



Neutral Citation Number: [2024] EWHC 3263 (Admin)

Case No: AC-2023-LON-001804

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/12/2024

Before :

MRS JUSTICE LIEVEN

Between :

THE KING
(on the application of)

**THE COMMISSIONER OF THE
POLICE OF THE METROPOLIS**

Claimant

and

THE POLICE APPEALS TRIBUNAL

Defendants

and

SANDEEP KHUNKHUN

Interested Party

Mr Dijen Basu KC (instructed by **Jacqueline Morris** of the **Directorate of Legal Services**)
for the **Claimant**

The Defendant did not attend and was not represented
Mr Allan Roberts (instructed by **Hempsons LLP**) for the **Interested Party**

Hearing dates: **29 November 2024**

Approved Judgment

This judgment was handed down remotely at 10.30am on 17 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MRS JUSTICE LIEVEN

Mrs Justice Lieven DBE :

1. This is a remedies judgment following a substantive judgment handed down on 13 September 2024 (*The King on the application of The Commissioner of the Police of the Metropolis v The Police Appeals Tribunal* [2024] EWHC 2348 (Admin)). The background to the matter and the Court’s conclusions are fully set out in that judgment and will not be repeated here. I will use the same acronyms as in that judgment.
2. The Claimant continues to be represented by Dijen Basu KC, the Defendant did not attend and was not represented, and the IP was again represented by Allan Roberts.
3. After the judgment the parties were unable to reach agreement about the terms of the consequential order. There are three issues now in dispute:
 - a. Whether I should quash the PAT decision in its entirety or only in respects of Grounds 2 and 4 of the IP’s appeal to the PAT;
 - b. In the alternative, whether I should remit the matter to the PAT in respect of Grounds 1 and 3 of the IP’s appeal;
 - c. Whether I should order the IP to repay backpay for the period.
4. Mr Basu submits that I should, and indeed already have in the judgment, quash the entirety of the PAT decision and reinstate the decision of the Panel to dismiss the IP.
5. Mr Basu refers me to regulation 4 of the Police Appeal Tribunal Rules 2020:

“Circumstances in which a police officer may appeal to a tribunal – Conduct Regulations

4. (1) Subject to paragraph (3), a police officer to whom paragraph (2) applies may appeal to a tribunal in reliance on one or more of the grounds of appeal referred to in paragraph (4) against one or both of the following—

(a) a finding referred to in paragraph (2)(a), (b) or (c) made under the Conduct Regulations;

(b) any decision to impose disciplinary action under the Conduct Regulations in consequence of that finding.

(2) This paragraph applies to—

(a) an officer other than a senior officer against whom a finding of misconduct or gross misconduct has been made at a misconduct hearing;

(b) a senior officer against whom a finding of misconduct or gross misconduct has been made at a misconduct meeting or a misconduct hearing, or

(c) an officer against whom a finding of gross misconduct has been made at an accelerated misconduct hearing.

(3) A police officer may not appeal to a tribunal against a finding referred to in paragraph (2)(a), (b) or (c) where that finding was made following acceptance by the officer that the officer's conduct amounted to misconduct or gross misconduct (as the case may be).

(4) The grounds of appeal under this rule are—

(a) that the finding or decision to impose disciplinary action was unreasonable;

(b) that there is evidence that could not reasonably have been considered at the original hearing which could have materially affected the finding or decision on disciplinary action, or

(c) that there was a breach of the procedures set out in the Conduct Regulations, the Complaints and Misconduct Regulations or Part 2 of the 2002 Act or unfairness which could have materially affected the finding or decision on disciplinary action.”

6. The PAT found that the IP succeeded on all her Grounds, and the Court found that the PAT's conclusions were irrational on the Grounds advanced by the Claimant. As Mr Basu submits, at J162 of the judgment the Court said:

“162. It is in the light of the case that was put to them, and the paucity of evidence supporting any possible conclusion that the findings did not reasonably lead to a finding of gross misconduct, that Ground One succeeds. If the PAT were to lawfully overturn the Panel's decision the finding of gross misconduct had to fall outside “the range of reasonable findings or outcomes to which the Panel could have arrived”, see Derbyshire at [37]. In the light of the findings the Panel had made and the evidence that was presented to them, the conclusion of gross misconduct was entirely within the range of reasonable findings. The PAT therefore acted unlawfully in overturning those conclusions.”

7. That was a finding which went as much to Ground 1 that the IP had advanced in front of the PAT as to Ground 2. It was necessarily the case that in reaching that conclusion the Court determined that the Panel's conclusions as to misconduct and gross misconduct were reasonable and that the PAT was wrong in law to interfere with them.
8. In respect of Ground 3, he submits that the Court found that the decision of the Panel to dismiss was a reasonable one, given the findings that the Panel had made. The conclusion in [177] makes this clear: *“the Panel's conclusions were well within the range of their reasonable findings.”* The Police disciplinary process is there, at least in part, to maintain public confidence in the police. The Panel had made very serious findings about the IP's conduct and concluded that she was guilty of gross misconduct and should be dismissed. The Court has upheld the Panel's conclusion on gross

misconduct. It would be extraordinary, and bring the system into disrepute, to then find that the Panel were not entitled to decide that she should be dismissed.

9. Mr Roberts submits that it is not correct to allocate the Grounds of Appeal to the PAT into the separate regulatory heads. There were four Grounds of Appeal to the PAT:

“1. Ground 1 was that the Panel was unreasonable in its finding. This allegation was freestanding of the IP’s personal circumstances (Ground 2). In essence, Ground 1 alleged that it was unreasonable for the Panel to find that the failures amounted to misconduct or gross misconduct in and of themselves.

2. Ground 2 was that the Panel erred in not considering the IP’s personal circumstances. This was freestanding of Ground 1, albeit there was an overlap in the two Grounds.

3. Ground 3 was with regards the sanction. This comprised three elements: (1) that the sanction was unreasonable in and of itself, (2) that it was unreasonable for failing to consider the IP’s personal circumstances and disability and (3) concluding mitigating factors were aggravating factors.

4. Ground 4 related to specific findings that the IP had misled the investigators.”

10. Mr Roberts submits that the Court’s decision does not affect Grounds 1 and 3. In respect of Ground 1, the PAT decision to remit the matter to the Panel stands and therefore the IP remains reinstated until the Panel reconvenes. The basis of the Ground is that the allegations went to performance, not misconduct, and that although there is an overlap with Ground 2 they are discrete grounds. However, he does accept that when the PAT addressed Grounds 1 and 2, they dealt with them together.

11. He relies upon [36] of the PAT decision where they said:

“36. Upon appeal the factual matrix is not challenged save to a minor extent (considered below), but whether the proven behaviour might amount to a performance issue rather than one of misconduct was not considered by Panel and they have included no analysis or determination on this issue in their decision. Given the potential significance of the issue, we find that before rejecting such a submission, the Panel would have to have weighed up and shown they had weighed up these arguments.”

12. Mr Roberts submits that this finding of the PAT stands and therefore the Panel have to consider/reconsider whether the conduct found amounted to a misconduct or performance issue.

13. On Ground 3 Mr Roberts submits that even if all the other findings of the Panel were left undisturbed, the PAT did not deal with whether the sanction of dismissal was too harsh. Therefore this matter should be remitted to the PAT in any event to reconsider.

14. In my view, Mr Roberts' submissions fail to properly take into consideration the terms of the Court's judgment. At J162 I found that the Panel's finding of gross misconduct was open to them. I agree with Mr Basu that there is no "bright line" between poor performance and misconduct, and it was not necessary for the Panel to formally state that they had considered whether these findings were matters of performance, and, if not, that they were matters of misconduct. In the light of J162 it would be wholly inconsistent to conclude that the findings made were, or could be, merely issues of poor performance.
15. It necessarily follows that there was no error by the Panel in finding the matters in issue were ones of conduct leading to misconduct rather than performance. Indeed, in the light of the factual findings the Panel made, which I found they were entitled to make, it is very difficult to see how their conclusion could have been anything other than gross misconduct.
16. On Ground 3 and the sanctions, once the Panel had found gross misconduct and that the IP had actively sought to mislead them, it appears to me to be absolutely obvious that dismissal was within the range of reasonable responses. It needs to be remembered that this is a scheme intended to uphold public confidence in the police. I note that at no point did the PAT suggest that the sanction was excessively harsh on the basis of the findings that the Panel had made.
17. The third issue concerns backpay that the Claimant paid the IP for the period of 17 May 2022 to around 9 May 2023, between her original dismissal and her reinstatement following the PAT decision. The Claimant is not seeking the repayment of the sums paid between her reinstatement and the decision of the Court.
18. Mr Basu submits, on the basis of first principles, given that her reinstatement has been quashed, she should repay the backpay for that period. When the Claimant wrote the Pre Action Protocol letter they raised that they would apply for interim relief and therefore the Claimant was on notice that she could be required to repay any sums paid if the application for judicial review was successful. The fact that she had that knowledge is a material consideration in a decision as to whether to order her to repay. He points out that this is public money, and the Claimant would be remiss if it did not seek to recover it.
19. Mr Roberts refers to the IP's personal circumstances, in particular the level of her indebtedness to her parents and very personal reasons as to how she had used the money. I have taken these personal circumstances into account, but it is not necessary to set them out in a public judgment. He submits that from his dealings with the IP she did not understand that she might have to repay the money.
20. I asked whether there was any caselaw covering reimbursement of backpay when an Employment Tribunal decision was overturned by the Employment Appeal Tribunal. Both counsel agreed, after further research, that there was not. They told me that it was so rare for an Employment Tribunal to order reinstatement that the situation was very unlikely to arise in practice.
21. Mr Roberts submits that the correct course would be for the Police to sue the IP in an unjust enrichment claim, rather than seek repayment through the route of this judicial review, although he accepts that I have the jurisdiction to make the order sought.

22. Although I have sympathy for the IP's personal circumstances, particularly taking into account her vulnerabilities, I also have regard to the Claimant's need to protect public funds. Any reasonable person in the Claimant's position would have understood that any sums she was paid after the Panel's decision was overturned was at risk once the Claimant had decided to judicially review the decision. This was made clear in a Pre Action Protocol letter. Mr Roberts says that from his knowledge of the IP it is unlikely that she actually understood the reality of this risk. However, the very nature of the case is that she was capable of exercising an important public function as a police officer, so it is not unreasonable to determine an obligation to repay in a relatively objective manner.
23. The IP was legally represented throughout. The money in question is public funds and it is essential that it is properly accountable. The IP will already have received and will keep money that in the light of my judgment she was not actually entitled to, i.e. the payment after the reinstatement. In my view there is nothing unreasonable in her being required to repay the backpay sums. I can see no benefit in requiring the Police to start a separate civil action for recovery, those incurring more costs to all concerned. For these reasons I will make the order sought by the Claimant.