

PC 41146 Samuel Gerrard
Special Case Hearing
Decision on Findings & Outcome

Background

1. PC Gerrard, having joined Surrey Police on 22nd May 2017, was arrested whilst off duty at Popworld in Guildford on 19th September 2019 and subsequently charged with common assault the following day. Following a 2 day trial on 25th February 2020 he was found guilty of common assault and sentenced to a fine on 23rd March 2020.
2. The allegation is that as a result of this conviction, of which documentary evidence from Basingstoke Magistrates Court is before the hearing, that PC Gerrard has breached the standards of professional behaviour and brought discredit onto the police service.
3. The case was due to be heard on 24th March 2020, which was the day following the announcement by the Prime Minister of the national 'lockdown' due to the Covid-19 pandemic. An application for adjournment was received pending an appeal of the conviction to the Crown Court. This application was declined on 25th March with the request safe hearing arrangements to be made as soon as practicable.
4. The Special Case Hearing was conducted on 22nd May 202 via [REDACTED] video conferencing in order to ensure the safety and wellbeing of all participants. Care was taken to ensure that submissions and evidence could be clearly seen and heard, and that all parties were properly supported. Where necessary questions and points were repeated to ensure clarity and an audio recording of the hearing was taken by the Surrey Police Professional Standards Department.

[Redacted]

Considerations & Finding

- 24. I am clear from the outset that a conviction for common assault in Magistrates Court is on the balance of probabilities a breach of the Professional Standards as it brings discredit on the police service and undermines public confidence in policing.

- 25. I have carefully considered, taking all the evidence before me, both documentary and provided in the hearing today by PC Gerrard, whether or not the breach is so serious as to amount to Gross Misconduct.

- 26. I accept, on the evidence of PC Gerrard, and from viewing the CCTV that this incident was very short in duration; a matter of seconds, or minutes for the whole encounter. I also accept that there was no injury to the victim, nor any damage caused.

- 27. I am also persuaded that the assault was out of character for PC Gerrard, taking into account the consistent character evidence that describes him as dedicated, calm and professional. All eleven statements describe broadly the same qualities and I note that a number of the witness are familiar with PC Gerrard both personally and professionally.

- 28. In assessing the seriousness of the offence, I also accept PC Gerrard's evidence that he genuinely believed, albeit mistakenly, that he had been a victim of crime, and that his bank card had been stolen by the victim of the assault, and that his actions were driven by that belief. In other words I accept the argument that he was acting in good faith. This is also evidenced by the fact that following the assault PC Gerrard waited for the police to arrive and reported his missing bank card.

29. I have looked closely at the CCTV, particularly at the demeanour of PC Gerrard and of the victim, and I am not persuaded by PC Gerrard's oral evidence that alcohol had 'no bearing' on his response to the victim. PC Gerrard gave evidence that he had drunk a beer with a meal and three or four gin and tonics. PC Gerrard stated that 'he wasn't acting as a police officer, so to speak', and that his physical actions were to prevent the victim, who he suspected of stealing his bank card, from leaving. He also accepted, in hindsight, that he had misconstrued some of the behaviour and communication from the victim.
30. It can be clearly seen from the CCTV that PC Gerrard was able to physically dominate the victim and if necessary restrain him. One interpretation of the footage is that PC Gerrard's stance of placing his head close to the victim and crouching over him whilst holding his clothing is intimidating. PC Gerrard gave evidence that this was because the music was loud and he was leaning in to hear what the victim was saying in response to his accusation that he had stolen his bank card.
31. From the evidence of PC Gerrard, and from viewing the CCTV it is apparent that he had a number of other options available to him as an off duty police officer to resolve the situation. He was present in Popworld with another police officer who could have assisted if he had been requested to do so. He was aware that the venue has door staff who also could have assisted, and he was in near proximity to bar staff. In suspecting a crime he could have acted as a police officer and placed himself 'on duty' in order to effect an arrest, or exercised his discretion in conducting initial enquiries to establish whether his suspicion that the victim had stolen his bank card was well founded.
32. The response of PC Gerrard is sudden and impulsive which indicates to me that he has not been able to apply the judgement, discretion, restraint and clarity of thought, that are extensively trained and expected of police officers, whether on or off duty. This also indicates to me that alcohol did have some bearing, especially as the evidence from his character witnesses is consistent in describing his usual demeanour as calm.
33. It is not at all uncommon for disputes of this nature to occur in pubs and bars, hence the requirement for door staff, and the regular attendance of the police at such venues, when

matters get out of their control. PC Gerrard, as an officer on duty would be routinely expected in his regular duties to attend to, and resolve, peacefully if at all possible, exactly such disputes.

34. The public expect that officers in these circumstances be impartial, professional and exercise restraint. I believe that it undermines public confidence in policing and brings discredit on the police service for an officer to be convicted of assault in such circumstances.

35. I am not persuaded that the circumstances of this conviction for assault provide compelling reasons that the breach of the Professional Standards is *not* so serious as to be regarded as simple misconduct.

36. Even if actions are driven by good faith, or aimed at preventing crime, they should not result in consequences that ultimately breach the Professional Standards. In this case they were so serious as to have resulted in a conviction, following trial, for common assault in the Magistrates Court.

37. I am aware that an appeal on this conviction has been made to the Crown Court, but this does not undo the fact that PC Gerrard's actions directly led to his conviction by the Magistrates Court, and that the consequence of this is that public confidence in policing has been undermined. It has *already* brought discredit on the Police Service.

38. Taking all this into account I consider that the breach of the Professional Standards is so serious that it amounts to Gross Misconduct.

Outcome

39. In deciding on the most appropriate outcome, I have carefully considered the written and oral submissions, the evidence of PC Gerrard, and the character evidence supplied. I have used the College of Policing Guidance on Outcomes to guide my considerations.

40. The purpose of the police misconduct regime is to:

- a. Maintain public confidence in the police service
- b. Uphold high standards in policing and deter misconduct, and
- c. Protect the public

41. Firstly, I agree with the submission by Mr Waite that in this case, there is not an ongoing need to protect the public. The character evidence, persuasive arguments by Mr Morris and evidence from PC Gerrard all indicate to me that there is little likelihood of such an offence reoccurring. PC Gerrard has demonstrated insight from what has happened and clearly described the lessons he has learned, particularly around poor judgement and misreading people. This is especially true as after the event PC Gerrard discovered that the victim had recognised conditions that would determine him vulnerable, and potentially explain his behaviour.

42. It is for these reasons that I am not without sympathy for PC Gerrard and the situation he has created for himself and the considerable implications that brings for his personal and professional life.

43. In determining the appropriate sanction I have assessed the seriousness of the misconduct and kept in mind the purpose of imposing sanctions.

44. It was submitted by Mr Morris on behalf of PC Gerrard that a finding of Gross Misconduct does not mean that dismissal is inevitable and referred me to the case of ***Royal College of Veterinary Surgeons v Samuel [2014]*** referenced in the College of Policing Guidance on Outcomes p.14, footnote 48. I have read that guidance.

45. There is no doubt that PC Gerrard is culpable for the misconduct. His actions led to his arrest, charge, trial and conviction. It is a conviction for assault, and although there was no injury caused, it was nevertheless an assault on a member of the public in a public place.

46. The College of Policing Guidance is clear at 4.16 that it is entirely unacceptable for police officers, who are responsible for enforcing the law, to break the law themselves. In PC

Gerrard's case, he has broken the law in an area where he would be routinely required to respond, exercise his discretion and uphold the law. Violence by police officers of any kind, when disproportionate, is serious and undermines public trust in policing.

47. In assessing the harm in this case, I note that there was no injury or damage caused, but there is harm to public confidence, no matter how brief the incident, or the circumstances in which it arose, it did result in a conviction for common assault.

48. I have looked carefully at the aggravating factors of this case, and there was a failure of PC Gerrard to raise his suspicions with his colleague present, or members of the door staff, or bar staff. Such actions may have prevented the assault from taking place, and protected all parties involved.

49. There are a number of mitigating factors in this case. It is a single episode of brief duration, he was acting in good faith, believing he had been a victim of crime and there is evidence of the lessons that have been learned by PC Gerrard. However, as I have described, there were earlier actions, or alternative actions available, that would have negated, or avoided the use of force in the heat of the moment.

50. I have also considered personal mitigation, noting that this carries limited weight. PC Gerrard has served his Country, in his previous military career, and the County. He is well regarded and according to the character evidence shows promise in his policing career. He has remained throughout this ordeal a dedicated officer. His character evidence witnesses concur that he would be a loss to policing.

51. I have actively considered the lesser sanction of Final Written Warning, and whether this would meet the purposes of maintaining public confidence, upholding high standards and deterring misconduct. I have concluded, with some regret, that it would not do so in this case. I believe that there is a clear conflict between a conviction of assault arising from a misunderstanding in a bar, and the requirements of policing in exactly those circumstances. It is for exactly these reasons that officers are given training early in their

service about the risks and dangers of such scenarios. They require sound judgement and the exercise of restraint.

52. Therefore the appropriate outcome in this case is one of dismissal without notice.

Gavin Stephens, Chief Constable

22nd May 2020