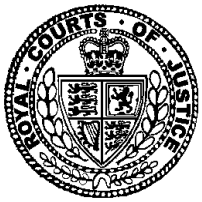

Neutral Citation Number: [2022] EWHC 1951 (Admin)

Case No: CO/3164/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 July 2022

Before :

THE HONOURABLE MRS JUSTICE HEATHER WILLIAMS DBE

- -

Between :

THE QUEEN **on the application of** **THE COMMISSIONER OF POLICE OF THE METROPOLIS**	**Claimant**
- and –	
POLICE APPEALS TRIBUNAL	**Defendant**
1) SUPERINTENDENT ROBYN NOVLETT WILLIAMS **2) DIRECTOR GENERAL OF THE INDEPENDENT OFFICE FOR POLICE CONDUCT**	**Interested Parties**

- -

Anne Studd QC and Daniel Hobbs (instructed by **Directorate of Legal Services**) for the **Claimant**
Gerard Boyle QC (instructed by **Kingsley Napley**) for the **First Interested Party**

Hearing dates: 5 – 6 July 2022

- -

Approved Judgment

Mrs Justice Heather Williams:

Introduction

1. The Claimant applies for a judicial review of the 22 June 2021 decision of the Police Appeals Tribunal ("PAT") to impose a Final Written Warning ("FWW") on Superintendent Robyn Williams. The Commissioner submits that the only reasonable outcome was her dismissal without notice. Permission to apply for judicial review was granted by Calver J on the papers on 16 December 2021. Pursuant to Hill J's order of 21 March 2022, the case was heard together with Claim CO/2766/2021 which raises similar, albeit not identical, grounds of challenge; and which is the subject of a separate judgment handed down at the same time as this judgment. As is usual, the PAT has adopted a neutral position and has played no active part in these proceedings. The First Interested Party, Supt Williams, has supported the PAT's decision and resisted the Claimant's grounds. The Second Interested Party, the Director General of the Independent Office for Police Conduct, has taken no active part.

2. On 13 March 2020, Supt Williams appeared before a special case hearing ("SCH") in respect of a single allegation that she had breached the Standards of Professional Behaviour in relation to Discreditable Conduct as a result of her criminal conviction in November 2019 for possession of an indecent image of a child. As I describe below, the circumstances of the offence were highly unusual. Given the nature of the offence and Supt Williams' senior rank within the Metropolitan Police Service ("MPS"), the criminal case attracted considerable publicity. The SCH was presided over by Assistant Commissioner Helen Ball who determined that the conduct amounted to gross misconduct and that Supt Williams should be dismissed without notice.

3. Supt Williams appealed the sanction imposed and her appeal was heard by the PAT on 16 June 2021. She did not challenge the finding of gross misconduct. The PAT allowed the appeal and then re-took the decision on sanction. The Claimant does not challenge the overturning of AC Ball's decision but contends that the PAT's re-determination of the appropriate sanction was legally flawed.

4. The Commissioner advances two grounds of challenge. The first is that the PAT failed to follow the structured approach required by law of first assessing the seriousness of the conduct by reference to culpability, harm, aggravating and mitigating factors ("Ground One"). In addition to this over-arching contention, Ground One has a number of sub-grounds as follows:

    i) The PAT failed to take into account or make any proper assessment of the seriousness of Supt Williams' conviction ("Ground 1(a)");

    ii) The PAT erred in treating Supt Williams' personal mitigation as pivotal and determinative of where the public interest lay ("Ground 1(b)"); and

    iii) The PAT erred in its approach to the aggravating and mitigating factors in respect of HHJ Marks' sentencing remarks ("Ground 1(c)").

5. The Commissioner's second ground is that the PAT took into account irrelevant considerations, namely:

i) That Supt Williams had been singled out for prosecution amongst those who were sent the image; and /or

ii) In weighing the officer's acquittal on the corruption charge against the aggravating feature of the dishonesty inherent in her conviction.

6. The Commissioner submits that in light of these errors the outcome determined by the PAT was outside the range of reasonable responses open to it and perverse and that, accordingly, this Court should quash the PAT's decision and substitute it with the sanction of dismissal without notice.

7. Supt Williams contends that the PAT did not err in law in imposing a FFW or, if there was any error, the same decision would have been reached in any event if it had applied the correct approach. In the further alternative, she argues that the case should be remitted to the PAT for re-consideration, as dismissal without notice is not the only reasonable option available.

The legal framework

Special case hearings

8. The Police (Conduct) Regulations 2012/2632 ("the 2012 Regs"), made pursuant to powers conferred by sections 50, 51 and 84 Police Act 1996, applied to the disciplinary processes in this case. Gross misconduct is defined as a breach of the Standards of Professional Behaviour "so serious that dismissal would be justified" (regulation 3(1)). The Standards of Professional Behaviour are contained in Schedule 2 and include that: "Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty".

9. Where an investigator believes that the appropriate authority ("AA") would be likely to determine that the special conditions are satisfied, they may submit a statement to that effect (regulation 18(3)). The Claimant is the AA for present purposes. On receipt of the investigator's statement, the AA determines whether the special conditions are satisfied (regulation 41(1)). The "special conditions" are that: (i) there is sufficient evidence, in the form of written statements or other documents, without the need for further evidence, whether written or oral, to establish on the balance of probabilities that the conduct of the officer concerned constitutes gross misconduct; and (ii) it is in the public interest for the officer concerned to cease to be a police officer without delay (regulation 3(2)). If it determines that these conditions are satisfied, the AA may certify it as a special case and refer it to a SCH (regulation 41(4)). Pursuant to regulation 43, the officer is provided with the AA's certificate issued under regulation 41(4) and giving written notice of this and describing the conduct that is the subject matter of the case and how it is alleged to amount to gross misconduct. Regulation 45 makes provision for the officer's response, including indicating whether he or she accepts that the conduct amounts to gross misconduct and providing any written submissions by way of mitigation.

10. Pursuant to regulation 53(13) the person conducting the SCH reviews the facts of the case and decides whether the conduct in question amounts to gross misconduct. No witnesses other than the officer may give evidence at the SCH (regulation 53(5)). Where gross misconduct is found, the options in terms of sanction are to impose a FWW, extend an existing FWW or dismiss without notice (regulation 55(1)). The decision-maker is

required to have regard to the record of police service of the officer concerned as shown on their personal record (regulation 55(10)).

The Police Appeal Tribunal

11. Section 85 Police Act 1996 imposes a duty on the Secretary of State to "by rules make provision specifying the cases in which a member of a police force or a special constable or a former member of a police force or former special constable" may appeal to a PAT. Appeals are brought under the Police Appeals Tribunal Rules 2012/2630. Rule 4 sets out the circumstances in which an appeal to the PAT may be brought. These include an appeal by an officer against whom a finding of gross misconduct has been made at a SCH (rule 4(2)(c)). The appeal may be against that finding and/or against the disciplinary action imposed (rule 4(1)). Amongst other grounds, an appeal may be brought on the basis that the disciplinary action imposed was unreasonable (rule 4(4)(a)). Rule 22(1) states that the PAT shall determine whether the grounds of appeal have been made out. The Chair is required to prepare a written statement of the PAT's determination and the reasons for its decision (rule 22(5)).

12. It is well established that the test for "unreasonableness" under rule 4(4)(a) is something less than the *Wednesbury* test: the authorities were summarised by Freedman J in *R (The Chief Constable of Northumbria Police) v The Police Appeals Tribunal & Barratt* [2019] EWHC 3352 (Admin) ("*Barratt*") at para 16(c). Once it has concluded that the unreasonableness test is met, the PAT is entitled to substitute its own view, addressing the matter on a "clean slate" basis and dealing with the appellant in any way in which they could have been dealt with by the misconduct panel or SCH: *R (Chief Constable of Cleveland Constabulary v Police Appeal Tribunals & Rukin* [2017] EWHC 1286 (Admin) at para 53.

Determining sanction

The structured approach

13. In *Fuglers LLP & Ors v Solicitors Regulatory Authority* [2014] EWHC 179 (Admin) ("*Fuglers*") Popplewell J (as he then was) explained that there were three stages to be adopted when determining sanction. The case concerned the Solicitors Disciplinary Tribunal ("SDT") but the approach has since been applied to the police. The stages were: (1) assess the seriousness of the misconduct; (2) keep in mind the purpose for which sanctions are imposed by the tribunal; and (3) choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question. Mr Justice Popplewell went on to explain the process as follows:

> "29. In assessing seriousness the most important factors will be (1) 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 harm 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 be informed by (3) aggravating features (e.g. previous

> disciplinary matters) and (4) mitigating factors (e.g. admission at an early stage or making good any loss)…
>
> 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…"

14. In *R (The Chief Constable of Greater Manchester Police) v Police Misconduct Panel & Roscoe* (13 November 2013) ("*Roscoe*") HHJ Pelling QC, sitting as a judge of the High Court, identified what a decision maker needed to show by way of compliance with this approach:

> "16. …The only way a court or anyone else reading the decision can be satisfied that the correct structured approach has been adopted is if either the panel identifies the structured approach that it is required to adopt expressly in the body of its decision and then explains how it has arrived at the relevant decision applying that approach. If that ideal approach is not adopted but it is apparent from the language used by the tribunal that in substance such an approach in fact has been adopted then the court will not intervene. Obviously however the court will not guess or assume that a correct approach has been adopted if that is not apparent on the face of the decision."

15. When the PAT remakes a sanctions decision it stands in the place of the original decision maker and is required to take the same approach: *R (The Chief Constable of Nottinghamshire Police) v Police Appeals Tribunal & Flint* [2021] EWHC 1248 (Admin) ("*Flint*"), per Steyn J at para 75.

Sanction of dismissal

16. Where gross misconduct is established there is no presumption that the outcome should be dismissal unless there is something exceptional to justify an alternative sanction: *Flint* at para 69. However, it is well recognised that there are particular categories of cases where a strict approach is taken. In *Bolton v Law Society* [1994] 1 WLR 512 ("*Bolton*") at 518C, Sir Thomas Bingham MR (as he then was) recognised in respect of solicitors that in cases of proven dishonesty the outcome had almost invariably been that the individual was struck off the Roll of Solicitors, no matter how strong the mitigation advanced. In *R (The Chief Constable of Dorset) v Police Appeals Tribunal & Salter* [2011] EWHC 3366 (Admin) ("*Salter*") Burnett J (as he then was) said that the correct approach on a finding of serious impropriety by a police officer in the course of his duty was reflected in the approach identified in *Bolton*:

> "22. …The reasons which underpin the strict approach applied to solicitors and barristers apply with equal force to police officers. Honesty and integrity in the conduct of police officers in any investigation are fundamental to the proper workings of the criminal justice system. They are no less

> important for the purposes of other investigations carried out by police forces…The public should be able unquestioningly to accept the honesty and integrity of a police officer. The damage done by a lack of integrity in connection with the investigation of an alleged offence may be enormous. The guilty may go free. The innocent may be convicted. Large sums of public money may be wasted. Public confidence in the integrity of the criminal justice system may be undermined. The conduct of a few may have a corrosive effect upon the reputation of the police service in general."

17. Mr Justice Burnett went on to identify factors that the decision maker should have regard to when considering the appropriate sanction (para 24). He said that cases of "proven dishonesty and lack of integrity in an operational environment" were the most serious and that in such cases the sanction of dismissal would "to use the language of Sir Thomas Bingham in *Bolton* 'almost inevitably' be appropriate", but there existed a "a very small residual category" where a lesser sanction may be available (para 24 iii)). The Court of Appeal dismissed an appeal from Burnett J's decision and endorsed his approach: *Salter v The Chief Constable of Dorset* [2012] EWCA Civ 1047. At para 19 Maurice Kay LJ observed that "a sanction resulting in the officer concerned having to leave the force will be the usual consequence of operational dishonesty" but he acknowledged the possibility of exceptional cases.

Personal mitigation

18. Sir Thomas Bingham MR explained the limited value of personal mitigation in *Bolton* at 519B as follows:

> "Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again….All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness…The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price."

19. An analogous approach applies to police officers. In *Salter*, Burnett J said that as the most important purpose of the sanction was to maintain public confidence in the police and maintain its collective reputation, "personal mitigation is likely to have a limited impact on the outcome" (para 24 ii)). This approach was endorsed by the Court of Appeal in

Salter. Lord Justice Maurice Kay noted that a police officer would often be able to refer to an unblemished past and the esteem of his or her colleagues, but because of the importance of public confidence "the potential of such mitigation is limited" (para 25).

20. In *R (Williams) v Police Appeals Tribunal & Commissioner of Police of the Metropolis* [2016] EWHC 2708 (Admin), [2017] ICR 235 ("*Williams*"), Holroyde J (as he then was) rejected the submission that this approach to personal mitigation was confined to cases of dishonesty or a lack of integrity, indicating that it applied to all forms of gross misconduct by a police officer, as public confidence in the police service may be seriously harmed by many forms of misconduct (paras 63 - 64). He continued:

> "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."

21. In *Williams,* the claimant's challenge to his dismissal was unsuccessful. The Court accepted that character testimonials from a number of local politicians and community and religious leaders had been relevant evidence but did not consider that it could be inferred from their contents that public confidence and respect would be maintained if the officer was not dismissed (para 72). The Court pointed out that it was not clear whether all the witnesses were aware of the details of the admitted misconduct, that they

did not represent the only view expressed in the particular case and that in any event it was for the panel to determine the likely effect on public confidence (para 72).

The Court's jurisdiction

22. The Court's jurisdiction is more limited than in respect of a statutory appeal from a body such as the SDT. In accordance with usual judicial review principles, a public law error must be established before the PAT's decision can be quashed. Whether the Administrative Court would have made the same decision as the SCH or the PAT is not in point. As Burnett J explained in *Salter*:

> "25. At each level in the disciplinary process, the decision maker or decision making body is expert in nature. It knows and understands how the police service works. It knows and understands the importance of maintaining integrity amongst police officers. It knows and understands the impact that serious misconduct can have on the force concerned and the police service in general. Parliament has provided that the Tribunal is the appellate body for these purposes. There is no further appeal to the High Court. The Tribunal is subject to the supervisory jurisdiction of this court… the approach of this court in judicial review is different from the approach adopted when sitting in an appellate capacity from the Solicitors Disciplinary Tribunal. Absent another error of law on the part of the [PAT] its decision on sanction could be interfered with only on classic *Wednesbury* grounds, in short that on the material before it no reasonable Tribunal could have reached the conclusion that it did."

23. In *R (Wilby-Newton) v Police Appeals Tribunal & Chief Constable of South Yorkshire Police* [2021] EWHC 550 (Admin) Julian Knowles J noted that this applied with particular force where this Court was asked to overturn a particular sanction imposed for misconduct, as in that type of case: "the PAT with its expertise are better placed than the Court to determine what is required by way of sanction to maintain confidence in policing", but that it may apply with lesser force where the Court is asked to intervene because of an alleged error of law (para 86). In *Williams*, Holroyde J recognised: "I have to pay appropriate respect to… [the PAT's] experience and expertise in balancing the public interest and the individual circumstances of a defaulting police officer" (para 74).

24. This Court's limited role is reflected in Freedman J's observation in *Barratt* that it should guard against the misuse of its jurisdiction by Chief Constables seeking to mount what are in effect "undue leniency" appeals (para 21).

The College of Policing Guidance

25. The College of Policing's "Guidance on outcomes in police misconduct proceedings" ("the CoP Guidance") is issued by the College of Policing pursuant to section 87 of the Police Act 1996. The parties accept that it reflects the principles identified in the case law. The document is intended to ensure consistency and transparency in assessing conduct and imposing outcomes (para 1.2). The guidance states that it does not override the discretion of decision makers, who will determine the appropriate outcome in each case based on its particular facts and circumstances (para 1.3). It was accepted that the

panel had to exercise its discretion in accordance with the structure identified in the guidance in *Roscoe* (para 14) and in *R (Chief Constable of West Midlands Police) v Panel, Chair, Misconduct Panel & Officer A* [2020] EWHC 1400 (Admin) ("*Officer A*") (para 30). In *Officer A* Eady J addressed the extent to which the panel was required to refer to the CoP Guidance in its decision:

> "53. It is common ground that the Panel was required to follow the three-stage structured approach laid down in the Guidance…That said, as Mr Butterfield QC submits, this did not mean the Panel was required to exhaustively cite each consideration set out in the Guidance, or to ruminate upon each part, in order to demonstrate adherence to it. Equally, however, the mere fact that the Panel expressly referred to the structured approach laid down in the Guidance would not be, of itself, enough to demonstrate that it had applied that approach. The issue is one of substance rather than form. The Panel was not involved in a tick-box exercise but was required to apply the structured approach laid down as a way of ensuring that its Outcome Decision properly took account of all relevant matters and afforded the necessary primacy to public confidence. The question is whether the Outcome Decision, as explained in this case, demonstrates this."

26. Although she identified clear errors that led to her quashing the misconduct panel's decision in that case, Eady J adopted "a generous approach" to the panel's reasoning (para 59), affording it "a degree of latitude" (para 58), so that, for example, although it did not refer to discriminatory conduct being especially serious, as set out in para 4.51 of the CoP Guidance, she accepted that in substance this was encompassed within the panel's reference to the officer's culpability as "high" (para 57). She indicated that "it would be wrong to necessarily expect cross-referencing to each relevant point within the Guidance" (para 58).

27. The CoP Guidance notes the threefold purpose of the police misconduct regime, namely: to maintain public confidence in and the reputation of the police service; to uphold standards in policing and deter misconduct; and to protect the public (para 2.3). The decision maker should have regard to the principle of proportionality, weighing the interests of the public with those of the officer (para 2.9). Although misconduct proceedings are not designed to punish the officer, the outcome can have a punitive effect and therefore the sanction should be no more than is necessary to satisfy the purpose of the proceedings. Less severe outcomes should be considered first and the least severe outcome that deals adequately with the issues identified and protects the public interest should be chosen (paras 2.10 & 2.11).

28. Section 4 of the CoP Guidance addresses the assessment of the seriousness of the misconduct. Paras 4.2 and 4.4 adopt the three stage approach identified in *Fuglers* and the four categories by which seriousness is to be assessed (para 13 above). Reflecting the case law, the text states that the most important purpose of imposing disciplinary sanction is to maintain public confidence in and the reputation of the policing profession as a whole and that this must take precedence over the specific impact on the individual whose misconduct is being sanctioned (para 4.5). It continues: "[c]onsider personal mitigation such as testimonials and references after assessing the seriousness of the conduct by the

four categories above" (para 4.6). It recognises that there may be overlap between the categories (para 4.7).

29. The CoP Guidance considers culpability from para 4.10. Para 4.13 recognises that culpability will be increased if the officer was holding a position of trust or responsibility at the relevant time. Para 4.15 indicates that the types of misconduct which the guidance then addresses are "especially serious". The first of these is where there has been a conviction or caution for a criminal offence. The text (without reproduction of the footnotes) states:

> "4.16 It is entirely unacceptable for police officers who are responsible for enforcing the law to break the law themselves.
>
> 4.17 The level of culpability depends on the seriousness of the offence. The sentence imposed by the criminal court is not necessarily a reliable guide to seriousness in misconduct proceedings, which are primarily directed towards maintaining public confidence in the profession. A relatively minor criminal offence may be of the utmost gravity in the professional context.
>
> 4.18 The conviction or caution may relate to on or off-duty conduct. While the person(s) conducting the proceedings cannot question the conviction or sentence imposed, they can consider the circumstances of the offending and form their own view of the gravity of the case.
>
> 4.19 Offences of dishonesty, sexual offences (including possession of child pornography) and violent crime are particularly serious and likely to terminate an officer's career. Such offending involves such a fundamental breach of the public's trust in police officers and inevitably brings the profession into disrepute.
>
> 4.20 Any criminal conviction will be serious, however, and likely to have an adverse impact on public confidence in policing. An officer's conviction or caution may be disclosed to the prosecution and defence during the course of a criminal trial, with the potential for undermining the investigation and the prosecution."

30. Operational dishonesty is dealt with at paras 4.25 – 4.32 and 5.1 – 5.4. In short, the text reflects the case law I have already referred to; in such circumstances dismissal is the "almost inevitable outcome".

31. The CoP Guidance addresses harm from para 4.57, indicating that this can comprise not only harm suffered by individuals and/or a wider community.

> "Effect on the police service and/or public confidence
>
> 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."

32. The CoP Guidance then provides non-exhaustive lists of potential aggravating and mitigating factors (paras 4.67 – 4.71).

33. Section 6 of the CoP Guidance addresses personal mitigation. Again, it reflects the case law that I have already summarised. It states that "[p]urely personal mitigation is not relevant to the seriousness of the misconduct"; and that this is to be considered after assessing the seriousness of the misconduct (para 6.2). Personal mitigation including whether the officer has made a significant contribution to the police service should be considered (para 6.3), but "the weight of personal mitigation will necessarily be limited particularly where serious misconduct has been proven" (para 6.4). 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" (para 6.6). Nonetheless, "personal mitigation is always relevant and should always be taken into account" (para 6.9).

The material facts and circumstances

Background

34. Supt Williams began her career as a police officer at the age of 18. She went on to become the first black female Sergeant in Nottinghamshire Police. She joined the MPS in 2008 and attained her current rank of Superintendent in 2014. In her witness statement for these proceedings, she says that she is the only female Black, Asian or multiple-ethnic heritage uniformed Superintendent in the MPS.

35. The record of Supt Williams' police service that was read out at the PAT hearing was prepared by Chief Supt Helen Harper, the Borough Command Unit ("BCU") Commander for Central West London. It recorded that Supt Williams undertook Inspector roles in the MPS until 2010 when she became an Acting Chief Inspector. During 2014 – 2016 she worked as part of the Command Team for the Notting Hill Carnival. In June 2017 following the Grenfell Tower tragedy she was part of the Command Team, becoming the lead for community engagement and ongoing stakeholder management. In the period 2017 – March 2018 she was a Temporary Chief Supt in the role of Borough Commander for Sutton. Since March 2018 she had worked at Westminster performing the roles of HQ Supt and, more recently, operational support. Her service history was described as "exemplary" and her awards and commendations were listed, including a Queen's Policing Medal awarded for distinguished service in 2004 and a Commissioner's Commendation for outstanding leadership at Grenfell. Her commitment to policing and supporting her team and colleagues was described as "outstanding".

The conviction

36. On the morning of Saturday 3 February 2018, Jennifer Hodge sent an indecent video showing a female child engaged in sexual activity with an adult male to her 17 WhatsApp contacts, including her sister Supt Williams. The video had been sent to Ms Hodge by her partner, Dido Massivi. Over the weekend of 3 – 4 February Supt Williams and her sister were in contact and spent time together. Following one of the other recipients reporting the image to the police, a criminal investigation was begun and Ms Hodge was arrested late at night on Sunday 4 February 2018. She called her sister from the police station shortly after 8am on Monday 5 February.

37. From 30 October 2019 – 19 November 2019 Supt Williams stood trial at the Old Bailey before the Common Serjeant, HHJ Marks QC and a jury. She was charged with possession of an indecent image of a child, contrary to section 160, Criminal Justice Act 1988. The image was a Category A. Her defence was that she only became aware of the indecent contents of the video when her sister called her from the police station. Ms Hodge and Mr Massivi were tried along with her, charged with distributing the image (and in Mr Massivi's case with two additional offences). Supt Williams was also charged with a corrupt or improper exercise of her powers as a constable contrary to section 26, Criminal Justice and Courts Act 2015, it being said that she had not taken steps to report the matter to the police to protect her sister. Supt Williams was convicted on the possession charge and acquitted on the corruption charge. Ms Hodge and Mr Massivi were convicted on the charges they faced.

38. On 26 November 2019 Supt Williams was sentenced to a community order with a requirement that she perform 200 hours of unpaid work (which she subsequently undertook). In his sentencing remarks, HHJ Marks acknowledged that in so far as he had imposed a lesser sentence than contemplated by the Sentencing Guidelines he did so "having regard to the very unusual circumstances of this case… which, in my judgment makes this a case which is very far removed from the sort of case contemplated by the Guidelines". By dint of her conviction Supt Williams was required to register as a sex offender for five years. Mr Massivi received a 12 month sentence of imprisonment suspended for two years and Ms Hodge a community order requiring her to do unpaid work for 100 hours.

39. The sentencing remarks of HHJ Marks QC in respect of Supt Williams included the following:

> "The issue that arose in your case was whether or not you were aware on either the Saturday or the Sunday that your sister had sent you the video. My interpretation of the jury's verdict is that your assertion that you were not so aware and only learned of the fact on Monday morning following the phone call from your sister from Colindale police station, was rejected by them.
>
> …..
>
> Given the extreme reaction of your sister on receiving that video from her partner, I regard the idea that when the 2 of you finally spoke at 7 p.m. on Saturday evening, that she had forgotten all about the video, as being utterly fanciful; and I am sure that by this time at the latest you were aware of the video being on your phone and in broad terms of its contents, albeit I accept that you never played it.
>
> Moreover, I regard it as being equally fanciful that throughout all the time that you spent together on the Sunday, the video was never discussed between you.
>
> The fact that you did nothing about this was a grave error of judgment on your part, especially given the fact that by dint of your job, you knew the imperative of so doing and had the ready means at your disposal to act, as you yourself told the jury. It is though an error of judgment from which you neither gained nor stood to gain in any way which makes it all the harder to understand.
>
> As the prosecution have submitted, this represents a serious aggravating feature…
>
> You have had a stellar career in the police force for over 30 years; that is amply demonstrated by the awards you have received, the high mark that you achieved and the truly outstanding character evidence called on your behalf during the trial.

> Against this background it is a complete tragedy that you find yourself in the position that you now do."

HHJ Marks QC went on to say that he bore in mind that: (i) Supt Williams was in no way responsible for the video being sent to her; (ii) it was in her possession for a relatively short period of time; (iii) there was no question of her having it for sexual gratification; (iv) the case concerned one video only; and (v) regardless of any penalty imposed, the consequences of the conviction would be immense "in particular so far as your employment and career are concerned".

40. On 22 January 2020, the Court of Appeal refused the Attorney General's application to refer the sentences of Mr Massivi and Ms Hodge as unduly lenient. No equivalent application was made for Supt Williams' sentence.

41. Supt Williams sought to appeal her conviction and sentence. Permission to do so was refused by the full Court of Appeal on 10 March 2021: [2021] EWCA Crim 327. Giving the judgment of the Court, Dame Victoria Sharp, President of the QBD, observed that the issue for the jury was whether Supt Williams could satisfy them that she had not seen the image and did not know, nor had cause to suspect, that it was indecent; and that they had been entitled to reject her evidence on that issue. The prosecution case was described as a strong one.

The disciplinary proceedings

42. Supt Williams was not suspended in the period between February 2018 and her trial and she undertook full time duties for the MPS. Following her conviction and sentence she continued to work full time. On 3 December 2019 Cmdr Catherine Roper determined that suspending her from duty was not necessary. Her written determination recorded her view that the issue of public confidence was not best served through the officer being suspended "as it is clear that many communities have had their confidence negatively impacted through the investigation itself". She identified restrictions to be imposed on the duties that Supt Williams could undertake.

43. A misconduct investigation was undertaken by the Independent Office for Police Conduct. In light of her conviction, the conduct matter was certified as suitable for determination at a SCH. A notice pursuant to regulation 43 of the 2012 Regs informing her of this was served on Supt Williams on 14 January 2020. The notice said that her conviction was discreditable conduct as it "discredits the police force and undermines public confidence in it"; and that it was considered to amount to gross misconduct. The notice also referred to the jury's verdict indicating "they did not accept that you were unaware of the content of the video until Monday morning when your sister was arrested".

44. Supt Williams submitted a regulation 45 response dated 6 March 2020. It referred to her "life-long and dedicated service to the public" and summarised her police career and achievements. It included extracts from an accompanying bundle of character evidence from a wide range of police officers (of both senior and more junior rank) and community leaders, a number of whom expressed the view that it would be damaging to public confidence in the MPS if she was dismissed. A link to an online petition signed by over 12,500 members of the public was supplied. It was argued that her offending did not amount to gross misconduct and, alternatively, that dismissal would be disproportionate.

45. The bundle included testimonials from the following (which were referred to in the PAT's decision): (i) Insp Jones, who said that Supt Williams had maintained the confidence of the community affected by the Grenfell Tower fire, many of whom had attended to support her during her trial and she maintained the confidence of her colleagues; (ii) Martin Hewitt, a former MPS Assistant Commissioner and current Chair of the National Police Chiefs Council, who said he retained his professional respect for the roles Supt Williams had undertaken and believed "she still has a contribution to make to policing"; (iii) Cmdr Richard Smith, who said he greatly admired Supt Williams' commitment to public service, that he recognised the seriousness of the matters under consideration, but "based on my previous experience of her conduct and character, I would have no hesitation in continuing to work with [her] as a trusted colleague in the police service"; and (iv) Cmdr Sue Williams, Head of Safeguarding, who said that Supt Williams had worked tirelessly for the communities she had served and that she had supported her in her role at events and conferences "and will continue to do so".

46. Mr Boyle QC also drew my attention to the following testimonials in particular: (i) from Superintendent Alan Duncan, who said he did not believe the conviction had had a significant detrimental impact on the MPS and that if Supt Williams were to be dismissed this would have a more significant adverse impact on some communities' confidence than retaining her services would do; and (ii) from former Inspector Donaldson who was present when Supt Williams was sentenced and said she was astounded by the level of support from officers from various forces, community leaders and members of the public. She said that in her view dismissal would damage the trust and confidence of certain communities that Supt Williams had worked closely with.

47. In her career summary, Chief Supt Harper said that if the decision was made to retain Supt Williams, she "would be willing to retain her on my BCU".

48. The SCH took place on 13 March 2020. AC Ball concluded that the allegation amounted to gross misconduct and that the appropriate outcome was dismissal without notice. Supt Williams appealed the sanction outcome.

The Police Appeals Tribunal

49. On 27 July 2020, the PAT Chair determined that the appeal should proceed to a hearing. This was held on 16 June 2021. The Panel comprised Rachel Crasnow QC (the Chair), Assistant Chief Constable Mark Travis of South Wales Police and Mr Piers Westlake who was a former Superintendent in West Midlands Police. The PAT allowed the appeal, substituting a FWW for 18 months.

50. The PAT's written decision was dated 22 June 2021. It set out the "Relevant Factual Background" from para 4. It noted that the conviction related to a single image which Supt Williams had not asked to receive, that she had never played the video attached to the WhatsApp message and that her possession of the image was not motivated by any sexual interest (para 5). It recognised that the regulation 43 Notice contained an allegation "based on the possession conviction itself" (para 6). At para 7, the PAT referenced the sentence imposed and the Judge's sentencing remarks regarding her honesty, which, the PAT said, had been relied upon by the SCH Presiding Officer both in finding that there was gross misconduct and in her dismissal outcome. The PAT then set out the substantive parts of the SCH Presiding Officer's decision, including further detail about the

sentencing remarks, noting that the Judge had found that Supt Williams had not told the truth to the jury and that her actions had been a grave error of judgment.

51. Paragraphs 16 – 20 of the PAT's decision summarised the law. The three stage approach described in *Fuglers* was referenced and the need for the decision-maker to follow that structured approach and show that they had done so, as identified in *Roscoe* (paras 14 above). The PAT recognised that when deciding on disciplinary action, the maintenance of public confidence in the profession was "a factor of particular importance". As regards personal mitigation, the PAT cited *Salter*, *Williams* and *Bolton* observing that: "whilst personal mitigation may be relevant, the protection of the public and the interests of the profession will be given greater weight because of the nature and purpose of disciplinary proceedings, particularly where serious misconduct has been proven". The PAT said that personal mitigation would not be ignored, as there is a public interest in keeping officers who possess skills and experience (as recognised in *Giele v General Medical Council* [2005] EWHC 2143 (Admin)) and there is a sliding scale, with "the more serious the misconduct, the greater the weight given to the interests of the profession, and the protection of the public". Ms Studd QC accepts that these paragraphs accurately set out the law.

52. Between paras 23 – 36 the PAT analysed the Presiding Officer's decision, concluding that it was "unreasonable" within the meaning of rule 4(4)(a) for a number of reasons, including: that she had afforded too much weight to the sentencing judge's comments about dishonesty given there was no Honesty and Integrity charge; that inadequate notice had been taken of the numerous character testimonials to the effect that the officer's dismissal would risk damaging the MPS' reputation; that the MPS had provided no evidence that Supt Williams' retention throughout the investigation and prosecution had resulted in a loss of public confidence, in circumstances where the evidence indicated she still held the trust and confidence of the community; and AC Ball had not grappled with the fact that Supt Williams had not been suspended from duties. In a footnote, the PAT provided 28 cross references to character statements that had expressed the view that Supt Williams' dismissal would damage the force. Additionally, in paras 30 – 31 the PAT referred to the views expressed by Insp Jones (para 45 above), Cmdr Roper (para 42 above) and Chief Supt Harper (para 47 above).

53. From para 37 onwards the PAT addressed its "clean slate" determination of the appropriate sanction. In light of the Claimant's grounds, it is necessary to set out a number of the paragraphs that followed in full:

> "37. Our approach has been to follow and apply the COP guidance, in order to apply the requisite principles and arrive at our outcome decision. When assessing seriousness, we acknowledge that the question of seriousness is not a binary question. In the areas of culpability, harm, aggravating and mitigating circumstances we identified the fact of the conviction *per se* along with being placed on the Sex Offenders Register, which is an extremely serious matter for anyone let alone a serving officer.
>
> 38. We do not think that there was shown to be a risk of harm arising from the conviction nor a risk of such behaviour being repeated. It is significant with regard to risk that the MPS

permitted the Appellant to continue to work albeit on a restricted basis after her arrest and also after her conviction. It is noteworthy that two of the testimonials which call for her to remain an officer able to provide a valuable service, are from MPS safeguarding leads. The same message is set out in the testimonial from Martin Hewitt, now Chair of the National Police Chiefs' Council, who when previously an Assistant Commissioner for the MPS held various roles including being a senior leader for territorial and front-line policing, giving him a strong understanding of community confidence and safeguarding.

39. As an aggravating factor we need to identify the fact of Ms Williams being disbelieved by the jury at her Crown Court trial in relation to whether she had been told by her sister what image the message sent to her by her sister contained. But we also bear in mind that the Appellant had been acquitted of a second charge of police corruption at the Crown Court. Since we are not able to assess the extent to which the suggested dishonesty was grossly improper it would be wrong to assume this against her.

40. We note that the AA did not charge the Appellant with a breach of the Professional Standard of Honesty and Integrity; it would therefore be unfair to treat her as though this was an element of her actual misconduct. The sensible way of dealing with a situation where a Misconduct Panel wishes to scrutinise an officer's conduct under different Standards to that or those specified in the Regulation Notices, which accords with the principles of natural justice, is to inform the officer that breaches of additional Standards might be considered by the misconduct panel as early as possible…see *R (on the application of the Chief Constable of the Derbyshire Constabulary) v Police Appeals Tribunal* [2012] EWHC 2280 at paragraph 38 and following where Beatson J said that finding somebody guilty of a matter amounting to serious misconduct without having charged the same was bad practice.

41. That the AA did not put a charge of breach of the professional Standard of Honesty and Integrity before the SCH must impact on the weight given to the Crown Court judge's sentencing comments about truthfulness and overall culpability. Accordingly we give the fact of the dishonesty less weight that [sic] had that been the case.

42. As against the aggravating fact of the conviction and the comments made by the trial judge at sentencing, we must take into account that there was never a suggestion of a sexual element to the possession conviction. We also note the image was in the Appellant's possession for a short time."

54. The PAT said that it accepted the mitigating features relied upon by Supt Williams but it had not double counted them and having the image for a short time and there being no sexual intent, which reduced the seriousness of the misconduct, had been considered under culpability (para 43).

55. The PAT indicated that having assessed the seriousness of the conduct by reference to culpability, harm, aggravating features and mitigating circumstances, it then moved on to assess personal mitigation (para 44). It noted again that personal mitigation "has a limited effect" particularly in gross misconduct cases because of "the vital purpose when imposing disciplinary sanctions is that of maintaining public confidence in and the reputation of the policing profession as a whole" (para 44). The PAT then set out paras 6.2 – 6.9 of the CoP Guidance in full (para 33 above). It noted that there was no dispute that Supt Williams had had an immensely successful career to date (para 46). The decision then emphasised:

> "47. In this case there is an important overall theme echoed by the testimonials before us. Rather than simply her continued employment said to be damaging respect for the force, the contrary is contended for. Many, many voices from a wide range of positions argue that the MPS will suffer reputationally in terms of community trust and confidence should dismissal take place. Additionally there is substantial evidence from internal and external voices as to the Appellant's unique organisational skills set and the difference the Appellant has made to the MPS and the wider community during her service in a whole range of ways. Therefore this is not simply a question of applying the principles from the case of *Giele*; it is also focusing upon avoiding loss of confidence in the force which many say will occur should dismissal go ahead."

56. The PAT noted the impressive testimonials and the fact she was permitted to work throughout the criminal investigation and after her conviction (para 48) and then continued:

> "49. There was felt by some to have been unfairness in the decisions to arrest and charge the Appellant given that some other 16 people had been sent the image and none of them had been arrested or charged despite not all of them having deleted or reported the image (and some of them had watched it). This view is communicated in some of the testimonials. We do not reach any view about this as we do not have the relevant material before us nor is it a specific factor in this appeal; rather it is an issue going to public confidence…The PAT has not had the benefit of seeing the full rationale for the Appellant being the only recipient to be charged, but we note the concerns about overall inconsistency with the way she was treated when compared with other such recipients…"

57. The PAT observed that the testimonials showed that the Appellant was a bridge between the communities she served and the MPS at a very high level. Further reference was made

to the testimonials indicating the negative impact on confidence in the MPS that would result from her dismissal (para 50). The decision then said:

> "52. We are aware we cannot be certain that the views of those who have provided testimonials represent the public at large, but given the extent of such evidence we do not see how the possibility of an alternative view (about whom no evidence has been solicited) can outweigh the passionate and heartfelt views of whose [sic] who have made the effort to set out their views.
>
> 53. We have considered how young victims of sexual offences might respond to the retention of an officer with such a conviction. We think given the unique circumstances of this offence it cannot be rationally contended that were this officer to remain in the MPS her continued employment would reasonably undermine the confidence of current and future victims. We note again from *Giele* at [33] that the views of the public are expected to be reasonable and informed."

58. The PAT reminded itself that it needed to consider sanction by reference to the need to maintain public confidence in and the reputation of the police service; the need to uphold high standards and deter misconduct; and the need to protect the public (para 54); and that it needed to begin by considering the least severe available disciplinary action and work upwards (para 55). The PAT said the first question for it to decide was whether a FWW would "fail to protect the public or risk high policing standards being downgraded", noting that a FWW was a serious sanction (para 56). It then considered whether Supt Williams' continued employment was "even feasible" (para 57), noting that a risk assessment might be useful, but it believed there were a variety of feasible and meaningful roles available for her even if she could not work in the evidential chain (paras 58 - 59). Reference was made to Cmdr Roper's December 2019 assessment (para 42 above).

59. The PAT observed that the testimonials had assisted it in deciding whether dismissal was "a proportionate and necessary outcome" (para 59). It then set out its conclusion as follows:

> "60. Whilst such personal mitigation in itself only rarely assists in avoiding a dismissal for gross misconduct, this is one of those rare cases. Having taken into account all the factors when went to our views on seriousness and mitigation, we have reached the view that the 3-fold purposes of misconduct proceedings would be met by the Appellant being given a FWW of 18 months' duration. This is because the properly informed public would, in our view, understand the factors that we have contemplated, including: the unique circumstances of the conviction, the stellar career of the Appellant, the substantial impact she had had on enhancing the reputation of the Force as a whole and that her dismissal would reduce confidence in the police in some of the communities in which the MPS has

> struggled to gain trust. We have decided that the dismissal of the Appellant in this exceptional case is not necessary."

Evidence post-dating the Police Appeal Tribunal's decision

60. Both the MPS and Supt Williams filed evidence in these proceedings which post-dated the PAT's decision. At the hearing I emphasised the very limited utility of this material, given the Court's role in a judicial review challenge based on traditional public law grounds. I was told by counsel that it was provided by way of "background" and to give "context". In the circumstances I will only refer to it briefly.

61. In her statement dated 9 May 2022, Supt Williams described the roles she had undertaken since her return to work in June 2021. The restrictions on the roles she could undertake were reduced in November 2021 by Cmdr Betts of the MPS' Professional Standards Department ("PSD") and she was currently leading the Design, Integrity, Performance and Improvement team within the MPS' Frontline Policing HQ.

62. In his statement dated 13 May 2022, Bas Javid, the Temporary Deputy Assistant Commissioner of Professional Standards, described the vetting process applied to applicant police officers who have convictions or cautions. He also addressed the circumstances in which an officer's conviction would have to be disclosed to, and then by, the prosecuting authorities. He explained that Supt Williams underwent a vetting review after the PAT's decision and was re-instated. The decision is exhibited; Paul Slater concluded that it would not be proportionate to refuse clearance. TDAC Javid also explained that following disciplinary proceedings for gross misconduct that is proven but which does not result in dismissal, the officer may be subject to "risk management measures", which are ordinarily decided upon by the Superintendent in charge of the Directorate of Professional Standards' Integrity Assurance Unit ("IAU"). He said that the IAU is currently managing five officers who are serving with convictions for violent, dishonesty or sexual offences received during their service with the police. He said that there is a major impact on deployability where officers are retained with serious criminal convictions and he expressed the view that to do so is fundamentally at odds with the police's primary purpose of upholding law and order.

The Claimant's Grounds

63. In the Introduction I summarised the two grounds advanced by the Claimant. I will now set out the Claimant's contentions in relation to Ground One in more detail, as distilled from the Statement of Facts and Grounds ("SFG") and by reference to the three sub-grounds that I identified earlier.

Ground 1(a)

64. The PAT failed to make a proper assessment of the seriousness of Supt Williams' conviction in that:

    i) It failed to undertake any proper analysis of the seriousness of the gross misconduct and failed to refer to or apply the CoP Guidance in respect of convictions (SFG, paras 29, 31, 32 and 41);

ii) When considering harm, it failed to address the issue of maintaining public confidence in policing and the reputation of the MPS, instead focusing on the absence of any risk of harm caused by Supt Williams (SFG, paras 35 - 38);

iii) The MPS Safeguarding leads did not express the views attributed to them in para 38 of the decision (SFG, para 40); and

iv) It was wrong in principle for the PAT to consider the personal mitigation of Supt Williams in the form of the testimonials at the stage when it was assessing the seriousness of her conduct (SFG, para 39).

Ground 1(b)

65. The PAT fell into error in treating Supt Williams' personal mitigation as determinative in that:

i) It was unable to assess the impact of the personal mitigation because it had not first properly assessed the seriousness of the conduct (SFG, paras 44 – 45);

ii) The weight given to the personal mitigation was wholly disproportionate given the seriousness of her conduct (SFG, paras 46 and 49); and

iii) The issue of the public's confidence in policing cannot depend upon the personal mitigation of an individual officer (SFG, para 46).

Ground 1(c)

66. The PAT erred in relation to aggravating and mitigating factors in respect of HHJ Marks' sentencing remarks in:

i) Failing to treat her dishonesty in advancing an untruthful defence that the jury rejected as an aggravating factor (SFG, para 51); and

ii) Giving this less weight because it was not advanced as a breach of the Honesty and Integrity standard (SFG, paras 52 – 53).

An additional submission

67. Ms Studd began her oral submissions by saying that when an officer has been convicted of a serious criminal offence the approach that should be taken was analogous to that which applied where there had been operational dishonesty, so that dismissal was the "almost inevitable outcome" unless there were exceptional reasons not to take that course (paras 17 and 30 above). She said that the PAT had not approached the matter through this prism. When I pointed out that this was not one of the alleged legal errors advanced in the SFG, she agreed that it was not a ground of challenge in itself, but she said it was the theme that underpinned the grounds. I will return to this point after considering the specific errors that are relied upon in relation to Ground 1(a).

Discussion and conclusions

Ground One

68. I will first address the over-arching contention raised in respect of Ground One and then Grounds 1(a), 1(c) and 1(b). It is logical to consider the sub-grounds in this sequence as (a) and (c) relate to the assessment of seriousness, whereas (b) concerns the use the PAT made of personal mitigation.

The over-arching contention

69. In my judgment the PAT did follow the structured approach required by the case law and the CoP Guidance. As I have already indicated, the Claimant does not take issue with any aspect of the PAT's summary of the applicable legal principles (para 51 above). In addition, I note in particular that:

    i) The PAT directed itself in accordance with the three stages identified in *Fuglers* and replicated in paras 2.3 and 4.2 of the CoP Guidance when it summarised the legal framework (para 51 above) and again in its para 25 when assessing AC Ball's reasoning. Moreover, the structure of its decision conformed to this approach. As regards the first stage, the PAT assessed the seriousness of the misconduct at paras 37 – 43 of its decision. As regards the second stage, the PAT reminded itself of the purpose for which sanctions are imposed at paras 44 and 54 of its decision (a topic it had already addressed when summarising the law). It then followed the third stage in selecting the sanction that it believed most appropriately fulfilled that purpose at paras 54, 56 and 60;

    ii) The PAT approached the question of the seriousness of the misconduct by considering the four topics of culpability, harm, aggravating and mitigating features from para 37 onwards. This accorded with *Fuglers* and para 4.4 of the CoP Guidance;

    iii) Subject to the Claimant's point about para 38 of the decision which I consider as part of Ground 1(a) below, the PAT addressed personal mitigation from para 44 onwards *after* its consideration of the seriousness of the conduct. This accorded with paras 4.6 and 6.2 of the CoP Guidance;

    iv) The PAT repeatedly recognised that public confidence in policing was a factor of particular importance, including in its summary of the applicable legal principles and when it came on to its conclusions in paras 44, 54, 56, 60 and 61; and

    v) When it came on to the third stage, the PAT first considered the least severe available disciplinary action, asking whether this was a proportionate and necessary outcome, as explained at paras 55 and 59 of its decision. This reflected paras 2.9 – 2.11 of the CoP Guidance.

70. Accordingly, subject to my consideration of the specific criticisms advanced by the Claimant in the sub-grounds, the PAT explicitly adopted the applicable structured approach as required in *Roscoe* (para 14 above).

Ground 1(a) – assessment of seriousness

71. The PAT's decision dealt with culpability relatively briefly and did not make express reference to paras 4.16 – 4.20 of the CoP Guidance concerning seriousness in cases of criminal convictions (para 29 above). However, in keeping with the approach described by Eady J in *Officer A* (paras 25 and 26 above), which I respectfully agree with, the question for me is whether the PAT's decision complied *in substance* with the applicable principles and guidance. As Eady J explained, a public law error does not arise simply from the fact that a PAT has not referred in terms to every applicable passage in the CoP Guidance.

72. I consider that the PAT's reasoning indicates that it did adopt the correct approach. It rightly concluded in para 37 of its decision that Supt Williams' conviction and the requirement to be placed on the Sex Offenders Register were "an extremely serious matter for anyone let alone a serving officer". If the PAT had expressly referenced paras 4.17 – 4.19 of the CoP Guidance it would not have led to a materially different assessment of the severity, since the PAT's approach reflected their contents (para 29 above). Further, as the contents of the PAT's para 37 (and para 6) shows, it did have regard to the fact of the officer having been convicted and not simply to the conduct that had led to the conviction (as Ms Studd suggested in her submissions).

73. Although the circumstances of the offence were not rehearsed in para 37 it is clear from the decision viewed as a whole that the PAT had those circumstances very much in mind. The PAT had already referred to features of the offence and to HHJ Marks' sentencing remarks, including that Supt Williams' account had been disbelieved by the jury (para 50 above). The PAT further referenced the fact that she was disbelieved by the jury in para 39 of its decision. In her oral submissions Ms Studd suggested that this should have formed part of the assessment of culpability rather than it being treated as an aggravating factor. However, I do not consider that anything turns on this. Para 4.7 of the CoP Guidance recognises that the factors will overlap (the main concern being not to double count). Indeed, the Claimant's own complaint under Ground 1(c) is in part that the PAT *should* have treated this as an aggravating factor (SFG, para 51). In addition, the contents of paras 42 and 43 of the PAT's decision indicate that the particular circumstances of the offence were taken into account when assessing culpability (and then not doubled counted as mitigating factors).

74. Ms Studd also submits that the PAT did not properly address the harm factor, as it failed to address the need to maintain public confidence in policing and the reputation of the MPS at this stage of its decision. She points in particular to para 38 of its decision, which she says wrongly focused on the lack of risk presented by Supt Williams and on her personal testimonials which she says were only relevant after the assessment of seriousness had been made.

75. I accept that the PAT's decision could have been more clearly expressed in terms of its assessment of harm, but in my judgment para 38, read in the context of the decision as a whole, does not indicate any public law error. I accept Mr Boyle's point that the reason why the PAT addressed whether there was any risk posed by Supt Williams - concluding that there was none - was because in her reasons for dismissing the officer, AC Ball had said that the public could have no confidence that she would protect them in the future. Criticism of that passage was part of her appeal submissions and it is apparent that in the first part of para 38 the PAT was indicating why it took a different view of this aspect.

76. Furthermore, the PAT was clearly aware of the central importance of maintaining public confidence in policing, as shown by its repeated references to this factor during the course of its decision (para 69 (iv) above). In terms of para 38 itself, it made brief reference to "community confidence" when referring to the testimonial from Martin Hewitt. Whilst, beyond that, although the PAT did not address the impact of the officer's offending on public confidence in any detail in this paragraph, this needs to be seen in a context where, just a few paragraphs earlier, the PAT had noted the absence of any evidence that there had been a consequential loss of public confidence and the considerable body of evidence indicating that Supt Williams still held the trust and confidence of the community and had been permitted by the MPS to undertake duties throughout the investigation and prosecution (para 52 above). Undoubtedly, the PAT still had these observations in mind when it came to remake the decision and consider harm. It is apparent from those earlier passages that it considered public confidence and the MPS' reputation had not been significantly damaged by this particular conviction. (This view is also apparent from the latter part of its decision, addressing the second and third stages, where the PAT dealt in detail with the impact on public confidence if Supt Williams was dismissed.) In addition, there was no error involved in taking into account the fact that the officer had not been suspended from duties; the weight it gave to this was a matter for the PAT's evaluation.

77. Accordingly, when the substance of its decision is examined, it is apparent that when considering the harm caused, the PAT was alive to and did assess the impact of the offending on the maintenance of public confidence in policing and on the reputation of the MPS.

78. Alternatively, if I were thought to be incorrect in my primary conclusion that there was no error of law, so that there was a failure to take into account the impact on public confidence and the reputation of the policing profession at the harm stage, then in any event section 31(2A), Senior Courts Act 1981 would compel the refusal of relief in respect of this as I am quite satisfied that it is highly likely that the outcome for the Claimant would not have been substantially different if the PAT had considered these matters in its assessment of harm. I bear in mind where the onus of proof lies and that it is a high threshold, but it is plain that: (i) as the PAT in any event assessed the composite effect of culpability, harm, aggravating and mitigating factors in this case as "extremely serious", a more detailed assessment of harm at this juncture would not have led to a different overall evaluation; and /or (ii) the PAT's detailed consideration of the impact on public confidence and the reputation of the police in other parts of its reasoning – see in particular paras 29 – 32, 47 – 48, 50(ii), 52, 53, 60 and 61 of its decision – shows that bringing this into account when assessing harm would not have elevated its assessment of that factor or of the overall seriousness of Supt Williams' conduct.

79. I do not consider that there is anything in the suggestion that the PAT wrongly took into account personal mitigation when assessing seriousness. As I have already indicated, the PAT addressed personal mitigation from para 44 of its decision onwards after it had assessed seriousness by reference to the four prescribed elements. Its reference to certain testimonials in para 38 of its decision was in the context of explaining why it did not consider that Supt Williams herself presented a risk of harm and / or in respect of its assessment of the impact on public confidence. It was not at this stage concerned with her "immensely successful career" (para 46), her unique skills set (para 47) or her work with particular communities (para 50(i)), matters which it only brought into account *after* it had evaluated seriousness. Ms Studd was driven to suggest that when the impact on

public confidence is considered as part of the evaluation of harm no regard should be paid to any material from an officer's testimonials that related to public confidence. Such a position is illogical. When the decision maker assesses the impact on public confidence they should not have to do so in blinkers; all material that bears on that question should be taken into account. It would be illogical for material within the officer's testimonials to be excluded from that assessment simply because those documents *also* contain personal mitigation which is only relevant at the later stages.

80. Mr Boyle fairly accepted that there was a degree of overstatement in the way the PAT characterised the views of Mr Hewitt and the safeguarding leads (Cmdr Smith and Supt Williams) in para 38 of its decision. They did not "call for her to remain an officer", a phrase Mr Boyle admitted had been derived from his written submissions to the PAT. Nonetheless, their testimonials were positive in terms of the future contribution that Supt Williams could make to policing and, where relevant, they expressed a willingness to continue to work with her (para 45 above). In these circumstances, this slight misstatement did not involve any error of law.

The additional submission

81. In her Skeleton Argument, Ms Studd added the contention that the PAT erred in failing to recognise that the almost inevitable sanction for a sexual offence is dismissal from the force. This was said to be a reference to para 4.17 of the CoP Guidance. However, it had been accepted that there was no sexual element to Supt Williams' offending. In any event the text of para 4.17 refers to such offences as being "likely" to terminate an officer's career. In keeping with the case law that I have earlier summarised, this is distinct from the "almost inevitable" termination which is the expression used in relation to the outcome for operational dishonesty (para 30 above).

82. As I have already noted, in her oral submissions Ms Studd advanced a broader version of this submission, contending that when an officer is convicted of a criminal offence / a serious criminal offence (the submission was put both ways) then the decision maker's approach should be that dismissal is almost inevitable, by analogy with the position that applies to instances of operational dishonesty. Apart from the real difficulty that this was not a pleaded ground of challenge (and no application was made to amend the grounds), this submission does not reflect the existing case law or the contents of the CoP Guidance and Ms Studd confirmed during the hearing that she did not take issue with the terms of either. I record for completeness that after a draft of this judgment was circulated to counsel for typographical corrections, Ms Studd disputed that this submission was additional to her Grounds. She referred to para 22 of the SFG and she said that neither the Court nor the Interested Party had said she was required to amend to pursue this. However, para 22 SFG (which precedes the numbered grounds) explains why the issues raised are of public importance, the contents are not advanced as a ground in itself and do not include the "almost inevitable" submission made orally. Furthermore, when Ms Studd made the submission orally I did raise with her that it was not a pleaded ground (para 67 above). As she then indicated that it was not a ground of challenge, the question of amendment did not arise. In any event, the merits of the point are addressed in this section of my judgment.

83. Whilst my observations should not be taken as diminishing the seriousness of a serving police officer being convicted of a criminal offence – as the PAT said, this is an extremely serious matter – the case law and the CoP Guidance do distinguish between instances of

operational dishonesty (on the one hand) and other instances of gross misconduct including criminal convictions (on the other), as can be seen from my review of the case law at paras 16, 17 and 20 above and by a comparison of paras 4.16 – 4.20 and 5.3 of the CoP Guidance (paras 29 - 30 above). In the case of operational dishonesty dismissal is regarded as "almost inevitable", whereas in relation to convictions for serious offences the position is reflected in the summary at para 4.19 (and para 4.65) of the CoP Guidance that termination will be "likely".

84. It is obvious why such a strict approach of almost inevitable dismissal is adopted in respect of operational dishonesty; whereas a criminal conviction, whilst extremely serious for a serving police officer, may span a wide range of circumstances, so that a fact-specific assessment is required (by reference to the recognised structured approach). Although the Claimant placed particular emphasis upon *Williams*, this approach is entirely consistent with Holroyde J's analysis at paras 66 and 67 of *Williams* (para 20 above). The Claimant also suggested that this Court should give further guidance as to the approach to be taken by those deciding upon sanction in officer misconduct cases involving police convictions. I do not consider that it is necessary to do so; the correct approach has already been clearly identified in the case law and in the CoP Guidance that I have referred to.

Ground 1(c) – aggravating and mitigating factors

85. The complaint that the PAT failed to treat Supt Williams' dishonesty in advancing an untruthful defence as an aggravating factor is hopeless. The PAT said in terms in its para 39 that it took this into account as an aggravating factor.

86. The second aspect of Ground 1(c) relates to the weight that the PAT gave to this factor and to its reasoning in paras 39 – 41. Ms Studd submits that it was illogical for it to be accorded less weight simply because it was not also charged as a breach of the Honesty and Integrity standard; the conduct was the same in any event. In my judgment the PAT was making two points in this part of its decision. Firstly, that it would not take into account dishonesty *beyond* the untruthful defence to the possession charge, given that Supt Williams had been acquitted of the corruption charge and the AA had not sought to prove the corruption element. This was plainly a fair and appropriate approach to take. Secondly, that the untruthful defence to the possession charge would be taken into account as an aggravating feature rather than as additional misconduct, given it had not been charged as such. Again, this appears to me to be a legally unobjectionable approach. Beyond this, the question of weight was a matter for the specialist Tribunal's evaluation; it cannot be suggested that its assessment of weight was perverse.

87. It is also instructive to see how the matter was addressed by counsel during submissions before the PAT, as the approach taken in its decision appears to be consistent with this. During Mr Boyle's submissions the Chair asked how they were to deal with the sentencing remarks indicating that the jury rejected the officer's defence to the possession charge and with her acquittal on the corruption charge. During her submissions, Ms Studd accepted that the reference in para 67 in *Williams* (para 20 above) applied where there was a disciplinary charge of dishonesty, as opposed to where the facts indicated some dishonesty. She then observed: "Your starting point is different. Whereas this is not a dishonesty trial. This dishonesty, such as it is or issue of credibility, is just an aggravating feature of the conviction".

Ground 1(b) – personal mitigation

88. It follows from the conclusions that I have expressed in respect of Ground 1(a) and Ground 1(c) that I reject the first part of Ground 1(b), namely that the PAT was unable to properly assess the impact of personal mitigation because it had erred in its approach to the earlier question of seriousness.

89. Ms Studd accepted that the views expressed in the testimonials supplied by Supt Williams were relevant material for the PAT to consider after seriousness had been assessed. This plainly follows from the *Bolton – Williams* line of authorities (paras 18 - 20 above) and from paras 6.3 and 6.9 of the CoP Guidance. She also accepted, in accordance with para 72 in *Williams* (para 21 above), that in so far as these documents expressed views about the effect on public confidence in policing if the officer was dismissed, then at this stage (as opposed to when harm was assessed) this was relevant material for the PAT to take into account. Its relevance is also confirmed by paras 4.60 and 4.61 of the CoP Guidance.

90. However, once it is (rightly) accepted that this material was relevant, the question of the weight to be placed on it was a matter for the specialist tribunal, provided it correctly directed itself in terms of the applicable principles. As Holroyde J observed in *Williams*, whilst the importance of maintaining public confidence in and respect for the police service is constant, what may vary is the extent to which the particular gross misconduct threatens the preservation of such confidence and this will be a fact-specific decision (para 20 above). Similarly, paras 4.60 – 4.62 of the CoP Guidance acknowledges that public perception is relevant and that this is to be assessed objectively by the decision maker based on its experience and the circumstances of the case (para 31 above).

91. In terms of its self-directions, the PAT correctly recognised that personal mitigation is usually of limited effect particularly in a gross misconduct case and that the vital purpose it should keep in mind was the maintenance of public confidence in and the reputation of the policing profession as a whole (paras 51 and 55 above). It also correctly recognised that the more serious the misconduct, the greater the weight to be given to the interests of the profession (para 51 above). The Claimant does not identify any respects in which the PAT's directions were legally erroneous. The PAT was mindful that it was only in a rare case that personal mitigation could avoid a dismissal in a gross misconduct case (para 59).

92. The Claimant's complaint in respect of Ground 1(b) is really no more than an expression of disagreement with the view formed by the specialist tribunal and with the weight it gave to the testimonials. The PAT was entitled to come to the view that it did and the circumstances are a long way from indicating that its decision was perverse. The PAT was clear in the reasoning it set out; that it was not simply the officer's very successful policing career or the valuable skills she could still provide that proved influential, but the fact that there was considerable evidence before the PAT that confidence in policing would be *damaged* by her dismissal and no evidence to the contrary. The PAT explained this in some detail (paras 55 - 59 above). In doing so at paras 52 – 53 of its decision it specifically took into account how victims of sexual offences might respond to her remaining an officer; and that there might be other views as to the impact on public confidence that it had not been provided with (para 57 above). The PAT was plainly aware that the testimonials were solicited, since the requests for the same were included in the character evidence bundle.

93. Ms Studd sought to argue that the PAT erred in failing to arrive at the same conclusion as in *Williams*. However, both decisions were specific to the particular misconduct and other factual circumstances before the respective decision makers. Moreover, the highest that the character evidence was put in *Williams* by the officer's own counsel was that it could be inferred from this material that public confidence and respect would be maintained if he was not dismissed, a proposition the Court rejected (para 21 above). Here the evidence was powerful and extensive and went much further, such that the PAT was satisfied it positively showed that community trust and confidence in the police would be reduced if dismissal occurred. In the circumstances the evidence went significantly beyond personal mitigation. As is clear from its reasoning, the PAT did not treat personal mitigation as "determinative", as Ms Studd suggested.

94. It therefore follows that I reject Ground 1(b).

Ground Two

95. As set out in para 4 above, the first complaint is that the PAT took into account an irrelevant consideration namely that Supt Williams had been singled out for prosecution amongst those who were sent the image.

96. Paragraph 49 of its decision does not suggest that the PAT made any finding that the Claimant had been singled out for prosecution. To the contrary, the PAT said in terms that it did not reach any view about this as it did not have the relevant material before it (para 56 above). Accordingly, I am satisfied that the PAT did not proceed on the basis that Supt Williams had been singled out for prosecution.

97. The PAT did note that this was a view expressed in some of the testimonials (of which it gave examples in a footnote). It indicated that this was one of the factors that for some had led to the expressed loss of confidence that would follow if the officer were dismissed. As such, it appears to me that the PAT was doing no more than summarising that viewpoint. However, if and in so far as it was taken into account as part of the much wider body of evidence relating to community loss of confidence if Supt Williams was dismissed, it was for the PAT to evaluate that evidence and I do not consider that any error of law was involved.

98. In the alternative, if I am wrong in my primary conclusion, so that this limited reference to the viewpoint of some that the officer had been singled out, amounted to taking an irrelevant consideration into account, then this is plainly a further instance where s.31(2A), Senior Courts Act 1981 would compel the refusal of relief. I am quite satisfied that it is highly likely that the outcome for the Claimant would not have been substantially different if the PAT had left this particular matter out of account when evaluating the material it discussed from para 47 onwards and in particular the impact on public confidence if the officer were either retained or dismissed. The terms of para 49 of the decision do not suggest that this aspect was something that weighed heavily with the PAT. Furthermore, it is quite clear from its reasoning that the PAT found the combined effect of the views expressed to be compelling in the exceptional circumstances of this case; simply removing one of the reasons why some had said there would be a loss of confidence in policing if Supt Williams was dismissed would not have materially changed that evaluation.

99. The Claimant's second complaint in relation to Ground Two is that the PAT considered Supt Williams' acquittal of the corruption count to weigh in her favour as something to offset against the aggravating factor of her being disbelieved by the jury in respect of the possession count. I do not read the PAT's reasoning in that way. As I have discussed at para 86 above, in paras 39 – 40 of its decision the PAT quite properly said that it would not take into account the conduct of which she was acquitted. It did not suggest that this was something that it would positively take into account in her favour.

100. Ground Two therefore fails.

Overall conclusion and outcome

101. No basis has been shown for overturning the PAT's decision to impose the sanction of a FWW on Supt Williams. The PAT was entitled to regard this as an exceptional case in which dismissal for the officer's gross misconduct was not a necessary and proportionate sanction. As it applied the correct legal approach, the appropriate sanction was a matter for its specialist evaluation. This Court is not exercising an appellate jurisdiction or re-making the decision. I have found that the decision showed a correct understanding of and application of the relevant legal principles. As it explained in its para 60, the PAT reached the conclusion that it did because of the unique circumstances of the conviction, the officer's stellar career, the substantial impact she had had on enhancing the reputation of the MPS as a whole and its assessment that her dismissal would reduce confidence in the police in some of the communities in which the MPS had struggled to gain trust. This was a permissible conclusion for it to reach.

102. Accordingly, the claim is dismissed.