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Case No: CO/4057/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/10/2023

Before:

MR JUSTICE JAY

Between:

**THE CHIEF CONSTABLE OF THAMES VALLEY
POLICE**

Claimant

- and -

A POLICE MISCONDUCT PANEL

Defendant

- and -

PC HAFEEZ JAVEED

**Interested
Party**

Alan Payne KC and Barnabas Branston (instructed by **Thames Valley Police Legal Services**) for the **Claimant**
Susannah Stevens (instructed by **Direct Access**) for the **Interested Party**

Hearing date: 17th October 2023

Approved Judgment

This judgment was handed down remotely at 10:30am on 27th October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MR JUSTICE JAY:

INTRODUCTION

1. On 17th August 2022 a Police Misconduct Panel (“the panel”) determined that PC Hafeez Javeed was guilty of gross misconduct. He received a final written warning extended for five years. The Chief Constable of Thames Valley Police (“Thames Valley Police”) contends in these judicial review proceedings that the panel’s decision was unlawful on public law grounds and that PC Javeed should have been dismissed. In the alternative, Thames Valley Police contends that the panel’s public law errors are such that the case should be remitted to them for reconsideration.

ESSENTIAL FACTUAL BACKGROUND

2. In August 2020 PC Javeed, who was aged 25 at the time, was employed as a police response officer at Maidenhead Police Station. He had had just over two-years’ service. Miss A, a detention officer and junior to him, had been employed in that capacity for about 12 months. On PC Javeed’s account, which Miss A did not accept, they had encountered each other on a number of occasions before the events forming the subject-matter of the misconduct proceedings and there had been banter, fist bumps and pats on the shoulder.
3. On 11th August 2020 Miss A was working at her desk in the staff room in the custody suite at Maidenhead Police Station. DO Collins was working in the same room. PC Javeed’s account was that he entered the custody suite that morning because he wanted to discuss a potential arrest with the custody sergeant. At or shortly after 8:20am the police officer entered the staff room and walked directly up to the seated Miss A. What happened next is caught on CCTV.
4. Thames Valley Police contends that the only fair way of assessing the police officer’s actions is by viewing the CCTV footage. Visually, it is of good quality but there is no audio. That is relevant inasmuch as there clearly were verbal interactions between the police officer and Miss A. In my judgment, the CCTV footage is open to more than one interpretation and the panel received oral evidence as to what happened. The only fair way of arriving at a conclusion on the balance of probabilities as to what happened can be by considering all the evidence in the case. It is not, of course, this Court’s role to undertake that exercise. My task is to undertake a review function applying well-settled principles. The invitation to undertake a “fair” assessment of the CCTV footage comes close to asking me to form my own view of the underlying evidence.
5. The parties before the panel proceeded on the basis that there were two events, which were described as Event 1 and Event 2. These were separated by a brief interlude during the course of which the police officer moved away from Miss A and there was a verbal exchange between them.
6. Thames Valley Police’s interpretation of the CCTV evidence is as follows:

“Event 1

[PC Javeed is seen to] walk directly up to the seated Miss A and stand immediately next to (if not actually touching) her left shoulder, lean over her, fleetingly touch the top of her head/the back of her neck area, and then place his hands on her shoulders and squeeze them whilst talking to her.

Event 2

[PC Javeed is seen to] walk back to stand very close to the side of Miss A, place the mobile phone he was holding in his left hand down on the desk, freeing up his left hand which he then briefly slips under Miss A's left arm, before then retracting it and placing it on her left shoulder and massaging it (whilst at the same time placing his right hand on the back of her head and then on her right shoulder)."

7. Next on the CCTV we can see PC Javeed leaving the room. At no stage did he look at or towards DO Collins, who appears to have been unaware of what had occurred beyond seeing PC Javeed's hands on Miss A's shoulders for a couple of seconds. Immediately upon his leaving, Miss A turned towards DO Collins and said, on her account, "I think he's just groped my boob". The CCTV imagery then shows her demonstrating what had occurred.
8. DO Collins' recollection of what Miss A said was along the lines of, "that officer just grabbed my boob". Miss A then reported these events to DI Robert Webb and PS Lianne Roberts and their evidence as to what she said was very similar.
9. PC Javeed was suspended from duty and then interviewed under caution. He did not accept that he had invaded Miss A's personal space or that he had crossed any boundaries. He denied massaging Miss A's shoulders. PC Javeed accepted that he did touch her shoulder and that he placed his left hand under her arm "in a jokey way". He denied touching her hair or her breast; he claimed that he went "nowhere near" the latter. He denied putting his phone down in order to touch her breast. Specifically:

"I believe that she's misinterpreted the action, like my, I do admit that my hand was over here but making a friendly gesture but at no point did my hand manoeuvre towards her breast or at no point did I squeeze her breast."

Further:

"Q. Did she give you any indication that either, she had enjoyed it, er, encouraging it, your touching her?

A. I mean, I couldn't, I couldn't tell you what's in her mind so ...

Q. Nothing obvious to you?

A. Em, I mean she was laughing ..."

10. PC Javeed denied having any sexual interest in Miss A. There had been no flirtatious behaviour between them in the past.
11. An investigating officer of the “Appropriate Authority” within Thames Valley Police completed a report on 4th January 2021 recommending that PC Javeed had a case to answer for conduct amounting to gross misconduct for breach of “authority, respect and courtesy” and/or “discreditable conduct” justifying dismissal. On 12th February 2021 he was served with a notice informing him that he was to appear at a Misconduct Hearing in relation to these allegations.
12. This hearing was delayed pending the conclusion of criminal proceedings for the offence of sexual assault. On 25th November 2021 following a three-day trial PC Javeed was acquitted.
13. The Misconduct Hearing took place between 15th and 17th August 2022.

THE MISCONDUCT HEARING

14. The panel was chaired by Ms Nicola Talbot Hadley, now HHJ Talbot Hadley. Her wing members, each with an equal voice in the outcome, were then Chief Superintendent Katy Barrow-Grint (now Assistant Chief Constable) and Ms Susan Wilkins, the lay member.
15. The particulars of the conduct alleged to constitute gross misconduct, as served under regulation 30 of The Police (Conduct) Regulations 2020, were as follows:

“You approached [Miss A] as she sat at her desk and without her invitation or consent proceeded to touch her, including:

(a) by rubbing her upper back and/or

(b) by touching her on the top of her head and/or

(c) by massaging her shoulder(s) and/or

(d) by reaching your left hand under her left armpit and touching her left side

and/or

(e) by touching her left breast with your left hand and/or

(f) by squeezing her left breast.

(c) Such touching was entirely unsolicited and unwelcome and left [Miss A] shocked, surprised and offended. It was in breach of the Standards of Professional Behaviour in relation to “Discreditable Conduct” and/or “Authority Respect and Courtesy” in that it was conduct which would discredit the police service or undermine public confidence in it and/or demonstrated a failure to treat your colleague, [Miss A] with respect and courtesy. If proven it is considered to amount to gross

misconduct, namely a breach of the Standards of Professional Behaviour so serious that your dismissal would be justified.”

16. PC Javeed’s response, as served under regulation 31, included the following:

“10. PC Javeed is only aware of patting her on the back and touching her shoulders and her side area, near the armpit as described in interview. He is not aware that he ever touched her breast area and denies doing so. He did not squeeze her breast. He did not massage her shoulders. He did not touch the top of her head, nor did he rub her back.

11. The touching was momentary during a conversation. PC Javeed meant nothing by the brief contact at all and the contact was not sexual. The contact did not amount to an act breaching the Standards of Respect and Courtesy.”

17. Thames Valley Police’s opening note included the following:

“13. The AA’s case is that all of the touching seen on CCTV was entirely inappropriate, some of it extremely so. The nature of the relationship between Miss A and PC Javeed was entirely and only professional. PC Javeed crossed a significant boundary once he had invaded her personal space and proceeded to lay his hands on her. The AA’s primary case is that he did squeeze Miss A’s left breast as she alleges, but even on the officer’s account, touching her at all and placing his left hand anywhere near her rib cage in the context of an entirely professional relationship was entirely inappropriate; there was simply no reasonable explanation for such conduct.”

18. The opening note also alluded to PC Javeed’s acquittal at his criminal trial. It pointed out that the panel applied a lower standard of proof (viz. the balance of probabilities) and that in order to establish gross misconduct proof of a sexual motivation was not required.

19. In my view, there was, at least arguably a lack of clarity, in the way Thames Valley Police was advancing its case, although as I will proceed to demonstrate at a later stage in this judgment the panel took its own course. No one could have been in any doubt that the deliberate squeezing of a woman’s breast is sexually motivated. That did not need to be made explicit in relation to the primary case, but great clarity was required as regards the alternative case. The panel was told that proof of a sexual motivation was not required to establish gross misconduct. That was of course true as far as it went, but what exactly was being alleged in this respect? In my opinion, the deliberate placing of a hand under a woman’s armpit *without any reasonable explanation* for doing so generates the strong inference of a sexual motivation, although that may not be quite as irresistible as it would be on the Thames Valley Police’s primary case. I will be returning to this point in the context of the parties’ submissions.

20. The panel heard evidence from Miss A, DO Collins and PC Javeed.

21. During the course of her evidence, Miss A denied any history of “high fiving”, “fist pumping” or the like with PC Javeed. She said that her reaction to Event 1 was “it was just a bit odd but I didn’t really think much of it at the time”. Miss A said that the first touching of the shoulders was in the nature of a squeeze massage. She had no recollection of the subject-matter of the conversation between the two events. As for the key feature of Event 2:

“From what I remember is his left hand goes under my left arm and then across, covers my whole breast and then he squeezes it.

...

All I felt was just a brush past my sort of ribcage and then just a hand straight onto my breast, a quick squeeze and then he moved his hand away straight away. It wasn’t there for a long period of time.”

22. Later, Miss A clarified that the squeeze was to the side of her breast.
23. Miss A was asked questions in cross-examination about her previous interactions with PC Javeed. It was put to her that these included “high fives”, which Miss A denied. She agreed that PC Javeed had in the past done or said nothing to suggest that he might have any sort of personal interest in her. Miss A denied that her conversation with PC Javeed that morning was jokey or friendly. As for Event 1, it was put to Miss A that she was wrong about PC Javeed touching her hair; she denied that. As for Event 2, it was put to Miss A that her *perception* was that PC Javeed had touched her breast but she must be unsure about that: her first account to DO Collins was that “I think he just groped my boob”. Miss A’s answer was that:

“It, it had just happened, I wasn’t sure that he would because why would anyone? But he had.”

And then slightly later in his cross-examination, when asked whether it could have been an accidental touching:

“Why would he be anywhere near there?”

24. DO Collins confirmed when giving evidence that all he saw was PC Javeed putting his hands on Miss A’s shoulders after entering the room. That was not concerning. In terms of the conversation he had with Miss A after PC Javeed had left, DO Collins agreed that he said “oh”. Unprompted by counsel, he added:

“... then I said, “he must have had long fingers.”

25. Ms Talbot Hadley sought clarification of this answer:

“Q. DO Collins, can I just ask when she demonstrated to you what had taken place afterwards, you moved your left hand around the ribcage area. Did she actually touch her breast when she demonstrated to you what had happened?”

A. I couldn't 100% say, I can just remember her hand coming to here to say no from the side like that and then that's what I got. I couldn't see ..."

26. PC Javeed gave evidence before the panel. He had an undergraduate degree in Criminal Law and Criminology at Royal Holloway and has or had been doing a Masters in Counter-Terrorism. He had wanted to be a police officer from a very young age. He explained that he was a shift response officer at Maidstone Police Station, and that on the day in question he was in a "very, very good mood" having been told by his sergeant that he was the highest performing officer in the team.
27. PC Javeed's account of what happened in the staff room did not differ materially from what he had said at interview. He said that he was not aware at the time that Miss A was uncomfortable. He said that the allegation that he stroked Miss A's hair was "completely wrong", and that he did not massage her shoulders. He did not touch Miss A's breast and when he left the room she was "smiling and laughing".
28. When the video was played and PC Javeed was asked to comment, he said this:

"After watching it a number of times um, I now...I feel horrendous. I don't want anyone to make an allegation about me. And I do admit, and I do say that, yes I was in her personal space and I want to apologise to everyone. And I want to apologise to her. And I am genuinely very, very sorry. But the allegations made, I did not do any of those and in hindsight, looking at this now, I...I feel horrendous. I feel...I don't know...I feel upset and I'm genuinely sorry.

Q. In terms of interactions with people in future, what would you do differently?

A. I wouldn't interact with them.

Q. Well, what would you do differently, give us a detail?

A. I...I would keep my distance and just...just talk and I...I wouldn't go in and I wouldn't go near anyone's personal space because someone who had interactions with me and I'm having interactions with them and then someone makes an allegation of sexual assault or whatnot then...

Q. So you wouldn't go into their personal space now. What about physical touching?

A. I wouldn't...I wouldn't physically touch anyone.

Q. You've described some of the type of physical touching that went on at the police station. Would you engage in any of that now?

A. No."

29. PC Javeed also said that at the time he did not feel that he was in Miss A's personal space. This was:

“... because she had encroached my personal space ... in terms of like touching me on the back ... it just made me think they were mutually friendly mannerisms.”
30. PC Javeed was cross-examined on the basis that his repeated squeezing of Miss A's shoulders did amount to massaging, and that he did squeeze her left breast.
31. The case of Thames Valley Police as closed to the panel was consistent with the opening submission. Counsel's essential point was that “that's just down to you and what you make of the two competing accounts”. Counsel also reiterated the submission that “the appropriate authority does not have to prove any sexual interest”. At §19 above I have addressed my concerns about that.
32. The panel, as is often the case in proceedings such as this, had a sheaf of impressive character evidence which I have fully considered.
33. The panel delivered its finding on gross misconduct and invited further submissions on sanction. Annex A to this judgment contains the “full account of the reasons for the finding” of gross misconduct. Annex B contains the “full account of the reasons for the disciplinary action imposed”.

THE GROUNDS OF CHALLENGE

34. Ground 1 is that there are material errors in the assessment of culpability. First, it is argued that the panel materially erred in failing to find that some or all of the actions were intended to be sexual and/or to provide any or any adequate reasons concluding that they were not intended to be sexual. Secondly, it is said that the panel failed to consider or make any findings relating to whether some or all of the actions were sexual in nature, irrespective of PC Javeed's intentions. Thirdly, it is contended that the panel failed to provide any or any adequate reasons why they concluded that the actions were not intended to be sexual. Fourthly, it is submitted that the panel failed to consider PC Javeed's wholly inappropriate response to these events given, in particular, his account at interview. Fifthly, it is said that the panel failed to consider adequately or at all the risk of further inappropriate conduct by PC Javeed in the future.
35. Ground 2 is that there are material errors in the decision on sanction. First, it is argued that, given the panel's findings as to the seriousness of PC Javeed's misconduct, and the harm to public confidence generally, “the only reasonable conclusion open to them (irrespective of personal mitigation) was that PC Javeed's dismissal was necessary to maintain public confidence”. This was particularly so in the light of PC Javeed's lack of insight. Secondly, it is submitted that the panel failed to make any or any adequate findings as to whether, irrespective of PC Javeed's intentions, some or all of his actions were sexual in nature. Thirdly, it is contended that no proper consideration was given to the risk of repetition. Fourthly, it is said that the mitigating factors identified by the panel were plainly insufficient to “displace the presumption” that dismissal was “likely to follow”, in line with para 4.65 of the relevant guidance. Fifthly, it is argued that there was no reference in the decision on sanction to the paragraphs in the guidance setting out the likely consequences that should flow from the findings made. Sixthly, it is

submitted that the panel erred in minimising the seriousness of the misconduct on the basis that standards had changed since August 2020. Seventhly, the contention is made that no reason was given explaining why a final written warning would be sufficient to protect public confidence.

RELEVANT LEGAL FRAMEWORK

The Police (Conduct) Regulations 2020 (SI No 4 of 2020)

36. Regulation 2 defines “misconduct” (for these purposes) as “a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action”, and “gross misconduct” as “a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal”. It is unnecessary to refer to other regulations dealing with notices, procedure and the like.

College of Policing’s “Guidance on outcomes in police misconduct proceedings”, 2017 version (“the Guidance”)

37. The current version of the Guidance came into force on 17th August 2022. The parties are agreed that the relevant version is that published in 2017.

38. Section 1 of the Guidance provides in material part:

“1.2 The guidance is intended to assist persons appointed to conduct misconduct proceedings (misconduct hearings, misconduct meetings, and special case hearings) under Parts 4 and 5 of the Police (Conduct) Regulations 2012 (the Conduct Regulations). The guidance may also be used to inform assessments of conduct under Regulation 12 of the Conduct Regulations or paragraph 19B of Schedule 3 to the Police Reform Act 2002. The guidance is designed to ensure consistency and transparency in assessing conduct and imposing outcomes at the conclusion of police misconduct proceedings.

1.3 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.

1.4 Instead, this guidance outlines a general framework for assessing the seriousness of conduct, including factors which may be taken into account. These factors are non-exhaustive and do not exclude any other factor(s) that the person(s) conducting the proceedings may consider relevant.”

39. As for the assessment of seriousness, the Guidance includes the following:

“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, i.e., seriousness.

4.2 As Mr Justice Popplewell explained [in *Fuglers LLP v Solicitors Regulation Authority* [2014] EWHC 179 (Admin), referring to a similar guidance note regarding solicitors), there are three stages to determining the appropriate sanction:

- assess the seriousness of the misconduct
- keep in mind the purpose of imposing sanctions
- choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question.

4.3 Assessing the seriousness of the misconduct is the first of these three stages.

4.4 Assess the seriousness of the proven conduct by reference to:

- the officer's culpability for the misconduct
- the harm caused by the misconduct
- the existence of any aggravating factors
- the existence of any mitigating factors.

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 the reputation of the policing 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."

40. Para 4.10, under the rubric "culpability" provides:

"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."

41. Paras 4.14 and 4.15 provide:

"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.

The following types of misconduct, however, should be considered especially serious”

42. The types of misconduct falling in the “especially serious” category include (non-exhaustively) criminal convictions, operational dishonesty, impropriety or corruption, data protection and misuse, and sexual impropriety.

43. The Guidance addresses harm under paras 4.57ff. In particular:

“4.57 Harm will likely undermine public confidence in policing...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.

4.58 Assess the impact of the officer’s conduct having regard to these factors and the victim’s particular characteristics.

4.59 Where no actual harm has resulted, consider the risks attached to the officer’s behaviour, including the likelihood of harm occurring and the gravity of harm that could have resulted.

4.60 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.

4.61 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.

4.62 Whether a matter is of local or national concern will be a matter for the person(s) conducting the proceedings based on their experience and the circumstances of the case.

...

4.65 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.”

44. As for aggravating and mitigating factors, the former includes “malign intent” and “serious physical or psychological impact on the victim”. The latter includes “misconduct confined to a single episode of brief duration”. Para 4.72 is material:

“In cases where the misconduct occurred several years prior to the meeting or hearing, consider the outcome by reference to the standards of the time rather than current attitudes and standards. Give due account to the officer’s conduct in the intervening years, for example, whether they performed their duties to a high standard.”

46. Section 6 of the Guidance addresses personal mitigation and provides:

“the weight of personal mitigation will necessarily be limited particularly where serious misconduct has been proven.

...

[the primary consideration] is the seriousness of the misconduct found proven. If the misconduct is so serious that nothing less than dismissal would be sufficient to maintain public confidence, personal mitigation will not justify a lesser sanction.”

48. Section 7 of the Guidance provides the following conclusions:

“7.2 There are three stages to determining outcome:

- assess the seriousness of the misconduct
- keep in mind the threefold purpose for imposing outcomes in police misconduct proceedings
- choose the outcome which most appropriately fulfils that purpose, given the seriousness of the conduct in question.

7.3 Assessing the seriousness of the conduct is the first of these three stages. In assessing the seriousness of the conduct, have regard to the four categories outlined: culpability, harm, aggravating and mitigating factors.

7.4 Consider less severe outcomes before more severe outcomes. The more serious the conduct found proven against an officer, the more likely it is that dismissal will be justified.”

Relevant Jurisprudence

50. The parties have cited extensively from authority in the sphere of what may be described as police discipline. This sphere bears certain similarities with medical and legal discipline, in particular in the consistent and constant recognition of the importance of maintaining public confidence in the profession and the reputation of the service. Indeed, it would be fair to say that this public interest may be described as a paramount consideration. By that I mean, “the most important” rather than (at least in all conceivable situations) “so important that unless there are powerful and cogent considerations militating against that course, dismissal should follow”.

51. Previous authority is valuable in illuminating the generally applicable principles. Given that each case is so fact-specific, I do not consider it a helpful exercise to attempt to calibrate the present case against earlier decisions of this Court and the Court of Appeal, particularly in circumstances where a review jurisdiction is being exercised.
52. I derive the following principles from the relevant jurisprudence, confining my review of authority to the principles that are pertinent to the outcome in the instant case.
53. First, in *Fuglers LLP v SRA* [2014] EWHC 179, at paras 28-30, Popplewell J, as he then was, set out the three-stage “structured approach” that should govern the decision-making of disciplinary panels.

“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.

29. In assessing seriousness the most important factors will be (1) the culpability for the misconduct in question and (2) the harm caused by the misconduct. Such harm is not measured wholly, or even primarily, by financial loss caused to any individual or entity. A factor of the greatest importance is the impact of the misconduct upon the standing and reputation of the profession as a whole. Moreover the seriousness of the misconduct may lie in the risk of harm to which the misconduct gives rise, whether or not as things turn out the risk eventuates. The assessment of seriousness will also be informed by (3) aggravating factors (e.g. previous disciplinary matters) and (4) mitigating factors (e.g. admissions at an early stage or making good any loss). These considerations are reflected in The Solicitors Disciplinary Tribunal Guidance Note on Sanctions issued in August 2012 at paragraphs 13 to 17.

30. At the second stage, the tribunal must have in mind that by far the most important purpose of imposing disciplinary sanctions is addressed to other members of the profession, the reputation of the profession as a whole, and the general public who use the services of the profession, rather than the particular solicitors whose misconduct is being sanctioned. ”

55. Secondly, given the “most important purpose” that has been identified, and given also that in a disciplinary context an unblemished past record and positive evidence of good character will be the norm, the weight to be given to personal mitigation in a serious case is likely to be limited. Disciplinary sanctions are not primarily punitive. In a wider disciplinary context, the case that is ordinarily cited as support for the foregoing proposition is *Bolton v The Law Society* [1994] 1 WLR 512 and the famous passage of Sir Thomas Bingham MR, as he then was, at 519B-E. In *Salter v The Chief Constable of Dorset* [2012] EWCA Civ 1047, the Court of Appeal, Maurice Kay LJ giving the

lead judgment, held that the *Bolton* principles could be “read across” to the police context and that the weight to be given to personal mitigation was necessarily limited in a serious case (at paras 21 and 23).

56. There are helpful dicta to similar effect in *Williams v Police Appeals Tribunal* [2016] EWHC 2708 (Admin), per Holroyde J, as he then was, at paras 66 and 67:

“66. ...the importance of maintaining public confidence in and respect for the police service is constant, regardless of the nature of the gross misconduct under consideration. What may vary will be the extent to which the particular gross misconduct threatens the preservation of such confidence and respect. The more it does so, the less weight can be given to personal mitigation. Gross misconduct involving dishonesty or lack of integrity will by its very nature be a serious threat: save perhaps in wholly exceptional circumstances...Gross misconduct involving a lack of integrity will often also be a serious threat. But other forms of gross misconduct may also pose a serious threat, and breach of any Standards may be capable of causing great harm to the public’s confidence in and respect for the police.

67. This does not mean, of course, that personal mitigation is to be ignored...On the contrary, it must be taken into account...But where the gross misconduct threatens the misconduct of public confidence and respect in the police – as gross misconduct often will – the weight which can be given to personal mitigation will be less that would be the case if there were no such threat, and if the disciplinary body were a court imposing a punishment. Whether the circumstances are such that the sanction of dismissal is necessary will be a fact-specific decision: where the facts show dishonesty, case law establishes that dismissal will almost always be necessary, and dismissal will often be necessary where the misconduct involves a lack of integrity; where the facts show that one of the other Standards has been breached, the appropriate outcome will depend on an assessment of all the circumstances, with proper emphasis being given to the strong public interest in maintenance of respect and confidence in the police and consequentially less weight being given to personal mitigation.”

58. Thirdly, some types of gross misconduct case are so serious that dismissal may be regarded as the expectation: in order to avoid it, some particularly compelling consideration has to be advanced. This principle clearly applies in a police context to cases of operational dishonesty (see the facts of *Salter*), and I would hold that it should also apply to the “especially serious” categories of case that I have previously referenced. I intend to leave for further consideration the correct approach to para 4.65 of the Guidance.
59. Fourthly, these are judicial review proceedings and not an appeal. The medical cases (brought under section 40 of the Medical Act 1983) are not relevant. In this context, I would define the *Wednesbury* test in these terms: the claimant must show that the

panel's conclusions were clearly wrong (I note that Holroyde J took the same view in *Williams*). This has three consequences. First, when it comes to findings of primary fact based wholly or in substantial part on a panel's assessment of oral evidence, the scope for judicial review is very limited. To demonstrate that a decision was clearly wrong in circumstances where the reviewing court has not seen and heard the witnesses is a tall order. Secondly, in the wider context of evaluation and assessment of the appropriate sanction, this court must respect the expertise and judgment of the decision-maker. Thirdly, if the court is satisfied that the panel correctly identified the considerations material to its decision, and did not take immaterial considerations into account, it is well-established that matters of weight are not for this court.

60. Authority for this second aspect is to be found in paras 22-24 of the decision of Heather Williams J in *R (oao Commissioner of Police of the Metropolis) v PAT and Robyn Williams* [2022] EWHC 1951 (Admin).
61. Fourthly, it is axiomatic that the panel must give sufficient reasons for its decision. Here, the principles are so well-established that extensive citation from authority is not required. I agree with Ms Stevens' formulation that the reasons provided must be such as to ensure that (a) the parties are aware in broad terms why they have won or lost (as the case may be), (b) that the parties and any appellate court can discern whether there has been legal error, and (c) that the mind of the decision-maker has been focused on the material issues. I would go slightly further: reasons must also be sufficient to enable the reviewing court to discern and understand the decision-maker's essential reasoning processes. If the Court should conclude that the decision-maker's reasons contain an error, it must then go on to decide whether that error was material to the outcome. If so, there will be cases where the Court can properly conclude what the outcome should be with that error notionally corrected, but there will be cases where the Court is in doubt. In this latter circumstance, the case should be remitted to the panel for reconsideration.
62. I return to para 4.65 of the Guidance, which falls under the heading of "harm". It contains a general statement of the position where "serious harm" has been found, either to an individual victim or in connection with the wider public interest. Para 4.65 is not concerned with the officer's level of culpability, although I can see that there may be an indirect correlation between blameworthiness and harm. I cannot accept the submission of Mr Alan Payne KC for Thames Valley Police that para 4.65 applies the principle in *Salter* that dismissal is to be expected in serious cases. *Salter* applies to cases where the officer's culpability is especially serious. In my view, para 4.65 is less prescriptive. Dismissal may be the likely outcome in cases of serious harm, but that is no more than a general indication of the position. It is a prediction. Whether dismissal is appropriate in any individual case will always require a close examination of the officer's culpability, an aspect which para 4.65 does not claim to address.

DISCUSSION AND CONCLUSIONS

63. I am grateful to both counsel for their compelling written and oral arguments. A summary of these is unnecessary for present purposes.
64. This is undoubtedly a difficult case. It is not so because the law is particularly complex or unclear; it is not. The challenge lies in the extent to which this reviewing court should be dissecting the panel's reasons for their conclusion that a final written warning was the appropriate sanction.

65. In his oral argument Mr Payne chose to begin with his second Ground – that is to say, on the premise that the panel’s findings of fact were correct. Ground 1 seeks to upset those findings. He had clear forensic reasons for sequencing his submissions in that fashion, but I have not deviated from my provisional view expressed during the hearing that Ground 1 must be considered before Ground 2. Logically, it comes first. Should Thames Valley Police win on Ground 1, it would be inevitable that the decision on sanction could not stand. Indeed, I would go further: the only reasonable sanction in all the circumstances of this case would have to be dismissal.
66. Mr Payne’s starting point on Ground 1 was that PC Javeed’s actions were “objectively” sexual or that, at the very least, consideration should have been given by the panel as to whether they were.
67. I return to where I left matters hanging at §19 above. The deliberate act of squeezing a woman’s breast would, to use the terminology preferred by Mr Payne, be “objectively” sexual. There is, however, perhaps a better formulation. I agree with Ms Susannah Stevens, who has presented PC Javeed’s case before me with conspicuous poise and ability, that section 78 of the Sexual Offences Act 2003 applies by analogy. Some actions are inherently or by their very nature sexual: see section 78(a); others *may* be sexual, depending on all the circumstances, including the inferences to be drawn from any explanation, or the lack of it, given by the individual in question: see section 78(b). I cannot accept Mr Payne’s high submission that even on his client’s alternative case what PC Javeed did fell into the first category, although I am with him to the extent that this might have been a case that fell into the second category.
68. I also cannot accept Mr Payne’s argument that whether an action is sexual depends on how a woman in Miss A’s position is likely to have construed it. Plainly, that is one of the circumstances that must be considered but it is far from determinative.
69. The panel had absolutely no difficulty with the proposition that the primary case contained within it the implicit allegation that PC Javeed’s actions were sexually motivated. That is made clear, amongst other things, by the use of the term “grope”; the panel found as a fact that, notwithstanding Miss A’s perception, her breast was not groped. When it came to the panel’s consideration of the alternative case, it no doubt took into account the way in which Thames Valley Police’s case had been advanced. Given, in particular, the way in which PC Javeed was cross-examined, there were obvious difficulties in concluding that his actions were sexually motivated even if the panel had thought there was no reasonable explanation for them.
70. In any case, I have reached the conclusion that both parties’ submissions on Ground 1 ignore what the panel actually decided. Contrary to Mr Payne’s submission that the panel failed to address the issue, and to Ms Stevens’ that the issue did not require to be addressed at all, I think that it is clear from the panel’s reasons that consideration was given to the reasonableness or otherwise of PC Javeed’s explanation for what he did and, consequently, whether the inference of a sexual motivation should be drawn:

“10. The Panel has considered carefully the evidence of PC Javeed, both from his interview and the oral evidence given by him at the hearing. *The Panel has accepted that there were no sexual motivations on the part of the Officer* or malign intentions; he was intending to be friendly and was in a

particularly good mood owing to his performance having been praised that same morning. However, he went too far in tactile behaviour within a professional setting with someone that he did not have a close friendship with. ..." [emphasis supplied]

71. The reference to "no sexual motivations" was in the context of the alternative case: the panel had already found as a fact that his hand came far too close to Miss A's left breast but had not touched it. So, the issue of sexual motivation was addressed in the context of PC Javeed's explanation for his actions. It is for this reason that I said at §19 above that the panel took its own course.
72. If I were entitled to reach my own conclusion, I would be expressing more than a modicum of disquiet. PC Javeed's squeezing of the shoulders, which he has denied, looks to me like a massage. His reasons for placing his hand under Miss A's armpit were, apparently, that he was in a "very, very good mood" and was behaving in a "jokey" fashion. I am not particularly persuaded. Other considerations bearing on this issue are the stance PC Javeed took when interviewed under caution and his belief, clearly articulated in his oral evidence to the panel, that it was Miss A who had previously invaded *his* personal space.
73. It is also a fair criticism that the panel did not expressly address possible inconsistencies between PC Javeed's interview and his oral evidence. However, there is no reason to suppose that the panel did not consider these matters during the course of its deliberations: they were entirely obvious.
74. Overall, my assessment is that the panel adopted a somewhat generous interpretation of PC Javeed's actions in the light of all the evidence.
75. Ultimately, however, my level of disquiet can go no further than that. The panel saw and heard the evidence, and I am in no position to assess the impressions Miss A and PC Javeed respectively may have made. The sub-text of the panel's evaluation of Miss A was that she was a credible witness but not sufficiently reliable. What she may have perceived to have been a "grope" (i.e. a sexual assault) was not: the contact was "very close to the side of her left breast", but it was not close enough. This was a fleeting contact and the CCTV does not show exactly what PC Javeed did.
76. I reiterate that the panel's failure to undertake any close analysis of PC Javeed's evidence lends some support to Mr Payne's overarching submission, and I have to say that in this case a more detailed review of his evidence should really have taken place. Nonetheless, what happened that morning was a jury question *par excellence* for the panel. It would require a wholly exceptional case for an experienced panel's conclusion of primary fact to be overturned on a judicial review. Mr Payne has fallen short of persuading me that this is such a case.
77. I now turn to address Mr Payne's various submissions grouped under Ground 2.
78. Some of his points have already been covered. I have concluded that the panel was entitled to decide that PC Javeed's actions were not sexual. I have also concluded that para 4.65 of the Guidance does not go so far as to raise a presumption in favour of dismissal; but even if I am wrong about that the point leads nowhere. Furthermore, I do not consider that the panel failed properly to address the risk of recurrence. That is

implicit in the final substantive paragraph of its decision, dealing with the sufficiency of a final written warning.

79. In my view, it is helpful in a case such as this to ask two questions. The first is whether the panel could properly have concluded that dismissal was not required in these particular circumstances. The second is whether an examination of the panel's reasons for coming to the conclusion it did are sustainable.
80. The first question must, of course, be framed in *Wednesbury* terms. Mr Payne's headline submission was that the finding of serious harm, the paramount public interest in protecting public confidence in the police, PC Javeed's failure to demonstrate appropriate insight, even before the panel, and the relatively low weight that should be given to his personal mitigation all point to this being a decision on sanction that was clearly wrong.
81. I certainly see the force of these arguments, and my mind has wavered. However, I cannot conclude that the panel reached a conclusion that was simply not open to it. The key features of this case possibly militating against dismissal were the absence of sexual motivation, the fleeting nature of the contact, and the finding that "his intentions were friendly and light-hearted". In short, and in rejection of one of Mr Payne's overarching submissions, a proper calibration of the public interest in all the circumstances of this case did not necessitate dismissal. To the contrary, provided that it is clear from the panel's reasons that they understood the paramount importance of this public interest (as I have defined it at §50 above), the weight to be accorded to it was for the panel to determine. In my judgment, this is clear enough. I refer to the following two passages in its ruling on outcome:

"We have been mindful of the threefold purpose of the police misconduct regime as set out in the College of Policing Guidance. Police officers are rightly held to the highest of standards and the protection of the public confidence in and the reputation of the police service are paramount."

and

"This officer has come extremely close to dismissal without notice owing to the seriousness with which such behaviour is now regarded."

82. My second question requires an examination of the panel's reasons for imposing the sanction it did. I have the following concerns about these.
83. First, the panel found that it was "disturbing" that PC Javeed "appears to show little recognition of how disrespectful and potentially intimidating this would have been for a young female member of staff etc." In my judgment, although I might have put the matter slightly differently, this was an entirely fair assessment. Yet in the very next paragraph of its decision on gross misconduct, the panel said that it was "gratifying" that PC Javeed had belatedly apologised. The decision on outcome is closer to the "gratifying" than the "disturbing":

“This officer has come extremely close to dismissal without notice owing to the seriousness with which such behaviour is now regarded, and his apparent lack of self-awareness at the time that his conduct was inappropriate and disrespectful. We acknowledge that he has now finally apologised for the upset caused and, having reflected upon it, shows some awareness of how it may have been perceived by Miss A and also the wider public.”

84. Furthermore, and this aspect is also relevant to the issue of outcome, I repeat that the panel have not addressed PC Javeed’s evidence that Miss A had previously invaded *his* personal space. In my judgment, there is an unresolved tension between these parts of the panel’s decision, as well as a failure to address an issue which called for some analysis.

85. Secondly, there is a tension between the following passages in the panel’s decision:

“12. The Panel has considered the College of Policing Guidance (chapter 4) when assessing the seriousness of the conduct. In the current climate of public and national concern about any police officer who appears to behave disrespectfully or abusively towards women, this matter takes on a heightened and aggravated seriousness. The culpability of the officer and risk of wider harm to the reputation of the police and public confidence is, in our view, considerably high.

...

... We have accepted that his intentions were friendly and light-hearted but his actions went too far and fell below the standard of appropriate behaviour that is expected of him. We also accept that the standards by which he should be judged and public expectations have rightly shifted in the intervening period between the date of the incident and today’s hearing (as per paragraph 4.72 of the Guidance).”

88. The first citation, from para 12 of the panel’s decision on gross misconduct, references the aftermath of the Sarah Everard case and her tragic abduction and murder in March 2021. In terms of its impact on public perception, the panel’s reasons are intelligible. Although “considerably high” could certainly have been better phrased, what the panel was saying was that the harm to the public interest was serious.

89. It was wrong at this stage of the panel’s decision-making process to conclude that PC Javeed’s culpability was also “considerably high”. That assessment was made before taking into account any mitigatory factors bearing on the circumstances of the offence. Even so, my reading of the panel’s decision on sanction was that these circumstances *were* considered at that juncture. This error therefore leads nowhere.

90. The real tension I am referring to is between para 12 of the decision on gross misconduct and the paragraph concluding with the reference to para 4.72 of the Guidance. This was not a case where standards had arguably changed between the date of the events

complained of and the date of the panel's decision. Only two years had elapsed, and although Ms Everard's murder had intervened that had no impact whatsoever on PC Javeed's culpability. Placing a hand under a woman's armpit was as serious in 2020 as it was in 2022, and PC Javeed would have known that. All that changed is that public concern in inappropriate conduct in police officers has increased. I reject Ms Stevens' submission that in the context I am currently examining Ms Everard's murder was some sort of watershed moment.

91. Mr Payne criticised other aspects of the panel's reasoning. He submitted that too much weight was given to personal mitigation. It is true that the panel spent time rehearsing the personal mitigation, but the authorities make it clear that it must be considered. The panel said in terms that "personal mitigation may have a less significant part to play in deciding outcome". Again, that might have been better phrased, but this was not a case of "especially serious" misconduct, as it would have been had the primary case prevailed. Personal mitigation could, therefore, have some part to play in deciding the outcome. There is insufficient indication that the panel accorded to it disproportionate weight in the overall circumstances of this case.
92. Mr Payne submitted that the final substantive paragraph of the decision on outcome amounted to no more than assertion:

"We take the view that a final warning of an extended duration to reflect the seriousness of the matter would be sufficient to ensure that the officer learns from this process for the future and is given a further chance to prove himself as a police officer and, as a sanction, would also protect the public confidence in and reputation of the police force which is more important than the impact of this outcome upon any individual member. In coming to this conclusion, we have considered how an individual member of the public may view this case in particular and as a whole, having heard and seen all of the evidence and made the same findings as we have done."

93. Given PC Javeed's limited acceptance of his degree of culpability, I have to say, and not for the first time, that this conclusion is somewhat generous to him. Many would say that he scarcely deserved another chance. However, I reject the submission that the panel's reasons are unclear or inadequate. Mr Payne's real complaint is that the panel's conclusion was perverse, but that raises the separate issue which I have already addressed.
94. Finally on this topic, Ms Stevens drew my attention to the crisp observations of Mostyn J in para 56 of his judgment in *Commissioner of Police of the Metropolis v A Police Conduct Panel & Russell and Strickland* [2022] EWHC 2857 (Admin):

"It is axiomatic that reasons for a decision will always be capable of having been better expressed. It is well-known that a reviewing court should not subject a decision to narrow textual analysis. Nor should it be picked over or construed as though it were a piece of legislation or a contract (see *Volpi v Volpi* [2022] EWCA Civ 464 at [2(vi)] per Lewison LJ and *Re F* [2016] EWCA Civ 546 at [23] per Sir James Munby P)."

I have applied this approach.

95. Plainly, it should only be in rare circumstances where the reviewing court concludes that the decision at issue was one that was open to the panel on the merits but the latter's reasons are insufficient. This is one of those cases. There are, in my judgment, material errors in aspects of the panel's key reasoning. The reference to the change in standards is plainly wrong. But in my judgment what the decision would or should have been in the absence of these errors cannot be stated with sufficient confidence. Either outcome is possible.
96. I have reached that conclusion because it seems to me that a panel properly directing itself in all material respects could reach the same conclusion as did this panel, or it could decide to dismiss PC Javeed. This case, as the panel correctly said, is finely balanced. I have taken that factor into account in reaching my decision that, even if the notional errors (in PC Javeed's favour) are removed, the outcome remains uncertain.
97. In these circumstances, the only just course would be to allow this application for judicial review and remit the case to a panel with a different legally qualified chair for further consideration of the issue of outcome/sanction. I direct that the parties file brief submissions in writing as to whether the panel should be wholly reconstituted or one or both of the "wing" members should be present.
98. I should be crystal-clear as to the basis on which this further consideration should take place. The panel's findings of fact must stand (Ground 1 has failed), as must the conclusion that PC Javeed was guilty of gross misconduct. However, before the panel it will be open to the parties to advance further submissions, and if necessary call further evidence, on these issues:
 - (1) the degree of harm to the wider public interest, including public confidence in and the reputation of the police force (I have articulated my concerns about para 12 of the panel's decision on the issue of gross misconduct. Although their overall conclusion must stand, I direct that the degree of harm to the wider public interest should be reconsidered.)
 - (2) the seriousness of PC Javeed's misconduct in the light of the panel's findings of fact.
 - (3) personal mitigation, including the weight to be given to it in the circumstances of the instant case.
 - (4) PC Javeed's insight, awareness and understanding of the impact of his actions.

DISPOSAL

99. This application for judicial review succeeds. PC Javeed's case should be remitted to a Police Misconduct Panel for reconsideration in the light of my judgment.

ANNEX A

FINDING: Gross Misconduct

FULL ACCOUNT OF REASONS FOR THE FINDING:

Identify those allegations found proven, and what factual basis you find the charge proved. Identify which witnesses preferred and why.

1. The Panel needs to be satisfied of the Appropriate Authority's case on the balance of probabilities and has reminded itself of that standard when making factual findings.

2. The Panel heard direct evidence from Miss A, in relation to the incident which took place shortly after 8.20am on 11 August 2020 and were also referred to her witness statements made on 11 August 2020 and 28 August 2020. The Panel was also shown CCTV evidence from the Detention officer's office, which covered most of the office space. This footage was shown to Miss A during her evidence, and the Panel noted that she had not been shown the footage prior to making her statements.

3. In terms of any pre-existing relationship between PC Javeed and Miss A, both parties have accepted that they may have had some work-related conversation on a few occasions before the date of the incident and PC Javeed knew of Miss A's first name by hearing it from others. They had not socialised together outside of work and did not have an intimate relationship. PC Javeed has maintained that there had been some previous physical contact of a friendly nature such as a pat on the shoulder or fist-pump, and he had had some conversations with Miss A of a light-hearted nature but Miss A has denied any previous physical contact or conversations beyond polite greetings. They were not accustomed to regularly working together although it has been agreed that their shifts overlapped at various times and there may have been interactions between them of an insignificant and non-memorable nature. Both have agreed that Miss A was not one of PC Javeed's closer female colleagues. Both have agreed that there was no previous flirtatious or suggestive behaviour between them.

4. Therefore, whatever the discrepancies there may have been between the witnesses as to previous interactions, there were no circumstances as we see it that would have justified the close proximity of the physical contact which is evidenced by the CCTV and indeed admitted by PC Javeed himself, and the more intimate touching as alleged by Miss A.

5. Having watched the CCTV evidence, the Panel finds that PC Javeed came far too close to Miss A than would be appropriate

in a professional situation. When he initially entered the room and went over to her desk, he leaned over her in an overbearing and intimidating way, which clearly invaded her personal space. The Panel accepts that he put his hands on her shoulders and may have inadvertently touched her hair. He then moved away from her but came back to stand next to her again; the reason for this is not apparent and neither party can remember the conversation clearly, although it seems realistic to us that some conversation must have taken place about the prisoner that PC Javeed was about to bring into custody and a response came from Miss A that caused PC Javeed to turn back to her. Miss A has accepted in her second witness statement that she initiated the conversation with PC Javeed by asking him “what shit are you dealing with?” and that this was done in a light-hearted manner; it seems probable to us that the conversation which followed was also light-hearted.

6. We can see from the CCTV that PC Javeed put his phone down with his left hand on the desk next to Miss A and put his hands onto her shoulders again. It seems that the action of putting the phone down was a deliberate act to free up his left hand. There was a clear lack of respect for her personal space once again. The Panel also finds that he did put his left hand under her arm towards her rib cage, which has been admitted by him. It is not possible to see from the CCTV a deliberate squeezing of the breast. Having considered all of the oral evidence, the Panel cannot be satisfied to the relevant standard of proof that he deliberately squeezed her breast but does accept that in putting his left hand around her left side the Officer deliberately touched Miss A in the area very close to the side of her left breast, which may have been perceived by her as “groping”, and has concluded that this level of physical touching was highly inappropriate. The Panel also finds that he squeezed her shoulders repeatedly which may have been perceived as a kind of massage-type movement and this was also inappropriate.

7. The Panel heard directly from the witness DO Collins who was in the same room at the time of the incident, but not watching directly and he appeared to have limited engagement with the whole incident, as he was occupied with looking at his mobile phone. Miss A reported to him what had happened immediately after PC Javeed had left the room, within a matter of minutes, and also demonstrated to him her perception of the touching of her left side and breast with her left hand, which can be seen on the CCTV footage.

8. In making these findings, the Panel has considered Miss A’s own evidence which we found to be sincere and without malice, the fact that she immediately told her colleague in the same room, DO Collins, and also reported the matter very quickly

afterwards to Inspector Webb and made her statement within a couple of hours. We accept that she may have frozen with shock or surprise and did not have much of an opportunity to react at the time. Her account has been consistent with the CCTV evidence and there would appear to be no reason for her to lie about what had happened. The Panel understands entirely that her reaction to this behaviour would have been one of upset and shock.

9. The AA's case is that all of the touching as shown on the CCTV was inappropriate, as the relationship between the two parties was entirely professional and the incident took place within a professional location. The Panel entirely agrees with this position, and also finds it disturbing that PC Javeed has accepted a certain level of physical touching which would ordinarily be considered inappropriate in any modern workplace situation and appears to show little recognition of how disrespectful and potentially intimidating this would have been for a young female member of police staff, in an inferior position vis a vis a police constable.

10. The Panel has considered carefully the evidence of PC Javeed, both from his interview and the oral evidence given by him at the hearing. The Panel has accepted that there were no sexual motivations on the part of the Officer or malign intentions; he was intending to be friendly and was in a particularly good mood owing to his performance having been praised that same morning. However, he went too far in tactile behaviour within a professional setting with someone that he did not have a close friendship with. It is gratifying that the Officer has now recognised the upset and offense caused to Miss A and has apologised for his behaviour.

11. The Panel has concluded that there were serious breaches of both standards, relating to Authority, Respect and Courtesy, and also Discreditable Conduct. Officers must ensure that their behaviour and language could not reasonably be perceived to be oppressive or intimidating and, in conducting themselves at work, must not engage in inappropriate behaviour when on duty or in an office environment. In this instance, PC Javeed did not treat a member of police staff with the respect and courtesy she is entitled to expect. In behaving in the way that he did, such conduct would inevitably bring the police service into disrepute and damage the relationship of trust and confidence between the police and the public. Both the public and staff / officers within the police force are entitled to be treated with respect and courtesy and to feel safe from unwanted touching when at work or going about their daily business.

12. The Panel has considered the College of Policing Guidance (chapter 4) when assessing the seriousness of the conduct. In the

current climate of public and national concern about any police officer who appears to behave disrespectfully or abusively towards women, this matter takes on a heightened and aggravated seriousness. The culpability of the officer and risk of wider harm to the reputation of the police and public confidence is, in our view, considerably high.

13. Our finding is therefore that the conduct as a whole amounts to gross misconduct, in that it is so serious that dismissal would be justified.

ANNEX B

DISCIPLINARY ACTION IMPOSED:

Full account of the reasons for the disciplinary action imposed

We have been mindful of the threefold purpose of the police misconduct regime as set out in the College of Policing Guidance. Police officers are rightly held to the highest of standards and the protection of the public confidence in and the reputation of the police service are paramount.

As set out above, and following the Guidance on aggravating factors as we must, we have found that the officer was culpable in that the inappropriate touching that we have found to take place was a deliberate act on his part and showed a disregard for the personal space and physical dignity of Miss A, who was in an inferior position as a member of police staff. The conduct could have been seen as intimidating and overbearing, although we have not found that it was sexually motivated and did not amount to a deliberate squeezing of her breast. We have accepted that Miss A would have been caused and has been caused some psychological distress and her confidence in the workplace has suffered. We also accept that the likelihood and risk of harm occurring to the public reputation of and confidence/trust in the police could be substantial.

This officer has come extremely close to dismissal without notice owing to the seriousness with which such behaviour is now regarded, and his apparent lack of self-awareness at the time that his conduct was inappropriate and disrespectful. We acknowledge that he has now finally apologised for the upset caused and, having reflected upon it, shows some awareness of how it may have been received by Miss A and also the wider public.

We also bear in mind that there are other mitigating factors, namely that the misconduct was confined to a single episode of extremely brief duration, a matter of seconds, and that the officer was not motivated by a desire to pursue a sexual or inappropriate emotional relationship with a colleague. This is not a case of outright abuse of authority for the purpose of sexual gain. We have accepted that his intentions were friendly and light-hearted but his actions went too far and fell below the standard of appropriate behaviour that is expected of him. We also accept that the standards by which he should be judged and public expectations have rightly shifted in the intervening period between the date of the incident and today's hearing (as per paragraph 4.72 of the Guidance).

Whilst personal mitigation may have a less significant part to play in deciding upon outcome, we have taken account of the Officer's personal mitigation, namely his long-standing enthusiasm and commitment to the job, his positive character references and the views of his Area Commander. We accept that he is a dedicated, hard-working and capable officer without any previous record for inappropriate behaviour towards women or vulnerable members of the public, and he does have a previous record of service prior to becoming a police officer with vulnerable young people which we have heard about through one of his referees.

We take the view that a final warning of an extended duration to reflect the seriousness of the matter would be sufficient to ensure that the officer learns from this process for the future and is given a further chance to prove himself as a police officer and, as a sanction would also protect the public confidence in and reputation of the police force which is more important than the impact of this outcome upon any individual member. In coming to this conclusion, we have considered how an individual member of the public may view this case in particular and as a whole, having heard and seen all of the evidence and made the same findings as we have done.

We therefore impose a final written warning, to last for an extended period of 5 years, under s.42(3)(b)(i) and s.42(10) of the Police (Conduct) Regulations 2020.

We would recommend that if this has not already taken place, this officer is offered further training to develop his self-awareness and emotional intelligence when operating around female members of the public and colleagues.