

IN THE MATTER OF POLICE (CONDUCT) REGULATIONS 2020
WILTSHIRE CONSTABULARY
AND IN THE MATTER OF

POLICE CONSTABLE 1809 FRANK KATUS

PANEL DECISION AS TO THE FACTS

1. The panel sat for 3 days from Monday 15th January until Wednesday 17th January.
2. The panel was chaired by Jenny Tallentire (Barrister) sitting with Fay Howard (independent panel member) and Superintendent Guy Elkins.
3. Charles Apthorp of counsel represented the Appropriate Authority. The officer was assisted by Sgt Phil Matthews of the Police Federation. The panel is grateful for their assistance.

ALLEGATIONS OF FACT

4. The Regulation 30 notice sets out the following allegations.
 1. You joined Wiltshire Police in 2003. From October 2014 onwards you were serving as Roads Policing Officer.
 2. During the first few months of 2023 you exchanged messages via Facebook and WhatsApp with Witness A, a police staff colleague. It is alleged that these included inappropriate and unwanted comments about Witness A's physical

appearance, including that in late January 2023 you said to Witness A "If you were not gay or married, you would be my type".

3. It is further alleged that you sent a number of messages to two female Wiltshire Police colleagues which contained highly offensive and inappropriate 'meme' type images. In particular, this included the following:
 - a. On 15 January 2023 at 18:47 you sent Witness B via WhatsApp an image featuring a baby next to the text "This is what they get when a man marries a woman" above an image of pile of faeces next to the text "This is what they get when a man marries a man". This image was, or could reasonably be perceived to be, homophobic in nature.
 - b. On 29 January 2023 at 18:28 you sent Witness B via WhatsApp a cartoon image of a child drawing a picture of a classroom teacher's vagina. On 30 January 2023 at 18:28 you sent the same image to Witness A. This image was derogatory towards women.
 - c. On 2 February 2023 at 20:20 you sent Witness B via WhatsApp a cartoon image of Jack and Jill, with the text "JACK & JILL RAN UP THE HILL SO JACK COULD LICK JILL'S FANNY, BUT JACK GOT A SHOCK AND A MOUTHFUL OF COCK BECAUSE JILL'S A FUCKING TRANNY!". This message was derogatory towards trans people.
 - d. On 2 February 2023 at 23:10 you sent Witness B via WhatsApp an image with the text, "WOMEN WILL PIERCE THEIR BELLY BUTTONS, NIPPLES AND TONGUES GET TATTOOS, WAX THEIR LADY BITS AND INJECT SILICIONE IN THEIR TITS. BUT WHEN ITS TIME FOR A BIT OF ANAL SUDDENLY THAT HURTS TOO MUCH". This message was derogatory towards women.

- e. On 5 February 2023 at 14:47 you sent Witness B via WhatsApp an image showing the convicted sex offender Gary Glitter appearing to fish for a naked baby (in an altered image based on the album cover of 'Nevermind' by Nirvana). This image was offensive in nature in belittling child sexual abuse.
 - f. On 5 February 2023 at 14:47 you sent Witness B via WhatsApp a blurred image of a naked female with the text, "Should have gone to Specsavers!" This message was derogatory towards women.
5. In his Regulation 31 response, and in his evidence, the officer has admitted that he sent all of the messages which are set out in the Reg 30 allegations. He has admitted that they "could" be perceived as offensive, although he asserts that he did not intend them to be perceived as such. He states that the conversations were private. He has apologised for his conduct.
6. He has admitted that his behaviour amounts to misconduct, but denies that it should be assessed as gross misconduct.

PRELIMINARY MATTERS

7. Prior to the hearing the Chair had made the following directions:
- (a) That the complainants would be anonymised and referred to throughout as Witness A and witness B.
 - (b) That the hearing would be in public.
 - (c) That no witnesses were required to give evidence, save that the officer himself would give evidence if he wished to do so.
8. In his Regulation 31 response the officer stated at paragraph 11 that he had symptoms that "could suggest" he suffered with PTSD, and that such a diagnosis had clouded his

judgment. He sought to put forward his mental health difficulties as mitigation for his lack of judgment in sending the memes. Because of that the Chair directed at the PTR that any medical evidence to support such a diagnosis should be made available to the panel to enable the panel to consider, in part, whether the officer was suffering from a disability within the terms of the Equality Act at the time that he sent the messages which are the subject of the allegations.

9. The panel has since been provided with a letter from the officer's GP dated 6 November 2022, and some medical notes (appropriately redacted) covering his attendance at the GP through 2022 and 2023. There is no medical evidence by way of a psychological or psychiatric report which is advanced on the officer's behalf. The officer does not have a diagnosis of PTSD. He has been visiting his GP since 2019 describing symptoms of anxiety and depression. In the run up to these allegations being made he was stable on a prescription of sertraline, working in his normal job and performing well (according to his line manager who has provided a reference). He did not visit the GP between June and October 2022, and when he did visit in October 2022 it was in response to a particular work event which caused stress. His dosage of sertraline was then increased by his GP. On the basis of the information available to the panel, things appeared stable until the current misconduct allegations were made and he was suspended from work in February 2023. It is clear from the messaging contained in the evidence bundle that the officer was working a normal pattern at the time of the allegations. The panel is therefore satisfied on the balance of probabilities that the officer was not suffering from a disability within the terms of the Equality Act at the time of these allegations.

THE PANEL'S APPROACH

10. The panel has approached the case in the following stages –
 - a) Facts: to find the facts, based upon what is admitted by the officer and/or proven, on the balance of probabilities.

- b) Standards: to assess whether those facts (as the panel find them to be) breach one or more of the Standards of Professional Behaviour and, if so, which; and
- c) Effect: to assess whether the individual and cumulative effect of such breaches amounts to misconduct or gross misconduct.

11. The panel has kept in mind at all times that the legal and evidential burden lies on the AA and the standard of proof in misconduct proceedings is the civil standard of the balance of probabilities. The test is a simple unvarying balance of probabilities; what is more likely than not. The seriousness of the allegations of misconduct and/or the seriousness of the consequences for the officer do not require a different standard of proof, merely appropriately careful consideration by the panel before it is satisfied of the matter which has to be established. The inherent probability or improbability of the conduct occurring is itself a matter to be taken into account whether, on the balance of probabilities, the conduct occurred. In making the decision the panel has to give appropriate careful consideration to the evidence (9.10/9.11 Home Office Guidance 2020).
12. The panel has considered the bundle of evidence provided, which included a statement from each of Witness A and B. Also provided to us were whatsapp messages and Facebook messenger messages and Facebook comments between the officer and witness B, and Teams messages, meme images and a timeline of events provided by Witness A. The panel has heard evidence from the officer.
13. The panel were also provided with a bundle of character evidence. At the time of these allegations the officer had 20 years of service within the Police. He had been a Roads Policing Officer since 2014. The 4 character references provided are all from colleagues within Wiltshire Police. In the references the officer is described as friendly, caring and someone who shows empathy to colleagues and members of the public. His most recent line manager on the Roads Policing Unit described him as professional and courteous. Another referee described the officer as having a “good, broad sense of humour” and said that “I have always found him to use his humour appropriately be it at work or otherwise”, and “Frank’s character is such that he would never seek to upset

or offend anyone”. The panel has taken those references in account and kept them in mind as we reach our factual findings, although we also record the fact that we were told that those character referees did not know the nature of the allegations faced by the officer (or that he had admitted misconduct) at the time that they wrote the references. This fact does reduce the weight to which we can attach to them.

FINDINGS OF FACT

14. Allegation 1 is agreed by the officer and on that basis it is found provided.
15. As set out above, the officer does not dispute that he sent of all of the messages which are detailed in the Regulation 30 Notice in points 2 and 3. He has also agreed that all of those messages were inappropriate, and could be perceived as highly offensive. There has not been any factual dispute as to *what* was sent, or *when*, or to *whom*.
16. In allegation 2 relating to Witness A, it is alleged that the officer sent her inappropriate and unwanted comments about her physical appearance, which included the comment, “If you were not gay or married, you would be my type”. The officer has said that he never intended anything other than to “compliment” Witness A when he made comments on her physical appearance. Witness A had only returned to work after a period of maternity leave in September 2022 and she had met the officer shortly after that, in the workplace. The officer sent her a Facebook friend request on 24 January 2023, and it was at that point that Witness A gave him her mobile number as a more convenient way of communicating. Almost immediately the officer began to send her messages via Whatsapp, which included comments on her physical appearance. She detailed in her statement (and it is not disputed by the officer) that the first message he sent of this nature was in response to her telling him that she had had 2 children. The officer sent a message to the effect, “Two kids and you’ve kept that figure!”. Witness A said that made her feel uncomfortable. Almost immediately the officer would follow up with a message along the lines of, “sorry don’t think I am a

perv". This made Witness A feel that she had to make light of the comment regardless of her true feelings, and so she would reply with something like, "Don't be silly". It was against that background that the message detailed in allegation 2 was sent. Again the officer followed the message with an apology. These messages were usually sent late in the evening.

17. At the same time as these messages were being sent to Witness A, she also noticed that the officer was looking at her historic Facebook pictures and making comments on them. This included comments such as "cute", or "beautiful". When she uploaded a new profile photograph to her Facebook account, the officer commented "ding dong". This was followed shortly afterwards with a whatsapp message apologising and asking her not to think of him as a 'creep'. Witness A found these comments inappropriate.
18. The panel finds to the required standard that the messages sent to Witness A about her physical appearance were inappropriate and unwanted. Allegation 2 is therefore proved.
19. The timeline provided by Witness A (and not disputed by the officer) demonstrates that for approximately a week commencing on 24 January 2023 she was sent numerous messages by the officer. On some days she received several images or memes. Included within those messages was the cartoon image of a child drawing a classroom teacher's vagina which was sent to her on 30 January 2023 (allegation 3b).
20. The panel notes that the pattern of the officer sending inappropriate messages, quickly followed by an apology to Witness A, was also behaviour that he used towards Witness B. That behaviour had the same effect on both women; they didn't want to cause offence and his apologies led them to minimise his behaviour, despite their true feelings. In addition the officer also made comments on historic Facebook posts of Witness B.

21. Allegation 3 in the Regulation 30 notice particularises a number of meme type images alleged to be highly offensive and inappropriate which were sent to the officer's two female colleagues. The officer has admitted that he did send all of these memes and so the fact of them being sent is proved. Whilst the officer accepted in his Reg 31 response that they "could be perceived as highly offensive, he holds that he never intended them as such". In evidence he stated, "I'm responsible for what I say but not for how others portray or perceive it". He also told the panel, 'If I mean it one way I can't be responsible for others perceiving it the wrong way'.
22. The officer was not asked specifically about the image which is detailed in allegation 3a. This image is described in the Reg 30 Notice. The panel has no hesitation in finding to the required standard that this image is homophobic.
23. The cartoon image of a child drawing a teacher's vagina (allegation 3b) was sent to both Witness A and Witness B on consecutive days. The officer was cross-examined about this image. He told the panel that he had no idea why he sent that image to Witness B. He disagreed with the suggestion that he must have known it was highly offensive at the time he sent it. He agreed that it could be perceived as offensive, but only if it was perceived, as he expressed it, in "the wrong way". When he was asked what he thought was the right way to interpret that cartoon, he replied that it was about students obeying commands. The panel finds to the required standard that the cartoon is derogatory towards women. The panel finds that it is not credible to suggest, as the officer tried to in evidence, that there is any other way which it would be reasonable to interpret that cartoon. In terms of the context, it was sent on a Sunday evening to Witness B when that morning she had sent him a message saying that she didn't want to talk.
24. Allegation 3c refers to the cartoon image of Jack and Jill. The officer was cross-examined about this cartoon. He stated that he "was not in any way shape or form making light of somebody's gender". When he was asked what it meant, he minimised it by describing it as "a silly poem". He said he had no recollection of sending it. The panel finds to the required standard that this image is derogatory towards trans

people. The panel finds that it is not credible to suggest, as the officer tried to in evidence, that there is any other way to interpret that cartoon.

25. Allegation 3d refers to women and anal sex. This was sent to Witness B less than 3 hours after the image in 3c on 3 February 2023. The officer was cross-examined about this image, and he agreed that “it could be offensive” but also said “everyone has a different view”. The panel finds to the required standard that the cartoon is derogatory towards women. The panel finds that it is not credible to suggest, as the officer tried to in evidence, that there is any other way to interpret that image.

26. Allegation 3e refers to the image showing the convicted sex offender Gary Glitter appearing to fish for a naked baby. This was sent to Witness B on 5 February 2023. When cross-examined about this image the officer stated that he has 2 children himself, and that he does not condone offences against children. He told the panel that when he worked in the prison service many years ago he looked after Paul Gadd (Gary Glitter) in prison, and that he viewed that image as “taking the mick out of Paul Gadd”. Notwithstanding this evidence the panel finds to the required standard that the image is offensive in nature and does belittle child sexual abuse.

27. Allegation 3f refers to the blurred image of a naked female with the text, “Should have gone to Specsavers!”. This was sent to Witness B at the same time as the Gary Glitter image referred to in 3e. The officer said that he could not remember now why he had sent that image to Witness B. The panel finds to the required standard that the cartoon is derogatory towards women.

28. In addition to the specific images which are particularised in the Reg 30 notice, the officer also sent an image of an erect penis to Witness B on 10 January 2023. Witness B stated that she found this to be, “totally unsolicited and improper”. He was cross-examined about this image. He told the panel in evidence that it was an old picture of his penis which was taken to share with his wife. He had edited it using photolab so that it appeared more like a sketch rather than a photograph, and so it looked “less real” (as he put it). He also said in evidence that he had no idea why he had sent that

to Witness B. The panel has carefully considered the messages that the officer sent to Witness B alongside this image of his own penis. He asked her “real or fake lol”. He told the panel that he thought the editing made his penis look “less real”. The next day, after messages on a different topic, he raised the topic again and asked Witness B again in a message whether she had, “worked it out....real or not”. When she replied that she thought it was real, she replied, “I would say do you want to see it for real, but that’s overstepping the mark Imfao (emojis)”. She replied, “yeah just a bit (emojis)”. The panel finds that the unsolicited sending of a picture of his own penis by this officer to a female work colleague was totally inappropriate.

29. The messages with Witness B included a number of ‘selfies’ of the officer when he was topless and one when he was wearing his dressing gown on the sofa. The officer was asked about those photographs in evidence. His evidence was that there is nothing inappropriate about the topless photographs because men routinely walk around in warm weather with no top on. He told the panel that they were taken after he had had a bath. The panel finds to the required standard that these photographs were sent in part to try to encourage Witness B to send him photographs of herself. The panel has reached this conclusion because of the undisputed evidence that the officer tried to encourage both women to turn on their cameras when they were using Microsoft Teams for work meetings, and the messages he sent to Witness B asking her to send him a ‘selfie’. His evidence about the selfie photograph in his dressing gown (sent on 18 January 2023) is that was an old photograph because he had not had that leather sofa for a while. Although the officer did not give any further evidence about that photograph, the panel finds to the required standard that the photograph was sent for the purpose of suggesting to Witness B that the officer had an erection under his dressing gown. The reason for reaching this conclusion is because of the messages the officer sent immediately afterwards – “it’s a bit naughty lol”, and “glad you didn’t notice then Imfao”.

30. In addition, having reviewed the statements from both Witness A and B, the messages, and the timeline, the panel finds to the required standard that –

- (a) The officer gained the trust of both women by discussing his own mental health with them, and presenting himself to them as a friendly work colleague who wanted to support them with their mental health;
- (b) Very quickly after obtaining their mobile phone numbers, he began to message both women inside and outside of work hours;
- (c) The messages increased over time, both in terms of frequency and in terms of the level of sexualised content;
- (d) There was a sexual motive for the messaging with both women. By that the panel means that the officer was messaging either because he was in pursuit of sexual gratification or in pursuit of a future sexual relationship with both women. The panel has reached this conclusion not only because of the sexual innuendos contained within the messages, and the selfies and graphic images which were sent, but also because the Facebook comments he made were about the physical appearance of both women, and the behaviour of the officer when he visited them in the office was over-familiar and involved sexualised language (for example, the reference to “fanny Fridays” when he took his dog into the office);
- (e) The tone of the messaging with Witness B was, at times, demeaning, in that he repeatedly praised her by saying “good girl” and called her “sweetheart”;
- (f) The messages, in the context of the other behaviour by his officer, created an intimidating, hostile, degrading, humiliating and offensive environment for both Witness A and Witness B.

31. The officer has stated in his Regulation 31 response, and in evidence, that he did not intend to cause offence, and that if either of the women had asked him not to send messages of the type he was sending, then he would have ceased immediately. It is fair to record that during his exchanges with both witnesses, the officer did often apologise for going too far immediately after sending something sexualised, and then both witnesses would tend to reply to minimise what had happened or say it was alright (as set out at paragraph 16 above). They have said that they did so largely in order to avoid any awkwardness. In addition at some points earlier in the messaging with Witness B, the officer did apparently seek reassurance from her that he was not offending Witness B and on occasion she told him she was not offended, but that was

not in relation to the most graphic and offensive memes/images which are the subject of the Regulation 30 allegations.

32. The panel notes at this point that s.26 Equality Act 2020¹, and applicable case law to which we have been referred, defines harassment *by the effect* it has upon the recipient. Harassment cannot be displaced merely by a lack of intent by the person acting in the way which is the subject of the allegation. The panel has found, on the balance of probabilities, that the officer did harass both women, within the definition in section 26, Equality Act 2020.

ALLEGATIONS OF BREACHES OF PROFESSIONAL STANDARDS

33. It is contended by the AA that the officer's actions, if proved, breached the following Standards of Professional Behaviour:

- a. Authority, Respect and Courtesy, and
- b. Equality and Diversity, and
- c. Discreditable conduct.

34. The panel finds that both allegation 2 and 3 (both individually and taken together) breached the standard of Authority, Respect and Courtesy. That is because the officer has behaved in way which has damaged his own reputation and that of policing, by engaging in behaviour which was harassing and offensive towards 2 female colleagues. The panel's findings reflect that the officer established and pursued an improper sexual or emotional relationship with 2 people with whom he came into contact through the workplace. At the

¹ PSA v (1) HCPC & (2) Leonard Ren-Yi Yong [2021] EWHC 52 (Admin)

time he did so he was aware that both women were struggling with their mental health, and used that fact to establish a mutual connection and therefore their trust. Some of the messages he sent in pursuit of those relationships were sent when he was on duty.

35. The panel finds that both allegation 2 and 3 (both individually and taken together) breached the standard of Equality and Diversity. In allegation 2 the officer did not treat Witness A fairly and with respect. His unwanted and inappropriate comments referenced both her sex and her sexual orientation. He did not act towards witness A fairly. In allegation 3 the officer sent highly offensive, homophobic, transphobic, misogynistic and derogatory images and memes to both witnesses. In doing so he discriminated against women, homosexuals and trans people in the clearest possible way.
36. The panel finds that allegation 3 breaches the professional standard of Conduct. The officer's behaviour in sending highly offensive and derogatory images and memes of the type described brings discredit on Wiltshire Police and undermines public confidence in policing. This is because of the content of the messaging and the way the officer behaved towards 2 colleagues. The panel also bears in mind the finding we have made that one of these memes belittled child abuse. The panel finds that those within the protected characteristic groupings mentioned above would, in particular, be likely to have their trust and confidence in the police damaged were they to become aware of these messages. But in addition, the panel finds that the public generally would find the officer's conduct whilst on and off duty to be discreditable. This is particularly so given the current climate and recent cases in other forces which have drawn considerable media attention to the conduct of police officers, although even without those cases the panel still find allegation 3 to have breached this professional standard.
37. Allegation 2, on its own, does not breach the professional standard of Conduct. However, viewed together with allegation 3, allegation 2 does breach the professional standard of Conduct. That is because the officer harassed 2 female work colleagues.

EFFECT

38. As set out in the Outcomes Guidance para 3, misconduct is generally defined as unacceptable or improper behaviour. The Conduct Regulations further define misconduct as a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action.
39. Gross Misconduct is defined as a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal.
40. The panel finds that the breaches of the professional standard of Conduct, Equality and Diversity, and Authority, Respect and Courtesy individually and together amount to Gross Misconduct. Each of the breaches of these professional standards are so serious as to justify dismissal.

Jenny Tallentire LQC
Superintendent Guy Elkins
Fay Howard

17 January 2024