations and letters of thanks that ME had received while in service. Rightly, DCI Haycock drew the Panel's attention to the charity work ME has undertaken over a number of years. He described her as a *"good officer"* for whom *"something went terribly wrong"* and suggested that she had not been *"acting rationally"* [REDACTED]
99. DCI Haycock reminded the Panel that ME had resigned from Surrey Police. She had now *"moved on"* and had no intention of seeking to re-join the police service. He asked the Panel to show her compassion and, by implication, submitted that it should only direct that the finding of gross misconduct be recorded.
100. DS Warnes made representations on behalf of the RP in accordance with regulation 35(3)(c)(i). She drew attention to the "character statements" provided on behalf of RP. She submitted that RP had been realistic about the seriousness of his misconduct and had resigned in order to obtain

- alternative employment. He took personal responsibility for his behaviour. By implication, she also submitted that the Panel should only direct that the finding of gross misconduct be recorded.
101. In determining whether to impose the only available disciplinary action, the Panel must still follow the decision in **The Queen (on the application of the Chief Constable of Greater Manchester Police) v Police Conduct Panel (Roscoe – Interested Party) Case No 698/2018 (Administrative Court, Manchester District Registry)** and **The Queen (on the application of the Chief Constable of West Midlands Police) v Panel Chair (Officer “A” – Interested Party) [2020] EWHC 1400 (Admin)**. Therefore, it has had regard to the relevant provisions of the College of Policing’s Guidance. However, at all times it has borne in mind that it is guidance only and ultimately it is for the Panel to determine the appropriate outcome.
102. The Panel has also reminded itself that it does not follow that, because it has determined that the Officers’ breaches of the Standards of Professional Behaviour are so serious that dismissal would have been justified had they remained serving officers, that the only available disciplinary action must be imposed on each of them. In each of their cases, it has performed the “exercise” referred to in paragraph 2.11 of the College of Policing’s Guidance as if each was still a serving officer.
103. At the forefront of the Panel’s mind has been the purpose of misconduct proceedings – these are expressly set out in paragraph 2.3 of the College of Policing’s Guidance. The Panel has reminded itself that one of the consequences of the “overarching” purpose of misconduct proceedings is that any “personal mitigation” that an officer concerned is able to advance carries less “weight” than it would in, for example, criminal proceedings (see: **Salter v Chief Constable of Dorset [2012] EWCA Civ 1047**).
104. It has reminded itself of the observations of Holroyde J at paragraph 66 of his judgment in **The Queen (on the application of Williams) v Police Appeals Tribunal (Commissioner of Police of the Metropolis – Interested Party) [2016] EWHC 2708 (QB)**, viz:
- “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 exceptional circumstances, the public could have no confidence in a police service 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 in itself to the public’s confidence in and respect for the police**” (emphasis added).*
105. In assessing the seriousness of the ME’s conduct, the Panel has followed the approach set out in paragraph 4.4 of the College of Policing’s Guidance.
- The “degree” of the ME’s culpability is undoubtedly very high in respect of each of the 4 groups of misconduct:
 - With regard to group (i), the sexual activity was deliberate, intentional and planned in the sense that she and RP took advantage of their being crewed together at nights for their own personal gratification. At the time, ME held a supervisory position and was responsible for deployment of resources. She abused the trust placed in her to perform her role diligently and professionally. The sexual activity occurred over a significant period of time.

- With regard to group (ii), the failure to perform her duties was a deliberate dereliction of her duties in order that she might be able to engage in sexual activity. It occurred over a significant period of time and amounted to an abuse of her position and the trust placed in her by both Surrey Police and the public.
- With regard to group (iii), the Panel can only repeat that ME's conduct was calculated, manipulative, deceitful and dishonest. She instigated it in order to get Inspector Renwick to take action that could only benefit her and RP. The Panel do not consider her dishonesty can be categorised as "operational dishonesty", but this does nothing to reduce its seriousness.
- With regard to group (iv), as already stated, RP's remarks were plainly discriminatory and should have been challenged by ME as his supervisor. Failure on the part of a supervisor to challenge such conduct is always a serious failure as it can create the impression that such conduct is condoned and may be repeated.

Consequently, it logically follows that the Panel also considers that ME's culpability for her cumulative misconduct is also very high.

- With regard to the harm resulting from the ME's conduct in respect of each of the 4 groups, it is plain and obvious that her conduct had, at the very least, the potential to do serious harm to the reputation of the police service and to Surrey Police in particular.
 - Engaging in sexual activity while on duty, in a marked police car and in a public place clearly has the potential to do such harm.
 - Deliberately failing to discharge her police duties because she was engaged in sexual activity, likewise.
 - Deliberately lying to a senior officer in any circumstances, let alone when doing so is in order that personal gratification on duty can continue "in peace", clearly has the potential to do such harm.
 - Failing to challenge the discriminatory remarks of an officer she was supervising clearly has the potential to do such harm because it creates the impression that the police service and Surrey Police in particular are merely "paying lip service" to issues of Equality and Diversity.

Consequently, it logically follows that the Panel also considers that ME's cumulative misconduct had, at the very least, the potential to do serious harm to the reputation of the police service and to Surrey Police in particular.

- With regard to the aggravating factors set out in paragraph 4.67 of the College of Policing's Guidance:
 - ME's misconduct in group (i) was deliberate and premeditated. It involved an abuse of trust and was sustained over a period of time. It continued after she realised (as she should have done at the outset) that it was improper.
 - ME's misconduct in group (ii) was also deliberate. It involved an abuse of trust and was repeated over a period of time. It continued after she realised (as she should have done at the outset) that it was improper.
 - ME's misconduct in group (iii) was also deliberate and premeditated.

- ME's misconduct in group (iv) was an abuse of the trust placed in her as a supervisor and was a significant deviation from force policy concerning Equality and Diversity.

All the above matters are relevant when considering the aggravating factors in ME's cumulative misconduct. In addition, when her misconduct is considered cumulatively, there is the additional aggravating factor of multiple proven allegations and breaches of the Standards of Professional Behaviour.

- With regard to mitigating circumstances, of those set out in paragraph 4.71 of the College of Policing's Guidance, doing the best it can, the Panel is prepared to accept that ME made limited admissions at an early stage with regard to the misconduct in each of group (i), group (ii), group (iii) and group (iv).

As such, she may be regarded as having made limited early admissions in respect of her cumulative misconduct.

For the avoidance of doubt, for reasons already stated, mental health and the like are not mitigating factors in ME's case. Nor does the Panel consider that her recent resignation is indicative of genuine insight or remorse.

106. In conclusion, the Panel is in no doubt that the level of seriousness in ME's case in respect of each of the 4 groups individually and cumulatively is very high.

107. **In assessing the seriousness of the RP's conduct**, the Panel has similarly followed the approach set out in paragraph 4.4 of the College of Policing's Guidance.

- The "degree" of the RP's culpability is undoubtedly very high in respect of each of the 4 groups of misconduct:
 - With regard to group (i), the sexual activity was deliberate, intentional and planned in the sense that he and ME took advantage of their being crewed together at nights for their own personal gratification. RP abused the trust placed in him by the public to perform his duties diligently and professionally. The sexual activity occurred over a significant period of time.
 - With regard to group (ii), the failure to perform his duties was a deliberate dereliction of his duties in order that he might be able to engage in sexual activity. It occurred over a significant period of time and amounted to an abuse of his position and the trust placed in her by both Surrey Police and the public.
 - With regard to group (iii), RP's conduct on the 27th September 2019 *vis-à-vis* Inspector Renwick amounted to his countenancing the active deception of a supervisor by ME. He would have been under no illusion as to the seriousness of what had happened, but took no steps to correct what had been said, realising, as he must have, that it was to his "personal advantage" not to do so.
 - With regard to group (iv), RP's remarks were plainly discriminatory and contrary to the Equality and Diversity training he had received during his long service. He would have known that making such remarks was likely to undermine public confidence in the police service, especially within minority ethnic communities.

Consequently, it logically follows that the Panel also considers that RP's culpability for his cumulative misconduct is also very high.

- With regard to the harm resulting from the RP's conduct in respect of each of the 4 groups, it is plain and obvious that his conduct had, at the very least, the

potential to do serious harm to the reputation of the police service and to Surrey Police in particular.

- Engaging in sexual activity while on duty, in a marked police car and in a public place clearly has the potential to do such harm.
- Deliberately failing to discharge his police duties because he was engaged in sexual activity, likewise.
- Condoning deliberate deception of a senior officer in any circumstances, let alone where by doing so results in being able to continue to indulge in personal gratification while on duty “in peace”, clearly has the potential to do such harm.
- The use of discriminatory language by an officer clearly has the potential to do such harm because it creates the impression that the police service and Surrey Police in particular are merely “paying lip service” to issues of Equality and Diversity.

Consequently, it logically follows that the Panel also considers that RP’s cumulative misconduct had, at the very least, the potential to do serious harm to the reputation of the police service and to Surrey Police in particular.

- With regard to the aggravating factors set out in paragraph 4.67 of the College of Policing’s Guidance:
 - RP’s misconduct in group (i) was deliberate and premeditated. It involved an abuse of trust and was sustained over a period of time. It continued after he realised (as he should have done at the outset) that it was improper.
 - RP’s misconduct in group (ii) was also deliberate. It involved an abuse of trust and was repeated over a period of time. It continued after he realised (as he should have done at the outset) that it was improper.
 - RP’s proven misconduct in group (iii) involved a conscious decision not to correct the ME’s misleading of Inspector Renwick – as such it amounted to the concealing of wrongdoing. It was a significant deviation of what is expected of an experienced serving police officer.
 - RP’s misconduct in group (iv) was a significant departure from force policy on Equality and Diversity and contrary to the relevant training he had received throughout his service. While he was not performing the role of Acting Sergeant at the relevant time, the fact that he had frequently been in such a supervisory role and aspired to attain promotion to the substantive rank of Sergeant is an aggravating factor.

All the above matters are relevant when considering the aggravating factors in RP’s cumulative misconduct. In addition, when his misconduct is considered cumulatively, there is the additional aggravating factor of multiple proven allegations and breaches of the Standards of Professional Behaviour.

- With regard to mitigating circumstances, of those set out in paragraph 4.71 of the College of Policing’s Guidance, doing the best it can, the Panel is prepared to accept that RP made limited admissions at an early stage with regard to the misconduct in each of group (i) and group (iv). As such, he may be regarded as having made limited early admissions in respect of his cumulative misconduct.

The Panel is also prepared to regard his admission of cumulative gross misconduct in his Regulation 21 Notice and his subsequent resignation from Surry Police is indicative of a degree of insight into his cumulative misconduct.

108. In conclusion, the Panel is in no doubt that the level of seriousness in RP's case in respect of each of the 4 groups individually and cumulatively is also very high.

109. Having assessed the seriousness of each of the Officers' conduct, the Panel has taken into account, within the "constraints" of the decisions in **Salter** and **Williams**, the matters of what might be regarded as their respective "personal mitigation". For the avoidance of doubt, this includes:

- The character evidence adduced on behalf of the Officers;
- All statements made by the Officers in the course of the proceedings (including ME's recent personal statement) in so far as they contain any material that may be considered to be personal mitigation;
- In ME's case, the commendations and letters of thanks she has received;

[REDACTED]

110. Having considered the Officers' respective personal mitigation, the Panel acknowledges that prior to the index events in 2019, they had both discharged their duties efficiently and to the standard expected of them. They have sought to put the index events behind them and to rebuild their respective family lives. RP has embarked upon a new career and it is the Panel's understanding that, if she has not already done so, ME intends to do the same.

111. Having performed the above "exercise", the Panel, in accordance with paragraph 2.11 of the College of Policing's Guidance has considered the outcomes that would have been available had the Officers still been in service, starting with the least severe. The Panel has "accepted" Mr Beggs QC's "invitation", in paragraph 7 of his written submissions under modified regulation 35(3)(c)(ii), to consider: first, the Officers' respective appropriate outcomes in respect of the proved breaches concerning each of the 4 individual groupings; and, thereafter, their respective appropriate outcomes in respect of their respective cumulative breaches.

ME

112. The Panel will first set out its determination in relation to ME.

113. In respect of each of the 4 individual groupings, the Panel is in no doubt that, had the ME remained in service, Management Advice or a Written Warning would fail to adequately deal with the seriousness of her misconduct, let alone protect the public interest or deter other officers from conducting themselves in the same or a like way.

114. It logically follows that the Panel is similarly in no doubt that, had the ME remained in service, Management Advice or a Written Warning would fail to adequately deal with the seriousness of her cumulative misconduct, let alone protect the public interest.

115. The Panel has considered whether, in respect of each of the 4 individual groupings, this is a case where the appropriate disciplinary action would have been a Final Written Warning had ME remained in service. However, it does not regard that such an outcome would have adequately addressed the seriousness of ME's conduct regarding each grouping had she remained in service.

116. The Panel is in no doubt that the public would regard it as incomprehensible were it to be learnt that, had she not resigned, Surrey Police would have been prepared to retain the services of an

- officer who has been found to have acted as ME did in respect of her proved misconduct in group (i). Such conduct would properly be regarded as outrageous and incompatible with continued service as a police officer.
117. Furthermore, being prepared to retain the services of an officer who has been found to have breached the Standards of Professional Behaviour in the manner found by the Panel in respect of group (i) would be regarded as “setting a bad example” to other officers and would, in effect, be regarded as condoning the ME’s misconduct. In other words, the imposition of a Final Written Warning, had the ME remained in service, would undermine one of the “cardinal principles” of the police misconduct regime *ie* deterring misconduct.
118. Similarly, the Panel is in no doubt that the public would regard it as incomprehensible were it to be learnt that, had she not resigned, Surrey Police would have been prepared to retain the services of an officer who has been found to have acted as ME did in respect of her proved misconduct in group (ii). Such conduct would properly be regarded as extremely serious, contrary to the expectations of and incompatible with continued service as a police officer.
119. Again, being prepared to retain the services of an officer who has been found to have breached the Standards of Professional Behaviour in the manner found by the Panel in respect of group (ii) would be regarded as “setting a bad example” to other officers and would, in effect, be regarded as condoning the ME’s misconduct. In other words, the imposition of a Final Written Warning, had the ME remained in service, would undermine one of the “cardinal principles” of the police misconduct regime *ie* deterring misconduct.
120. The Panel is in no doubt that the public confidence in the police service, and in Surrey Police in particular, would be seriously undermined were it to be learnt that, had she not resigned, Surrey Police would have been prepared to retain the services of an officer who has been found to have acted as ME did in respect of her proved misconduct in group (iii). Acting with honesty and integrity lies at the heart of what is expected of all serving police officers. ME’s conduct in this regard was the antithesis of what is expected of a serving police officer. The public can have no confidence in a serving officer who is prepared to act dishonestly for her own personal purposes or otherwise.
121. Once more, being prepared to retain the services of an officer who has been found to have breached the Standards of Professional Behaviour in the manner found by the Panel in respect of group (iii) would be regarded as “setting a bad example” to other officers and would, in effect, be regarded as condoning the ME’s misconduct. In other words, the imposition of a Final Written Warning, had the ME remained in service, would undermine one of the “cardinal principles” of the police misconduct regime *ie* deterring misconduct.
122. Regarding ME’s misconduct in group (iv), the Panel is clear in its view that the retention of the ME’s services, had she not resigned, would undermine public confidence in the police service, and in Surrey Police in particular, especially amongst minority ethnic communities. The reputation of the police service and of Surrey Police would also be damaged. The impression created would be that the police service only “pays lip service” to Equality and Diversity and is not sincere in its aim of eradicating discriminatory behaviour in the service.
123. Additionally, being prepared to retain the services of a supervising officer, who has been found to have breached the Standards of Professional Behaviour in group (iv) in the manner found proved by the Panel, would be regarded as “setting a bad example” to other officers and would, in effect, be regarded as condoning discriminatory behaviour within the police service. In other words, the imposition of a Final Written Warning, had ME remained in service, would undermine one of the “cardinal principles” of the police misconduct regime *ie* deterring misconduct.
124. Accordingly, the Panel’s determination in relation to ME regarding the outcome on each of the 4 groups individually is that, had she remained in service, the only reasonable, proportionate and

appropriate disciplinary action in respect of each individual grouping would have been dismissal without notice.

125. As such, **in respect of each individual grouping**, the Panel does determine that **ME would have been dismissed if she had not ceased to be a member of a police force.**

126. It follows, therefore, that the **cumulative determination** of the Panel on outcome is that **ME would have been dismissed if she had not ceased to be a member of a police force.**

RP

127. **The Panel now turns to its determination regarding RP.**

128. In the interests of brevity, the Panel states that what is set out in paragraphs 113 to 115 regarding ME applies *mutandis mutatis* to RP and need not be repeated.

129. Similarly, in the interests of brevity, the Panel states that what is set out in paragraphs 116 and 119 regarding ME applies *mutandis mutatis* to RP in respect of his proved misconduct in relation to groups (i) and (ii) and need not be repeated.

130. Regarding RP's proved misconduct in group (iii), the Panel considers that the public confidence in the police service, and in Surrey Police in particular, would be seriously undermined were it to be learnt that, had he not resigned, Surrey Police would have been prepared to retain the services of an officer who acted without integrity by effectively condoning the deception of a senior officer, the only reasonable explanation for which is that he personally "benefitted" therefrom. The public would be further dismayed to learn that such retention would mean they would effectively be "underwriting" the salary of an officer precluded from performing the full role of a serving police officer as he would necessarily be removed from the "evidential chain".

131. Once more, being prepared to retain the services of an officer who has been found to have breached the Standards of Professional Behaviour in the manner found by the Panel in respect of group (iii) would be regarded as "setting a bad example" to other officers and would, in effect, be regarded as condoning the RP's misconduct. In other words, the imposition of a Final Written Warning, had the RP remained in service, would undermine one of the "cardinal principles" of the police misconduct regime *ie* deterring misconduct.

132. Regarding RP's proved misconduct in group (iv), the Panel considers that the public confidence, especially amongst ethnic minority communities, would be seriously undermined were it to be learnt that, had he not resigned, Surrey Police would have been prepared to retain the services of an officer who behaved as RP did. Its reputation would also be damaged. The impression created would be that the police service, and Surrey Police in particular, only "pays lip service" to Equality and Diversity and is not sincere in its aim of eradicating discriminatory behaviour in the police service.

133. Additionally, being prepared to retain the services of an officer of long service, who has been found to have breached the Standards of Professional Behaviour in group (iv) in the manner found proved by the Panel, would be regarded as "setting a bad example" to other officers and would, in effect, be regarded as condoning discriminatory behaviour within the police service. In other words, the imposition of a Final Written Warning, had RP remained in service, would undermine one of the "cardinal principles" of the police misconduct regime *ie* deterring misconduct.

134. Accordingly, the Panel's determination in relation to RP regarding the outcome on each of the 4 groups individually is that, had he remained in service, the only reasonable, proportionate and appropriate disciplinary action in respect of each individual grouping would have been dismissal without notice.

135. As such, **in respect of each individual grouping**, the Panel does determine that **RP would have been dismissed if he had not ceased to be a member of a police force.**

136. It follows, therefore, that the **cumulative determination** of the Panel on outcome is that **RP would have been dismissed if he had not ceased to be a member of a police force.**

Addendum

- a) Indirect sex and age discrimination and disability discrimination may be “justified” if the “perpetrator” can show the discrimination to be a proportionate means of achieving a legitimate aim.
- b) Had there been evidence before the Panel that was capable of supporting the contention that ME’s conduct may have been the consequence of disability, her age and or her sex, the Panel would also have determined that:
 - It was not discriminatory to “categorise” ME’s proved misconduct as gross misconduct instead of misconduct *simpliciter*; and/or
 - It was not discriminatory to determine that the appropriate disciplinary action in ME’s case is that she would have been dismissed if she had not ceased to be a member of a police force.
- c) The rationale for such determinations would have been that the AA had proved that such “categorisation” of ME’s proved misconduct and/or the imposition of such disciplinary action was a proportionate means of achieving a legitimate aim, namely the threefold purpose of the police misconduct regime as set out in paragraph 2.3 of the College of Policing’s Guidance on Outcomes in Police Misconduct Proceedings.
- d) In short, the Panel would have accepted the submissions of Mr Beggs QC summarised in paragraph 18(b)(ii) and paragraph 42 of his document dated the 19th July 2021.



**John Bassett
(Chair)**

20th August 2021