



Neutral Citation Number: [2023] EWHC 589 (Admin)

Case No: CO/2816/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/03/2023

Before :

CHARLES BAGOT KC, sitting as a Deputy High Court Judge

Between :

**THE KING (on the application of THE
CHIEF CONSTABLE OF THE BRITISH
TRANSPORT POLICE)**

Claimant

- and -

POLICE MISCONDUCT PANEL

Defendant

-and-

**(1) POLICE CONSTABLE 6102 IMRAN AFTAB
(2) THE INDEPENDENT OFFICE FOR POLICE CONDUCT**

**Interested
Parties**

**John Beggs KC and Peter Laverack (instructed by Simons Muirhead Burton) for the
Claimant**

The Defendant did not appear and was not represented

The First Interested Party in person

**Robert Talalay (instructed by the Legal Services Department, Independent Office for Police
Conduct) for the Second Interested Party**

Hearing date: 1 December 2022

Approved Judgment

This judgment was handed down remotely at 2.00pm on 17 March 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

CHARLES BAGOT KC, Deputy High Court Judge:

This judgment is in 7 parts as follows:

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I. Introduction

1. During the pandemic lockdown, an off-duty police officer approaches a lone female pedestrian, whom he does not know, having got out of his car alongside her, leaving the engine running. He engages her in conversation, for no policing purpose, during which he observes that she is “*too curvy to be Asian*” and shows her his warrant card to demonstrate that he is a police officer. She informs him that she is meeting someone and that she is “*taken*”; she also messages a friend saying “*help me*”. He stands close to her to show her photographs of himself working out in the gym, on his mobile telephone. He asks for her telephone number and immediately calls her to check she has given him the correct number. Before she leaves, he asks her for a hug. After she walks away, he drives alongside her at a slow speed seeking to wave at her. That evening he messages her addressing her as “*babe*”.
2. Following the woman’s complaint that she felt sexually harassed, a disciplinary process results in the Police Misconduct Panel (“the Panel”) finding that there was gross misconduct by the Officer and it imposes a final written warning by way of sanction.
3. The central issue in these proceedings is whether that outcome was open to the Panel or whether the only rational outcome was dismissal.
4. The Claimant, the Chief Constable of the British Transport Police (“BTP”), does not shy away from these proceedings capturing a real and present national concern about male police officers’ conduct towards lone women. That concern was noted by Collins Rice J after she granted permission for these proceedings, noting in a passage of her Order not forming part of the decision to grant

permission, dated 4 October 2021: “...it is notable that the factual matrix of the underlying case falls squarely within the overall ambit of acute general public concerns about policing at the present time.” It is also reflected in the recent publication of His Majesty’s Inspector of Constabulary: ‘An inspection of vetting, misconduct and misogyny in the police service’¹, of 2 November 2022.

II. The Judicial Review claim in outline

5. So, with the permission of Collins Rice J, the Chief Constable of BTP, applies for Judicial Review of the decision of the Defendant Panel. The four grounds for challenge are:
 - i) The Panel’s decision to impose an outcome other than dismissal was irrational.
 - ii) The Panel failed properly to follow the structured approach to assessing a disciplinary outcome:
 - a) by a failure properly to apply the first stage of the structured approach; and
 - b) a failure properly to apply the second stage of the structured approach.
 - iii) The irrationality of certain factual findings.
 - iv) The irrationality of the decision on outcome in the light of the irrational findings of fact.
6. As for the relief sought, the Claimant seeks an Order pursuant to CPR 54.2(c) quashing the Panel’s decision on disciplinary outcome. If successful on irrationality, the Claimant invites the Court to substitute a rational decision for that of the Panel (or to direct the same Panel to make a rational decision on disciplinary outcome). Should the Panel’s process of decision making be found to be unlawful or procedurally improper, the Claimant seeks an Order remitting the matter to a differently constituted Panel to hear the misconduct proceedings afresh.
7. The Panel has not sought to participate in these proceedings which is its standard approach.

¹ <https://www.justiceinspectorates.gov.uk/hmicfrs/publication-html/an-inspection-of-vetting-misconduct-and-misogyny-in-the-police-service/>

8. I am grateful to all those who addressed me in writing and orally at the hearing for their assistance. I have received further written submissions since the oral hearing. Even though I do not deal with every aspect of the evidence and every point taken in oral and written submissions, in this judgment, I have taken them into account when reaching my conclusions.
9. The First Interested Party, PC Aftab (“the Officer”), subject to the disciplinary process, was initially represented and filed Summary Grounds of Resistance, dated 12 September 2021, drafted by Patrick Hill of Counsel. He was also represented by the same Counsel at the hearing before the Panel. As the Officer was acting in person, without legal representation, at the substantive Judicial Review hearing, I have paid particularly close attention to those written grounds, drafted on his behalf. These were supplemented by the Officer’s own written document (“skeleton argument”) for the substantive Judicial Review hearing, dated 15 November 2022, the points in which he reiterated courteously and passionately when I gave him an opportunity to address me orally.
10. The Second Interested Party (“the IOPC”) appeared by Counsel, Robert Talalay, having provided a skeleton argument and, whilst making helpful submissions on some distinct points, largely adopted and supported the erudite written and oral submissions by the Counsel team of John Beggs KC and Peter Laverack for the Claimant.

III. The Facts and the Disciplinary Process in more detail

11. On 15 April 2020, the same day as the incident occurred, at 19:34 the complainant filled in an online complaint form to the Metropolitan Police giving the following account (I have redacted the name of the complainant’s friend):

“Complaint details

Please tell us what happened

I live in Hammersmith and was excited to go out for a walk/jog for some exercise as I have been self isolating for two weeks now. I had scheduled to meet a friend (redacted) to go for a jog together at a socially acceptable distance. So I was on my way to the Brook Green area, walking along Shepherds Bush Rd, and as I was crossing a smaller street I sensed a car beside me slowing down, and a man looking out of his car to look at me. He smiles, but with my earphones on, I do not hear whether he's said anything to me, so I just carry on walking. This car parks in front of me, just a few metres away from the Tesco's and the man walks out of his car. I assume that he's just parking and leaving, but he turns towards me and starts talking to me. I pull my earphones out to hear him say "How's it going? Sorry. I was

distracted by you whilst I was driving, and wanted to know, where are you from?" This kind of conversation starter happens quite often and so I just quickly answer to avoid being to rude and I say " Hong Kong" with a slight smile. I try to turn to leave and he says "Oh! I thought you were Brazilian! because you look too curvy to be asian!" At this point, I am already disgusted by what he's said but I decide to leave it and just wanted to get this over with as soon as possible so that I can go and find [complainant's friend], who is now waiting for me. This man introduces himself as Jay, and tells me not to worry as he is an officer, and that he has just come off his shift. He flashes his police badge at me, and says "here look, let me show you a photo too". I say "its really okay, im on my way to meet a friend so im going to go now" and he said "oh to tesco's?" and I say "no, for a run".

Jay says "oh you're a runner, maybe we can hang out some time soon too." and really finding it hard to leave, I quickly just say "Sorry im taken" (as usually that makes it easier to end the conversation. not this time though) Jay continues by saying "no its fine, we can just hang out, as friends you know, you dont believe me when i say im a police officer? Here, see, this is me in my uniform" and he proceeds to show me photos of him wearing the police helmet, but also photos of him wearing unbuttoned shirts, and pictures of him showing off his body. At this point, I message my friend (redacted) "help me" and am about to send him my location details, when Jay comes closer to me and asks for my number. In my experience, its easier to give out your real number and block them later than to say no or give them a fake number because boys tend to call immediately to check, so i gave him my number, and he then calls me to verify my number, and seeing that it came through, i show my phone to him with his call coming through and i say "sure, just message me, i need to leave now" and he says "aw i know its covid 19 and everything but you can give me a little hug right?" and I say "No, i need to go now" so i start calling my friend (redacted) to look occupied and walk away. and Jay gets into his car and slowly drives away whilst still waving at me. The reason I am filing this complaint: - It shouldnt be okay for a police officer to be flashing their badge at someone, ruining the police's image as a whole, and just making "the victim" i.e. me feel like i couldnt really leave at the time. - if the badge was not real and it was only a tool to "get" more girls, impersonating the police is also a crime and therefore I wanted it check whether this person is actually in the police force. - his intentions were clearly to try and get with me and during the whole situation even though i was out in public, i did not feel like I could leave, and I felt sexually harassed by the things he was showing me and saying. Now that he knows my number and first name, I keep wondering if he could abuse his power as a police man and find out more details about me and i feel absolutely unsafe. I am also currently living alone, so not being able to freely walk around my neighbourhood knowing that he works in the area is not a great feeling to have. - calling me "too curvy to be asian" was more racist than he may have thought. and i have no idea how he may have thought this would have been flattering for me to hear. I do not wish this situation upon any other girl.

Whilst I didn't fully express my discomfort at the time, my coping strategy is sometimes to laugh it off and just be done with the conversation to avoid any trouble, this has definitely ruined my day and left me feeling harassed. Since then, he has messaged me asking me for my whatsapp (which thankfully is linked to another number) and has asked "How was your run, babe". I have not responded to these and have blocked this number. I am also happy to provide screenshots of these conversations (both Jay's messages and my conversation with (redacted) to prove my messaging him "help me" and to prove the timestamp of when all of this happened)."

12. The complainant subsequently made a statement which was materially the same.
13. The IOPC investigated the allegations and the Officer replied to questions from an investigator on or about 22 May 2020 as follows (save I have replaced the references in the original to the complainant's name, with "[WXY]"):

"On the 15th April 2020, at approximately 1600 hours, I had just finished a 0700-1600 hours early shift and planned to leave work and attend for my daily essential food shopping at my local supermarket which is on the shepherd's bush road. I have been reluctant to park in the car park after my car boot was damaged a few months ago and as such routinely choose on street parking locally. On this occasion I had parked on Shepard's Bush road approximately 50 to 100 yards away from the Tesco.

On my way to the supermarket (Brook Green Tesco) I saw a female who I know now to be [WXY]. I will refer to her as [WXY] in my statement, she was slowly walking towards me in the direction I had parked my vehicle and at first glance I thought I knew this female from my gym (pure gym Hammersmith) which started the conversation I am a keen fitness enthusiast and kickboxer and in my spare time I usually train with males and females at the local gym which was a few hundred yards away from where I parked. I had an honest held belief that she attended my gym (pure gym, Hammersmith). [WXY] alleges that I was driving slowly next to her and looking out of my car and looking at her and smiling. I refute this as I was looking for a place park and I knew that I would have to turn left to do so. As I was looking for carrier bags in my vehicle, she walked slowly towards me on the pavement. I said 'hey, how's it going?' to her and she smiled, took out her headphones and stopped. She then alleges that I said to her that I been distracted by her when I was driving, and I wanted to know where she was from? This is not true. I had been driving slowly as I was about to park my car. I introduced myself as Jay- (my childhood/social nickname) and she introduced herself as [WXY]. I asked her how she was coping through COVID-19 and where she was from and she replied that it had been hard as she was unable to socialise as normal and smiled and said she was from Hong Kong. She alleges that I said "Oh I thought that you were Brazilian, because you look too curvy to be Asian" I did NOT make any such comment.

When I stated that I thought she was from Brazil she said, ‘No I have good genes’ She then asked me where I was from and as I assumed it was a polite conversation and I was happy to answer that I was a British Pakistani, to which she replied, ‘a British What’?

At this point I assumed the conversation had concluded but as she showed no sign of leaving and was continuing to chat, I asked her what she did for a living, she replied she was an admin assistant or similar. I said this must have been hard if she had been furloughed in the pandemic and she agreed. When she asked me what I did for a living, I replied I was a police officer who had just finished my shift in the local area and was on my way for essential shopping up the road. She said ‘oh, really? I don’t believe you, where’s your badge?’ at which point I was ethically obliged to show my warrant card as she was a member of the public requesting it.

She began asking about what the role of a police officer entailed and at this point I was happy to engage her and answer. She said that to be in the police, officers must have to be in optimal shape and this segued into her asking about my general fitness regime. I replied that I enjoy doing a variety of training through running, weight lifting, circuit training and particularly martial arts and stated that I had pictures on my phone of my training endeavours. She asked to see them, and I was happy to show her as she had also expressed an interest in fitness. Throughout the conversation I was mindful of the need to ensure social distancing and so I was aware when she breached this by stepping forward to see my pictures, so I took a step back. I did show [WXY] pictures which I had on my phone. The pictures were of me in the pure gym carrying out some weight training.

She then commented about my physique, complimenting me and at this point she looked at me up and down and said she thought I had a good physique. She asked what my height was. I replied that she too looked in good shape and asked her what fitness regime she was doing.

I said to her ‘are you a member of the pure gym down the road?’ as we have all been affected by gym closures during the pandemic, to which she replied that she was not attending the gym now. I said ‘you look like you are into your fitness- I am motivated by fellow fitness enthusiasts and as a friendly gesture (as I was aware gyms are closed) I said if she wanted to train together once feasible we could. I have been asked many times for support/advice on training in the local gym. She replied ‘yes, WhatsApp me and we can arrange a time and date’ so we swapped numbers and I said I would message her later, as I was originally on my way to Tesco. At this point I said to [WXY] ‘I would shake your hand’ to say nice to meet you but due to covid-19 am not going to, I then said bye to [WXY] and told her to have a good run she then said bye and slowly walked off smiling.

At this point, I saw the queue from the Tesco car park was long and decided to forgo the waiting time as I was tired from my early shift.

To my knowledge, the encounter lasted a few minutes. I am aware she asked personal details about me including where I live, where I work, and if I frequented Westfields shopping centre. I found these questions slightly disconcerting at as at the time I had no reason for concern but given the shock of this allegation I am fearful of my safety and my wellbeing because she knows more about me than I do about her, and as she knows I am a police officer I worry she may do something to jeopardise my career or reputation. I have taken extra regard as is expected of police officers to engage and support the community in a worrying time for us all and am mindful that there is a heightened sense of fear in the community about the pandemic.

I am worried that as [WXY] alluded to in her statement, conversation starters are common but, on this occasion, she has chosen to make a complaint and I am highly concerned that this may be because I am in a profession of law enforcement which may be polarising for some. I find it conflicting that she stated she 'wanted to get this over with as soon as possible', however, continued to engage in conversation longer than I had anticipated and as such was willing to oblige.

I am also confused as to why [WXY] states she wanted to check the legitimacy of my profession via the mechanism of a complaint- I am ethically obliged to disclose to a member of the public who asks to see my warrant card that I am indeed a police officer hence showing her my warrant card at the time.

I would also like to make the point that at no time was this conversation sexual it was always based around fitness. At NO time did I make a sexual comment verbally or in a text message. As shown in the text messages I did use the term "babe". This is a term I use friends as part of my day to day language. If on this occasion I have caused offence to [WXY] by using this term the I would like to state that was not my intention. It was not used in a sexual or defamatory way. Our brief conversation was purely about fitness and potentially meeting for a fitness session. I would like to add that by nature I am a very sociable person and I thought that we were engaging in a friendly chat and she showed a keen interest in wanting to train together. I did message [WXY], as she requested, on WhatsApp approximately two (2) hours after we meet. A copy of the text messages has been provided. From those text messages I would like to state categorically that I sent those messages to arrange a training session. When [WXY] did NOT respond to my text messages I made NO further contact.

I would like to state categorically that I refute ALL the allegations made by [WXY] in their entirety. I had an Honest held belief that on speaking to [WXY] initially that she did in fact attend and train at my local gym (Pure gym, Hammersmith). I did not force [WXY] into a conversation nor did I force [WXY] to remain in conversation with me. She could have walked away at any point."

14. The IOPC produced a report, dated 30 July 2020, to assist BTP's Appropriate Authority ("AA"). This is the term used in the *BTP Conduct Regulations 2015* ("the Regulations") for the Claimant Chief Constable, in her capacity as the initiator and overseer of misconduct proceedings against BTP constables.
15. By a formal Regulation 21 notice, setting out the breaches alleged, the matter was referred to misconduct proceedings. The notice communicated to the Officer that six allegations were being made against him, namely (I have replaced the name of the complainant with [WXY] again):

"...

- a) *Inappropriately used your status as a police officer in an attempt to impress [WXY], or otherwise advance your prospects of building a relationship with her;*
- b) *Persistently ignored [WXY's] cues that she did not wish to engage with you;*
- c) *Made comments of a sexual nature to her;*
- d) *Showed her photographs of an inappropriate or sexual nature;*
- e) *Engaged with [WXY] generally, sought physical contact with her (i.e. a hug), and stood within two metres of her despite the coronavirus pandemic and in breach guidance issued by the Government and guidance provided to you by the British Transport Police;*
- f) *Your interaction with [WXY], which was not a reasonable excuse to be outside of your home, was a breach of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020."*

16. The Notice continued:

"Your actions as set out above constituted a serious departure from one or more [of] the standards [of Professional Behaviour set out in Schedule 1 to the Regulations]:

(a) Honesty and Integrity

Police officers are honest, act with integrity and do not compromise or abuse their position.

(b) Authority, Respect and Courtesy

Police officers do not abuse their powers or authority and respect the rights of all individuals. Police officers do not abuse their powers or authority and respect the rights of all individuals.

(c) Equality and Diversity

Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

(d) Duties and Responsibilities

Police officers are diligent in the exercise of their duties and responsibilities.

(e) Discreditable Conduct

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

17. On 16 April 2021, the Officer served a notice in response, under Regulation 22. He accepted approaching the complainant (and that she had not in fact approached him as per his original account), showing his warrant card “*to provide reassurance*” and showing photos of himself, as well as later messaging her addressing her as “*babe*”. The Officer did not accept that any breach of the relevant Standards Of Professional Behaviour had occurred.
18. A notable feature of this matter, as will be seen, is that the Panel disbelieved most of the Officer’s account and his denials, preferring the complainant’s account on most points. One of the Claimant’s complaints is that the Panel failed, when considering seriousness, to take any account of the extent to which it had disbelieved the Officer’s account and the ramifications.
19. The Panel had a variety of other evidence available to it, including a statement from the complainant’s friend, confirming the arrangement to meet and the messages sent to him (as well as copies of those messages). The incident was also recorded on CCTV although the recording was of images alone; no sound was captured.
20. This was a very experienced Panel consisting of a legally qualified Chair, Akbar Khan; a police member, Superintendent David Oram; and an independent member, Pradeep Agrawal. They heard this matter from 17 to 19 May 2021. As well as the documents mentioned above, the Panel heard in person evidence from the Officer and evidence via video link from the complainant. The Panel’s determination is dated 19 May 2021. Given the nature of the grounds of review, the Panel’s factual findings deserve to be set out in full (I have redacted the name of the complainant’s friend):

“Factual Findings

1.13. In relation to the alleged facts at paragraph 1², the Panel finds these proven based on the admission by the officer at paragraph 3 in his Regulation 22 response.

1.14. In relation to the alleged facts at paragraph 2³, the Panel finds the facts in relation to the officer alighting from his car and approaching the complainant proven based on the officer's own admission. However, the Panel does not accept that the officer 'parked' his car as alleged.

² That is a reference to paragraph 1 of the Regulation 21 Notice: “At approximately 4pm on 15 April 2020 you were driving your vehicle along Shepherds Bush Road.”

³ “You parked and alighted from your car and approached [WXY], who was unknown to you at the time.”

1.15. The evidence from the officer and the CCTV footage show that his car pulled into the motor cycle bay. He stopped a few feet away from the kerb with the engine idling and the vehicle lights left on when he alighted from the vehicle and walked around the rear of the vehicle before approaching the complainant. Throughout the encounter the vehicle engine was left running.

1.16. The Panel finds that the officer did not 'park' the vehicle in the conventional meaning of the word 'parked' but simply stopped the vehicle in the motor cycle bay with its engine idling. As to the alleged facts that the complainant was 'unknown to him at the time' while this is factually true in hindsight, at the relevant time the officer maintained that he honestly, albeit mistakenly held the belief that the complainant was someone he recognised from his gym in Hammersmith, the Pure Gym. The Panel has assessed the evidence and finds it is inconclusive as to whether he honestly held the belief that he knew the complainant at the time he approached her. In any event, the Panel finds it is not a material fact in this case as within a minute or two of their exchanges it was clear he did not know her.

1.17. In relation to the alleged facts at paragraph 3, the Panel finds the majority of facts proven based on the admissions made by the officer and the complainant. Both agreed there was a conversation in which the complainant was asked if she was Brazilian to which she replied she was from Hong Kong. The disputed facts concern the reference to the words "*because you look too curvy to be Asian*". The complainant stated that the whole sentence said to her by the officer in response to her reply that she was from Hong Kong was "*Oh I thought you were Brazilian because you look too curvy to be Asian*". The officer denied he made any reference to these words.

1.18. The Panel has reviewed the evidence and finds on a balance of probabilities that it prefers the evidence of the complainant. In reaching its finding, the Panel has assessed the consistency and reliability of the complainant's evidence compared to the officer's evidence contained in their respective accounts made to the IOPC and their live evidence. In this regard, the Panel notes the complainant filed her complaint setting out her account of the content of the encounter at 7.34pm on the same day of the incident, namely, 15 April 2021. Her account was therefore extremely contemporaneous and very detailed regarding the encounter.

1.19. In contrast, the officer did not complete his statement to the IOPC until after the service of the Regulation 17 Notice of Investigation dated 13 May 2020. On his own admission before the Panel, the officer accepted that his account given to the IOPC was possibly incomplete in omitting that he had shown training/ gym pictures on two occasions to the complainant and not only on one occasion as his IOPC account might suggest.

1.19 (i). He also said his IOPC account was not given in a timeline as he was responding to questions put to him by the IOPC. The Panel has reviewed the IOPC request dated 22 May 2020 for a written statement from him and notes that it simply requests that he give his version of events of 15 April. It did not prescribe any particular order that he was required to present his version of events. It therefore seems strange to the Panel that the officer would seek to present a version of events to the IOPC that did not reflect a timeline of how the encounter unfolded in the same way that the complainant did as this would have been the clearest way of presenting his evidence. This being the case, while the officer denied his IOPC account was unreliable due to the omission noted earlier he stated that he did his best to state what he could recall of the encounter to the best of his knowledge and belief.

1.20. Looking at both accounts, they refer to the complainant being asked where she was from and the officer stating he thought she was Brazilian. However, the complainant recalls the officer making reference that *'she looked too curvy to be Asian'*. The officer has denied stating this. The Panel accepts on a balance of probabilities that this was said by the officer based on the contemporaneity and consistency of the complaint's evidence both in her written account to the IOPC and in her live evidence. On the other hand, the Panel finds the officer has been inconsistent on some material matters between his IOPC written account and his live evidence, namely the sequencing of the photographs and showing of his warrant card which casts doubt on his general recollection of the encounter. The Panel recalls that memories tend to fade with time not, improve with time, yet the officer's memory appears to have improved with time regarding how many times he showed his photos to the complainant which he claimed in his live evidence was twice although this was not reflected in his IOPC account.

1.21. In relation to alleged facts at paragraph 4, the evidence from the complainant was that she definitely did not ask or initiate a request to see the officer's badge or warrant card but it was case of him saying if you don't believe that I am a police officer then here is my badge. In contrast, the officer stated that during their conversation regarding what they both did for a living, he informed the complainant that he was a police officer who had just finished his shift, to which the complainant said to him *"Oh really? I don't believe you, where is your badge?"* He said he felt ethically obliged to show his warrant card as she was a member of the public requesting it. He did so to provide her with reassurance that he was not lying as he thought she might have thought he was impersonating a police officer. The Panel prefers the evidence of the complainant based on her consistent contemporaneous IOPC account and her live evidence compared to the officer has been inconsistent in his IOPC account his live evidence as previously identified. Further the Panel can find no reasonable basis why the complaint would have wished to see the officer's badge or warrant card when she was on her way to meet a friend and by doing so would have been further delayed. The Panel found the complainant was candid and

honest in her live evidence accepting when she did not recall a matter and clear when she did. This is to her credit.

1.22. On the other hand, the Panel finds there is a plausible reason why the officer would have produced his warrant voluntarily. The officer said in producing his warrant card, he did not consider he was putting himself 'on duty' but simply responding to an ethical duty to demonstrate his good faith. He accepted he was not acting for a legitimate policing purpose in showing his warrant card. It was suggested to the officer in cross examination that he had taken out his warrant card in order to keep the complainant engaged as she wanted to leave. He denied this assertion and said she was talking and engaging freely with him.

1.23. The Panel has assessed the evidence and finds on a balance of probabilities that the warrant card was produced to the complainant not at her request as she said, and not for any ethical reason, but voluntarily by the officer to demonstrate he was someone who the complainant could trust as he was an officer. In this sense, its purpose was for the complainant's reassurance as he was a complete stranger who had just stopped her in the street while she was going about her lawful business.

1.24. The officer knew very well from his experience from frontline policing the power that production of a warrant card would have on a member of the public in providing reassurance that the holder could be trusted. The Panel finds that while the officer did show his warrant card for the purpose of reassurance, at the same time there was no legitimate policing purpose in producing his card. The only reasonable conclusion to reach on a balance of probabilities is that the reassurance he sought to provide was to induce the complainant to continue the engagement with him as there was no objective reason why she would have continued talking to a complete stranger when she was on her way to meet her friend, (redacted).

1.25. The Panel also finds from the CCTV footage that there was no continuing showing of the warrant card as alleged but it was a quick show of the warrant card from him. There has been dispute about whether the warrant card was produced before the mobile phone pictures or vice versa with the AA suggesting the warrant card was produced first followed by the pictures. The Panel finds resolution of this matter to be immaterial in the context of specifically assessing the purpose for which the warrant card was produced given that there is no dispute that whatever the sequence both the photos and the warrant card were produced at some stage during the encounter.

1.26. Having made its findings on the facts regarding production of the warrant card it follows that the allegation at paragraph 13(a) of the Regulation 21 notice is proven on a balance of probabilities, namely, that the officer did use his status as a police officer in an attempt to impress the complainant, or otherwise advance his prospects of building a relationship with her. In

this latter regard, the Panel accepts the evidence of the officer that the nature of the relationship he envisaged was to *'hang out as friends' or 'training buddies'* and not a sexual relationship.

1.27. In relation to the alleged facts at paragraph 5, the Panel finds these facts proven on a balance of probabilities based on the admissions of the officer and the complainant.

1.28. In relation to the alleged facts at paragraph 6, the Panel finds that the complainant did decline his invitation and told the officer she was *'taken'*. The complainant said she told the officer she was taken because she was finding it hard to leave the conversation and that by saying this it usually makes it easier to end a conversation. The Panel also notes that immediately after she told the officer that she was *'taken'* she texted her friend *'Help me'*. In the Panel's view this is clear evidence that in her mind she was keen to get away from the officer and therefore by telling him she was *'taken'* she hoped to achieve this outcome. In contrast, the officer has simply denied that the complainant told him this. The Panel has assessed the evidence and on a balance of probabilities prefers the complainant's evidence compared to the officer's which contextually and contemporaneously is supported by her subsequent action of texting her friend *"Help me"*.

1.29. In relation to the alleged facts at paragraph 7, the Panel finds on a balance of probabilities that the officer did ask the complainant to *'hang out as friends'* He said as much in his IOPC account and in his live evidence. As regards whether he said *'you don't believe me when I say I am a police officer'* the Panel has already accepted at paragraph 1.21, the evidence of the complainant that she did not request production of the officer's warrant card or badge but that he voluntarily produced it after he said *"You don't believe me when I say I am a police officer?"*

1.30. However, the Panel does not accept the assertion in paragraph 5, that the officer *"persisted"* in his behaviour. This is because the CCTV evidence shows the engagement between the officer and the complainant to be outwardly congenial with laughing and smiling on both sides. There is no objective evidence suggesting that the officer was being *'persistent'* in any way.

1.31. It is not disputed that the complainant did send a text message to her friend (redacted) stating *"Help me, I am on my way, Got stopped by a guy, Gosh"* all in quick succession which clearly evidences the complainant's ongoing internal stress at the time from the encounter. However, these messages were unknown to the officer at the time and from the CCTV there is no objective evidence showing any outward stress by the complainant.

1.32. In the Panel's view her outward behaviour did not reflect her inner stress. Furthermore, the Panel finds that the encounter was in broad daylight

in public and it was open to the complainant to leave the conversation at any time. She stated in live evidence and in her IOPC account that she was *'disgusted'* by the officer's remarks regarding when he said *"Oh! I thought you were Brazilian because you look too curvy to be Asian"*, yet she did not leave. She also gave the officer her mobile number when she could have refused to do so. It is therefore reasonable to assume that she remained in conversation by consent.

1.33. The AA's states that the complainant was small in stature in comparison to the officer who is very tall. This is indeed factual but the implication made by the AA is that the complainant was in a somewhat weaker position during the encounter and was possibly being detained against her free will and choice. The Panel does not find this on the evidence. The complainant made her complaint within a few hours of the encounter. This required determination and courage. The complainant also explained her practice of giving out her real mobile number rather than a fake number when asked by males hitting on her. This was so she could ensure that any conversation went smoothly and then block them. She also said she used the tactic of telling the officer she was 'taken' so she could end the conversation. In the Panel's view her candour shows someone who was very capable of looking after herself and was clearly 'streetwise' in the situation she found herself.

1.34. In light of these findings, the Panel does not accept the assertions made at paragraph 9 that the officer *"continued his unwelcome persistence in talking to the complainant"*. It therefore follows that the allegation in paragraph 13(b) is not proven.

1.35. In relation to the alleged facts at paragraph 8, the Panel does not find the facts proven, namely, that the officer showed the complainant photographs of himself wearing a police helmet, wearing an unbuttoned short and showing off his body. The AA bears the burden of proof of proving its case on a balance of probabilities. They have failed to discharge this burden regarding the alleged nature of the photographs being of an inappropriate or sexual nature because the IOPC investigation was deficient in failing to ask for the photographs from the officer.

1.36. The evidence of the complainant was that she was shown photographs by the officer she described as 'indecent' comprising mostly selfies of the officer in his underwear and others with his upper torso naked and another wearing a police uniform. None of these photographs have been produced by the AA.

1.37. The officer has produced four photographs that he claims he showed her comprising of one photo in his martial arts gym kit and the remaining three photos of him weight lifting. The complainant has candidly said that she believes only one of the photos produced she might have seen, namely, the one with him dressed in a martial arts gym kit. She

said she could not recall any of the others being shown to her and importantly she would consider none of them as being 'indecent'. In the circumstances, the AA has failed to prove its alleged facts at paragraph 8 and likewise at allegation 13(d).

1.38. In response to the AA's failure to produce any photos of an indecent nature it has been suggested that the officer should have voluntarily cooperated with the IOPC and handed over any photos on his phone. The Panel does not accept this analysis. The fundamental error lies with the failure of the IOPC to request the photographs in the first place as part of its investigation. The officer was fully entitled to take the view as he did, that he did not have any photos of the nature alleged by the complainant on his phone and therefore was not in a position to produce any voluntarily. What photos he did have he produced to his legal advisers which was entirely reasonable in the circumstances.

1.39. In relation to the alleged facts at paragraph 10, the Panel finds these facts proven based on the agreed accounts of both the complainants and the officer.

1.40. In relation to the alleged facts at paragraph 11, the Panel finds the facts proven based on the agreed accounts of the officer and the complainant, save for the disputed reference to the request for a 'hug' by the officer. In this regard, the Panel recalls the officer stated in evidence that he did not request as 'hug' but said he would have offered to shake the complainant's hand meaning a fist bump. The complainant in her account stated that he requested a 'hug' which she refused.

1.41. The evidence of (the complainant's friend) also referenced a request for a 'hug' which is supportive of the complainant's IOPC account. What is clear from the evidence is that both the officer and the complainant agree that the reference for a hug came after the officer mentioned Covid-19. Despite the recognition of covid-19 at the time the officer has admitted to standing on occasion within two metres of the complainant in breach of government guidance. By showing her pictures from his phone on two occasions and his warrant card the Panel finds that the officer encouraged the complainant to step forward to be closer to him in breach of government guidance.

1.42. In view of the permissive behaviour shown by the officer, the Panel finds it is more likely than not that he did ask the complainant for a 'hug' before they went their separate ways. Furthermore, the complainant has been clear and reliable in her IOPC account and before the Panel in her live evidence. In contrast, the officer has not been consistent in his evidence between his IOPC account and live account. Accordingly, on a balance on a probabilities, the Panel prefers the evidence of the complainant and finds that the officer did request a 'hug'. Therefore, based on its findings it follows that allegation 13(e) is proven.

1.43. In relation to the alleged facts at paragraph 12, the Panel finds the facts proven based on the admissions made by the officer.

1.44. In relation to the allegation at paragraph 13(c) that the officer made comments to the complainant of a sexual nature, the AA relies upon the proven reference by the officer to the complainant "*looking too curvy to be Asian*" and his reference to *'babe'* in his text message. In relation to first reference the Panel finds that the reference to the body appearance of the complainant *'looking too curvy to be Asian'* to be of a sexual and unwanted nature. The complainant said she was disgusted by it and the Panel accepts her evidence as to how she felt.

1.45. However, the Panel finds on the evidence that the reference to *'babe'* was not sexual in nature. In this regard, the Panel heard evidence from the officer that this was the friendly and light hearted manner in which he referred to his female friends since he was at university. The Panel accepts his explanation and also his candid admission that the reference to *'babe'* towards a person who he had only met a few hours only and was not a friend was indeed *'ill- judged'* in the circumstances.

1.46. Finally, in relation to allegation 13(f), the Panel recalls the evidence of the officer that he was on his way for shopping at Tesco when he encountered the complainant, which if correct would have provided the officer with a *'reasonable excuse'* to be outside of his home under the relevant government Coronavirus Regulations 2020.

1.47. The evidence shows that he did ask the complainant if she was going to Tesco to which she replied *'No'*, she was going for a run. The evidence also shows that the Tesco shop was on the same street where he pulled in and remained stationary while he met the complainant. Finally, the evidence shows that following the encounter he did not go to the Tesco as he said the queue was too long. Having assessed the evidence, the Panel finds it is more likely than not that he was going to Tesco for his shopping but was temporarily distracted by the meeting with the complainant. The Panel finds that this temporary deviation from his primary purpose of shopping for no more than five- minutes did not vitiate his reasonable excuse for being outside his home. The fact that he decided in the end not to go to Tesco because of the long queues also does not in the view of the Panel negate his initial purpose of going to do his shopping."

21. The Claimant's skeleton argument, at paragraph 12, conveniently summarises the reasons for the Panel finding that three of the six allegations in the Regulation 13 Notice were proven:

- i) **Paragraph 13(a):** PC Aftab "*did use his status as a police officer in an attempt to impress the complainant, or otherwise advance his prospects of building a*

relationship with her”, but this relationship was to be friends or training buddies and not sexual (paragraph 1.26 of Determination).

- ii) **Paragraph 13(c)**: PC Aftab’s remark “*looking too curvy to be Asian [was] of a sexual and unwanted in nature*” (paragraph 1.44 of Determination).
- iii) **Paragraph 13(e)**: PC Aftab “*did ask the complainant for a ‘hug’ before they went their separate ways*” (paragraph 1.42 of Determination).

22. In the light of its factual findings, the Panel decided that the Officer’s actions breached all five Standards of Professional Behaviour alleged in the disciplinary proceedings and at paragraph 3.7 of the Determination, that this amounted to gross misconduct (as summarised in the Claimant’s skeleton at paragraphs 15-16):

“15...

- i) **Honesty and Integrity**: breach arose from PC Aftab’s “*production of a warrant card where there was no legitimate policing purpose*” and “*production of his warrant card was solely for his personal gain of seeking or continue to prolong the conversation with the complainant with a view to forming a training (albeit not sexual) relationship with her*” (paragraph 2.8 of Determination).
- ii) **Authority, Respect and Courtesy**: breaches arose from PC Aftab’s saying the word “*babe*” and his comment “*too curvy to be Asian*” (paragraph 2.11 of Determination).
- iii) **Equality and Diversity**: breach arose from PC Aftab’s saying “*‘too curvy to be Asian’ [which] was unwanted stereotypical racial profiling*” (paragraph 2.13 of Determination). But no breach arose from the use of the word “*babe*” (paragraph 2.14 of Determination).
- iv) **Duties and Responsibilities**: breach arose from asking for a hug in breach of the COVID-19 guidance (paragraph 2.16 of Determination).
- v) **Discreditable Conduct**: breach arose as “*on the basis of the admitted and proven facts the officer has by his conduct discredited and undermined public confidence in the policing service*”, the “*clearest evidence*” of which was “*the evidence of the complainant herself*” as “*she feels that people in power like the officer can get away with such conduct*”. The Panel noted: “*In her written complaint she said she felt ‘sexually harassed’*” (paragraph 2.18 of Determination).

16. [...]

The Panel found that PC Aftab’s behaviour amounted to gross misconduct (paragraph 3.7 of Determination), including for the following reasons:

- i) *“Harm has been suffered by the complainant in particular and to wider confidence in policing in general”* (paragraph 3.4 of Determination).
 - ii) The complainant felt *“sexually harassed”* (paragraph 3.4 of Determination).
 - iii) The complainant felt that *“calling her “‘too curvy to be Asian’ was more racist than he might have thought”* (paragraph 3.4 of Determination).
 - iv) *“the public would be deeply concerned that a police officer used his warrant card for personal gain”* (paragraph 3.4 of Determination).
 - v) The conduct was aggravated by PC Aftab’s *“abuse of trust, deviation from the government covid-19 guidelines, [and] proven multiple breaches of the professional standards all constitute aggravating factors”* (paragraph 3.5 of Determination).”
23. The Panel decided that the appropriate disciplinary outcome was a final written warning setting out its reasoning, having previously reviewed the law and guidance, in paragraphs 4.10 to 4.21 of the Determination as follows (I have replaced the complainant’s name with “[WXY]”):

“...

4.10 Turning now to the outcome or sanction for the officer:

4.11 The Panel recalls it has already found that the officer is solely responsible for his own conduct.

4.12 In terms of harm, and recalling the relevant aggravating and mitigating factors, the Panel has found that public confidence and trust has been significantly undermined by the conduct of the officer towards the complainant in particular, and the wider public confidence in policing in general. This is a case where the misconduct of the officer has directly engaged and/or impacted an identifiable member of the public, [WXY], who said in her live evidence that looking at the incident as a whole she felt as if the officer was trying to 'hit on her'. It made her angry as she felt that a lot of people in positions of power like the officer get away with this type of behaviour. She also felt that the process had been too long and took too much effort from her.

4.13 Of importance in the context of maintaining public confidence in and the reputation of the police are the comments made by the complainant regarding what she wished to see happen as a result of her complaint. She stated in her written complaint that she wished *“the police to learn from the incident, the individual officers or staff involved to learn from the incident, the force to apologise and acknowledge something went wrong and to be provided with an explanation from the police”*. She also said that she felt *‘absolutely unsafe’* as the officer had her personal details. While her comments are not binding on the Panel, they are nonetheless important

when weighing all the relevant factors in determining on an appropriate and proportionate outcome.

4.14 Turning to the Police Service Record for the officer, as a general remark the Panel notes that in 2018 he was the subject of a service recovery complaint. The details are unknown to the Panel and the complaint is not relied on by the AA in recommending an outcome. Specifically, the records show that the officer has been with the BTP Force for approximately 6 years and was a PCSO with the Metropolitan Force beforehand.

4.15 The character evidence submitted on behalf of the officer shows him to be a diligent, well liked and conscientious officer with a keen interest in fitness and exercise.

4.16 In his statement to the Panel, the officer expressed remorse for his actions and also noted that he had learnt from this incident. He said if retained by the Panel he would be more professional and respectful towards the public. In this context, the Panel believes that the salutary effect of these proceedings and the expression of remorse and reflective insights shown by the officer into his behaviour should provide the necessary assurance to the public that his misconduct will not be repeated and that he will adhere to the Professional Standards of Behaviour expected from him.

4.17 The misconduct regime recognises that officers will make mistakes. The Panel recognises that an important feature of the disciplinary regime is acknowledging that something went wrong here. This has been done by the Panel's finding of gross misconduct and the clear message that such conduct will not be tolerated. The Panel also considers that learning and development forms an integral part of public protection and reassurance. In this context, and to respond to the complainant's wishes and the wider public interest, the Panel recommends the BTP Head of Professional Standards adopt the following Management action:

- a. The complainant lives in the Hammersmith Area, the Panel believes it would helpful if PC Aftab is moved from Hammersmith BTP to a new location to minimise inadvertent contact with the complainant.
- b. PC Aftab should as a reflective practice undertake a further period of ethical and diversity training.
- c. PC Aftab should receive coaching and words of advice from a senior BTP Officer.

4.18. The Panel also recommends that PC Aftab write a formal letter of apology to the complainant within 14 days of today's date.

4.19. Further, the Panel recommends the following Organisational Learning:

BTP should publish a notice to its officers and staff setting out that Warrant and Identification Cards must be used for a policing purpose and that the existing policy "Warrant & Identity Cards" Policy & Manual of Guidance is reviewed in light of this case.

4.20. These proceedings look forward and are designed to protect the public, deter future misconduct and maintain the reputation of the profession. The Panel has carefully taken into account all the relevant factors in the circumstances of this officer taking care to not 'double count'. It has considered amongst other factors, the seriousness of the conduct, the damage to the reputation of the policing service, the remorse and insights about his individual conduct, and the likelihood of any harm manifesting itself in the future.

4.21. Overall, the Panel finds that a **Final Written Warning** is an appropriate and proportionate outcome for the officer to reflect the serious circumstances of the misconduct and to maintain public confidence in policing. The Panel also hopes that its other recommendations which it recognises are not binding, will be taken up by the Head of Professional Standards Department.”

IV. The Law and guidance on the appropriate approach

The Statutory and Regulatory Framework

24. This is helpfully summarised in detail in the Claimant’s skeleton argument upon which I draw and which I paraphrase in this section.
25. Although BTP is not a territorial police force but one maintained to police the railway, the misconduct regime applicable to it is materially the same as applicable to territorial police forces in England and Wales.
26. The *BTP Conduct Regulations 2015* (“the Regulations”) to which I have already referred, again, adopt the terminology, structure and guidance applicable to territorial police forces. They are engaged when an allegation comes to the attention of the Chief Constable (here designated as the “Appropriate Authority”) raising the potential for the conduct complained of to amount to misconduct or gross misconduct: Regulation 5(1). Misconduct is defined as “*a breach of the Standards of Professional Behaviour*”: Regulation 3. Gross misconduct is defined as “*a breach of the Standards of Professional Behaviour so serious that dismissal would be justified*”: Regulation 3.
27. I have set out in the preceding section the process of investigation and referral of allegations and the relevant Regulations under which this is done.

28. By section 87(1) of the *Police Act* 1996 (“the 1996 Act”), the Secretary of State may issue guidance concerning disciplinary proceedings, such as these. Section 87(1B) provides that the College of Policing may, with the approval of the Secretary of State, issue guidance as to the discharge of disciplinary functions. As such, by reg.3(7), the statutory guidance issued by the Secretary of State and the College of Policing under s.87 of the 1996 Act apply to misconduct proceedings under the BTP Conduct Regulations 2015.
29. At the time of this incident on 15 April 2020, the Secretary of State had issued ‘*Home Office Guidance - Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing*’, published on 5 February 2020 (“HOG 2020”)⁴. HOG 2020 was published in parallel with the misconduct regulations applicable to territorial police forces in England and Wales changing to the Police (Conduct) Regulations 2020, which replaced the Police (Conduct) Regulations 2012. The previous Home Office Guidance was published in June 2018 (“HOG 2018”).⁵
30. At the time of the misconduct hearing (and at the time of the incident on 15 April 2020), the College of Policing had issued ‘*Guidance on outcomes in police misconduct proceedings*’, 2017 (“Outcomes Guidance 2017”). In 2022, new guidance was issued.
31. The College of Policing has published other guidance pursuant to s.39A of the 1996 Act. Its ‘*Code of Ethics*’ of July 2014 (“Code of Ethics”)⁶ aims “to support each member of the policing profession to deliver the highest professional standards in their service to the public”. The Code of Ethics of July 2014 is still current.
32. The Court of Appeal highlighted the importance of the statutory guidance when seeking to understand the standards of behaviour expected of police officers, and of non-statutory guidance on the specific topic in issue. In *R (Officer W80) v the Director General of the IOPC* [2020] EWCA Civ 1301; [2021] 1 WLR 418, Sir Geoffrey Vos MR observed [20]:

“20. We agree that the Code [of Ethics] and the HOG [2018] are the primary reference points for police officers and employees with respect to the professional standards which they are mandated by the 2012 Regulations to

4

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863820/Home_Office_Statutory_Guidance_0502.pdf

5

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732466/Home_Office_Guidance_on_Police_Misconduct.pdf

⁶ https://assets.college.police.uk/s3fs-public/2021-02/code_of_ethics.pdf

follow. They cannot, however, be seen in isolation from other guidance issued by the College. For that reason, we deal now with two documents published by the College that specifically address the use of firearms by police officers: the non-statutory, now updated Armed Policing Authorised Professional Practice (the "APAPP")...”

Appropriate approach to misconduct proceedings and sanctions

33. Before coming on to such non-statutory guidance, it is appropriate to consider the appropriate approach to misconduct proceedings and the imposition of sanctions.

34. After making its factual findings and a finding of gross misconduct, a panel is required to follow the structured approach to disciplinary outcome discussed in *Fuglers LLP v SRA* [2014] EWHC 179 (Admin). Popplewell J prescribed a three-stage approach, at [28]:

“28. There are three stages to the approach which should be adopted by a Solicitors Disciplinary Tribunal in determining sanction. The first stage is to assess the seriousness of the misconduct. The second stage is to keep in mind the purpose for which sanctions are imposed by such a tribunal. The third stage is to choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question.”

35. The *Fuglers* structured approach was confirmed to apply to police misconduct panels in *R (on the application of the Chief Constable of Greater Manchester Police) v Police Misconduct Panel v Roscoe* [2018] 11 WLUK 822.⁷ The Outcomes Guidance 2017 also endorses the *Fuglers* structured approach (paragraph 4.2). In *Roscoe*, HHJ Pelling QC, sitting as judge of the High Court, held at paragraph 16 (emphasis added):

*“16. In my judgment this panel fell into error in the way it approached the sanction. The only way a court or anyone else reading the decision can be satisfied that the correct structured approach had been adopted is if **either the panel identifies the structured approach that it is required to adopt expressly in the body of its decision and then explains how it has arrived at the relevant decision applying that approach. If that ideal approach is not adopted but it is apparent from the language used by the tribunal that in substance such an approach in fact has been adopted then the court will not intervene. Obviously***

⁷ It was also endorsed by Steyn J in *R (on the application of the Chief Constable of Nottinghamshire Police) v Police Appeals Tribunal v Flint* [2021] EWHC 1248 (Admin), at [64, 72 and 73].

however the court will not guess or assume that a correct approach has been adopted if that is not apparent on the face of the decision.”

36. The judge observed at paragraph 18 about the Panel’s erroneous approach:

“18. Although the panel states in the second and third line of its sanction decision that it has applied the principles in the guidance that falls far short of what is required in my judgment. It does not set out expressly or even refer expressly to the correct structured approach identified in Fugler summarised in the guidance even though the parties formerly cited Fugler to the panel.”

37. As set out in the HOG 2020, there are three central pillars to police misconduct proceedings:

“DISCIPLINARY PROCEEDINGS

4.26 There are three over-arching purposes for police disciplinary proceedings:

- *To maintain public confidence in, and the reputation of, the police service,*
- *To uphold high standards in policing and deter misconduct,*
- *To protect the public.*

4.27 Undertaking disciplinary proceedings against individual officers seeks to achieve these goals by establishing the facts underlying the allegation and coming to a fair and just conclusion, with regard to all the evidence.”

“Purpose of proceedings

4.33 [...]

4.34 As such, disciplinary proceedings are intended to deal with serious breaches of this nature that would damage public confidence in policing and have the potential to bring the reputation of the police force concerned or the service as a whole into disrepute such that a formal sanction would be appropriate if the allegation or matter were found proven.”

38. These three central pillars are repeated in the Outcomes Guidance 2017 at paragraph 2.3, with the foremost being public confidence. Those may be upheld only if the outcome of disciplinary proceedings reflects and is consistent with the severity of misconduct found. That is underlined by authorities on police misconduct and equivalent disciplinary regimes, such as those applicable to Solicitors.
39. In *R (on the application of Green) v Police Complaints Authority* [2004] UKHL 6; [2004] 1 WLR 725, per Lord Carswell [78]:

“78. *Public confidence in the police is a factor of great importance in the maintenance of law and order in the manner which we regard as appropriate in our polity. If citizens feel that improper behaviour on the part of police officers is left unchecked and they are not held accountable for it in a suitable manner, that confidence will be eroded.*”

40. Sir Thomas Bingham MR earlier made the same point in relation to the solicitors’ profession in the seminal case on professional disciplinary regimes, *Bolton v Law Society* [1994] 1 WLR 512. When explaining the apparent harshness of sanctions imposed by the Solicitors Disciplinary Tribunal, he identified the purposes of sanctions, and in doing so identified the same foremost purpose as applies to police misconduct proceedings. He held [518H-519A] (emphasis added):

“The second purpose is the most fundamental of all: to maintain the reputation of the solicitors’ profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession’s most valuable asset is its collective reputation and the confidence which that inspires.”

41. In *R (on the application of Chief Constable of Dorset Police) v Police Appeals Tribunal v Salter* [2012] EWCA Civ 1047, Maurice Kay LJ held that it was appropriate to draw an analogy between police officers and legal professionals, [21] (emphasis added):

“21. ... Although police officers do not have a fiduciary client relationship with individual members of the public or the public at large, they do carry out vital public functions in which it is imperative that the public have confidence in them. It is also obvious that the operational dishonesty or impropriety of a single officer tarnishes the reputation of his Force and undermines public confidence in it. In these respects, the similarities between solicitors and police officers justify the analogy provided that, ultimately, the decision-maker, be it the PAT or a judge of the Administrative Court, appreciates at all times that the index case falls to be assessed in the context of policing. I am entirely satisfied that Burnett J committed no error in this regard.”

42. Maurice Kay LJ approved the approach of Burnett J whose judgment was under appeal, including his *dictum* that: “*The public should be able unquestioningly to accept the honesty and integrity of a police officer*” [22].
43. The integrity part of the Honesty and Integrity Standard of Professional Behaviour and the Discreditable Conduct standard, with its reference to “*public confidence ... whether on or off duty*”, naturally overlap. Integrity reinforces public confidence and breaches of integrity are destructive to it. That point was made by Males LJ in *R (R) v National Police Chief’s Council* [2020] EWCA Civ 1346; [2021] 1 WLR 262, at [81; 87]:

“81 *Further, there can be no doubt that the integrity of police constables is of vital importance, as is the existence of public confidence in that integrity.*

...

...

87 ... *I have no doubt that the importance of maintaining police integrity and public confidence is of fundamental importance and that the requirement that all cautions should be disclosed, including reprimands received as a child, is rationally connected to that objective. It promotes public trust to know that nothing in an officer’s background has been held back before he or she is entrusted with the powers which a constable has ...”*

44. I note that when assessing a breach of integrity, the relevant conduct falls to be assessed against the expectations in the specific profession. Those expectations will differ between the policing and solicitors’ professions. In *Wingate v SRA* [2018] EWCA Civ 366; [2018] 1 WLR 3969, Jackson LJ held [97 to 102] (emphasis added):

“97. *In professional codes of conduct, the term “integrity” is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson P in Williams at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.*

...

100. *Integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse.*

...

102. Obviously, neither courts nor professional tribunals must set unrealistically high standards, as was observed during argument. 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... ”

45. A critical theme when weighing up the conduct of police officers is also that British policing rests on the principle of consent.⁸

Guidance on approach to off-duty conduct and the use of warrant cards

46. The statutory guidance is at paragraph 2.21 of HOG 2020 (emphasis added):

“2.21 When police officers produce their warrant card or act in a way to suggest that they are acting in their capacity as a police officer (e.g. declaring that they are a police officer) they are demonstrating that they are exercising their authority and have therefore put themselves on duty and will act in a way which conforms to these standards. For example, during a dispute with a neighbour a police officer who decides to produce a warrant card would be considered to be on duty.”⁹

47. The Code of Ethics also highlights the standards expected in the use of warrant cards. When explaining the Honesty and Integrity Standard of Professional Behaviour, it states: “According to this standard you must ... use your position, police identification or warrant card for policing purposes only, and not to gain a personal advantage that could give the impression you are abusing your position”.

Outcomes Guidance 2017

48. Front and centre of the Outcomes Guidance 2017 is the maintenance of public confidence in the police. The first substantive paragraph at 2.1, after the Introductory section, records (emphasis added):

49. *“2.1. Police officers exercise significant powers. The misconduct regime is a key part of the accountability framework for the use of these powers. Outcomes should be sufficient to demonstrate individual accountability*

⁸ The opening paragraph of the 2008 version of the HOG read: “1.1 Public confidence in the police is crucial in a system that rests on the principle of policing by consent. Public confidence in the police depends on police officers demonstrating the highest level of personal and professional standards of behaviour.”

⁹ A near identical paragraph was found in the HOG 2018, at paragraph 1.32: “When police officers produce their warrant card (other than for identification purposes only) or act in a way to suggest that they are acting in their capacity as a police officer (e.g. declaring that they are a police officer) they are demonstrating that they are exercising their authority and have therefore put themselves on duty and will act in a way which conforms to these standards. For example, during a dispute with a neighbour a police officer who decides to produce a warrant card would be considered to be on duty.”

for any abuse or misuse of police powers if public confidence in the police service is to be maintained. They must also be imposed fairly and proportionately.”

50. This theme is developed at paragraph 4.1, under the heading ‘Assessing Seriousness’, (emphasis added):
51. *“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. Whether conduct would, if proved, amount to misconduct or gross misconduct for the purposes of Regulation 12 of the Conduct Regulations is also a question of degree, ie, seriousness.”*
52. Paragraphs 4.14 and 4.15 then set out, *“It is not possible to categorise all types of case where dismissal will be appropriate because the circumstances of the individual case must be considered. Many acts have the potential to damage public confidence in the police service”*; but *“The following types of misconduct however should be considered especially serious...”*. Categories of conduct are provided, which include:

- a) Use of police power for personal gain:

“Consider cases where an officer has exercised their police powers in bad faith, for personal gain or at the behest of a friend or relative in this category of very serious misconduct.” (paragraph 4.28)

“Other serious cases might involve an officer using their status as a police officer to act dishonestly or otherwise exert improper influence.” (paragraph 4.31)

- b) Sexual impropriety, and breach of position of trust or authority:

“Misconduct involving... sexual impropriety undermines public trust in the profession and is therefore serious.” (paragraph 4.39)

“More serious action is likely to be appropriate where the officer has demonstrated predatory behaviour motivated by a desire to establish a sexual or inappropriate emotional relationship with a colleague or member of the public.” (paragraph 4.40)

“Where an officer has used their position to pursue a sexual or improper emotional relationship with a member of the public, this should be regarded as an abuse of authority for sexual gain. Such conduct can cause substantial damage to public trust and confidence in the police...” (paragraph 4.42):

c) Discrimination:

“Discrimination towards persons on the basis of any of these characteristics [including race] is never acceptable and always serious.”
(paragraph 4.51)

53. Concerning “harm”, the Guidance says, among other things (emphasis added):

“Effect on the police service and/or public confidence

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. Always take seriously misconduct which undermines discipline and good order within the police service, even if it does not result in harm to individual victims.” (paragraph 4.57)

“How such behaviour would be or has been perceived by the public will be relevant, whether or not the behaviour was known about at the time.”
(paragraph 4.60)

“If applicable, consider the scale and depth of local or national concern about the behaviour in question. A case being reported in local or national media, however, does not necessarily mean that there is a significant level of local or national concern. Distinguish objective evidence of harm to the reputation of the police service from subjective media commentary.” (paragraph 4.61)

“Where gross misconduct has been found, however, and the behaviour caused or could have caused, serious harm to individuals, the community and/or public confidence in the police service, dismissal is likely to follow. A factor of the greatest importance is the impact of the misconduct on the standing and reputation of the profession as a whole.” (paragraph 4.65)

54. In the summary grounds of resistance, the Officer highlights the following additional provisions:

“The guidance does not override the discretion of the person(s) conducting the meeting or hearing. Their function is to determine the appropriate outcome and each case will depend on its particular facts and circumstances. Guidance cannot and should not prescribe the outcome suitable for every case.” (paragraph 1.3)

“Outcomes should be sufficient to demonstrate individual accountability for any abuse or misuse of police powers if public confidence in the police service is to be maintained. They must also be imposed fairly and proportionately.” (paragraph 2.1)

“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.¹³ Consider less severe outcomes before more severe outcomes.¹⁴ Always choose the least severe outcome which deals adequately with the issues identified, while protecting the public interest.¹⁵ If an outcome is necessary to satisfy the purpose of the proceedings, impose it even where this would lead to difficulties for the individual office.” (paragraph 2.11)

“Each case will depend on its particular facts. Have regard to all relevant circumstances when determining the appropriate and proportionate outcome to impose.” (paragraph 7.7)

Non-statutory guidance

55. Statutory guidance is not intended exhaustively to cover all instances or types of misconduct. As noted by Sir Geoffrey Vos MR in *Officer W80* (cited above) non-statutory guidance is also relevant to weighing up the standards of behaviour required of police officers.
56. In the instant claim, the IOPC relies upon the witness statement of Kathie Cashell, its Director of Strategy and Impact, whose role involves developing and delivering the IOPC’s strategy focussing on ensuring that public confidence in the police complaints system is secured and maintained. Exhibited to it is non-statutory guidance relevant to the conduct in this incident.
57. Ms Cashell exhibits the National Police Chiefs’ Council’s (“NPCC”) ‘*National Strategy to address the issue of police officers and staff who abuse their position for a sexual purpose*’, 2017 (“NPCC National Strategy”) and which was before the Panel. Its Foreword commences (emphasis added):

*“The public expect and deserve to have trust and confidence in their police. When police officers or staff therefore abuse their position for a sexual purpose, particularly in respect of vulnerable persons, **such behaviour represents a fundamental betrayal of the public and the values for which the police service stands.***

*The NPCC are unequivocal in condemning absolutely such reprehensible behaviour which **can never be justified or condoned.** Such behaviour*

amounts to serious corruption and is treated as such. Those who abuse their position have no place in the service.”

58. In Section 2, the NPCC National Strategy defines “*abuse of position for a sexual purpose*” as (emphasis added):

“any behaviour by a police officer or police staff member, whether on or off duty, that takes advantage of their position as a member of the police service to misuse their position, authority or powers in order to pursue a sexual or improper emotional relationship with any member of the public’

This includes: committing a sexual act, initiating sexual contact with, or responding to any perceived sexually motivated behaviour from another person; entering into any communication that could be perceived as sexually motivated or lewd; or for any other sexual purpose.”

59. Section 2 continues:

“What is important to note is the imbalance of power between police officers or staff and members of the public. In abuse of position cases such as these, a member of the public does not have to be vulnerable for the definition of abuse of position for a sexual purpose to be made out. However the vulnerability of the victim may be seen as an aggravating factor.”

60. Also exhibited to the statement is the IOPC’s own document ‘*Abuse of position for a sexual purpose (APSP): An overview of the IOPC’s work and its impact*’ (“IOPC APSP Overview”). This document adopts the definition of APSP from the NPCC National Strategy. The ‘Key messages’ of the IOPC APSP Overview include (emphasis added):

*“• When police officers or staff abuse their position for a sexual purpose **this is serious corruption – and it has absolutely no place in policing.***

*• This kind of behaviour is an appalling abuse of the public’s trust ... **The police are there to help them, not exploit them.***

*• Ultimately, it is police forces who need to **act to root out this kind of behaviour and this will require a zero tolerance approach** backed up by decisive and consistent action from those in charge.*

• It is in everyone’s interest to root out those who abuse their position ...”

61. The IOPC APSP Overview then identifies the ‘Distinguishing features’ of APSP:

“Distinguishing features

The key elements of APSP are:

- *Taking advantage of power granted by virtue of a role within the police*
- *The pursuit of an improper relationship*

The abuse of position increases the potential for actions to undermine public confidence in the police. It is a serious form of corruption. These factors separate APSP, which includes consensual sexual relationships, from other sexually motivated offences.

APSP is not limited to police officers. This definition includes staff, volunteers and contractors as well.

It is also important to recognise that APSP covers a wide spectrum of unacceptable behaviour. More subtle actions, such as flirtatious messages or unnecessary contact, can be the start of a pattern of behaviour. It is important to root out any abuse of position and take action.

We also frequently see other inappropriate behaviour linked to our APSP investigations, such as the misuse of police computer systems to obtain information about individuals who are then targeted by perpetrators.”

62. I was also referred to His Majesty’s Inspector of Constabulary’s very recent report, ‘*An inspection of vetting, misconduct, and misogyny in the police service*’, 2 November 2022 (see footnote 1) (“the HMIC Report”). Naturally, I bear in mind that this post-dates the Officer’s conduct subject to these proceedings and also the Panel’s Determination. But it is a document which reviews the approach in the past, highlights where it has gone wrong and urges higher and more consistent standards.
63. In my judgment, this is important context in understanding the impact of officers’ misogynistic and predatory behaviour on public confidence in the police. The Inspector’s Foreword records:
- “At the moment, it is too easy for the wrong people both to join and to stay in the police. Too many recent events prove this. If public confidence in the police is to be improved, chief constables, among others, need to be less complacent. Standards need to be consistent, and higher.”*
64. Exhibited by Ms Cashell are also statements issued by numerous police forces to educate the public on how to react to being stopped by an officer in plain clothes. These statements were issued after the murder of Sarah Everard by a serving Metropolitan Police officer. No one involved in this case is seeking to equate this Officer’s conduct with a grave crime. That murder also post-dated the relevant events. But those statements highlight an effect which was not new, when this Officer behaved as he did on 15 April 2020, namely how corrosive it

is to public confidence in the police, and as such to policing by consent, for a warrant card to be misused to engage a lone woman.

Personal mitigation

65. Central to the Officer's oral submissions at the Judicial Review hearing was an impassioned plea in mitigation to highlight the disproportionate impact upon him and his family which dismissal would bring. In that regard, I remind myself of the guidance in the authorities.
66. This was discussed in the judgment of Sir Thomas Bingham MR in *Bolton* [519B-E] (emphasis added):

“Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence, for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation' of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.”

67. This was also summed up by Maurice Kay LJ in the Court of Appeal's decision in *Salter* [23]:

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

The approach to be taken by the Administrative Court

68. In *R (Chief Constable of Northumbria Police) v (1) Police Appeals Tribunal (2) Barratt* [2019] EWHC 3352 (Admin) [21], Freedman J observed:

“21. The correct approach to be taken by the Administrative Court on a claim for judicial review of a PAT’s decision is that stated by Burnett J in R (CC of Dorset) v PAT & Salter [2011] EWHC 3366 (Admin) (emphasis added):

“[9] 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] 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.”

The Administrative Court should guard against the misuse of its jurisdiction by Chief Constables seeking to mount what are effectively “undue leniency” appeals to decisions of misconduct panels or PATs.”

69. I bear in mind the need for caution before disagreeing with the decision of a specialist tribunal, made up of panellists experienced and expert in assessing police misconduct, including the impact of a police officer’s misconduct on public confidence in and the reputation of the police. As Burnett J observed in *Salter* [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.”

70. The observations in *Salter* apply equally to a decision of a Police Misconduct Panel. That is the approach I take to the grounds of review.

V. The Grounds of Review: submissions

Ground 1: submissions

71. Ground 1 is that the Panel's decision not to dismiss was irrational.
72. The Claimant amplifies the meaning of irrationality by reference to *Salter* in the Court of Appeal at [22], per Maurice LJ:
- “22. I turn to the third issue, irrationality. That sometimes misunderstood word means no more here than the reaching of a conclusion which no reasonable Tribunal could have reached on the same material with the consequence that its decision was (in the words of Jackson LJ in Salisbury) “clearly inappropriate”. To my mind, this is the central question in the present case. Did the [Police Appeals Tribunal] exceed the limits that were reasonably open to it?”*
73. The Claimant submits that it was not reasonably open to the Panel to impose a disciplinary outcome short of dismissal. There are two limbs under which Mr Beggs KC argues the only rational outcome could have been dismissal:
- i) First, by applying the relevant guidance to the factual findings made; and
 - ii) Second, by reference to the seriousness and significance of those factual findings, which it is argued the Panel failed properly to grasp.
74. On the facts found by the Panel, the Claimant contends that the Officer's conduct plainly falls within the definition of APSP in the NPCC National Strategy (and as adopted in the IOPC APSP Overview). These documents categorise the type of conduct carried out by the Officer as a form of “*serious corruption*”, for which there must be “*zero tolerance*”, and which has no place in the police service.
75. It is the Claimant's position that against the facts found, dismissal was the only appropriate outcome.
76. On the second limb of ground 1, the Claimant contends that the Panel failed to consider its factual findings from the perspective of those whose confidence in the police is most eroded by the Officer's conduct, namely lone women. The Panel failed to understand, or even grasp, the seriousness and significance of this conduct, relying particularly on paragraphs 1.25, 1.32, 1.33 and 4.17 of the Determination. The assumptions that the complainant remained in conversation by consent and that she was ‘streetwise’ were unreasonable and, in any event, were a failure to consider the impact upon the wider public in such situations.

77. The Claimant also says this failure to grasp the seriousness and significance clouded the Panel's approach to sanction. It defies logic to find the Officer unfit to serve in Hammersmith but fit to serve in all other areas. The Panel erred in viewing the Officer's conduct as impacting only the complainant, hence protecting her from inadvertent contact, whilst failing to consider the impact on other lone women as a class of persons or public confidence in policing. Had the Panel properly considered those two factors the only possible outcome was dismissal.
78. The IOPC adopts and supports the Claimant's submissions on ground 1. It highlights that APSP is at the uppermost end of the spectrum of seriousness when assessing the gravity of an officer's misconduct and this has been a consistent feature of national policy for some years. Abuse of position is taken very seriously in the relevant guidance, even absent a sexual element.
79. In his written document, as to all the grounds of challenge, the Officer highlighted that an independent and respected panel had gone through a respected process to decide upon a written warning and it should not be overturned just because some people have a contrary opinion. He said the appeal felt like a personal/racial attack on him and highlighted that "*...officers from a BAME background are far more likely to get into disciplinary matters which lead to dismissal.*" He expressed dissatisfaction with the way he had been treated and that he would like the decision of a final written warning upheld by this court.
80. In the summary grounds of resistance, additional extracts from the College of Policing Guidance were highlighted, as set out above. Those highlighted the fact sensitive nature of the determination of the appropriate outcome exercising a broad evaluative judgment. The requirement was to impose the least severe outcome dealing adequately with the issue identified, while protecting the public interest and to impose an outcome with was both fair and proportionate. Particular reliance was placed on the careful weighing up of the facts and determination of the outcome by a specialist panel. The contention was that the Claimant did not come close to satisfying the high threshold of irrationality.
81. The show of the warrant card was brief. The Panel did not find that the Claimant sought to pursue a sexual or improper emotional relationship and it was open to the Panel to find that the complainant remained in the conversation by consent. The Officer was not found to have been intending deliberately or consciously to discriminate rather than using a one-off discriminatory stereotype. The Panel did not find that the Officer sexually harassed the Claimant, did not find there to have been persistence or relevant vulnerability. The Panel's outcome was a reasonably appropriate and proportionate one, open to it.

Ground 2: submissions

82. Ground 2 is that the Panel failed properly to follow the structured approach to assessing a disciplinary outcome.
83. The Claimant mounts a process challenge to the way the Panel arrived at its decision on disciplinary outcome saying that it purported to, but did not in fact, apply the structured *Fuglers* approach.
84. Limb 2(a) of this ground is an assertion of a failure properly to apply the first stage of the structured approach, that is assessing the seriousness of the misconduct. The Claimant highlights the four reference points at the first stage, set out at [29] in *Fuglers* and repeated in the Outcomes Guidance 2017 at paragraph 4.4:
- “1. *The officer’s culpability for the misconduct.*
2. *The harm caused by the misconduct.*
3. *The existence of any aggravating factors.*
4. *The existence of any mitigating factors.*”
85. The Claimant’s case is that the Panel used the phraseology of the four central reference points of seriousness, without properly engaging in a substantive way. Culpability was dealt with cursorily, noting (paragraph 3.3 of the Determination) that the Officer was “*solely to blame*”, without placing that conduct on the spectrum of culpability according to the facts and categories in the Outcomes Guidance 2017. The analysis was deficient as referring only to “*respect and courtesy*” without taking account of the abuse of position flowing from the Officer showing his warrant card.
86. Looking at harm, there was similarly a failure properly to assess this and in particular the harm resulting to public confidence in the police. Paragraph 4.12 of the Determination is a particularly woeful aspect, so says the Claimant, in its lack of engagement with the seriousness of the conduct and the harm that this type of conduct causes to public confidence.
87. The IOPC adopts a neutral stance on both aspects of ground 2.
88. In the summary grounds of resistance, as to ground 2(a), the Officer contended that the Panel did indeed follow the structured three-stage approach in *Fuglers* and was entitled to refer back to its earlier reasoning which it expressly adopted. Reading the determination as a whole, it came to clear and rational decisions on both harm, culpability and other relevant aggravating and mitigating factors.
89. Limb 2(b) of this ground is the Claimant’s assertion of a failure properly to apply the second stage of the structured approach, concerning the purpose for

which the sanction is imposed. Drawing on the seminal case law, the Outcomes Guidance 2017 at paragraph 2.3 records that purpose as being threefold:

- i) maintain public confidence in and the reputation of the police service;
- ii) uphold high standards in policing and deter misconduct; and
- iii) protect the public.

90. The Claimant's criticisms of the Panel's approach here overlap with the contentions under ground 1. Again, it is said that the terminology is used but the analysis lacks substance and genuine engagement. The focus is on future learning and future harm prevention, rather than assessing the harm already caused and the need to hold the Officer to account in the interests of public confidence.
91. The Claimant contends that this Panel's approach was unlawful and procedurally improper by reason of the same errors examined by Eady J in *R (on the application of Chief Constable West Midlands Police) v Panel Chair, Police Misconduct Panel v Officer A* [2020] EWHC 1400 (Admin) at [64 and 65] (emphasis added):

“64. ... the Panel was required to demonstrate that it had then undertaken the second step, and had reminded itself of the three-fold purpose of imposing a disciplinary sanction - maintenance of public confidence in, and the reputation of, the police service; the upholding of high standards in policing and the deterrence of misconduct; the protection of the public. Merely having referenced these aims at an earlier stage does not establish that the Panel took the further step of returning to the purpose of a disciplinary sanction before reaching its decision. On the contrary, the Panel's assessment at paragraphs 10-12 is focused almost entirely on the perspective of Officer A, rather than the broader, public-oriented concerns to which it was required to have regard. At most, there is a reference to the impact on public confidence in the future, if Officer A were unable to remedy his misconduct (see paragraphs 10 and 12 of the Outcome Decision), but this fails to address the question of public confidence given the misconduct that had already taken place. Ultimately, the reasoning provided demonstrates a consideration of sanction through the prism of Officer A's personal mitigation rather than the purposes to which the Outcome Decision was required to be directed.

65. For the reasons I have explained, I therefore consider that this challenge must be upheld. The Panel erred in its failure to adopt the approach laid down in the Guidance; in particular, in omitting to engage with the evidence on actual harm, and in failing to adopt the structured approach required and to return to the question of purpose after considering

questions of personal mitigation. Certain of the Panel's conclusions are also properly to be described as irrational; specifically, its apparently inconsistent approach to the contextual mitigation and its finding of provocation.”

92. As to ground 2(b), the Officer’s initial grounds of resistance contend that the Panel correctly directed itself on stage two of *Fuglers*. There was reference both to the harm to the complainant as well as wider public confidence in policing generally. The Panel was entitled to focus on the complainant’s observations about future learning, given this was an aspect of public protection and reassurance. The care taken by the Panel to reach an appropriate and proportionate outcome was demonstrated by the series of recommendations made both looking at the harm already caused and future learning.

Ground 3: submissions

93. The Claimant contends that certain of the Panel’s factual findings were irrational.
94. The first is the finding, at paragraph 1.26 of the Determination, that the relationship the Officer sought to build was “*not a sexual relationship*”. This was irrational in the light of the Panel’s own analysis of the facts (paragraph 1.44) that his “*too curvy to be Asian*” comment was of a sexual and unwanted nature and the later text message referring to the complainant as “*babe*”.
95. The second is that the use of the word “*babe*” was not sexual in nature. This was irrational in the light of the Officer’s comments and actions which preceded it, including those discussed in the preceding paragraph.
96. The IOPC, with the Claimant’s support, also contends that the Panel’s finding, at paragraph 1.34, that the Officer did not continue in his unwelcome persistence in talking to the complainant was irrational. It is said that this finding flies in the face of other findings including that:
- i) The Officer produced his warrant card to “*induce the complainant to continue the engagement*”: paragraph 1.24;
 - ii) It rejected his account that the complainant had not told him she was “*taken*” so as to indicate she was not interested: paragraph 1.28;
 - iii) The Officer tried several different tacks to continue his involvement with the complainant including asking her to “*hang out as friends*” (at paragraph 1.29), showing her photographs of him on his phone, (at 1.37), asking her for her phone number (at 1.39), and asking her for a hug before they parted company (at 1.42).

97. The IOPC contends that this was plainly persistent conduct and the Panel fell into error in finding otherwise based on its assessment of the passive engagement of the complainant. The IOPC says with vigour that this is wrong. It places the responsibility on the victim, not the perpetrator – that somehow it is the duty of the lone woman being engaged by an officer who has placed himself on duty to challenge him, otherwise she cannot thereafter complain if he continues to try and engage with her. The only rational finding was that this was persistent conduct in abuse of the Officer’s position.
98. As to ground 3, the Officer’s initial grounds of resistance deal only with the first two factual findings. Emphasis is placed on the Panel correctly directing itself as to the law. The Officer stresses that the use of the word “*babe*” has to be seen in the context of it being a familiar term used by him amongst female friends. It was not a word he used or intended sexually. The Panel was entitled to find that, whilst inappropriate, the word was not sexual. The Officer challenges the asserted sequence of events so as to undermine the significance of the complainant’s observation (not in response to that specific comment) that she was “*taken*”.

Ground 4: submissions

99. Ground 4 is the irrationality of the decision on outcome in the light of the irrational findings of fact.
100. It is the Claimant’s contention that had the Panel reached rational conclusions that: (a) the relationship sought was sexual; and (b) the use of the word “*babe*” was sexual; and (c) he did continue his unwelcome persistence in talking to the complainant, these factual conclusions alongside those stated under ground 1 would render dismissal the only disciplinary outcome open to the Panel.
101. The IOPC supports this ground pointing out that on those alternative findings, the Officer’s conduct was undoubtedly APSP and at a very high level of seriousness. That would inevitably mean that the only proper conclusion would have been dismissal.
102. The Officer’s original grounds rely upon the response to ground 3, given ground 4 is parasitic upon it. Emphasis is placed upon the comprehensive nature of the Determination, making findings and reaching an outcome open to it on the all the evidence before it.

VI. Discussion - Ground 1

103. Public or media clamour is not a basis for fair decision making. These proceedings are not about singling out an individual officer for heavy-handed

punishment in the light of media opprobrium concerning grave crimes by serving policemen, unconnected with the disciplinary findings against this particular Officer. The relevance of those unrelated matters is to underline the centrality of maintaining the trust and confidence of the wider public as an objective of a properly functioning police disciplinary regime.

104. Ground 1 requires the Court to consider the outcome based on the findings as made by the Panel.
105. In reaching a decision, I am mindful to guard against a Judicial Review being used as a back door to facilitate an undue leniency challenge. That is not this case. I have accorded significant weight to the considerable experience and expertise of the Panel and their specialist ability to determine the appropriate outcome based on findings made. I acknowledge that a finding of *Wednesbury* unreasonableness requires more than judging that the imposition of a final written warning was one which was unreasonable in the day-to-day meaning of that word or one which this Court would not have made and with which it disagrees. Notwithstanding the significant threshold involved, I am driven to the conclusion that a final written warning, and the recommendations including geographical deployment, were an irrational outcome because the Officer's conduct meant that the only sanction open to the Panel was dismissal.
106. This was an unsolicited approach to a lone female by an off-duty officer who was driving past, during the pandemic lockdown. He made the "*too curvy to be Asian*" comment which importantly and rightly the Panel found to be of a sexual and unwanted nature and amounted to unwanted stereotypical racial profiling. He inappropriately used his warrant card solely for personal gain, to prolong the engagement with the complainant and to impress her or otherwise advance his prospects of building a relationship with her. From then on, he was on duty. The Officer showed personal photographs of him in gym kit either before or after the warrant card was shown. The complainant was finding it hard to leave the conversation, declined the Officer's offer to "*hang out [together]*" and told him she was "*taken*". He requested her telephone number, checking she had given the correct one by calling her immediately. When she insisted on leaving, he asked her for a hug. He later sent her a message referring to her as "*babe*". The complainant felt "*sexually harassed*" by the Officer's engagement with her.
107. For my part, the Panel's factual findings¹⁰ only need to be stated for it to be manifest that there could only be one rational outcome.
108. It is unclear if the Panel took a different course considering that it could imagine more serious transgressions and dismissal needed to be reserved for those. If so, it fell into error. Whilst misconduct can and should be placed on the spectrum,

¹⁰ They are reproduced in full earlier in this judgment.

it is routinely possible to imagine even more serious conduct. That cannot properly be a bar to imposing dismissal where conduct is deemed to warrant it.

109. The seriousness of this gross misconduct meant that maintaining public confidence and retaining this Officer in the police service were mutually exclusive. The elements of seriousness were in multiple domains and part of the conduct was when the Officer had put himself on duty by showing his warrant card. I accept the Claimant's submissions that the Panel's findings betray "*especially serious*" misconduct, per the Outcomes Guidance 2017, because:
- i) The Officer used his police power for personal gain, which is "*very serious misconduct*" (paragraph 4.28 of the Outcomes Guidance).
 - ii) The Officer's conduct amounted to sexual impropriety which is "*serious*" as it "*undermines public trust in the profession*" (paragraph 4.39). The conduct amounted to "*predatory behaviour motivated by a desire to establish a sexual or inappropriate emotional relationship with ... a member of the public*", (paragraph 4.40), which "*can cause substantial damage to public trust and confidence in the police...*" (paragraph 4.42) and for which "*More serious action is likely*" (paragraph 4.40).
 - iii) The Officer racially profiled a woman according to her body shape, with race being a characteristic about which discrimination is "*never acceptable and always serious.*" (paragraph 4.51). The context was discrimination upon a lone female unknown to the Officer.
110. Even on the Panel's findings, in my judgment, this conduct should properly have been characterised as APSP (abuse of position for a sexual purpose) and "*serious corruption*", under the NPCC's National Strategy 2017, which the IOPC's APSP Overview rightly notes, has no place in policing. It was clearly inappropriate to meet the conduct as found by the Panel with anything short of dismissal.
111. The Claimant's observations that the Panel underestimated the seriousness and significance of this conduct are well founded, in my judgment. These are most evident at paragraphs 1.32 to 1.33 and 4.17 of its Determination.
112. An aspect of the Determination which I have found troubling is the Panel's observation (at 1.32 to 1.33) that it was reasonable to assume that the complainant remained in conversation by consent. This included because she gave her mobile number when she could have refused to do so; that it was open to her to leave at any time and despite saying she was disgusted by the Officer's remarks, "*...yet she did not leave...*"; that she was "*very capable of looking after herself and was clearly 'streetwise' in the situation she found herself in.*" This was based in addition on her description of her practice of "*giving out her*

real mobile number rather than a fake number when asked by males hitting on her". This was so she could ensure that any conversation went smoothly and then block them. She also said she used the tactic of telling the officer she was 'taken' so she could end the conversation.

113. As will be seen later in this judgment, I consider those findings to be flatly contradicted by other findings, such as (first sentence of 1.32) that "*her outward behaviour did not reflect her inner stress.*"
114. But, more importantly, I am afraid those findings betray an outmoded and discredited attitude to interpreting a complainant's demeanour and reactions to a stressful encounter. Such an approach has no place in a proper disciplinary process.
115. It was unreasonable to assume the complainant remained in the encounter by consent. The Panel found that the Officer had shown his warrant card to induce her to continue the engagement with him. The Panel failed to grasp the power imbalance and the true nature of this encounter. The complainant's approach was to avoid a confrontation with a physically much larger individual and remain outwardly composed, anticipating that this would shorten the encounter and make it easier to end. An approach which downplayed the seriousness of the encounter based on the complainant's outward reaction, her decision to avoid confrontation, remain and comply with requests of an Officer who had shown his warrant card, was plainly erroneous. It would be quite wrong to put the onus on a complainant to react in a particular way or to judge seriousness through this prism.
116. Furthermore, a (flawed in my view) perception that the complainant was capable of brushing off this conduct does not detract from its seriousness or the significance of its impact upon her.
117. This failure to grasp the seriousness and significance clouded the Panel's approach to sanction as it omitted appropriately to factor in the impact upon public confidence. The primary management action identified was (at paragraph 4.17 of the Determination) "*The complainant lives in the Hammersmith area, the Panel believes it would be helpful if PC Aftab is moved from Hammersmith BTP to a new location to minimise inadvertent contact with the complainant.*" It was illogical to find the Officer unfit to serve in Hammersmith but fit to serve in all other areas. The Panel erred in viewing the Officer's conduct as impacting only the complainant, hence protecting her from inadvertent contact, whilst failing to consider the impact on other lone women as a class of persons or public confidence in policing generally. Had the Panel properly considered those two factors then dismissal was inevitable.

118. I reach the same conclusion as Mostyn J in *R (Commissioner of the Police for the Metropolis) v A Police Conduct Panel and PS Russell; PC Strickland* [2022] EWHC 2857 (Admin) when he observed, at [75],

“This paragraph, which is the apex of the reasoning exercise, sheds no light on why such a lenient sanction serves the policy of the disciplinary regime namely to foster confidence in the competence and probity of the police. In my judgment this is a fatal flaw.”

119. The Claimant is right to observe that the Officer’s use of his warrant card for personal gain from a lone woman is anathema to the principle of policing by consent. Lone women should be able unquestioningly to know that when an officer produces his warrant card, he does so for a proper policing purpose. A warrant card provides an officer with the means to disable, disarm, placate and reassure members of the public so that they acquiesce to the officer in ways that they would not to a member of the public. The use of a warrant card to influence a lone woman for the officer’s personal gain so seriously undermines public confidence that it is corrosive to policing by consent.
120. On the Panel’s own findings, it failed properly to grasp the seriousness and significance of this conduct and its impact on public confidence in the police. Had it done so, there was only one outcome reasonably open to it, namely dismissal.

Discussion - Ground 2

121. This ground concerns an assessment of whether the Panel’s approach was unlawful by reason of a failure to follow the three-stage structured approach to disciplinary outcome in *Fuglers* and reflected in the Outcome Guidance 2017.
122. There is of course overlap between the considerations of how seriousness was approached under this ground and the discussion of ground 1 above.
123. In my view, the Panel fell into the same error as identified by HHJ Pelling QC in *Roscoe* (cited above) at [16; 18] of merely identifying the test, rather than actually applying it in the methodical way required, both in relation to seriousness and also the purpose for which the sanction is imposed. I agree with the observations in *Roscoe* that this falls far short of what is required. Here it vitiates the Panel’s determination of outcome.
124. Emphasising the need to follow the structured approach, the Outcomes Guidance 2017 records at paragraph 4.5:

“When considering outcome first assess the seriousness of the misconduct taking account of any aggravating or mitigating factors and the officer’s record of service. The most important purpose of imposing disciplinary sanctions is to

maintain public confidence in and reputation of the police profession as a whole. This dual objective must take precedence over the specific impact that the sanction has on the individual whose misconduct is being sanctioned.”

125. There then follow detailed guidelines in relation to each of the four reference points for assessing the degree of seriousness displayed in the circumstances of the case. The Outcomes Guidance 2017 includes under the heading “Culpability” at paragraph 4.10 the following:

“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.”

126. At paragraph 4.13 the Outcomes Guidance 2017 adds:

“Culpability will be increased if the officer was holding a position of trust or responsibility at the relevant time. All police officers are in a position of trust but an officer’s level of responsibility may be affected by specific circumstantial factors such as rank, their particular role and their relationship with any persons affected by the misconduct”.

127. As set out earlier in this judgment, paragraphs 4.15 to 4.55 of the Outcomes Guidance 2017 record types of misconduct that should be classified as especially serious.

128. Whilst the Panel used the familiar terminology, it failed adequately to proceed to apply it systematically. Some of the reasoning can only be found in an earlier part of the Determination focussing on whether this was misconduct or gross misconduct. Referring back to that limited reasoning is not a substitute for a structured approach. The reasoning on culpability is cursory, observing that the Officer was “solely to blame” (Determination at paragraphs 3.3; and 4.11). There was a failure to engage meaningfully with the types of conduct discussed in the Outcomes Guidance 2017, in the Culpability section, so as to determine the degree of culpability. Whilst there was reference to a failure to show respect and courtesy, again at paragraph 3.3 of the Determination, the reasoning was silent as to any consideration of the abuse of position involved in using a warrant card for no proper policing purpose.

129. There is also a significant flaw by reason of the Panel’s failure to factor in the ramifications of extensively disbelieving the Officer’s account, given just a month after the incident and repeated in his oral evidence. The Panel accepted the complainant’s account almost entirely. This necessarily meant rejecting the Officer’s account that he had already parked when the encounter occurred, rather than leaving his vehicle idling in a motorcycle bay; rejecting his emphatic denial that he used the “too curvy to be Asian” words; rejecting his attempt to

characterise production of his warrant card as his ethical observation because of her disbelief that he was a police officer; and rejecting his account that at no time was the conversation sexual. There was a concerted effort by the Officer to twist matters, for exculpatory purposes, by portraying himself as the victim, fearful of his own safety and wellbeing as the complainant knew more about him than he did about her. The Panel did not engage at all with the impact of this sustained and extensive untruthfulness and lack of integrity on the Officer's culpability. This additionally vitiated the process by which it reached its outcome.

130. Whilst there is mention at paragraphs 3.4 and 4.12 of the Determination of factoring in harm to public confidence, this is inadequate. The focus at paragraph 4.12 is inappropriately narrow, in looking almost exclusively at the direct impact on the complainant. Important as that was, it was flawed without meaningful engagement with the impact on lone females as a class of persons and public confidence in general. Merely stating that it has been impacted without examining how does not suffice. There is no recognition that this is APSP and behaviour amounting to serious corruption or the ramifications of such findings. The risk is that, as here, this results in a failure to grasp the corrosive effect of conduct such as this on public confidence, leading to an inappropriate outcome.
131. At paragraphs 4.17 to 4.20, there is no sufficient consideration of the purpose for which the sanction is imposed: the second stage of *Fuglers*. The focus is all forward looking, rather than the centrality of maintaining public confidence, particularly amongst lone women as a group, should this Officer remain in service. The flaw with this is that it focuses on prevention of future harm to the exclusion of assessing the harm already caused and the importance of holding him to account in order to uphold confidence in the police.
132. The Panel fell into the same error as identified by Eady J at [64-65] in the 2020 decision in *Officer A*, cited above, namely only focussing on the impact in future.
133. Here, even future harm is assessed in an inappropriate way, as demonstrated by the recommendation of redeployment outside Hammersmith. This made it less likely that the Officer would encounter the complainant, whilst on duty, but completely overlooked the fact that this was shifting the issue to another area without addressing the future protection of lone women elsewhere or their confidence in policing.
134. The complainant's own complaint added weight to the material indicating these relevant considerations were not specific just to the complainant. Her complaint, set out in full earlier in this judgment included this passage (emphasis added):

*“The reason I am filing this complaint:- It shouldnt be okay for a police officer to be flashing their badge at someone, **ruining the police’s image as a whole**, and just making “the victim” i.e. me feel like i couldnt really leave at the time. ... i did not feel like I could leave, and felt sexually harassed by the things he was showing me and saying. ... **I do not wish this situation upon any other girl.**”*

135. Wider public protection and confidence was a point which the Panel erroneously failed to consider in any meaningful or appropriate way.
136. Overall, in my judgment, the failure to follow the structured approach at both the first and second stages vitiates the decision on outcome.

Discussion- Ground 3

137. If, contrary to my findings on ground 1, on the Panel’s findings the outcome was a rational one, this ground seeks to challenge three of those findings.
138. There is substance to the challenges made under this ground, in my view, given the conflicting findings reached do not withstand scrutiny.
139. The Panel’s finding, at paragraph 1.26, based on accepting the Officer’s evidence that the relationship he envisaged was not a sexual relationship, is unsustainable. The Panel had already found, in rejecting the Officer’s flat denial, that he did indeed make the *“too curvy to be Asian”* remark and that this was of a sexual and unwanted nature. It also found that the complainant remarked that she was *“taken”* and felt sexually harassed. It also accepted that the encounter ended with the Officer requesting a hug, notwithstanding the social distancing rules. Finally, there was the follow-up message from the officer in which he addressed to the complainant as *“babe”*. The only sustainable conclusion from that collection of findings was that the Officer was not randomly approaching a lone female to seek a gym *“training buddy”* but that he abused his position, and used his warrant card, as part of seeking a sexual relationship.
140. The same considerations analysed above demonstrate the irrationality of the finding that the use of the word *“babe”* in the text message was not sexual in nature, at paragraph 1.45. In my view, the Panel again fell into error and made a finding not open to it. The Panel erroneously focussed only on the Officer’s prior use of the word, suggesting it was a light-hearted and friendly manner in which he referred to his female friends since University. But context is everything. This was not banter with the Officer’s friends, but a form of address used to a complete stranger whom he had approached earlier that day and to whom he had already made a verbal comment the Panel had found was sexual and unwanted. In those circumstances, it was irrational to view the use of *“babe”*

differently from the earlier “*too curvy to be Asian*” remark. Both can only properly be classified, in this context, as sexual in nature.

141. The IOPC’s challenge, supported by the Claimant, to the finding, at paragraph 1.34, that the Officer’s conduct was not persistent is also well founded, in my view. Again, the contrary findings the Panel had already made, render this subsequent finding unsustainable. The Panel had already rejected the Officer’s account that he produced his warrant card ethically, as the complainant did not believe he was a police officer and asked to see it. The Panel found instead that it was produced, “*to induce the complainant to continue the engagement.*” (at 1.24). The Panel had rejected the Officer’s contention that the complainant had not made the observation that she was “*taken*” so as to end the encounter and demonstrate she was not interested. The Panel had made other findings only consistent with an attempt by the officer to prolong the encounter, i.e. to persist, including asking her to hang out as friends; showing her photographs of him in gym kit on his phone; asking for her phone number and calling her immediately to check she had given the correct number; and reacting to her saying she had to leave by asking for a hug.
142. This finding reflects the observations I have already made, when discussing ground 1, about the Panel’s flawed approach to interpreting the complainant’s demeanour during this encounter. The IOPC is correct to observe that this propagates an outdated and improper understanding of the dynamic between an Officer (off-duty but who puts himself on duty by showing his warrant card) and a lone female unknown to him where, in essence, unless the woman actively challenges him and resists, she is taken to consent to the encounter. The complainant did not run, did not challenge him and acted politely and cooperatively, for the entirely plausible reasons she gave. Past experience had shown that this was the best way for the conversation to go smoothly. The Panel had already found that her outward behaviour did not reflect her inner stress and accepted that she messaged a friend saying “*help me*”, yet she was “*streetwise*” and remained in the conversation by consent.
143. These contradictory findings underpinned the conclusion that the Officer did not continue his unwelcome persistence in talking to the complainant. This is largely because of the passive engagement of the complainant. This is troubling and wrong. It places the responsibility upon the complainant, not the perpetrator. It comes close to imposing an obligation upon a lone woman approached by an officer in such circumstances, to challenge him, otherwise she cannot therefore complain if he continues his efforts to try to engage with her.
144. The only proper finding open to the Panel was that the Officer’s conduct was persistent. The Panel was irrational to excuse his continuation of his conduct as justified by the Panel’s flawed interpretation of the complainant’s demeanour and behaviour.

Discussion - Ground 4

145. If I am right about the additional findings which the Panel ought to have made, then this can only strengthen the conclusion already reached, that dismissal was the only rational outcome here.
146. The Officer would have been found to have used his warrant card to persist in a sexually motivated encounter with a lone female unknown to him. He would have been found to have used sexualised and discriminatory language early in that encounter, attempted to engage in physical contact, and also to have followed-up that encounter, notwithstanding the complainant's indications throughout that she was not interested in engaging with him, by sending a message using a sexualised mode of address.
147. Again, in my judgment, such facts only have to be recited to make it obvious that such conduct was incompatible with remaining in the police service.
148. Such findings would make it beyond argument that this was APSP and serious corruption. The culpability would be high, compounded by the motivation and persistence, as would the harm caused and the risk to public confidence, were the officer not dismissed. The inappropriateness of redeploying the Officer to a different area would be all the more stark, reflecting a dereliction of the need to address public protection, the maintenance of public confidence in and the reputation of the police service.
149. In the light of those additional findings, dismissal would be unavoidable.

VII. Conclusion and Disposal

150. The Claimant Chief Constable is correct to observe that these proceedings capture a real and present national concern about male police officers' conduct towards lone women. The focus of this Judicial Review is on applying the law to the facts of this case. But a lawful, structured, approach to the appropriate outcome involves a consideration of wider factors including the central importance of upholding public confidence in the police.
151. The Officer is wrong to suggest that he is "...a victim of the times we are now living in today." or that this is a personal or racist attack on him to get him dismissed. This case has nothing to do with scapegoating and is not a disciplinary overreaction to the well-publicised serious crimes of which certain policemen have been convicted in recent months and years.
152. By contrast, it is this Officer's own choice to approach a lone female and indulge in prejudiced racial stereotyping and sexualised language, amongst other

troubling features of his conduct, which have been the undoing of his police career. Whilst the consequences for him are stark, he is entirely the author of his own misfortune in that regard.

153. At the hearing of the Judicial Review, the Officer made an impassioned plea for the final written warning to remain undisturbed, that he had learned his lesson and that the consequences of dismissal for him and his family would be tragic. The corrosive impact of incidents such as this on public confidence in the police service is such, to adapt the words of Sir Thomas Bingham MR in *Bolton* at [16], that the reputation of the police is more important than the fortunes of any individual officer.
154. For all the reasons set out above, I am satisfied that no reasonable Panel, correctly applying the law and the guidance, could have reached the decision on sanction, of a final written warning, that this Panel did. This is the case, even on the facts as found, let alone on the additional facts it should have found. I therefore quash the sanctions decision on the grounds of irrationality as the only sanction reasonably open to the Panel was dismissal without notice.
155. I have borne closely in mind the cautionary words in the authorities that the usual approach should be for specialist Panels to determine sanctions, rather than for Courts to substitute their own. Notwithstanding this, in the circumstances of this case, I consider it appropriate that I should substitute the Panel's outcome with a dismissal, under the Court's jurisdiction to do so in sections 31(5) and (5A) of the *Senior Courts Act* 1981, rather than remitting the matter to the same (or a different) specialist Panel. It would be no kindness to the Officer to remit this matter. This would inevitably raise a glimmer of hope that he would once again avoid dismissal. He has been on gardening leave since August 2021 and would likely remain so, unsure of his fate, for many more months. This would also be disproportionate more generally for the other parties who would expend substantial further public funds on a fresh disciplinary process, only to end up inevitably back in the Administrative Court, should the outcome of a second Panel process be the same as the first.
156. There could only be one rational and reasonable disciplinary outcome from the choice of this Officer to interact with a lone female member of the public unknown to him, in the way that he did, on 15 April 2020. That could not conceivably involve him continuing as a police officer.