Neutral Citation Number: [2022] EWHC 117 (Admin)

Case No: CO/4195/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/01/2022

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

THE QUEEN ON THE APPLICATION OF SHANE WHEELER	**Claimant**
- and -	
POLICE APPEALS TRIBUNAL	**Defendant**
-and-	
CHIEF CONSTABLE OF CUMBRIA	**Interested Party**

- -
- -

Eva Niculiu (instructed by **Haighs Law Firm**) for the **Claimant**
Simon Walsh (instructed by **Force Solicitor**) for the **Interested Party**
The Defendant did not appear and was not represented

Hearing dates: **11-12 October 2021**

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Approved Judgment

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Mr Justice Julian Knowles:

Introduction

1. The Claimant, Shane Wheeler, was formerly a police constable with the Cumbria Constabulary. This is an application by him for judicial review of the decision of the Defendant, the Police Appeals Tribunal (PAT), on 25 August 2020 to dismiss his appeal against the disciplinary finding of gross misconduct and his dismissal without notice by a Police Misconduct Panel (the Panel) on 16 October 2019.

2. Permission was granted by His Honour Judge Saffman sitting as a judge of the High Court on 6 April 2021.

3. The Panel was constituted under the Police (Conduct) Regulations 2012 (SI 2012/2632). These have since been replaced by the Police (Conduct) Regulations 2020 (SI 2020/4) but were current at the time. In this judgment, unless otherwise indicated, references are to the 2012 Regulations.

Factual background

4. The Claimant was a police constable with Cumbria Constabulary for 29 years between 1990 and 2019. Before that he was a civilian scenes of crimes officer with the same force for three years between 1987 and 1990.

5. It is only fair to emphasise that until his dismissal, the Claimant had a long and unblemished record as a police officer. He was regarded as someone who would go a long way to help others, as the Panel recognised in its reasons at [71].

6. The Defendant is the body responsible under the Police Act 1996 for determining appeals against decisions of Police Misconduct Panels. The rules applicable at the time (again, they have since been replaced) were the Police (Appeals) Tribunal Rules 2012 (SI 2012/2630) (the 2012 Appeal Rules).

7. The Interested Party is the Chief Constable of Cumbria Constabulary, who was the ‘appropriate authority’ under reg 3(1)(b) of the 2012 Regulations, ie, the person who brought the disciplinary proceedings against the Claimant. Once the Chief Constable determined that there was a case to answer against the Claimant for gross misconduct, she referred them to a Misconduct Panel under reg 19(5). She was thus the other party in the misconduct hearing, and thereafter the Respondent to the Claimant’s appeal to the PAT. In fact, in this case, pursuant to reg 3(5)(a), the Chief Constable delegated the role of appropriate authority under the Regulations to Deputy Chief Constable Mark Webster, at least for the purposes of making representations on outcome under reg 35(11)(c)(ii). I will return to this later.

The gross misconduct allegations

8. The Claimant is an avid and life-long rugby fan who has had a long-standing involvement with the game in various capacities, including playing for the Cumbria Constabulary team, and then acting as one of its officers. Before he was unfortunately injured and had to retire from playing, he played at quite a high level.

9. The gross misconduct charges against him arose out of his buying tickets for, and selling tickets to, colleagues and others for international rugby matches which he was able to obtain through his contacts in the game. The tickets were often highly sought-after and in short supply. In simple terms, he acted as a ticket-broker, taking money from customers and then sourcing tickets for them. He only ever charged face-value for the tickets. This was something which he had done for many years before the allegations against him were made.

10. His buying and selling tickets was lawful and, for a long time, took place without complaint. However, from about 2015 or 2016 onwards, his activities proved to be less satisfactory and started to give rise to complaints. A number of people either paid the Claimant for tickets but received neither the tickets nor refunds (or the refunds were paid many months later), or they sold him tickets but were not paid in full for them. A number of people received cheques from the Claimant drawn on his personal account but when they were presented for payment they 'bounced'.

11. The notice served on the Claimant under reg 21 of the 2012 Regulations alleged the following matters as amounting to gross misconduct:

> "1) For many years and whilst employed by Cumbria Constabulary you have helped fellow police officers and members of the public obtain tickets to professional rugby matches. You have done so lawfully and without particular complaint. You have not sought to profit personally from these activities.
>
> 2) Your ticket activities have taken two principal forms:
>
> > 1) You sell tickets to those who wish to attend rugby matches. When these people pay you for their tickets you are under an obligation to either provide those tickets or, if you cannot do so, to refund the monies paid to you. If the tickets you provide are not as good or as expensive as those you offered, you are under an obligation to refund any difference in value (or to refund the whole of the monies paid upon request);
> >
> > 2) You buy tickets from others for onward sale to the people referred to above. Once these tickets have been provided to you, you are under an obligation to pay the sellers for them
>
> 3) Recently, however, your activities have proved less satisfactory and less successful than in the past. Numerous people [footnote 1 stated; Full details of these people and the relevant transactions appear In the [investigating officer's] report and accompanying documentation that will be given to you with this Notice and do not need to be set out Individually here] have either paid you for tickets but received neither tickets

nor refunds or sold you tickets but not been paid in full for them. Numerous other people have received cheques from you but when presented these cheques have not been honored.

4) Many of those you have done business with have experienced serious difficulty in obtaining from you money that was due to them. You still owe money to customers.

5) You have used your status as a police officer to encourage people both to obtain tickets through you and to allow you greater latitude in repayment timescales than they would to other suppliers. You have done so:

> a) implicitly, by telling your customers (or allowing them to become aware of the fact) that you are a serving police officer;
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> b) implicitly, by using Cumbria Constabulary email addresses and email systems to conduct transactions with your customers;
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> c) explicitly, by sending a picture of your Cumbria Constabulary crested business card bearing your printed name;
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> d) explicitly, by sending a picture of you in uniform, flanked by other police officers, with an accompanying text that read: "I'm sure if you google me my ugly mug will pop up on the Cumbria Constabulary website somewhere. I'm the one in the middle. I'm a big rugby fan and 100% genuine - I won't let you down".

6) By acting as aforesaid, you have failed to act with the honesty and integrity required of all police officers at all times by the Standards of Professional Behaviour. The standard of honesty and integrity is explained in Schedule 2 of the Police (Conduct) Regulations, 2012 as being one that requires officers not to 'compromise or abuse their position'. Acting with honesty and integrity is further explained in the Code of Ethics (2014) as an officer using his or her "position, police identification (...) for policing purposes only and not to gain a personal advantage that could give the impression that [he or she] is abusing [that] position'~

7) By acting as aforesaid, you have al so behaved in a manner that discredits the police service as a whole and undermines public confidence in it. This is amply evidenced by the number and nature of complaints received about your ticket operations.

> 8) Following complaints to him from other police officers, your area commander Supt Rob O'Connor told you in a meeting on 14 February 2017 that you should immediately "stop brokering ticket sales" for both colleagues and friends. Despite these strong words of advice, you did not stop your ticket activities. You thereby defied a lawful order from a superior officer.
>
> 9) You have recently been providing your services as a chauffeur to Sir Norman Stoller in return for a loan from him. Carrying out additional work such as this constitutes a 'secondary business' under the relevant Cumbria Constabulary "Business Interest and Additional Occupations" policy. Carrying on such a secondary business also requires you to notify the Constabulary of it and to obtain approval for it. You did neither.
>
> 10) In acting as described in paragraphs 8 and 9 above, you have breached the Standard of Professional Behaviour that requires all police officers to abide by force policies and lawful orders.
>
> 11) Your breaches of the Standards of Professional Behaviour are so serious that your dismissal from Cumbria Constabulary would be justified and they have, as such, been categorised as amounting to gross misconduct (as that term is defined in Reg 4 of the Police (Conduct) Regulations, 2012)."

12. In fact, that should have been a reference to reg 3(1), which defines gross misconduct as, 'a breach of the Standards of Professional Behaviour so serious that dismissal would be justified'. Those Standards are contained in Sch 2 to the 2012 Regulations. They include requiring police officers: to act with integrity and not to compromise or abuse their position; to abide by lawful orders; and to behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.

The Claimant's extended response under reg 22

13. In his response he described how he would try and source tickets through contacts. Usually, tickets would only be released shortly before the games. If he had taken money for tickets but was unsuccessful in securing them then a full refund would be made, but only at the end of the tournament, which is how he had always operated in the 25 years he had been supplying tickets. Sometimes he would buy tickets from his own money. He did not 'ring-fence' the money he received for tickets (eg by opening a separate bank account), but paid the money into his own account. Paragraph 63 stated, 'The funds for the purchase of rugby tickets were mixed with, and juggled alongside, the officer's own finances.'

14. The Claimant admitted that in recent times his system had functioned less well and that delays arose in processing refunds. He accepted some of these delays (including those caused by dishonoured cheques) were due to his own financial problems, and he also accepted that his bookkeeping had been 'inadequate'. He said problems had been exacerbated by a number of matters including: (a) two bereavements, including his

father, in 2017; (b) mobile phone problems, including messages getting lost; (c) acquiring tickets for the 2018 Six Nations tournament proved unprecedently difficult. Also, he was arrested for fraud (although never charged), and his devices and diaries were seized two days before the end of the 2018 Six Nations, which further complicated repayments. There were a number of people owed refunds for tickets for that tournament and other games for which he had taken payment.

15. He emphasised that: (a) he had always acted in good faith; (b) all of the complainants had been repaid by the time of the Panel hearing; (c) he had become overwhelmed by the growth of his client base, due to his success in securing tickets over the years.

16. He then went to provide detailed responses to the complaints contained in the witness statements which had been supplied with the reg 21 notice.

17. His extended reg 22 response stood as his evidence in chief at the disciplinary hearing and he was also cross-examined.

The Panel's decision

18. The Panel consisted of a Legally Qualified Chair (LQC), Paul Forster; Temporary Superintendent Helen Harkins of Cumbria Constabulary; and Mr Christopher Lindley, Independent Panel Member. It gave its decision orally on 16 October 2019 and delivered its written reasons on 3 November 2019. In summary, these were as follows.

19. After recounting the background, the Panel set out the evidence from the two complainants who had given live evidence (it also received a quantity of written evidence from complainants whom it determined it did not need to hear from).

20. The first live witness was DC Rigg. At [15] the Panel recounted her experience of dealing with the Claimant:

> "15. DC Rigg's experience is very similar to that described by many of the witnesses. On each of the three occasions, she paid for the tickets in advance. The face value of the tickets for the first two games was less than she had paid, and a refund was due, but the money was not forthcoming from PC Wheeler several months after the match. DC Rigg took matters into her own hands, giving PC Wheeler £120 and telling him to make up the balance with the money she was owed. PC Wheeler clearly defaulted and failed to pay money that was due. There was no guarantee that tickets would be available and so he cannot be criticised for not providing tickets for England v Ireland in March 2018 but there is no excuse for his failure to immediately refund the £200 that was owed to DC Rigg because he had not paid out to buy any tickets."

21. The Panel then set out the evidence of Jayne Douglas, a retired police officer. It was her complaint which led to the Claimant's arrest. After describing how the Claimant would ask for money 12 months in advance, the Panel said at [17]-[19]:

“17. A refund was due of £180 after a match in February 2016. Ms Douglas started to text PC Wheeler from 14 April 2016 asking for her refund. He told her that he was still waiting for money to be repaid to him before he could pay her. At the same time, he asked her for money for the Six Nations in 2017. She was told that she needed to be quick to guarantee the tickets. Despite still being owed £180, Ms Douglas transferred £200 to PC Wheeler. In November 2016, Ms Douglas sent a text to PC Wheeler to remind him that he still owed her £180. He told her that he had forgotten about it. A further text was sent to PC Wheeler on 14 December 2016 and another on 31 December 2016. In a reply, PC Wheeler told her that he had deliberately held the money back because he had been showered with requests for the next set of games and he thought that she would probably be putting in an order. Ms Douglas thought that was odd because it contradicted PC Wheeler’s usual policy of buying tickets 12 months in advance. Ms Douglas received her refund of £180 on 13 January 2017 in respect of the match in February 2016. 398

18. In 2016, Ms Douglas paid £800 in advance for two separate Six Nations matches in 2017. She received the tickets in March 2017, and they were cheaper than she had paid for, so she was due a refund of £440. PC Wheeler sent her a text on 18 April 2017 telling her he would be banking his refund cheque the next day. Ms Douglas suggested that he use the money due to her for 2018 but she was told that he could not do that because his cheque would not clear for a week and he had tickets coming from a different source. Ms Douglas sent PC Wheeler a text on 26 April 2017 asking him for her refund. He told her that he was on a course and the cheque was on his desk. On 11 May 2017, PC Wheeler texted Ms Douglas to say that he would drop the cheque off at her house. The same day he told her that a friend had offered him Six Nation tickets for 2018 and that she would have to snap them up. All the tickets were for £100 and so Ms Douglas put £400 into PC Wheeler’s account that night believing that she would get 4 tickets for 2018. PC Wheeler failed to respond to texts sent by Ms Douglas asking about the tickets. The cheque issued by PC Wheeler refunding £440 was returned by his bank because of insufficient funds. Ms Douglas sent messages to PC Wheeler, but he did not reply. When they spoke on the telephone, PC Wheeler told her that he had mixed her up with another friend called Douglas and had given her money to him. After that conversation, PC Wheeler refunded the £440.

19. The 2018 Six Nations started in February 2018. Ms Douglas believed that she had tickets for the England v Ireland game on 17 March 2018. She had booked train tickets to London. On 25 February 2018, Ms Douglas sent a text to PC Wheeler asking for

> her tickets. She got no response. She sent further texts and again there was no reply. On Thursday 15 March 2018, two days before the match, Ms Douglas went to see PC Wheeler at Ulverston Police Station. He told her that he had lost his phone. She told him that he knew people who would have her number so that he could have contacted her. PC Wheeler told her that there were no tickets. Ms Douglas was very angry and told him to put £400 back in her account. The £400 was still outstanding when Ms Douglas made her statement on 16 March 2018."

22. At [20] the Panel said:

> "20. In addition to Kirsty Rigg and Jayne Douglas, we have statements from 18 other witnesses, who had all purchased tickets from PC Wheeler. They describe the process, paying for tickets in advance and if the face value was less than had been paid, a refund was due after the match or at the end of the tournament. Of these 18 witnesses, 16 are either serving or former police officers or are employed by Cumbria Constabulary. They all provide evidence that PC Wheeler was late or failed to refund money that was due to them. They complain about difficulties they had contacting PC Wheeler. Their evidence establishes a pattern of behaviour that is consistent with the evidence provided in person by DC Rigg and Ms Douglas."

23. At [28]-[30] the Panel summarised:

> "28. It is evident that PC Wheeler was in serious financial difficulties and that he was juggling his finances. It is unlikely that things would have improved. The effect of his arrest was to bring all the balls crashing to the ground.
>
> 29. We found that DC Rigg and Ms Douglas were truthful witnesses. They provided clear evidence about their dealings with PC Wheeler. He did not challenge their evidence in any substantial way. What they had to say was very similar to what the other witnesses said in their statements. Many expressed embarrassment at having to make a statement. They had been reluctant to ask PC Wheeler for their money and they gave him a great deal of latitude, more so than if he had been a commercial ticket broker. Overall, the impression is that they were disappointed in PC Wheeler because many of them regarded him as a friend or a colleague.
>
> 30. PC Wheeler did not seek to conceal matters and he admitted at the hearing that he was in financial difficulties due in great part to his gambling habit. Things had got out of his control. However, even at the hearing, the officer did not seem to appreciate the extent or seriousness of his conduct."

24. The Panel then turned to how the Claimant had handled his finances:

> "31. The money given to PC Wheeler to purchase tickets was either transferred into a bank account in his name or paid to him in cash. Some of the money was kept in a tin in the officer's house. PC Wheeler did not challenge the evidence provided by a financial investigator, Julie Bailey. The money he received was not ring-fenced but was mixed with, and to use his own words "juggled alongside" the officer's own finances.
>
> 32. It is clear that the people who bought tickets from PC Wheeler did not appreciate the scale or complexity of his activities. They were asked to pay up to 12 months in advance, but for the most part they did not understand that PC Wheeler was holding the money and not buying the tickets immediately. The tickets were obtained from several different sources and often they were not available until close to the day of the match. That is why he did not know the value of the tickets and why he generally could not guarantee that tickets would be available. PC Wheeler bought tickets from individuals or clubs that could not make use of the tickets they had been allocated. He was not buying them from official sources such as the Rugby Football Union. PC Wheeler did not always buy tickets to order. He sometimes bought and paid for blocks of tickets himself long before the demand for tickets materialised. That was his own speculative venture, but he did so confident that he would be able to sell them on to his customers. Money paid to PC Wheeler by a particular person for a set number of tickets was not set aside or individually allocated but rather mixed in with PC Wheeler's own money. He said in evidence that once he received somebody else's money it in effect became his money. On the evidence, the money he received for tickets was used for his own purposes as well as buying tickets for others.
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> …
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> 34. Julie Bailey looked at the evidence provided by 10 of the witnesses and analysed how money they gave to PC Wheeler was used. By way of example, she considered transactions between the officer and William Hall to see how the money was distributed until the account had a zero balance. Mr Hall has known PC Wheeler for forty years and he has both sold tickets to him and purchased tickets from him for many years. On 5 May 2015, Mr Hall paid PC Wheeler £810.00 for 9 tickets for England v Ireland in March 2016. The money was transferred into one of the officer's Lloyd's Bank accounts. Within a few days of the money being paid in, a total of £240 was withdrawn from the account in cash and is untraceable. A total of £622.00 was transferred to one of PC Wheeler's 402 other accounts. On

5 May 2015, £365.00 was paid out of that account to Bet365, the following day, £39.00 was paid to Paypal and on 11 May 2015, a cheque was drawn for £1,168.00. From the first account, a total of £363.00 was transferred to a third account in the officer's name. A total of £516.00 was transferred to Bet365 on 7 and 8 May 2015. Ms Bailey concludes that all of the funds supplied by Mr Hall on 5 May 2015 and been dissipated by PC Wheeler by 11 May 2015."

25. At [37] the Panel concluded:

> "37. This evidence demonstrates that as early as May 2015 PC Wheeler was accepting money for tickets and then using that money for his own purposes. Money was dissipated through the officer's three accounts. Money paid for tickets was not retained in a designated account nor was it used for its intended purpose. PC Wheeler knew what he was doing. The evidence as a whole demonstrates that the officer was juggling funds between accounts for his own purposes. This was not down to poor accounting practices. To compound matters, PC Wheeler failed to repay money that was due when on the face of it, he had the funds to do so. PC Wheeler had to juggle his ability to make refunds for matches previously played with the need to buy tickets for matches about to be played."

26. The Panel then dealt with a meeting between the Claimant and Acting Chief Superintendent O'Connor on 14 February 2017 after complaints had started to emerge. Mr O'Connor had known the Claimant for a number of years. The Claimant told him that only one person was owed money (£400). Mr O'Connor said that he told the Claimant (among other things) to stop brokering tickets, and 'I told him he could blame me, ie I had summoned him to my office and told him in no uncertain terms that this should stop'. He also told him to stop using the police email system when dealing with customers. Mr O'Connor decided to treat the matter as a welfare matter rather than a disciplinary matter and gave the Claimant advice about debt management and the help available from the Police Federation. A call was made to the Federation during the meeting.

27. The Claimant's recollection in his evidence differed, in that he said that he had not understood he was being ordered by Mr O'Connor to stop selling tickets, but was just being advised not to do so, but that he had understood be was being told to stop using the police email system. He knew that Mr O'Connor was going to report the matter to the Professional Standards Directorate.

28. The Panel also dealt with the separate allegation that the Claimant had taken a job as a chauffeur for a local businessman without obtaining the necessary permission to have a second job and with without complying with force policies on outside work.

29. At [52] et seq the Panel set out its conclusions. In summary, these were as follows:

a. The nature and extent of the Claimant's activities supplying tickets over many years was not in dispute. The Chief Constable accepted that the officer never operated the ticket service with a view to personal gain and made no complaint about the ticket service when it was operating normally. It was not alleged that PC Wheeler intended to defraud anyone.

b. The Claimant had failed to act with integrity, which it defined as 'the higher standards which society expects from professional persons and which the professions expect from their own members': *Williams v SRA* [2017] EWHC 1478. Integrity can be seen as a distillation of the trust which is placed in a professional person, and a want of integrity is any breach of that trust. The Claimant acted without integrity because for an extended period between at least 2016 and 2018 his friends and fellow officers trusted him to deal properly with the money they gave him to buy tickets. PC Wheeler abused that trust by failing to separate their money from his own and then to use that money for his own purposes. He disregarded the risk that he would not be able to pay them back when the time came. When payments were late, he made promises that he must have known he could not meet. He did not heed the warning from Mr O'Connor in February 2017.

c. The Claimant had engaged in behaviour which was discreditable by using his status as a police officer to get customers to deal with him tickets. His use of police email had come to be seen as acceptable and the Panel did not hold that to be discreditable, but it did do so in respect of a specific email he had sent to a woman called Georgina Black with a picture of his Cumbria Constabulary business card and a picture of himself in uniform flanked by other police officers, which it found he did so that she would feel confident that he would pay for the tickets he wanted to buy from her. The Panel said this was a blatant and obvious use of his status as a police officer and should not have been done.

d. The Panel did not find that the Claimant had failed to follow a lawful order from Mr O'Connor to stop brokering tickets, but did find that although he had submitted a business application, he failed to ensure that he had approval to work as a chauffeur and to make an annual return in compliance with the relevant force policy.

30. Taking all the Claimant's proved misconduct together, the Panel concluded at [66] that it amounted to gross misconduct:

> "We find that PC Wheeler acted in breach of the Standards of Professional Behaviour. The test is cumulative, and we assess matters based on each of the breaches we have found. In our view, the cumulative effective (*sic*) is such that the only lawful conclusion open to us is that PC Wheeler's conduct amounted to gross misconduct."

The Deputy Chief Constable's email on outcome

31. Before deciding on the outcome, the Panel was given an email from the Deputy Chief Constable of Cumbria, Mark Webster, to whom, as I have said, the Chief Constable had

delegated the functions of appropriate authority. This was sent at 16:26 on 16 October 2019 after the Panel had reached its conclusion on gross misconduct. It was sent to an officer with Cumbria Constabulary's Professional Standards Directorate who was acting as liaison officer.

32. The email was submitted pursuant to reg 35(11)(c)(ii), which requires a Panel considering outcome to give the appropriate authority, or the person appointed to represent the appropriate authority in accordance with reg 7(4) (ie, a lawyer or a police officer), an opportunity to make oral or written representations before the question of outcome is determined. The officer who is the subject of the proceedings has a similar right under reg 35(11)(c)(i).

33. This email forms the basis of the Claimant's first ground of challenge so I need to quote it in full:

> "Paul,
>
> My submission under regulation 35 of the Police (Conduct) Regulations 2012 for the attention of the panel
>
> PC WHEELER has offered a service involving the supplying and purchase of tickets for rugby games whilst employed by the Constabulary. It is also clearly evident that he has used his role as a police officer to emphasise his trustworthiness in doing so. Whatever PC WHEELER's objectives or intent, his actions have had considerable impact on the confidence of members of the public. His actions risk seriously undermining confidence in policing more widely if such behaviour is not challenged and dealt with appropriately. The issues presented to the Hearing involved many transactions that span a lengthy period of time, thereby constituting an extensive pattern of behaviour. PC WHEELER has also failed to comply with an important Force Policy around seeking authority, and approval, for a secondary business interest. This indicates to me that I cannot have confidence that any form of Written warning would adequately constrain PC WHEELER's future behaviour and prevent such things happening again. This is a widespread breach of trust that impacts across both the public and police colleagues, and is incompatible with the expectations the public have of a police officer. I strongly believe that public confidence in policing would be undermined should PC WHEELER remain in public service as a police officer. Unfortunately, dismissal is the only appropriate sanction because I cannot see how I could deploy an officer who has acted in this way. He will have lost the trust and confidence of the public and colleagues to enable him to discharge his fundamental duties.
>
> Mark"

34. I shall refer to this as the 'Webster email'.

35. Ms Niculiu candidly accepted that she did not object at the time to the email being given to the Panel.

Determination on outcome

36. The Panel dismissed the Claimant without notice. Its reasons were as follows ([67] et seq):

    a. The Panel considered the *Guidance on outcomes in police misconduct proceedings* issued by the College of Policing. In accordance with the Guidance, it adopted a three-stage process. Firstly, by assessing the seriousness of the misconduct then, secondly, by keeping in mind the purpose in imposing outcomes before finally deciding on the outcome that most appropriately fulfils that purpose given the seriousness of the conduct. The purpose of misconduct proceedings is to maintain public confidence in, and the reputation of, the police service; to uphold high standards in policing and to protect the public.

    b. It found that the Claimant's conduct was intentional and deliberate even if he did not intend the consequences of his actions. He could have foreseen the risk of harm. He had the opportunity in February 2017 to stop selling tickets, but he chose to continue. Whilst not having acted dishonestly, he breached the trust of his friends and colleagues.

    c. Regarding harm, the friends and families of those who bought tickets from him were all affected by his behaviour. His conduct has caused serious damage to public trust confidence in the police notwithstanding he had repaid all of the money.

    d. Aggravating factors in this case included the fact that the Claimant sustained his unacceptable conduct over a long period of time; his behaviour continued after he had been warned by Mr O'Connor; and he must then have realised or should have realised that his behaviour was not acceptable. He had not been forthcoming with Mr O'Connor about the extent of the problems. Mitigating factors included the bereavements he had suffered, and the phone problems only made a bad situation worse. Also, he retained the support of some friends and colleagues, which was powerful evidence. He had a long and unblemished record as a police officer. As to personal mitigation, this carried limited weight because the purpose of a professional sanction is not punitive.

    e. The Panel considered the available sanctions in ascending order of seriousness, but felt anything less than dismissal without notice would not be adequate, and so imposed that sanction.

Appeal to the PAT

37. The Claimant appealed to the PAT.

38. Rule 4 of the 2012 Appeal Rules set out the grounds on which a decision of a Misconduct Panel could be appealed. Rule 4(4)(a) provided:

> 4. (1) Subject to paragraph (3), a police officer to whom paragraph (2) applies may appeal to a tribunal in reliance on one or more of the grounds of appeal referred to in paragraph (4) against –
>
> (a) the finding referred to in paragraph (2)(a), (b) or (c) made under the Conduct Regulations; or
> (b) the disciplinary action, if any, imposed under the Conduct Regulations in consequence of that finding,
> or both.
>
> (2) This paragraph applies to—
>
> (a) an officer other than a senior officer against whom a finding of misconduct or gross misconduct has been made at a misconduct hearing;
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> …
>
> (4) The grounds of appeal under this rule are—
>
> (a) that the finding or disciplinary action imposed was unreasonable;
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> …
>
> (c) that there was a breach of the procedures set out in the Conduct Regulations, the Police (Complaints and Misconduct) Regulations 2012 or Schedule 3 to the 2002 Act, or other unfairness which could have materially affected the finding or decision on disciplinary action."

39. The Claimant's grounds of appeal were as follows:

    a. Ground 1: the finding of gross misconduct was unreasonable in all the circumstances (rule 4(4)(a)). It was said, inter alia, that the Panel had relied too uncritically on the Chief Constable's evidence and not paid enough attention to the defence case.

    b. Ground 2: the outcome of dismissal without notice was unreasonable in the all the circumstances (rule 4(4)(a)). That sanction was unnecessary: a final written warning would have sufficed.

    c. Ground 3: there was a breach of the procedures in the 2012 Regulations, or other unfairness which could have materially affected the decision, namely an appearance of bias arising out of the Deputy Chief Constable's email (rule 4(4)(c)). It was argued that the police member of the Panel, Ms Harkins, would have interpreted this as an order from a senior officer acting on behalf of the Chief Constable who had brought the proceedings to dismiss the Claimant which

she was bound to obey, and it therefore compromised the independence of the Panel when it was considering sanction by giving rise to an appearance of bias.

40. The appeal was heard on 7 August 2020. The Tribunal had a bundle in excess of 1500 pages. In a decision given on 5 September 2020, the PAT dismissed the appeal and upheld the Panel's decision. The PAT's judgment is detailed and runs to 157 paragraphs. I can summarise it as follows.

41. At [6] the Tribunal directed itself by reference to *R (Chief Constable of Wiltshire Police) v Police Appeals Tribunal* [2012] EWHC 3288 (Admin), [32]-[34], that the issue of whether a finding or sanction was unreasonable under Rule 4(4)(a) was to be determined by asking whether or not it was within the range of reasonable findings or sanctions available to the panel on the material before it, whether or not specifically referred to or decided. The test of reasonableness imposed by the Rules is not the *Wednesbury* test but something less. It is not suggested on behalf of the Claimant that the PAT applied the wrong test.

42. The PAT set out the background and then turned to Ground 1 at [17] et seq. At [27]-[28], the PAT said it accepted that it was not enough for a Misconduct Panel simply to state that it had taken all of the evidence into account in reaching its conclusions. That it did so, must, on the balance of probabilities, be apparent to the Tribunal from its review of the material before it. Accordingly, in order to decide Grounds 1 and 2, given the overlap, the Tribunal carried out a review of the evidence and other material before the Panel and their approach to it, with particular reference to the criticisms in the Grounds. In reaching its determination, the Tribunal reminded itself of the fact that the Panel's decisions were reached on the balance of probabilities.

43. Over the next 68 paragraphs the PAT considered the evidence of both the live witnesses and also the written evidence, and what the Panel had found in relation to it. It did so in the context of the Claimant's criticism that the Panel had taken an overly broad-brush approach to the evidence. At [99] it concluded that the Panel's findings on the evidence were ones which were reasonably open to it.

44. The Tribunal then turned at [91] et seq to the financial evidence which the Claimant criticised on the basis the Panel had treated it as being determinative of the issues. At [97] the Tribunal said the Panel's conclusion about his conduct based on this evidence had not been unreasonable. It noted the Claimant's own admission that there was a link between his own parlous financial state and failure to pay refunds in a timely fashion. The Tribunal also found that the requirement for some customers to pay 12 months in advance was a means of avoiding paying money due. It also noted that the Appellant had accepted the evidence of the financial investigator, Julie Bailey, whose findings were more than that the Claimant had simply failed to ring-fence money ([98]).

45. At [99] et seq the Tribunal considered the criticism that the Panel had given insufficient weight to issues which affected his culpability for his actions. At [108] the Tribunal concluded that the Panel had given sufficient weight to the defence case and the mitigating factors submitted by the Claimant.

46. The Tribunal then turned at [109] to the Appellant's criticisms of the Panel's findings of breaches of Professional Standards and rejected them.

47. It then turned to the Panel's finding of gross misconduct and found that the conclusion was one which was reasonably open to it.

48. The Tribunal then turned at [128] to Ground 2 and the finding on outcome and the contention that it was unreasonable in all the circumstances. The Tribunal considered matters in detail over the following paragraphs and concluded at [139] that the outcome determination had been reasonably available to the Panel.

49. Finally, the Tribunal considered Ground 3. It accepted that Article 6 of the European Convention on Human Rights applied to proceedings before the Panel and that it needed to be objectively unbiased, ie, not give rise to the appearance of bias. It found that the Panel had been properly constituted under the 2012 Regulations and that the email from the Deputy Chief Constable did not give rise to an appearance of bias. At [152] it added that 'the Superintendent was one of three members of the Panel, its constitution therefore provided an important safeguard.'

Grounds of challenge

50. The Claimant challenges the PAT's decision on two grounds:

    a. Ground 1: the Panel's decision was vitiated by apparent bias, and the PAT was in error in not so concluding. The nub of the Claimant's case is that the appropriate authority's decision *both* to appoint one of her own officers to the Panel and to send a 'forceful' submission to the Panel in the Webster email that the Claimant should be dismissed, gave rise to the appearance of bias because the police member of the Panel would have regarded this as a order or instruction from one party to the proceedings which she was bound to obey, meaning that the Panel's determinations were unfair at common law and/or in breach of Article 6(1) of the European Convention on Human Rights (the ECHR) and so contrary to s 6 of the Human Rights Act 1998.

    b. Ground 2: the PAT failed, adequately or at all, to address critical aspects of the grounds submitted on behalf of the Claimant and to give reasons for rejecting them.

51. The parties agreed the following list of issues.

52. In relation to Ground 1:

> "(1) Whether the following circumstances would lead a fair minded and informed observer to conclude that there was a real possibility that the discipline panel was biased/would cause an objective observer to doubt the impartiality of the discipline panel:

a. The appropriate authority Chief Constable exercising her discretion to appoint to the panel a member of the local force, Temporary Supt Helen Harkins (under Reg. 25);

b. The language of the appropriate authority's opening (claimant's skeleton argument para. 37a and 37b);

c. The Chief Constable exercising her discretion to make representations on outcome (under Reg. 35);

d. Those representations being delegated to the Deputy Chief Constable;

e. The hierarchy and formal relationship between T/Supt Harkins, the Deputy Chief Constable, and the Chief Constable being what it was;

f. The language of those representations (Core Bundle tab 17 p. 393)."

53. In relation to Ground 2:

"(2) Whether the PAT's review of the evidence of the complainants was wholly one-sided;

(3) Whether the PAT erroneously discounted the relevant consideration of the Claimant's arrest from the assessment of his culpability;

(4) Whether the PAT upheld a significant finding of fact made by the misconduct panel for which there was no proper evidential basis, namely that in February 2017, considerable problems with the Claimant's rugby ticket voluntary enterprise already existed, which the Claimant withheld from Superintendent O'Connor at a meeting between them;

(5) Whether the PAT failed adequately to engage with, alternatively failed to give adequate reasons for rejecting, the submission that the Panel had erred in finding a breach of the professional standard of integrity;

(6) Whether the PAT failed adequately to engage with the submission that the Misconduct Panel had erroneously found that the Claimant had made improper use of his status as a police officer, and took account of an irrelevant consideration in upholding the panel's finding;

(7) Whether the decision of the PAT was unlawful by reason, individually or cumulatively, of such failings as are made out in issues (2)-(6)."

54. Ms Niculiu for the Claimant submitted a lengthy Statement of Facts and Grounds and a lengthy Skeleton Argument, to which Mr Walsh for the Chief Constable responded. I will address the substance of how they each put their cases in the 'Discussion' section of this judgment.

The test on judicial review of a decision of the PAT

55. The approach the Administrative Court must take on a claim for judicial review of a decision of the PAT was stated by Burnett J (as he then was) in *R (Chief Constable of Dorset) v Police Appeals Tribunal* [2011] EWHC 3366 (Admin), [19], [25]:

> "19. … Proceedings in the Administrative Court seeking to challenge the decision of a Police Appeals Tribunal do not arise by way of appeal, but by way of a claim for judicial review. In those circumstances, a claimant in judicial review proceedings must establish a public law error before the decision of that Tribunal could be quashed.
>
> …
>
> 25. At each level in the disciplinary process, the decision maker or decision making body is expert in nature. It knows and understands how the police service works. It knows and understands the importance of maintaining integrity amongst police officers. It knows and understands the impact that serious misconduct can have on the force concerned and the police service in general. Parliament has provided that the Tribunal is the appellate body for these purposes. There is no further appeal to the High Court. The Tribunal is subject to the supervisory jurisdiction of this court. I have already observed that the approach of this court in judicial review is different from the approach adopted when sitting in an appellate capacity from the Solicitors Disciplinary Tribunal. Absent another error of law on the part of the Police Appeals Tribunal its decision on sanction could be interfered with only on classic *Wednesbury* grounds, in short that on the material before it no reasonable Tribunal could have reached the conclusion that it did.'

56. In *R (Chief Constable of Northumbria) v Police Appeals Tribunal* [2019] EWHC 3352 (Admin), [29], the Court said:

> "29. The PAT's decision is entitled to 'deference' such that the court should be slow to interfere with it. The PAT is a specialist appellate tribunal, experienced and expert in assessing police misconduct, including the impact of an officer's misconduct on public confidence in and the reputation of the police. Although he deprecated the use of the term 'deference' in *Salter* [ie, *Chief Constable of Dorset*, supra] Burnett J (as he then was) said at [33]:

> '…The reason why the court is slow to interfere with the decision of an expert tribunal is that the court does not share the expertise. It is not 'deference' but a proper recognition of the need for caution before disagreeing with someone making a judgment on a matter for which he is especially well qualified, when the court is not.'"

57. In relation to Ground 1, the issue for me is whether the Panel was infected by apparent bias. I am not concerned with whether the decision of the PAT to reject that ground of appeal was *Wednesbury* unreasonable or one which was reasonably open to it. There either was apparent bias, or there was not. I will say more about this later.

58. My approach to Ground 2 is different. In *R (Wilby-Newton) v Police Appeals Tribunal* [2021] EWHC 550 (Admin) leading counsel for the officer accepted, rightly in my view, that where this Court on a judicial review is concerned with whether the decision of the PAT was *Wednesbury* unreasonable (which, in substance, is the challenge under Ground 2), and the PAT itself had been concerned with whether the decision of the Panel on an issue had been 'unreasonable' under Rule 4(4)(a), then the Court's task is 'nuanced' or 'double layered'.

Discussion

Ground 1: whether the decision of the Panel was vitiated by apparent bias because of the Webster email and whether the PAT erred in concluding that it had not been

59. It was common ground that common law fairness and the civil limb of Article 6 of the ECHR applies to proceedings before Police Misconduct Panels and the PAT. It is well-established that Article 6 is applicable to disciplinary proceedings before professional bodies where the right to practise a profession is directly at stake: *Reczkowicz v Poland*, Applcn 43447/19, [183]-[185]. This aspect of Article 6 guarantees a fair and public hearing before a tribunal that is independent and impartial. In *R (Short) v Police Misconduct Tribunal* [2020] EWHC 385 (Admin), [76], a case on alleged apparent bias in a Police Misconduct Panel, Saini J said that the common law standards and Article 6 standards, in this regard, are not different. I will return to this decision later. Neither party referred to *Short* in their written submissions, however I drew it to their attention at the hearing.

60. An impartial tribunal is one which is free from actual bias and apparent bias. The case before me is one of alleged apparent bias. The applicable test was also common ground. It was authoritatively set out by Lord Hope in *Porter v Magill* [2002] 2 AC 357, [103]**:**

> " ... The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

61. Ms Niculiu made elaborate submissions in relation to this ground of challenge, but stripped to its essentials her argument can be set out in the following steps: (a) under reg

25(4)(b) a Police Misconduct Panel must contain a police member who is a member of *a* police force of the rank of superintendent or above. Hence, the police member may either be a member of the appropriate authority's own force, or a different force. In this case, she was from the same force; (b) the appropriate authority may make representations as to outcome (reg 35(11)(c)(ii)). In this case, that function had been delegated to Deputy Chief Constable Webster by the Chief Constable under reg 3(5)(a); (c) the Webster email was sent to a liaison police officer, and then given to the Panel prior to its outcome determination; (d) the email argued in strong and forceful terms that dismissal was 'the only appropriate sanction', because Mr Webster could not 'see how I could deploy an officer who has acted in this way'; (e) the police member of the Panel from Mr Webster's force would have been bound to regard this as 'her boss … telling her … that the only appropriate decision she could make on sanction was to dismiss the claimant' (Skeleton Argument, [35]); (f) matters were exacerbated by the way the appropriate authority's counsel had opened the case, eg, by saying the Panel would have to consider whether the officer had lost the authority's trust and confidence; (g) given this, a fair minded and informed observer would inevitably conclude that this gave rise to a real possibility of bias in that subordinate Panel member (which therefore infected the determination of the Panel as a whole); (h) given the police's rank structure, there is a prospect that a superior may affect the day-to-day role and career of a subordinate, so that even if the Webster email was not an order, 'the fair-minded observer would conclude … this increased the danger of insidious and unconscious bias on behalf of a subordinate when so addressed by her superior.' (Skeleton Argument, [57]); (i) put in the language of Article 6 case law (see eg, *Sadler v General Medical Council* [2003] 1 WLR 2259, [77] ('… Whether a tribunal satisfies the requirements of article 6 depends on all the relevant circumstances, including how the members of the tribunal are appointed, their tenure of office, their protection from outside pressure …') the email compromised the police member's (and hence the Panel's) protection from outside pressure and hence cast doubt on her and its impartiality.

62. Ms Niculiu was at pains to point out that her case was *not* that it is impermissible for an appropriate authority to appoint a member of her own force to a Police Misconduct Panel. She expressly accepted that this is permissible under the Regulations, and not of itself objectionable (Skeleton Argument, [46(a)(i) and (ii)]). Rather, she said her case arose out of the particular facts of this case and the Webster email. More generally, she said that if the police member was from the appropriate authority's own force then: (a) there cannot be a submission under reg 35(11)(c)(ii) *at all* because that submission effectively comes from the Chief Constable even if her functions have been delegated; or, alternatively (b) if representations under this regulation are to be made at the outcome stage where the police member is from the appropriate authority's own force, then it should be done by counsel (if there is one), or an officer of a rank no higher than the police member; and, in such a case (c) 'any representations should be expressed as a submission or advice, making it clear that it is dependent upon the nature and gravity of the panel's findings, 'not in the form of an edict' (Skeleton Argument, [48(2)(c)]).

63. In response, Mr Walsh submitted that it is inevitable in misconduct proceedings, and especially where the issue is gross misconduct, that the person representing the appropriate authority will make submissions on behalf of the appropriate authority in 'strong, uncompromising and commanding' terms and will deploy advocacy. The notional fair-minded observer would understand that what is said on behalf of the appropriate authority at a misconduct hearing (whether by counsel or a police officer (who under reg

7(4)(a), may represent the appropriate authority) are no more than submissions. The observer would understand that they are not orders or instructions from the appropriate authority that the police member of the Panel would regard herself as having to obey. The email was given to the Panel in public by the advocate acting on behalf of the appropriate authority. It was not, for example, sent privately to the police member by Mr Webster. (Mr Walsh did not seek to uphold [152] of the PAT's ruling, which I referred to earlier. I agree, and say no more about that issue. If there was apparent bias in one member then the Panel as a whole was infected by apparent bias and its determination, at least as to outcome, must be set aside).

64. In *Short*, the claimants were six police officers who faced serious allegations of gross misconduct arising out of the death of a detainee in police custody. They argued that because of prejudice arising from the contents of certain documents which were read (at least in part) by the legally qualified Chair of the Misconduct Panel, either the Chair, or the entire Panel, should have recused themselves from hearing the proceedings. The claimants issued a claim for judicial review to quash the Panel's decision not to recuse themselves. They complained that the Chair and/or the Panel had effectively become tainted by the contents of the controversial documents such that the fair-minded and informed observer having considered the facts would conclude that there was a real possibility that the Panel or Chair was biased.

65. In his judgment at [71]-[94] Saini J reviewed some of the authorities on apparent bias, from which the following summary is gratefully adopted.

66. When deciding whether the Panel was right not to recuse itself, it is not for the Court to assess the Panel's reasons on some form of *Wednesbury* or rationality basis. This is the point I made earlier. Rather, the Court has to decide for itself (as the hypothetical fair minded and informed observer) and on the basis of the same materials as were before the Panel/Chair, whether they/he should have recused themselves. Saini J referred to what was said on this issue by Mummery LJ in *AWG Group Limited v Morrison* [2006] 1 WLR 1163, [19]-[20]:

> "19. What is the position of this court on an appeal from the judge's decision not to recuse himself ? If the judge had a discretion whether to recuse himself and had to weigh in the balance all the relevant factors, this court would be reluctant to interfere with his discretion, unless there had been an error of principle or unless his decision was plainly wrong.
>
> 20. As already indicated, however, I do not think that disqualification of a judge for apparent bias is a discretionary matter. There was either a real possibility of bias, in which case the judge was disqualified by the principle of judicial impartiality, or there was not, in which case there was no valid objection to trial by him. On the issue of disqualification an appellate court is well able to assume the vantage point of a fair-minded and informed observer with knowledge of the relevant circumstances. It must itself make an assessment of all the relevant circumstances and then decide whether there is a real possibility of bias."

67. To the same effect is the decision in *R (Mahfouz) v Professional Conduct Committee of the General Medical Council* [2004] EWCA Civ 233, [19]-[20]:

> "19. Where it is alleged that a lower tribunal has acted in breach of the rules of fairness or natural justice, the court is not confined to reviewing the reasoning of the tribunal on *Wednesbury* principles. It must make its own independent judgment:
>
> > '… the question whether we are entitled to intervene at all is not to be answered… by reference to *Wednesbury* principles… Rather the question has to be decided in accordance with the principles of fair procedure which have been developed over the years, and of which the courts are the author and sole judge….'
> >
> > (*R v Panel on Takeovers and Mergers ex p Guinness plc* [1991] QB 146, 184 per Lloyd LJ).
>
> Furthermore, the question whether there has been a breach of those principles is one of law, not fact (see e.g. *Rose v Humbles* [1972] 1 WLR 33).
>
> 20. Accordingly although I will comment below on the discussion before the Committee, the decision of this court does not principally depend on how the matter was presented to the Tribunal or how they responded. What matters is whether they reached the right result."

68. In the case before me, I am concerned with a challenge to the PAT's decision on appeal, rather than a direct challenge to a decision of the Panel. However, the approach is the same, because whether the Panel was infected by apparent bias as a result of the Webster email is a binary question. Either it was, in which case the PAT should have so found and allowed the appeal under Rule 4(4)(c) and it erred in law in not doing so; or it was not, in which case the PAT was correct. So the question for me is, was the PAT wrong in law, in other words, was the Panel indeed so infected ? In deciding that, I put myself in the position of the hypothetical fair-minded and informed observer.

69. What is to be expected of the fair-minded and informed observer ? The House of Lords considered that question in *Gillies v Secretary of State for Work and Pensions* [2006] 1 WLR 781. The case arose from a disability appeal tribunal hearing where the medical member of the panel, which consisted of a legally qualified chairman and two other members including the medical member, was a doctor who had for a number of years provided reports on behalf of the Benefits Agency as an independent examining medical practitioner. In dismissing the Claimant's appeal and finding that there was no reasonable apprehension of bias, Lord Hope explained at [17]:

> "The fair-minded and informed observer can be assumed to have access to all the facts that are capable of being known by members of the public generally, bearing in mind that it is the appearance that these facts give rise to that matters, not what is in the mind of the particular judge or tribunal member who is under scrutiny. It is to be assumed, as Kirby J put it in *Johnson v Johnson* [2000] 201 CLR 488, 509, para.53, that the observer is neither complacent nor unduly sensitive or suspicious when he examines the facts that he can look at. It is to be assumed too that he is able to distinguish between what is relevant and what is irrelevant, and that he is able when exercising his judgment to decide what weight should be given to the facts that are relevant."

70. The appeal in *Bubbles & Wine Ltd v Lusha* [2018] EWCA Civ 468 followed a trial judge speaking with one party's counsel in private and alone. The judge told counsel that he thought the counterclaim seemed weak and the claimant's case had several evidential gaps and asked counsel to pass that information to his opponent. A note of the conversation was sent. Although the Court of Appeal recognised that what the trial judge did had been a mistake, it concluded that the threshold of 'apparent bias' was not reached. The Court of Appeal summarised the key applicable principles at [17]-[19]:

> "17. The legal test for apparent bias is very well-established. Mr Faure reminded us of the famous statements of Lord Hewart CJ *in R v Sussex Justices ex parte McCarthy* [1924] 1 KB 256 at 259 that 'it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done;' and that 'nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice.' These principles remain as salutary and important as ever, but the way in which they are to be applied has been made more precise by the modern authorities. These establish that the test for apparent bias involves a two stage process. The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the judge was biased: see *Porter v Magill* [2001] UKHL 67; [2002] 2 AC 357, para. 102 – para.103. Bias means a prejudice against one party or its case for reasons unconnected with the legal or factual merits of the case: see *Flaherty v National Greyhound Racing Club Ltd* [2005] EWCA Civ 1117, para 28; *Secretary of State for the Home Department v AF (No2)* [2008] EWCA Civ 117; [2008] 1 WLR 2528, para 53.
>
> 18. Further points distilled from the case law by Sir Terence Etherton in *Resolution Chemicals Ltd v H Lundbeck A/S* [2013]

> EWCA Civ 1515; [2014] 1 WLR 1943, at para 35, are the following:
>
> (1) The fair-minded and informed observer is not unduly sensitive or suspicious, but neither is he or she complacent: *Lawal v Northern Spirit Ltd* [2003] UKHL 35; [2003] ICR 856, para 14 (Lord Steyn).
>
> (2) The facts and context are critical, with each case turning on 'an intense focus on the essential facts of the case': *Helow v Secretary of State for the Home Department* [2008] UKHL 62; [2008] 1 WLR 2416, para 2 (Lord Hope).
>
> (3) If the test of apparent bias is satisfied, the judge is automatically disqualified from hearing the case and considerations of inconvenience, cost and delay are irrelevant: *Man O' War Station Ltd v Auckland City Council (formerly Waiheke County Council)* [2002] UKPC 28, para 11 (Lord Steyn).
>
> 19. In *Helow v Secretary of State for the Home Department* Lord Hope observed that the fair-minded and informed observer is not to be confused with the person raising the complaint of apparent bias and that the test ensures that there is this measure of detachment: [2008] UKHL 62; [2008] 1 WLR 2416, para 2; and see also *Almazeedi v Penner* [2018] UKPC 3, para 20. In the *Resolution Chemicals* case Sir Terence Etherton also pointed out that, if the legal test is not satisfied, then the objection to the judge must fail, even if that leaves the applicant dissatisfied and bearing a sense that justice will not or may not be done: [2013] EWCA Civ 1515; [2014] 1 WLR 1943, para 40."

71. To this, I might also respectfully add Lord Hope's observation in *Helow*, [3]:

> "3. Then there is the attribute that the observer is 'informed'. It makes the point that, before she takes a balanced approach to any information she is given, she will take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as the headlines. She is able to put whatever she has read or seen into its overall social, political or geographical context. She is fair-minded, so she will appreciate that the context forms an important part of the material which she must consider before passing judgment."

72. Even where prejudicial material has been seen by a tribunal, that is not the end of the matter. The nature and experience of the tribunal concerned is relevant, as the Court in *Mahfouz* recognised at [22]-[25]. It commented that professional tribunals can be

readily assumed to be able to put out of their minds irrelevant material. It said at [24] that where the panel included:

> "… retired judges, justices of the peace, barristers, solicitors and academics. They can be assumed to understand the proper approach to issues of law and to be aware of the need to disregard irrelevant material."

73. In *Subramanian v General Medical Council* [2003] Lloyd's Rep Med 69, the features of the GMC panel were considered in the context of a member having been made aware of a previous finding of serious professional misconduct. The Privy Council held that a fair-minded observer would be assumed to have knowledge of the GMC's long and well-established system with statutory backing, operated by those selected and elected to the task, and supported by a comprehensive appeal system.

74. In *Short*, [91]-[95], Saini J said:

> "91. In my judgment, the position of the Tribunal in this case is directly analogous to that of the panels in *Mahfouz* and *Subramanian*. As I have already observed, the Chair is a legally qualified non-practising solicitor who, for many years, sat as a judge; one member of the Tribunal is an experienced magistrate, the other an experienced senior police officer; and every one of them is well-placed to identify and ignore irrelevant and inadmissible material. The possible prejudice n *Mahfouz* and *Subramaniam* was clear and obvious and arguably serious (unlike the facts before me) but, notwithstanding that fact, the test for apparent bias was not met given the nature of the tribunals concerned.
> …
>
> 93. Before I conclude this aspect of my judgment, I should say that it is likely to be a common occurrence in tribunals, including within the Police Misconduct Tribunal, that members will read documents or hear oral evidence which might be inadmissible, irrelevant or prejudicial. I am confident that, in approaching their task professionally, they will be able to put such material out of their minds.
>
> 94. Of course, there may be a case where the material that has been put before them is so extreme in its prejudice that, even making one's best attempt, one cannot put that material out of one's mind – but that is not this case, and that will be a rare case.
>
> 95. In my judgment, a Tribunal of the type in issue in this claim, is quite able to separate the evidence it hears from the opinions which others may have expressed in the past. It is also well-able to distinguish between what the officers have and have not been charged with."

75. In her oral submissions, although not in her Skeleton Argument, Ms Niculiu relied on the decision of the House of Lords in *R v Abdroikov* [2007] 1 WLR 2679, which concerned the position of police officers and CPS employees sitting on juries following the changes in juror eligibility made by the Criminal Justice Act 2003. She referred me in particular to [26] of Lord Bingham's speech, in which he held that the presence on the jury of a police officer deprived the defendant of a fair trial in circumstances where there was a dispute between a prosecution police officer's evidence and that of the defendant, notwithstanding the police juror and the police witness were not known to each other. Lord Bingham referred to the 'instinct (however unconscious) of a police officer on the jury to prefer the evidence of a brother officer to that of a drug-addicted defendant would be judged by the fair-minded and to be a real and possible source of unfairness, beyond the reach of standard judicial warnings and directions'. In [27] he said that he doubted whether Parliament contemplated that employed Crown prosecutors would sit as jurors in prosecutions brought by their own authority, and that justice is not seen to be done 'if one discharging the very important neutral role of juror is a full-time, salaried, long-serving employee of the prosecutor.' She also referred me to passages in Lady Hale's speech ([50] and [53]).

76. I did not find *Abdroikov* to be of particular assistance. As the authorities I have cited make clear, there needs to be an intense focus of the facts where apparent bias is alleged. Not only (obviously) are the facts of the case before me different to the facts of any of the three appeals before the House in *Abdroikov*, the suggested cause of apparent bias here – namely outside pressure from a senior officer on a subordinate – is a wholly different underlying factual matrix from those which were before the House.

77. I turn to the case before me. In my judgment, the relevant facts which the hypothetical fair-minded and well-informed observer can be taken to know are as follows.

78. First, the Panel members knew they were sitting as a statutory panel in adversarial proceedings between the appropriate authority on the one hand, and the Claimant on the other. They understood their function to be quasi-judicial. They knew there was a statutory right of appeal. They therefore knew that they had a duty to act fairly towards all parties, including the duty to be independent and impartial. They knew that they had to put out of their minds irrelevant and/or prejudicial material, and only decide the case on the basis of *proper* evidence and *proper* argument. They would be able to ignore the impermissibly inflammatory. They would be able to do so because of their standing and experience. The legally qualified Chair, in particular, understood his role as including making sure the Panel acted lawfully and fairly. The Panel knew that the hearing had to be conducted in accordance with the procedure set out in reg 33. In particular, they knew that it was for the appropriate authority to prove on the balance of probabilities that the Claimant had committed conduct which either amounted to misconduct or gross misconduct (reg 33(14)).

79. The Panel knew that the case for each party might be advanced in part by argument and advocacy and sometimes in forceful language. They knew that it would not be proper, and indeed might itself be an act of misconduct, for the appropriate authority, or the officer to whom her functions under the Regulations had been delegated under reg 3(5)(a), or any other officer, to purport to give an instruction or order to them, or any one of them, to decide a particular issue in a particular way, or seek to pressurise them to reach a particular decision. They understood that were such an order or instruction to be given, it would be a serious interference with the administration of justice, and they

would be bound to ignore it. They would understand that Mr Webster, as a very senior officer, understood his role as the person to whom the Chief Constable's role had been delegated. The police member also understood that it would highly improper for her to suffer any career repercussions in the event that the Panel decided an issue against the appropriate authority, and that such a possibility was therefore remote to non-existent.

80. When it came to outcome, the Panel understood that whilst the appropriate authority was entitled to make representations on outcome under reg 35(11)(c)(ii), as was the Claimant under sub-paragraph (i), they were not bound to accept any such representations, no matter how forcefully they were put, whether directly from the appropriate authority in writing (as with the Webster email), or by way of submission from the appropriate authority's advocate by way of oral submission, or otherwise.

81. The Panel knew that they had to decide the outcome in accordance with the College of Policing's *Guidance on outcomes in police misconduct proceedings* (2017). They would therefore have had in mind the following paragraphs:

> "2.11 The outcome imposed can have a punitive effect, however, and therefore should be no more than is necessary to satisfy the purpose of the proceedings. Consider less severe outcomes before more severe outcomes. Always choose the least severe outcome which deals adequately with the issues identified, while protecting the public interest. If an outcome is necessary to satisfy the purpose of the proceedings, impose it even where this would lead to difficulties for the individual officer.
>
> 2.12 Ensure that processes and procedures are fair, objective, transparent and free from unlawful discrimination.
>
> …
>
> 7.1 This guidance should be used to inform the approach taken by panels and chairpersons to determining outcomes in police misconduct proceedings. It sets out an approach for assessing the seriousness of conduct, which can be applied to assessments of conduct under Regulation 12 of the Conduct Regulations or paragraph 19B of Schedule 3 to the Police Reform Act 2002.
>
> 7.2 There are three stages to determining outcome:
>
> - assess the seriousness of the misconduct
> - keep in mind the threefold purpose for imposing outcomes in police misconduct proceedings
> - choose the outcome which most appropriately fulfils that purpose, given the seriousness of the conduct in question.

> 7.3 Assessing the seriousness of the conduct is the first of these three stages. In assessing the seriousness of the conduct, have regard to the four categories outlined: culpability, harm, aggravating and mitigating factors.
>
> 7.4 Consider less severe outcomes before more severe outcomes. The more serious the conduct found proven against an officer, the more likely it is that dismissal will be justified.
>
> 7.5 Always take personal mitigation into account. Due to the purpose of disciplinary proceedings, its impact will necessarily be limited. Less weight can be attached to personal mitigation where serious misconduct has been proven.
>
> 7.6 The reasons for imposing a particular outcome should be recorded and usually read out in public. Refer to this guidance and explain any departures from it.
>
> 7.7 Each case will depend on its particular facts. Have regard to all relevant circumstances when determining the appropriate and proportionate outcome to impose."

82. With these facts in mind, I find it impossible to conclude that there was a real possibility that the police member or the Panel was biased as a consequence of the Webster email. I accept that it expressed a forceful view as to what Mr Webster thought the appropriate outcome should be, together with why he thought that. But the Panel knew that outcome was for it, and it alone, to be determined in accordance with the College of Policing's *Guidance* and the detailed stepped approach contained within it. The email was not expressed in the imperative, or in the form of a command, instruction or order (which, as I have said, would have been improper). Nor was it written privately to the police member (which also would have been improper, as Mr Walsh accepted in his Skeleton Argument at [13]). It was placed before the Panel as part of the hearing, in public, and all parties had the opportunity to make submissions upon it, including whether it was right or wrong, proper or improper, and relevant or irrelevant. I do not accept it represented outside 'pressure', as was submitted by Ms Niculiu on the basis of *Sadler*. It was a submission made in accordance with the Regulations in order to persuade the Panel to reach a particular outcome, which the Panel was well able to decide the merits (or demerits) of.

83. I note that the email made reference several times to public confidence in policing, and how the Claimant's conduct had undermined that confidence to the extent that dismissal without notice was the appropriate sanction. Whether this was right or wrong, it was an entirely legitimate argument to make. The College's *Guidance* makes reference several times to public confidence: see eg [4.57]: 'Harm will likely undermine public confidence in policing. Harm does not need to be suffered by a defined individual or group to undermine public confidence. Where an officer commits an act which would harm public confidence if the circumstances were known to the public, take this into account.' Therefore, Mr Webster's references to public confidence were not improper. His comment about deployment might be argued not to have been relevant, but that was a matter which could safely be left to the Panel. As I

have said, if the Panel thought it was irrelevant then they could be relied upon to ignore it. As it is, it was not referred to in their reasons.

84. Ms Niculiu's primary submission was that representations under reg 35(11)(c)(ii) are prohibited entirely where the police member is from the same force as the appropriate authority. Her alternative submission was in this situation, then any representation on outcome should come from counsel (Skeleton Argument, [48(2)(b)]. In my judgment, this would be a distinction in form and not of substance. I see no distinction between the appropriate authority making representations in writing which are given to the Panel, as in this case, and the situation where a submission to the same effect were to be made by the appropriate authority's counsel. In the latter case the Panel would know that what was being said was on instructions from the appropriate authority and that counsel would likely have something in writing to that effect.

85. Ms Niculiu also argued at [48(2)(c)] that 'any representation should be expressed as a submission or advice, making it clear that it is dependent upon the nature and gravity of the panel's findings, not in the form of an edict'. There are a number of answers to this argument. Firstly, the Webster email was not an 'edict', that is, an official order or proclamation, and it is not fair or accurate so to describe it. I note that elsewhere in the Claimant's Skeleton Argument it was accepted *not* to have been an order (see eg, [55]). Second, it is not for the appropriate authority to give 'advice' to the Panel. Third, the Panel well understood, and did not need to be told, that the outcome depended on the nature and gravity of its findings as to the Claimant's misconduct. Such is self-evident, and in any event the College's *Guidance* states at [4.1], 'Assessing the seriousness of the conduct lies at the heart of the decision on outcome under Parts 4 and 5 of the Conduct Regulations'; see also [4.10]: 'Culpability denotes the officer's blameworthiness or responsibility for their actions. The more culpable or blameworthy the behaviour in question, the more serious the misconduct and the more severe the likely outcome.' Fourth, the Webster email can, as I have said, be properly described as a submission.

86. It follows from this that I reject the Claimant's submissions that where the police member is from the appropriate authority's own force, reg 35(11)(c)(ii) needs to be 'read down' in some way, so that representations on outcome are prohibited entirely, or the manner or form in which they are to be made is restricted or constrained. For the reasons I have given, absent the sort of wholly exceptional extreme case adverted to by Saini J in *Short*, a written submission on outcome by the appropriate authority, even one written in forceful terms, provided that it is given to the Panel in public and provided that the officer is given the opportunity to respond to it (both of which are elementary aspects of fairness in any event), would not lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal was biased.

87. In my judgment the PAT was correct to reject the ground of appeal based on the Webster email. I therefore reject Ground 1.

Ground 2: whether the PAT failed adequately to address alleged 'substantial shortcomings' in the Panel's reasoning identified in Grounds 1 and 2 of the appeal; alternatively, whether it failed to give adequate reasons for rejecting those grounds

88. Again, the Claimant's submissions under this ground were lengthy. In the discussion which follows I do not propose to deal with every point but to deal with the central thrust of the submissions which were made. The fact that a particular point is not mentioned does not mean that it has been overlooked.

89. In considering this ground of challenge it is important to begin by emphasising that Rule 4(1) and (2) of the 2012 Rules permit appeals (inter alia) against: (a) a finding of gross misconduct; and (b) also against disciplinary action taken in respect of that finding. Grounds 1 and 2 in the appeal to the PAT challenged the Panel's finding of gross misconduct against the Claimant, and the sanction of dismissal without notice, on the grounds that they were both 'unreasonable' within Rule 4(4)(a), in the sense I explained earlier.

90. The question for me on Ground 2 in this judicial review challenge is therefore whether the PAT's decisions that: (a) the Panel's finding that the Claimant had committed gross misconduct was not unreasonable; and (b) its decision that the sanction of dismissal without notice was not unreasonable, were flawed in public law terms. Again, I set out the approach earlier. I bear in mind that it is not for me to revisit findings of fact that were made below, unless they have a bearing on the sort of public law error which the Claimant needs to show in order to disturb the PAT's conclusion.

91. Ms Niculiu's submissions in relation to this ground of challenge can be summarised as follows:

    a. The Panel only allowed cross-examination of three witnesses (DC Rigg, Ms Douglas and William Hall); in the event he was unavailable, and his statement was admitted. The Claimant's application to cross-examine six other witnesses was refused under reg 23. The Claimant's extended reg 22 response stood as his evidence in chief before the Panel, and he was cross-examined.

    b. A critical aspect of the Claimant's appeal to the PAT was that the Panel had disregarded the Claimant's response (in the form of evidence and submissions) to the evidence of each individual complainant, which was crucial to a fair assessment of his conduct and culpability. The PAT failed, adequately or at all, to engage with this aspect of the appeal, because its own review of the complainants' evidence (though lengthy) simply recited the case of the appropriate authority and also made no mention of the Claimant's responses. The PAT therefore compounded the failure of the Panel to address the Claimant's case.

    c. The PAT erroneously discounted, from the assessment of the Claimant's culpability, the relevant consideration of his arrest, which had caused many of the delays in the Claimant's reimbursing the complainants.

    d. The PAT upheld a significant finding of fact made by the Panel for which there was no proper evidential basis, namely that in February 2017, considerable problems with the Claimant's ticket enterprise already existed, which the Claimant withheld from Superintendent O'Connor at a meeting between them.

e. The PAT failed adequately to engage with, alternatively failed to give adequate reasons for rejecting, the submission that the Claimant's conduct did not amount to a breach of the professional standard of integrity.

f. The PAT failed adequately to engage with the submission that the Panel had erroneously found that the Claimant had made improper use of his status as a police officer, and took account of an irrelevant consideration in upholding the Panel's finding.

92. In summary, on behalf of the Chief Constable, Mr Walsh essentially submitted that the review by the PAT of the evidence in the case was not 'wholly one-sided' and it had been correct for the reasons it gave. The PAT looked carefully at the complainants' evidence. What the Claimant had done was not in dispute - it was admitted. It was also admitted that what the Claimant did was a breach of the Standards of Professional Behaviour because, although what the Claimant did was done whilst he was off-duty, his various actions discredited the police service and undermined public confidence in it.

93. The questions for the Panel and the PAT on appeal were therefore not whether the Claimant had done something, but: whether the admitted conduct also amounted to a breach of the integrity standard and the standard which required him not to compromise or abuse his position; and whether it amounted to gross misconduct so that dismissal without notice was justified then, and if so, whether dismissal was the appropriate outcome. In answering these questions the Claimant's individual actions had to be judged cumulatively. Dealing with the appropriate authority's case and its submissions did not, therefore, require a detailed analysis of how each complaint could have been resolved, but whether it could be shown on the balance of probabilities that the ticket selling operation as a whole had in fact run out of control.

94. By taking customers' money, treating it as his own, mixing it with his own money and spending it as he did, and then delaying paying refunds, the Claimant had acted in a way which was discreditable and without integrity. Although he had not been dishonest, judged cumulatively, his actions amounted to gross misconduct and dismissal without notice was not an unreasonable sanction. Neither the Panel nor the PAT had committed any error of principle. Neither phone problems nor his arrest were causative of difficulties. Although they made the problems worse, they were more deep seated than that.

95. Having carefully considered the submissions made on behalf of the Claimant I am not persuaded that the PAT's decisions were flawed in public law terms. That is for the following reasons.

96. I begin with the complaint that the PAT's evidential review was one-sided, leading it wrongly to leave out of account matters which mitigated the Claimant's culpability. In considering this, it is necessary to begin with the Panel's decision.

97. The Panel considered the evidence of DC Rigg and Ms Douglas (both of whom gave live evidence) in detail. It then said at [20] that the other complainants' evidence 'establishe[d] a pattern of behaviour that is consistent with the evidence provided in person by DC Rigg and Ms Douglas', and it then set out in tabular form the name of the

witness; their status as police officer or member of the public; how much they were owed; and the date at which they remained unpaid. It was not disputed that they were unpaid as at those dates; the Claimant's case was that was primarily because of his arrest in March 2018 and the seizure of his devices. Then, in the following paragraphs, it considered the Claimant's evidence in response. In particular, the Panel specifically referred to the difficulties which Claimant relied on, namely; banking problems; phone problems; and difficulties he said his arrest in March 2018 had caused in repaying customers.

98. At [27]-[28] the Panel said this:

> "27. PC Wheeler's arrest in March 2018 and the seizure of his devices and diaries before the end of the Six Nations brought matters to an abrupt halt. We take into account that at that point refunds due after the tournament were not yet payable. However, on the evidence, there was money outstanding from previous matches and PC Wheeler could have no reason to be confident that he would be able to repay his customers when money became due. The evidence is, as in previous years, that refunds would not be made on time and that the debts would carry over. We are looking at a history running from at least 2015 to 2018 and not 2018 in isolation. We also take into account the snowball effect on complaints caused by PC Wheeler's arrest. But for his arrest, some of the complainants might not have come forward and would have shown more forbearance as they had done in previous years.
>
> 28. It is evident that PC Wheeler was in serious financial difficulties and that he was juggling his finances. It is unlikely that things would have improved. The effect of his arrest was to bring all the balls crashing to the ground."

99. These were important paragraphs because the Panel expressly recognised a point central to the Claimant's submissions before me, which was that many of the complainants' refunds had not fallen due by the time of the Claimant's arrest, which prevented or hampered repayment and so mitigated his culpability or extinguished it entirely.

100. Turning to the PAT's decision, I do not accept that it is a fair criticism to call its analysis of the evidence 'one sided'. The Tribunal was dealing with the grounds of appeal which the Claimant had advanced. At [17]-[19] the PAT accurately set out the Claimant's complaint in Ground 1 about the Panel's finding of gross misconduct and in particular that it had taken an overly 'broad brush' approach to the *complainants'* evidence – not that it had left out of account the *Claimant's* evidence. At [27] it stated that it was not sufficient for the Panel to say that it had taken all of the evidence into account, but said that that must be apparent to the Tribunal. It therefore said that it had carried out a review of the complainants' evidence and other material before the Panel. In light of the ground of appeal it was considering, that was a correct approach.

101. Hence the Tribunal rightly focussed, by way of analysis of this ground of appeal, on the complainants' evidence. It was not slavishly required to recite all of the Claimant's evidence as well, when no criticism of the Panel's treatment of that evidence had been made, and it had plainly been taken into account by the Panel. It was submitted for the Claimant that by only reviewing one side's evidence, the PAT did not engage in any better an analysis than the Panel had done, and effectively repeated the Panel's error. That is not correct. The PAT engaged in precisely the exercise which the Claimant said the Panel should have done, and which the Claimant invited it to undertake.

102. It is right that the PAT did not exhaustively rehearse the Claimant's lengthy response to the evidence of each complainant. That evidence paints a complicated picture and descends into considerable detail. But the PAT had obviously read his evidence because, as I have said, they began their evidential review by referring to it. Moreover, the Panel had expressly referred in some detail to the Claimant's evidence and his explanations as to why refunds had been late. Taken together, both the Panel and the Tribunal considered both the complainants' evidence in detail and also the Claimant's evidence, including the matters which he principally relied on by way of mitigation and explanation for his conduct.

103. The key issue, it seems to me, is whether it was reasonable for the Panel to say there was a pattern established by the evidence of DC Rigg and Ms Douglas and the other complainants whose evidence they did not consider in detail, of failure to pay refunds or the late payment of refunds. In order to determine that issue, the PAT rightly considered the evidence of each complainant.

104. Having done so, the PAT stated at [85] that there were similarities in the complaints; and that the Panel's conclusion as to pattern was within the range of reasonable findings open to it and therefore not unreasonable. At [87] it said:

> "87. The Tribunal finds that the crux of the misconduct, in relation to ticket sales, on the Panel's findings was the delay in repaying refunds. When referring to his arrest in March 2018, they said "we take into account that, on the evidence, there was money outstanding from previous matches and PC Wheeler could have no reason to be confident that he would be able to repay his customers when money became due. The evidence is, as in previous years, that refunds would not be made on time and debts would carry over." [para 27 PAT 1239] The Tribunal agrees with the Panel's assessment and finds, on the basis of the witness evidence outlined above, that the Panel's finding was within the range of reasonable findings available to them on the material before them and not therefore, unreasonable."

105. The PAT obviously adopted the right approach to the concept of 'unreasonableness', and the contrary is not suggested, as I noted earlier. I am unable to say that [87] of the PAT's determination upholding the Panel's approach was flawed. In my judgment, if the Panel had undertaken the analytical exercise relating to the complainants' evidence which the PAT undertook, it would have reached the same conclusion.

106. Further, I am unpersuaded that even if the PAT had set out all of the Claimant's explanations, it would have altered matters. Notwithstanding the detail in the Claimant's responses, and his suggestion that events outside his control were principally to blame so he was not at fault, the evidence conclusively demonstrates that ultimate responsibility for all the delays and failures lay with him. This was not a case of poor book-keeping, or matters only becoming clear with hindsight, as the Claimant sought to suggest (see eg reg 22 response, [35]). Problems had started to emerge in 2015/6 (it matters not exactly when), which are what prompted Mr O'Connor to act in February 2017.

107. The fundamental difficulty lying in the way of the Claimant's case is (and was) that a lot of the appropriate authority's case was either not in dispute, or was admitted by him. Central to that case was the financial evidence, which both the Panel and the PAT considered in detail. The root cause of all the difficulties was the fact he mixed customers' money with his own, often used it for his own ends, and he was in serious financial difficulties, as the Panel found at [28] and which was not challenged. Consequently, he could not always pay his debts when they fell due, leading to delays, bounced cheques, complaints and, eventually, his arrest for fraud.

108. The Panel said at [37]:

> "37. This evidence demonstrates that as early as May 2015 PC Wheeler was accepting money for tickets and then using that money for his own purposes. Money was dissipated through the officer's three accounts. Money paid for tickets was not retained in a designated account nor was it used for its intended purpose. PC Wheeler knew what he was doing. The evidence as a whole demonstrates that the officer was juggling funds between accounts for his own purposes. This was not down to poor accounting practices. To compound matters, PC Wheeler failed to repay money that was due when on the face of it, he had the funds to do so. PC Wheeler had to juggle his ability to make refunds for matches previously played with the need to buy tickets for matches about to be played."

109. To begin with, in his original reg 22 response he expressly admitted misconduct, although he denied gross misconduct:

> "2. As set out below, the officer accepts that in relation to one part of the Regulation 21 allegations, namely the delayed repayment of funds due, he has breached the standards of professional behaviour in relation to discreditable conduct.
>
> 3. In relation to this breach of the standards of professional behaviour, the officer accepts that he has committed 'misconduct' within the meaning of Regulation 3of the Police (Conduct Regulations) 2012. The officer denies he has committed 'gross misconduct'."

110. The Claimant did not dispute the evidence of the financial investigator Julie Bailey. That clearly showed how, over a long period, the Claimant had paid his customers' money into his own bank account, had mixed it with his own funds, and then used it for his own purposes including settling gambling debts.

111. Not only was this not disputed by the Claimant, it was expressly admitted by him. He said at [32]-[35] of his reg 22 response:

> "32. As is apparent from the statements of the Financial Investigator Julie Bailey in respect of individual complainants (which are accepted), the officer did not ring-fence the electronic funds he received for the purchase of rugby tickets …
>
> 33. The funds for the purchase of rugby tickets were mixed with, and juggled alongside, the officer's own finances …
>
> …
>
> 35. The officer further accepts that some of those delays (including by the provision of returned cheques) were due to the officer's own personal financial difficulties … "

112. Further, in his extended reg 22 response, he admitted that:

> "89. He ought to have ring-fenced the funds received and have appreciated the risk that to do otherwise would mean that his own financial difficulties might translate into delay in the payment of refunds since the necessary refunds might not be available when the funds fell due. He accepts that some of the complainants experienced difficulty and delay in recovering their refunds.
>
> 90. His behaviour discredits the police service and undermines public confidence in it because of the intrinsic link between his sale of rugby tickets and his being a police officer."

113. At [36]-[38] the PAT said:

> "36 The Panel also had the statement of T/Chief Superintendent O'Connor in which he records the discussion he had with the Appellant, following direct complaints by officers about being owed money. In it, he said his understanding was that PC Wheeler was in a poor financial position and had significant debt issues. He also said that the Appellant had accepted that he had not perhaps made it clear to the buyers that the refunds would be made after the conclusion of the tournament. In addition, none of those complainants that he had spoken to were aware that PC Wheeler had to wait for the return of the monies from his supplier.

> 37. The Tribunal found that the concessions accorded with the evidence of a significant number of the complainants, as set out below.”

114. None of the detail of the Claimant’s responses to the complaints’ evidence could alter these central, and important, facts.

115. I therefore reject the first head of challenge.

116. I turn to the Claimant’s next criticism, namely that the PAT erroneously discounted, from the assessment of the Claimant’s culpability, his arrest. The Claimant was arrested for fraud on 15 March 2018, during the Six Nations, and his devices and papers were seized. In the event, no action was taken. It was an aspect of his appeal to the PAT that he said many of the delays complained of had arisen due to that arrest and accompanying seizure of all his devices and records, reimbursement not having been due until after the date of that arrest.

117. There is no merit to this criticism. The Panel expressly recognised it in its decision at [27]-[28], which I set out earlier. The PAT also dealt with the point at [105]-[107]:

> “105. There was also a strong focus in the appeal on the Appellant’s submission that many of the issues with his customers wouldn’t have happened if he had not been arrested, which arrest was unwarranted and ‘but for the arrest and seizure of these devices prior to the end of the 2018 Six Nations on 17.3.2018, refunds would have adequately followed.’ [para 40 PAT 653]
>
> 106. The Panel found that but for the arrest, the Appellant would not have stopped selling tickets. [para 57 PAT 1246] They also acknowledged that the arrest had a snowball effect on complaints against the Appellant [PAT 1239] The Tribunal find that its conclusion was reasonable and note its finding that even at the hearing, the Appellant was still unable to appreciate the seriousness of his conduct.
>
> 107. The Tribunal’s reasons for so finding are that it is mindful that the Appellant’s arrest resulted from a number of complaints to the Constabulary of alleged criminal behaviour, giving rise to a legitimate suspicion of the commission of an offence. The Constabulary had an obligation to investigate the allegations. There is no evidence to suggest that the decision to arrest was not a PACE compliant process, or in any way unlawful. Refunds were already being withheld or paid late without the permission of the customer, prior to the arrest, even as far back as 2016. It was clear from the evidence that the pressure on the Appellant was mounting. The plates were already spinning and the arrest caused them to come crashing down. The evidence demonstrates that it was the Appellant’s conduct that led him to be arrested and the Panel were not unreasonable in not accepting it as mitigation for his conduct.”

118. In fact, there was only one complainant (Ms Douglas).

119. For my part, I consider the Tribunal took the arrest into account in an appropriate way. It was little mitigation in the scheme of things. It is over-simplistic to say that it was the sole cause of late repayments to the complainants. Firstly the Claimant was running a very precarious scheme. Sudden unexpected problems were always likely to cause serious consequences, and he must have known that. Second, over a year before, in February 2017, the Claimant's conduct had generated sufficient concern – and complaints - that it had come to the attention of a senior officer, Mr O'Connor, who had met with the Claimant and got the Police Federation involved. Even though the Panel found there was sufficient uncertainty in what was said at the meeting that they acquitted the Claimant of disobeying a lawful order (to stop selling tickets), it must have – or should have - been plain to the Claimant that he should do so.

120. In his extended rule 22 response he refers to himself as having had a 'bollocking' from Mr O'Connor ([441]). He also confirmed that he knew that Mr O'Connor was going to report the matter to the Professional Standards Directorate. On any view, these events were a clear warning to the Claimant that he should stop selling tickets, but he did not. All the problems which occurred thereafter were therefore, essentially, of his own making and amounted to little mitigation. He could not say he was not warned. Further and in any event, both the Panel and the Tribunal found that even if he had not been arrested, there is no evidence he would have been able to pay refunds on time given all of the past problems. The premise of his argument is therefore unsound.

121. The next criticism is that the PAT upheld a significant finding of fact made by the Panel for which (it is said) there was no proper evidential basis, namely that in February 2017, considerable problems with the Claimant's enterprise already existed, which the Claimant withheld from Mr O'Connor at their meeting.

122. At [48] the Panel said:

> "48. It is apparent from the evidence that Chief Superintendent O'Connor was not aware of the extent of the problem. PC Wheeler told him at the meeting on 14 February 2017 that only person was owed money when that was not correct. That person was owed £400. DC Rigg was still owed £80 from the England v South Africa game in November 2016. Chief Superintendent O'Connor knew from his own enquiries that other people had complaints about PC Wheeler's activities. The officer failed to acknowledge the scale of his problems and he was not open about the difficult position he was in despite the understanding and the offer of help from Chief Superintendent O'Connor .."

123. The Claimant submitted on appeal to the PAT that there had been no proper evidential basis for the Panel's finding that there had been considerable problems with repayment delays at the time of the Claimant's meeting with Mr O'Connor, the scale of which the Claimant had withheld from him.

124. There is no merit in this point. The Panel's finding was a fair and reasonable reflection of the evidence. Mr O'Connor's statement said:

> "My understanding at that time was that PC Wheeler was in a poor financial position, had a number of failed relationships and therefore had significant debt issues. I understood that this was known by a number of people, hence the inference had been that PC Wheeler was keeping the money himself to get through. I put this to PC Wheeler when I spoke to him, and he denied it. I formed the view that given PC Wheeler had acquired hundreds and hundreds of tickets over the years I did not think he knew who he owed money to, or how much, and it was only down to people constantly contacting him that he repaid them what they said he owed them."

125. The subsequent financial investigation showed that the Claimant had, indeed (and contrary to his denial), been using customers' money for his own purposes, and so his denial to Mr O'Connor was at best very misleading, and at worse a lie. The Panel considered Ms Bailey's evidence about what had happened to money paid by one client, William Hall, and how it had been dissipated by the Claimant in 2015/16, including to pay gambling debts. Paragraph 37 of the Panel's reasons stated:

> "37. This evidence demonstrates that as early as May 2015 PC Wheeler was accepting money for tickets and then using that money for his own purposes. Money was dissipated through the officer's three accounts. Money paid for tickets was not retained in a designated account nor was it used for its intended purpose. PC Wheeler knew what he was doing. The evidence as a whole demonstrates that the officer was juggling funds between accounts for his own purposes. This was not down to poor accounting practices. To compound matters, PC Wheeler failed to repay money that was due when on the face of it, he had the funds to do so. PC Wheeler had to juggle his ability to make refunds for matches previously played with the need to buy tickets for matches about to be played."

126. Mr O'Connor's evidence was also that the Claimant told him only one person was owed £400 as at February 2017. That was not true. DC Rigg was owed money from a game in November 2016. The Panel heard live evidence from her and made the following finding of fact:

> "14. We heard evidence from Detective Constable Kirsty Rigg. She purchased tickets from PC Wheeler on three occasions. In 2016, she gave PC Wheeler £200 in cash for two tickets to the England v South Africa game on 12 November 2016. She received the tickets 2 or 3 days before she was due to travel to Twickenham. The face value of the tickets was less than she had paid, and she had to wait six or seven months for the money to be refunded …"

127. Six or seven months from November 2016 was May/June 2017. It follows that, as at February 2017, DC Rigg was owed money. Whether or not the money was to be rolled over for further tickets, as the Claimant asserts, is neither here nor there. This was a debt which the Claimant owed to a police colleague and if he had been totally forthcoming with Mr O'Connor then he would have admitted it.

128. Paul Turton was also owed money in February 2017. He had loaned the Claimant £1000 in 2014 as a 'float' to be repaid in instalments or by tickets. Money remained owing in February 2017. In March 2017 Mr Turton sent chasing texts to the Claimant, which eventually prompted a response from the Claimant that he had 'forgotten' and was 'embarrassed' to owe such a large amount (several hundred pounds). If, indeed, the Claimant really had forgotten about this debt, then this just bears out Mr O'Connor's supposition that the Claimant did not really know who he owed money to, or how much, and it was only when people chased him that he repaid them.

129. There was, accordingly, ample material to justify the Panel's conclusion, and the PAT was not wrong to reject the Claimant's complaint about it.

130. The next complaint is that the PAT failed adequately to engage with, or alternatively failed to give adequate reasons for rejecting, the submission that the Claimant's conduct did not amount to a breach of the professional standard of integrity.

131. The Panel said at [53]-[54] and [56]-[58]:

> "53. It is not alleged that PC Wheeler acted dishonestly. However, integrity is a broader concept than honesty, and it is consequently harder to define. In professional codes of conduct, the term is used "as a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members" (*Williams v SRA* [2017] EWHC 1478) Integrity connotes adherence to the ethical standards of one's own profession, and professional integrity is linked to the manner in which that particular profession professes to serve the public. That involves more than mere honesty.
>
> 54. Integrity can therefore be seen as a distillation of the trust which is placed in a professional person, and a want of integrity is any breach of that trust. It matters less, in this formulation, how the trust is broken. Dishonesty is the fastest way to destroy that trust, however, there are other, non-dishonest ways in which a professional may destroy trust, and lack of integrity may be the vehicle for expressing disapproval of that action.
>
> …
>
> 56. We were urged by Ms Niculiu not to rely simply on the number of complaints made against PC Wheeler and

> we do not do so. However, our findings of fact based on the evidence drives us to conclude that for an extended period between at least 2016 and 2018 PC Wheeler acted in such a way as to breach his duty of integrity. His friends and fellow officers trusted him to deal properly with the money they gave him to buy tickets. PC Wheeler abused that trust by failing to separate their money from his own and then to use that money for his own purposes. We accept that PC Wheeler always intended to refund any money that was due, but he disregarded the risk that he would not be able to pay them back when the time came. When payments were late, he made promises that he must have known he could not meet. PC Wheeler juggled his finances using other people's money.
>
> 57. The depth of the problem must have been apparent to PC Wheeler when he was brought to task by Chief Superintendent O'Connor in February 2017. The bare facts of the situation were spelled out to him, but he failed to take the opportunity and end his ticketing activities. We find that PC Wheeler was so far in that he decided he had to continue in order to keep afloat. Chief Superintendent O'Connor acted with generosity, but PC Wheeler was not candid with him about the extent of the problem. PC Wheeler continued as before until his arrest and but for that he would not have stopped selling tickets.
>
> 58. Based on our findings of fact we conclude that PC Wheeler's conduct amounted to a breach of the duty of integrity required of all police officers."

132. The argument is put as follows (Skeleton Argument, [91]-[92]). It was argued before the PAT that:

> "91. Firstly, the panel had misdirected itself as to and/or misapplied the standard of integrity. As a professional standard 'professional integrity is linked to the manner in which that particular profession professes to serve the public.' (*Wingate v Solicitors Regulation Authority* [2018] EWCA Civ 366 para. 102). Professional integrity for a police officer requires the application of higher than lay standards, or being particularly scrupulous, in respect of matters which are intrinsic to the role of a police officer and the way that police officers are expected and trusted to serve the public.
>
> 92. The basis of the panel's finding of lack of integrity was that '[the claimant's] friends and fellow officers trusted him to deal properly with the money they gave him to buy tickets. [The claimant] abused that trust by failing to separate their money from his own and then to use that money for his own purposes."

> (Panel's Decision para. 56, CB tab 18 p. 408). But scrupulously dealing with, and safeguarding, client money is not part of the role of police officers, nor intrinsically 'linked to the manner in which the police service professes to serve the public', as it is for instance for solicitors. Unwise as it might have been not to ring-fence the funds, it does not connote lack of integrity as a standard of policing not effectively to create a client account for an off-duty, amateur, voluntary, non-profit system of favours, nor even to deal recklessly (but not dishonestly) with other people's money which was entrusted to him – particularly in circumstances where the panel had expressly rejected the allegation that the claimant implicitly (mis)used his status as a police officer to encourage others to obtain tickets from him."

133. The PAT dealt with the issue at length between [110] and [121]. It recorded the Claimant's submission (based on *Wingate*) that lack of integrity must involve conduct that is linked to 'the manner in which he carries out his function [as] a police officer to serve the public'. In my judgment, the criticism that the PAT did not engage with, or give proper reasons for, rejecting this ground of appeal is not made out: it did both.

134. At [121] the PAT said:

> "121. The Tribunal finds that the Panel's finding that the Appellant breached the Standard of honesty and integrity, as to integrity, was reasonable on the material before it. Their reference in the Determination (para 54) to a purported definition of integrity was not helpful but having reviewed the matter, the Tribunal find that their decision was in line with the appropriate authorities, Home Office Guidance [ie, Home Office Guidance – *Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures* (June 2018)] and the Code, albeit that the latter two were not specifically referred to in the Determination. Their approach in looking at the cumulative evidence as to his conduct was also appropriate as it in line with the guidance outlined. The Appellant showed a lack of integrity by failing to do the right thing, as identified in the financial evidence previously referred to and also identified in the evidence from the complainants above. The Tribunal is also mindful of the duty in Police Regulations 2003 (as amended) Schedule 1 Regulation 6, on anyone holding the office of constable, to discharge lawful debts, including those arising from privately agreed transactions between trusted parties, which was not adhered to in this case."

135. The real question is whether the PAT's decision on this issue was flawed in public law terms and whether it applied an erroneous approach to the meaning of 'integrity'. In my judgment, it did not. The premise of the Claimant's argument – that lack of integrity must be linked to the exercise of the profession in question, and safeguarding client money is not part of the role of a police officer – is unsound. The Court of Appeal in *Wingate* did not say that the conduct in question, in order to lack integrity,

had to take place as part of the role of the profession involved. The statement in [102] of the judgment, 'The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public' is not to be so read. The way in which a profession 'professes to serve the public' means more than simply what the members of the profession do in the course of their jobs day-to-day. It refers to a broader standard of behaviour. In *Wingate*, Jackson LJ approved what was said in *Hoodless v Financial Services Authority* [2003] UKFSM FSM007, [19]: 'In our view 'integrity' connotes moral soundness, rectitude and steady adherence to an ethical code.' Integrity therefore applies to conduct going wider than the way in which the profession in question is exercised.

136. The Code which the PAT referred to in [121] is the College of Policing's *Code of Ethics - A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales* (July 2014). This is a statutory code of practice under s 39A of the Police Act 1996 (as amended by section 124 of the Anti-Social Behaviour, Crime and Policing Act 2014). Paragraph 1.4.2 of the Preamble provides that, 'You are expected to use the Code to guide your behaviour at all times – whether at work or away from work, online or offline'. Under 'Policing Principles', it says: 'Integrity - You always do the right thing.'

137. In *Chief Constable of Thames Valley Police v Police Misconduct Panel* [2017] EWHC 923 (Admin), McGowan J addressed the distinction between dishonesty and integrity in the Standards of Professional Behaviour, at [15]:

> "15. It is obvious that deliberate dishonesty on the part of a police officer would, almost invariably, amount to gross misconduct. The standard of honesty expected by the public of its police service is high and must be jealously guarded by those responsible for its maintenance. Equally the public is entitled to expect that police officers will maintain the required standards of integrity but as Sir Thomas Bingham MR set out in *Bolton v Law Society* [1994] 1 WLR 512 at 518 D,
>
> > 'If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust. A striking off order will not necessarily follow in such a case but it may well. The decision whether to strike off or suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case.'
>
> A lapse of integrity is very serious but can fall short of the quality of a lapse of honesty. Integrity in this context is not used in the sense of freedom from moral corruption rather in the sense of a failing to act in the right way, not behaving as the totally correct police officer would, in some way falling short of

> the whole. It is explained for police officers as 'doing the right thing'."

138. Judged in light of these principles, it is plain that what the Claimant did lacked integrity. As I have explained, he took money from colleagues and others in order to buy rugby tickets, sometimes long in advance of actually purchasing them, and then treated it as his own money and used it for his own purposes. Then, he often could not pay refunds on time because he had to wait for more money to come in from elsewhere to settle outstanding debts. He continued to operate in this way for over a year from February 2017 despite his meeting with Mr O'Connor and the clear warning signs that things were going awry. Many people were deprived of the benefit of having their money sitting in their bank accounts, whilst the Claimant benefitted from it in terms of cash flow and settling his own debts. There was a lack of transparency, and he was not open with his customers about how he operated. People had to repeatedly chase him for repayment which they no doubt found inconvenient and embarrassing. On any view, his behaviour lacked integrity. He did not do the right thing.

139. I therefore reject this criticism.

140. I next deal with the criticism that the PAT failed adequately to engage with the submission that the Panel had erroneously found that the Claimant had made improper use of his status as a police officer, and took account of an irrelevant consideration (late payment for the tickets of over a year) in upholding the Panel's finding.

141. The Panel found at [50] and [61] that the Claimant had misused his status as a police officer (and so breached the honesty and integrity standard) by sending Georgina Black (who was selling rugby tickets) a picture of himself in uniform and flanked by other officers, and a photo of his Cumbria Constabulary business card, together with the message, 'I'm sure if you Google me, my ugly mug will pop up on Cumbria Constabulary website somewhere. I'm the one in the middle. I'm a big rugby fan and 100% genuine. I won't let you down.'

142. The Panel said that he had done this to persuade Ms Black to sell him some tickets and to give her the confidence to believe that she could trust him to pay for the tickets. It said, 'The information was not provided for any police purpose and was blatant and obvious.' The Panel rejected his explanation that he had sent the picture and message simply to prove his identity, or his *bona fides*, as 'simply not credible'.

143. It was submitted to the PAT that this finding was unreasonable. Although what the Claimant had done was perhaps unwise, it had not been an abuse of his status as a police officer. All he was doing was seeking to prove his identity and was not seeking an advantage but was simply offering to buy tickets at the price Ms Black was offering them.

144. Before me, it is said that the PAT took into account an irrelevant consideration when it said ([84]), 'This submission might have found more favour with the Tribunal had it not been for the fact that the Appellant did not pay her for the tickets, despite promising her a cheque, until 6.3.09, just over a year after he received them'.

145. I reject these criticisms. First, why the Claimant did what he did was a question of fact

for the Panel. It heard from the Claimant and rejected his explanation. Its finding of fact was reasonable, and the PAT did not err.

146. As to the point about late payment, this was not irrelevant. The misconduct charge faced by the Claimant in relation to this was that he had breached the integrity standard by using his status as a police officer, 'to encourage people both to obtain tickets through you and to allow you greater latitude in repayment timescales than they would to other suppliers …' and then by communicating as he did with Ms Black. For him to have instilled a sense of security in Ms Black by holding himself out as a police officer as he did, and then to let her down by not paying her for a year despite his promise, obviously made the breach of integrity worse than if he had so held himself out (still wrongly) but paid her on time. He put forward reasons for not being able to pay, but on any view a year's delay was wholly unreasonable.

147. I therefore reject this ground of challenge.

148. For completeness, although not canvassed in his Skeleton Argument or the list of issues, I have also considered the PAT's rejection of appeal Ground 2, which challenged the Panel's sanction of dismissal. I have considered whether the PAT's conclusion that the sanction of dismissal without notice was not unreasonable, was flawed.

149. The PAT dealt in detail with this ground of appeal at [128]-[140]. At [139] it said:

> "139. The Tribunal has upheld the Panel's approach to and their findings of fact, their decisions on breaches of the Standards, their finding of gross misconduct and the seriousness of it, for the reasons set out. In light of that, the Tribunal finds that the decision on outcome was a decision reasonably available to the Panel on the material before them and therefore not unreasonable. It was submitted by Mr Walsh, that it is necessary for the disciplinary process to send out very clear messages to the police and the public. The Code at 9.2 states that "You should ask yourself whether a particular decision, action or omission might result in members of the public losing trust and confidence in the policing profession" An honest answer to that question in the Appellant's case, when his Manager confronted him in February 2017, ought to have given him considerable pause for thought and reflection but sadly, it did not."

150. This was a conclusion open to the PAT.

Conclusion

151. This application for judicial review is therefore dismissed.