



Neutral Citation Number: [2023] EWHC 2892 (Admin)

Case No: CO/68/2022; AC-2022-LON-000064

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/11/2023

Before

MR JUSTICE SWIFT

Between

THE KING

on the application of

KRISTINA O'CONNOR

Claimant

-and-

(1) POLICE MISCONDUCT PANEL
(2) THE COMMISSIONER OF POLICE OF THE
METROPOLIS

Defendants

-and-

JAMES MASON

Interested Party

Caoilfhionn Gallagher KC, Fiona Murphy KC and Harriet Johnson (instructed by **Hodge Jones & Allen**) for the **Claimant**

Anne Studd KC and David Messling (instructed by **Directorate of Legal Services, Metropolitan Police**) for the **Second Defendant**

Ailsa Williamson (instructed by **Reynolds Dawson**) for the **Interested Party**

Charlotte Ventham (instructed by **Transport for London, Legal**) for the **Mayor's Office for Policing and Crime** (20 October 2023 only)

Hearing dates: 16 – 17 May and 20 October 2023

Approved Judgment

MR JUSTICE SWIFT

A. Introduction

1. On 26 October 2020 the Claimant made a complaint to the Commissioner of Police of the Metropolis (“the Commissioner”) about the conduct of Detective Chief Inspector James Mason. Detective Chief Inspector Mason has now left the Metropolitan Police, having resigned with effect from 1 November 2022. In this judgment I will refer to him as Mr Mason. The complaint made in October 2020 concerned events that had taken place on 23 and 24 October 2011 (when Mr Mason was the Detective Sergeant in charge of the Robbery Squad at Kentish Town Police Station). The complaint was considered by a disciplinary panel (“the Panel”) at a misconduct hearing on 4 and 5 October 2021. The Panel’s conclusion was that Mr Mason’s conduct amounted to gross misconduct. The Panel imposed a penalty of a final written warning, to remain on Mr Mason’s service record for three years.
2. In this application for judicial review, the Claimant challenges the outcome of the misconduct hearing, and the legality of the investigation that preceded it. So far as concerns the hearing, the Claimant submits that the Panel failed to take its decision in accordance with guidance issued by the College of Policing pursuant to section 87 of the Police Act 1996. The decision of the Panel is also challenged on the basis that the Panel failed to consider relevant matters, placed excessive weight on some other matters and, overall, acted irrationally by concluding that Mr Mason should receive a final written warning rather than be dismissed from the police force. As to the investigation, the Claimant contends that the Commissioner acted unlawfully by failing to treat her complaint as a complaint about discrimination and in consequence, failing to undertake an effective investigation.
3. The Claimant made her complaint to the Metropolitan Police by phone on 26 October 2020. At that time the following was recorded:

“Informant was sexually assaulted by a police officer about 9 years ago I was too young to know what was happening, he verbally sexually assaulted me in the Pol Stn. He was making it obvious that he was attracted to inf, he asked to drive me home. He asked me about personal life. Inf said the officer didn’t take no for an answer through emails, regarding taking photos of inf and taking her out on a date.

No further details, awaits appointment call for further.”

On 29 October 2020 two police officers visited the Claimant at her home and took further details of the complaint and completed a complaint form. On the same day the complaint was notified to the Commissioner’s Directorate of Professional Standards. The notification form included the complaint form which itself set out the following information about the complaint.

“... It was established it was not a sexual assault but a reporting of inappropriate behaviour by a police officer in October 2011

as a result of being a victim of crime and him being involved in the investigation.

... VIW/1 stated that she was mugged on 23 October 2011 at approximately 15:00 hours in CAMDEN. She was then conveyed to Kentish Town Police Station in order to make a statement. VIW/1 is unsure how she got to the station.

VIW/1 stated that VIW/2 was very inappropriate whilst taking the statement, in an unknown room in KENTISH TOWN POLICE STATION, and was asking what she wears at work as she worked at a nightclub in SOHO. VIW/1 states that VIW/2 also asked her out to dinner, and asked if she had a boyfriend and questions about personal relationships. She described him as jovial and flirty in the interview room ... VIW/1 then believes that VIW/2 proceeded to take her home after the statement ...

VIW/1 posted an email trail on FACEBOOK on 24/10/2020 documenting their contact after the statement, this is as follows. It should be noted that this is a copy and paste from the email trail and VIW/1 stated that she has lost the original emails but has been trying to recover them from google and has documented her attempts.

Facebook post:

Can't quite believe what I am reading from the Detective Sergeant dealing with my mugging.

'Please look after yourself while you are out in Camden. Hopefully you will not be a victim of crime again but if you ever fancy having a drink with a very discrete Police officer, it would be my pleasure.'

-Thanks, I'll try. I am fine just a bit of a bruised face. Thanks for your help.

'If you have any visible injuries that you would like me to record then I am happy to take a picture for you and save it in case we manage to get any further in the investigation. I hope it doesn't hurt you too much and I am sure you still look amazingly hot.'

-Hahaha! Slightly inappropriate. You're presuming that I am unaffected enough by the crime to come on to me? Isn't there some type of code of practice that you are breaking right now?

'... have faith in my detective ability and experience. Actually, coming on to victims is positively encouraged, it's all part of the friendly and accessible face of the Met Police. It's the rejection that is frowned upon.'

-You have no shame! You could get fired for this!

‘You are probably right on both counts. I can assure that I am as determined in my pursuit of criminals as I am of beautiful women if that helps. You know where I am if you ever change your mind or need a friendly Police officer.’

CAN'T DEAL WITH THIS

He's sent another

...

In order to protect my fragile ego, I take your emails to mean you are extremely interested, found me charming and handsome and decided to stick my details in your little black book for a later date rather than take me up on my offer straight away...

It was equally nice to meet you and you have taken top spot as my favourite Camden victim of crime.

End of email trail.

...

VIW/1 added that sometime later she was burgled and because VIW/2 had told her to call him if she needed a police officer she did so. He did in fact “send officers over” but VIW/1 said that no impropriety occurred on this occasion. This was the end of their contact ...”

4. The treatment of complaints against police officers is governed by provisions in the Police Reform Act 2002 (“the 2002 Act”). In this case, and as required by paragraph 4 of Schedule 3 to the 2002 Act, the Commissioner (more precisely, his Directorate of Professional Standards) referred the Claimant’s complaint to the Independent Office for Police Conduct (“the IOPC”). The reference was made on 4 November 2020. By paragraph 14 of Schedule 3 to the 2002 Act it is for the IOPC to decide whether to investigate a complaint itself or refer the matter for local investigation, which in this instance meant for investigation by the Commissioner.

5. On 10 November 2020 the IOPC responded to the referral as follows:

“The IOPC has decided that this matter should be investigated and that it should be subject to a local investigation.

[The Claimant] has alleged inappropriate comments made by an officer in 2011 which may amount to an abuse of position. It is necessary that this matter is investigated in order to consider the veracity of the allegations and consider whether there has been any breach of the standards of professional behaviour and code of ethics.

Although I have considered the seriousness of the allegations which may amount to an abuse of position for a sexual purpose if

proven, and may uncover a potential pattern of behaviour on the part of the officer, I have also taken into account the lack of evidence to support or refute the allegations and the lapse of time between the alleged incident and the alleged complaint which may cause some evidential difficulties. Due to this, I am of the view that this matter is suitable for a local investigation at this stage.

If at any point following this decision the appropriate authority or person appointed to investigate identifies new evidence to suggest that Article 2 or Article 3 ECHR may be engaged, or any other matter which might merit this decision being reconsidered, the matter should promptly be re-referred.”

A further letter on 10 November 2020 from the IOPC informed the Claimant of this decision.

6. The complaint was then considered by the Commissioner in accordance with the provisions of the Police (Complaints and Misconduct) Regulations 2020 (“the 2020 Regulations”). Mr Mason was formally notified of the complaint on 4 December 2020, as required by regulation 17 of the 2020 Regulations. He was told that if admitted or proved the matters alleged would comprise gross misconduct. The form provided to Mr Mason (Form F163) categorised the complaint by reference to the Standards of Professional Behaviour set out in Schedule 2 to the Police (Conduct) Regulations 2020 (“the standards of behaviour” and “the Conduct Regulations”, respectively). On the Form F163 the complaint was identified as “Discreditable Conduct”, a reference to the ninth standard. The standards of behaviour are set by the Home Secretary in exercise of her power under paragraph 29 of Schedule 3 to the 2002 Act. They provide the premise for the definition of “misconduct” and “gross misconduct” under the 2002 Act. A breach of the standards of behaviour amounts to “misconduct”; a breach that is “so serious to justify dismissal” amounts to “gross misconduct”: see paragraph 29 of Schedule 3 to the 2002 Act. The rubric for “discreditable conduct” in the 2020 Regulations is as follows:

“Discreditable Conduct

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

Police officers report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.”

7. Mr Mason provided his written response to the complaint on 24 December 2020. His response included the following:

“I am making this response based on the information provided to me as part of the F163 – including crime report 2333946/11 –

and my own recollection of events from over 9 years ago. I do not have any original material to refer to, copies of emails or written notes.

I can confirm that on the evening of 23 October 2011 I was the on-duty Detective Sergeant in the robbery squad at Kentish Town Police Station. Following an incident of a phone being snatched, suspects were identified, and a number of enquiries were required. Due to the level of work involved and the pressure on the officers available, I took responsibility to take the statement from the victim of the crime.

The victim was transported to Kentish Town Police Station and was brought to the open plan robbery squad office on the ground floor. I met the victim and began the process of taking a formal statement from her regarding the incident. This allowed other officers to continue with other tasks both outside of the station, in custody and in the office.

... I proceeded to obtain all the relevant information, including [the Claimant's] personal details, while trying to put her at ease and support her as a victim of crime. I asked [the Claimant] for her home address, contact details and living arrangements – checking if there was anyone she wished to contact, including a partner, friends and family – conscious that her phone had been taken from her. I also obtained the details of the occupation and level of injury as required to accurately complete the crime report and statement form.

I produced a comprehensive written statement of events of the incident and completed all necessary elements for the victim's details. The [Claimant] endorsed the statement and I arranged for her to be taken home by mobile officers while I continued to support and supervise the investigation. At no point during the interaction did I ask [the Claimant] if I could take her out for dinner.

(I believe this can be inferred by the initial written invitation that is introduced as a fresh suggestion of a different type, rather than a continuation, repetition or alternative proposition).

I have been provided with excerpts of a brief email exchange between myself and [the Claimant]. I accept the accuracy and veracity of the details provided and confirm that I was responsible for sending the messages from my police account... My message [sic] are wholly inappropriate and inexcusable.

I can confirm that I did not ever email [the Claimant] again. My only other interaction with [the Claimant] since the final email was when she proactively contacted me and left a message several weeks later as she wished for my assistance following a

burglary, or similar offence, at either her address in Camden or one connected to her (from memory). Following the message, I made suitable enquiries to ensure that the matter had been appropriately recorded and was being progressed. I believe I left [the Claimant] a message to that effect but had no further involvement. That is the last time there has been any interaction of any type between myself and [the Claimant] in the subsequent 9 years.

DC Matt Isles continued to manage the original investigation under my supervision and dealt with any aspect of victim support or contact. The investigation was thorough and diligent.

I fully accept that my email contact with [the Claimant] was entirely inappropriate, improper and unwarranted. I believe this behaviour is uncharacteristic and isolated incident – over the course of my 21-year service I have dealt with and supported many hundreds of victims professionally, compassionately and without issue. I have successfully held positions demanding the highest levels of professionalism integrity ...

I am embarrassed and ashamed by the content of the messages and offer a sincere unreserved apology to [the Claimant] for any discomfort and distress that I may have caused.”

8. PC Ella Corner was appointed to investigate the complaint (in accordance with paragraph 16 of Schedule 3 to the 2002 Act, and regulation 12 of the 2020 Regulations). She produced a report dated 26 February 2021. Her conclusion was that Mr Mason had “a case to answer for Gross Misconduct”:

“6.1.41 It is the [investigating officer’s] opinion that DCI Mason’s conduct breached the Standards of Professional Behaviour. DCI Mason has a case to answer at the level of Gross Misconduct. In the College of Policing Guidance breaches of power imbalance are aggravated where the member of public is particularly vulnerable ... There are no other reported misconduct allegations of this type in relation to DCI Mason.”

9. On 19 March 2021 Chief Inspector Dave Byrne reviewed PC Corner’s report, as required by regulation 23 of the Conduct Regulations. He agreed with the decision that there was a case to answer of gross misconduct. His comments included the following:

“I agree with the investigating officer’s decision that there is a case to answer in relation to Gross Misconduct for DCI Mason.

I am satisfied that there is sufficient evidence upon which a misconduct hearing could, but not necessarily would, make a finding of gross misconduct.

...

In my opinion, despite the fact that the incident was historic and DCI Mason has made an admission and offered an apology, this matter is a serious breach of trust and could seriously undermine confidence and trust in the police. As such I do not think that DCI Mason can continue to serve as a police officer.

On the basis of the above rationale, I determine that a misconduct panel could make a finding which would result in DCI Mason's dismissal and therefore there is a case to answer at Gross Misconduct for Discreditable Conduct".

10. On 16 June 2021 a "Notice of Decision to Refer an Allegation to a Misconduct Hearing", required by regulation 30 of the Conduct Regulations, was served on Mr Mason, together with a further document setting out the allegations against him ("the allegations document"). The allegations document was set out in numbered paragraphs and was used by both Mr Mason as the framework for his response and by the Panel as its framework for its reasons and conclusions. The allegations document contained the following:

"1. On 23 October 2011, whilst a Detective Sergeant, you were the supervising sergeant for the investigation into a robbery on Chalk Farm Road ...

2. [The Claimant] attended Kentish Town Police Station, where you took a witness statement from her regarding the incident. You were the supervisor for the Officer in the Case, Trainee Detective Constable Matt Isles.

3. It is alleged that while taking a statement from [the Claimant] you asked her inappropriate questions about her personal life and relationships, including whether she had a boyfriend, what she wore to work, and whether you could take her out for dinner that evening. [The Claimant] declined to go to dinner with you and was driven home by police.

4. On 24 October 2011 [the Claimant] emailed your police email address to ask if her mobile phone could be checked for fingerprints, in order to help identify the suspect. You told [the Claimant] that this was not possible. You then engaged in the following in appropriate email exchange with [the Claimant]

[The allegations document then sets out the email exchanges already set out in this judgment, at paragraph 3].

5. On 24 October 2011 [the Claimant] posted the above exchange on Facebook stating, "Can't quite believe what I am reading from the Detective Sergeant dealing with my mugging".

6. The Crime Report ... was closed on 23 November 2011 after attempts were made to identify the suspects without success. Several months later [the Claimant] contacted you in relation to a separate report of a burglary. You had no further contact with [the Claimant] after this point.

Breaches of the Standards of Professional Behaviour

7. It is alleged that your communications with [the Claimant], as set out above, were in breach of the Standards of Professional Behaviour, in particular the Standards relating to Honesty and Integrity, to Authority, Respect and Courtesy and to Discreditable Conduct in that:

(a) Your comments towards [the Claimant] whilst taking her witness statement on 23 October 2011 were inappropriately personal and were in breach of the Standard relating to Authority, Respect and Courtesy.

(b) Your subsequent emails with [the Claimant] on 24 October 2011 were also inappropriate and were an attempt by you to establish a relationship with a person you knew to be a victim of crime. By these emails you were abusing your position as a police officer ... in breach of the Standards relating to Honesty and Integrity Authority and to Respect and Courtesy.

(c) You behaved in a manner that brought discredit on the Metropolitan Police Service and undermined public confidence in policing in breach of the Standard related to Discreditable Conduct.

8. It is further alleged that such conduct was a breach of the Standards of Professional Behaviour so serious that your dismissal could be justified, and therefore amounts to gross misconduct.”

11. On 7 July 2021 Mr Mason served a response to the allegations document. By reference to the numbered paragraphs in the allegations document his response was as follows. He admitted paragraph 1, and also paragraph 2 adding:

“There was nothing unusual about the DCI Mason taking the witness statement from [the Claimant]. A suspect had been arrested and there were other suspects at large, so T/DC Isles would have been very busy dealing with the prisoner in custody, a s. 18 search and other matters.”

His response to paragraph 3 was:

“When taking a witness statement, officers will ordinarily ask any witness what their occupation is as this should be included

in the statement. DCI Mason believed that [the Claimant] explained that she was employed at the Playboy Club which led to a discussion about her role there. The Playboy Club had reopened in London a few months earlier, in June 2011. DCI Mason accepts that he may well have asked whether she wore the Playboy bunny outfit which is quite iconic. DCI Mason is now aware [the Claimant] found that question invasive and apologises for having asked about her outfit.

...

DCI Mason would have asked if [the Claimant] had a boyfriend, or who she lived with because, as a victim, of crime, he would have been concerned about welfare issues and whether someone was available to look after her at home.

DCI Mason did not ask [the Claimant] out for dinner that evening and he would not have been available to go out for dinner that evening as he was working a late shift from 2pm to 10pm. However, it is accepted that in emails the next day he invited her for a drink, which it is accepted was inappropriate.”

In response to paragraph 4, Mr Mason accepted he had sent the emails and that they were inappropriate. In response to paragraph 5 he stated:

“It is accepted that this occurred. DCI Mason did not ever see this Facebook post and was unaware of its existence until 9 years later when he was served with a Regulation Notice on 14 December 2020.”

In response to paragraph 7(a) Mr Mason replied:

“There was only one comment which could be viewed as inappropriately personal, namely in relation to whether [the Claimant] wore the Playboy bunny girl outfit. As [the Claimant] found this invasive it is accepted that this is a breach of Authority Respect and Courtesy.”

He accepted that the conduct at paragraph 7(b) had occurred, and that it amounted to “a breach of Authority, Respect and Courtesy and Integrity”. He denied any breach of the standard of Honesty. Mr Mason admitted the allegation at paragraph 7(c).

B. Decision: the complaint about the Commissioner’s investigation

12. The complaint about the Commissioner’s conduct of the investigation is that the Claimant’s complaint was not treated as a complaint about discrimination and that in consequence, the investigation that was carried out was inadequate. There are two parts to the submission.

(1) Error when the reference to the IOPC was made

13. It is submitted that when the Commissioner referred the complaint to the IOPC the matter was not described as a complaint involving discrimination. Referrals are made using a standard form provided by the IOPC. Section G of the form is headed “Nature of Claimant, Recordable Matter or Incident”. The first part of section G comprises a tick-box list of “relevant factors”. The referring police force is required to “tick all that apply”. In this case when the referral form was completed the box against “sexual assault or harassment” was ticked but the box against a further item on the list, “discrimination”, was not ticked. The second part of section G is further tick-box list, this time one that sets out a number of the protected characteristics taken from section 4 of the Equality Act 2010. The protected characteristics set out are: age; disability; gender/gender reassignment; other discrimination; race; religion and belief; and sexual orientation. The question then posed is whether any of these matters is relevant to the matter being referred. In this case when the referral form was completed the box-ticked was the one to the effect that none of the listed characteristics was relevant to the complaint.

14. I do not consider that the way in which the referral form was completed discloses any legal error. The most important matter is that the IOPC was made fully aware of the substance of the complaint. A copy of the complaint form, completed on 29 October 2020, was sent together with the IOPC referral form. Section G of the referral form requires an exercise of judgement on the part of the person completing the form. Categorising the conduct reported in this case as “sexual assault or harassment” was a reasonable approach that properly captured the substance of the complaint. The criticism that the “discrimination” box ought also to have been ticked is not a matter of any substance. It would not have been wrong for that box to have been marked. However, describing this complaint as a complaint of discrimination adds nothing; sexual harassment is itself a form of unlawful discrimination. The same considerations also dispose of the complaint about how part 2 of section G of the referral form was completed. Once the information provided to the IOPC is considered in the round, there is no realistic argument that this matter was not properly and effectively referred as required by Schedule 3 to the 2002 Act. The Commissioner did not commit any error of law. There may be one further point that can be made. The list in part 2 of section G of the referral form does not contain the protected characteristic of “sex”. On that basis, the “none of these” marking entered on this part of the form was accurate since if the misconduct alleged comprised discrimination it was discrimination on the grounds of sex. However, I do not rest my conclusion on this part of the claim on that consideration alone. The list does include “gender” and it is possible that that has been included as an incorrect reference to the protected characteristic of sex. Whatever may be the position on this point, the complaint made by reference to the way in which the IOPC referral form was completed, fails. The way in which this form was completed discloses no legal error.

(2) The investigation was conducted without regard to relevant guidance and was inadequate.

15. The second part of the submission is that when PC Corner investigated the complaint she did not treat it as a complaint of discrimination and, in consequence, failed to investigate properly.
16. The regulation 17 notice (see above at paragraph 6) provided to Mr Mason classified the allegation as “Discreditable Conduct”. CI Byrne’s decision to refer the case to a misconduct hearing described the allegation in the same way. The Claimant submits this was incorrect in law: (a) because it was contrary to the IOPC’s “Guidance on the recording of complaints under the Police Reform Act 2002” (“the Recording of Complaints Guidance”); and (b) because it led to a further failure in the course of the investigation to apply the IOPC “Guidelines for handling allegations of Discrimination” (“the Allegations of Discrimination Guidance”). Both the Recording of Complaints Guidance and the Allegations of Discrimination Guidance were issued pursuant to section 22(1) of the 2002 Act. By section 22(7) of that Act the Commissioner is required to have regard to guidance issued under section 22(1). The submission is that the Commissioner failed to discharge this obligation so far as concerns each set of guidance and that, both for that reason and generally, the Commissioner failed to undertake an effective investigation.
17. The Claimant’s first point is that the Recording of Complaints Guidance required the matter should have been recorded under the classification “Equality and Diversity” (the third of the standards of behaviour). Reliance on the Recording of Complaints Guidance misses the mark. The guidance was given only in connection with the requirement to record complaints under paragraph 2 of Schedule 3 to the 2002 Act; it has no bearing on how a complaint is investigated. At paragraph 1.5 the Guidance states as follows:

“This document is intended as guidance of recording of complaints on professional standards department data bases only, not as guidance for the handling of police complaints generally. The IOPC Statutory Guidance provides a framework for the handling of police complaints and is available on the IOPC website. ...”
18. Further, even if that consideration is put to one side, there is no material inconsistency between the Guidance and the description that the misconduct in this case was within the Discreditable Conduct standard of behaviour. Table 1 in the Recording of Complaints Guidance gives examples of matters falling within each of the standards behaviour. In that table (at line Y) one example of discreditable conduct is “other sexual conduct” which, in turn, is described as including:

“... allegations of sexual conduct not amounting to sexual assault and including sexual harassment.”

The Claimant's submission to the contrary is that the misconduct in this case ought to have been classified as "discriminatory behaviour", as described at line F in Table 1. The rubric for that category includes the following:

"This includes any allegation that involves an element of any discrimination or is perceived to do so at any stage. Discrimination should be thought of in terms of treating people differently without justification through prejudice or unfair treatment of one person or group.

Discrimination may be committed on the grounds of race, disability, gender, religion and belief, sexual orientation, or age. The specific grounds of discrimination should be identified and recorded for each allegation. When recording an allegation in this category, it is expected that a sub-category will be selected.

If there are associated allegations (e.g. incivility or assault) these should be recorded separately. In addition, discriminatory behaviour may be identified by anyone receiving, recording, or investigating a complaint."

While it is possible that the misconduct alleged here could be said to fall within this class, the rubric at line Y of Table 1 is a much better fit. It is important to have well in mind that the guidance is intended only to assist those recording complaints to decide in the exercise of their judgement which of the standards of behaviour best suits the situation in hand. The guidance does not, and does not purport to provide a prescription for all possible circumstances. In this case, the characterisation of the misconduct as within the Discreditable Conduct standard of behaviour was, on a reasonable reading of the Guidance, a reasonably available course. There was no failure to have regard to this guidance.

19. The second point is that the investigation as conducted was inconsistent with the Allegations of Discrimination Guidance. The misconduct alleged against Mr Mason comprised a complaint of sexual harassment. In that sense it was a complaint about discrimination, and the Allegations of Discrimination Guidance was relevant.
20. The Claimant relies on Chapter 2 of the guidance: "Engaging with the Complainant", and in particular paragraphs 2.4 and 2.5. Chapter 2 emphasises the need for proper engagement with the complainant in order to understand her complaint and the factual basis for it. Paragraph 2.5 gives examples of "types of question" that should be put; the list is formulated on the premise that the complaint under investigation is a complaint of direct discrimination. The premise in the present case was a little different because the Claimant's complaint was of discrimination by harassment. Nevertheless, it is clear from the outcome of the investigation – for example, the allegations document (above, at paragraph 10) that the Claimant's complaint and the reasons for it had been understood. In particular, it was clearly understood that the Claimant had been treated as she had because she was a woman.

21. The Claimant also relies on Chapter 5 of the Allegations of Discrimination Guidance: “Conducting the Investigation”. The Claimant’s case on this part of the guidance was brought into sharp focus by late disclosure was made by the Commissioner only after the hearing in May 2023. In September 2023 it became apparent to the Claimant’s solicitors that a police officer had recently raised a complaint against Mr Mason based on events that had happened at Kentish Town Police Station. They sought disclosure of the documents relating to that complaint. Disclosure was provided on 2 October 2023 which revealed the following. The officer had worked with Mr Mason in the Robbery Squad at Kentish Town Police Station between 2010 and 2011. She had been one of three female officers in the squad. On 7 February 2022 she had made a complaint about Mr Mason’s conduct in 2010 – 2011, saying there had been a pattern of inappropriate sexual behaviour. She complained that Mr Mason had frequently made inappropriate comments to her. She referred to one specific occasion when she had finished work late and had sent a message to Mr Mason asking him to arrange a patrol car to pick her up. She said Mr Mason responded saying “he would do anything for an attractive officer”. She said that, generally, Mr Mason was “overly interested” in female officers he considered attractive and did not hide that interest.
22. The Claimant submits that the fact that this officer’s evidence only came to light in 2022, long after the investigation had finished, demonstrates that the investigation was not conducted in accordance with Chapter 5 of the Allegations of Discrimination Guidance. Various paragraphs in that chapter (paragraphs 5.5 – 5.10, 5.16, 5.17, and 5.19 – 5.20) make the point that an investigation should look for patterns of behaviour. Had the investigation been conducted effectively and in accordance with the guidance, the views of officers working in the Robbery Squad at Kentish Town Police Station in 2011 would have been sought and that would have cast the misconduct alleged by the Claimant in a very different light: not simply evidence of a one-off lapse of judgement by Mr Mason but rather, evidence of serial misbehaviour. What has emerged from the late disclosure also became the centrepiece of the Claimant’s further submission that various lines of enquiry should have been followed but were not, or that the investigation ought to have been conducted differently.
23. The only question for the court is whether the investigation was conducted lawfully. In this instance, the investigation was conducted pursuant to the power to investigate in paragraph 6 of Schedule 3 to the 2002 Act, a power provided in connection with the obligation that in this case fell on the Commissioner to handle the complaint “... in such reasonable and proportionate manner ...” as he determined. Once, as in this case, a decision to investigate has been made, public law obligations arise such that the investigator must comply with the obligations to act for a proper purpose, to take account of relevant matters, and so on. However, the requirement to consider relevant matters is not the premise for the court to prescribe what should or should not be considered. Any investigation could be conducted in different ways, each entirely consistent with the statutory purpose. Any investigation might follow different lines of inquiry and it is not for the court to second-guess every choice that the investigator might make. The scope of an investigation and decisions on the lines of enquiry to be followed are all decisions turning on the reasonable judgement of the investigator. The court must be careful to permit proper latitude to the investigator. In the context of the present case such latitude is reduced by what is said in the Allegations of Discrimination Guidance. The guidance provides an additional measure for legality because the room for manoeuvre available to the investigator is limited by the obligation to conduct the

investigation having regard to the guidance. Nevertheless, latitude remains, and hindsight is not the yardstick of legality.

24. I do not consider this investigation was conducted unlawfully. PC Corner did consider whether there had been any reported misconduct allegations “of this type” against Mr Mason. This was consistent with the requirement in the guidance that investigations should look for patterns of behaviour. It was not unreasonable (or inconsistent with the guidance), in particular given the age of the Claimant’s complaint, to look for patterns of behaviour by reference to whether or not other complaints had been made. Had there been other complaints there would have been some record both of the complaint and of the response that would permit, even 10 years later, some form of objective appraisal of whether or not a pattern of behaviour existed. Even though it is now apparent that had PC Corner followed a further line of inquiry and spoken to the officers in the Robbery Squad evidence of other conduct capable of amounting to harassment would have emerged, I do not consider that matter makes good the submission that the investigation was not conducted consistently with the guidance.
25. The Claimant advanced other matters in support of her submission that the investigation was insufficiently thorough: (a) that statements had not been taken from the other officers involved in the investigation of the mugging with a view to establishing whether there had been any good reason for Mr Mason, rather than one of those other junior officers, to interview the Claimant; (b) that the investigation of the complaint had not considered whether Mr Mason’s misconduct had compromised the investigation of the mugging; and (c) that Mr Mason’s response to the complaint should have been put to the Claimant in greater detail and that the Claimant should have been more “closely” questioned.
26. The significance that can reasonably attach to these points must be assessed considering all circumstances as at the time of the investigation. As to (a), it was not necessary for the investigation to extend to whether the Claimant’s statement should have been taken by someone other than Mr Mason. There was no doubt that Mr Mason had taken the statement and the matter central to the investigation was what he had said on that occasion (and after). Whether or not to investigate why Mr Mason had taken the statement at all was a matter within the discretion of the investigator. As to (b), there was nothing to suggest that anything Mr Mason was alleged to have done had compromised the investigation of the mugging. So far as concerns that investigation, one suspect had been arrested; he was interviewed under caution; he was not the person who had tried to grab the Claimant’s phone; he gave no information to identify any of the others who had been present. The criminal investigation was documented in the usual way and there is nothing in that record to support the suggestion that Mr Mason had done anything to prejudice that investigation. As to (c), by the time PC Corner commenced her investigation the Claimant had already provided full details of her complaint. Those matters were put to Mr Mason for response. Following consideration of his response, PC Corner spoke to the Claimant. The Claimant confirmed the details of her complaint and explained how she had been affected by the treatment she received on 23 October 2011 and the emails that had followed. While there is no doubt that so far as concerns any one of these matters the investigation could have been conducted differently, that is not to the point. It is sufficient that the steps that were taken were both reasonable and appropriate.

27. Overall, the Claimant's challenge to the legality of the investigation undertaken by the Commissioner fails, and is dismissed.

C. Decision: the complaint about the decision of the misconduct panel.

28. The Panel's conclusion was that Mr Mason's actions amounted to gross misconduct, i.e. a breach of the standards of behaviour so serious as to justify dismissal (see paragraph 29 of Schedule 3 to the 2002 Act). By regulation 42(3)(b), read with regulation 42(9) and (10) of the Conduct Regulations, where gross misconduct has been found to have occurred the disciplinary action available is either: (a) a final written warning to remain on file for up to 5 years; (b) reduction in rank or (c) dismissal without notice. In this case the penalty imposed was a final written warning to remain on Mr Mason's service record for 3 years. The Claimant submits first, that the Panel failed to have regard to guidance issued by the College of Policing. The guidance is "Guidance on outcomes in police misconduct proceedings" ("the Outcomes Guidance"). It was issued by the College of Policing pursuant to section 87(1)(B) of the Police Act 1996, a power to issue guidance to police forces as "to the discharge of their disciplinary functions". The Outcomes Guidance is directed to a panel's decision on penalty following a finding of misconduct. By section 87(3) of the 1996 Act, persons to whom guidance is issued must have regard to that guidance. Thus, the submission is that the Panel failed to comply with the section 87(3) obligation. The Claimant's second submission is that, in any event, the decision to impose a final written warning rather than to dismiss was the consequence of failure to take account of some matters and incorrect over-reliance on others, such that the conclusion on penalty was either erroneous or irrational.

(1) Failure to have regard to the College of Policing guidance

29. The Outcomes Guidance is very detailed, but it would be wrong to conclude it is some form of route map for misconduct panels that either removes or significantly reduces the opportunity for a panel to assess matters for itself. There are two important points to be made. The first is that the legal framework for a panel's decision is provided by the Conduct Regulations. As already noted, regulation 42 (which concerns the outcome of misconduct proceedings) lists the penalties that may be imposed when conduct amounting to gross misconduct has been found to have occurred. Also, by regulation 42(14), when the question of disciplinary action is being considered a panel "must have regard to the record of police service of the officer concerned as shown on the officer's personal record". Further, regulation 41 which makes provision for the procedure at a misconduct hearing includes a requirement (at regulation 41(15)) to "review the facts of the case" for the purpose of deciding whether or not gross misconduct has occurred. Nothing that appears in the Outcomes Guidance ought or could be construed as derogating from any provision in the Conduct Regulations. The second point is that the Outcomes Guidance itself recognises the primary role and responsibility of the misconduct panel when it comes to assessing the case before it. The "Introduction" to the Outcomes Guidance includes the following:

"1.3 The guidance does not override the discretion of the person(s) conducting the meeting or hearing. Their function is to determine the appropriate outcome and each case will depend on

its particular facts and circumstances. Guidance cannot and should not prescribe the outcome suitable for every case.

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

Thus, the Outcomes Guidance does not purport to be a straitjacket.

30. The Claimant’s submission relies on Chapter 4 of the Outcomes Guidance, “Assessing seriousness”, which in outline, provides as follows. *First*, the guidance refers to the judgment of Popplewell J in *Fuglers LLP v Solicitors Regulatory Authority* [2014] EWHC 179 (Admin). In that case the Solicitors Disciplinary Tribunal had imposed fines on a firm of solicitors and two of its members following misuse of funds in the firm’s client account. On appeal to the Administrative Court, the firm and the members contended the fines were disproportionate. The appeal was dismissed. Popplewell J’s primary reasoning was to the effect that appeals against the decisions of the Solicitors Disciplinary Tribunal would only succeed if the Tribunal had erred in law, failed to take account of relevant evidence, or failed to give proper reasons for its decision. However, in the course of his judgment, Popplewell J made some observations on the approach the Tribunal should take when deciding what penalty to impose. He referred to “two stages”: first, assessment of the seriousness of the misconduct; and second “to keep in mind the purpose for which sanctions are imposed by such a tribunal”. As to the first stage, and by reference to a guidance note issued by the Solicitors Disciplinary Tribunal, Popplewell J identified four matters relevant to assessment of seriousness. He stated “the most important factors” would be culpability for the misconduct, and the harm caused, and that any assessment of seriousness would be “informed” by aggregating factors and mitigating factors. As to his second “stage”, Popplewell J referred to the well-known observations of Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512.
31. *Second*, Chapter 4 of the Outcomes Guidance adopts Popplewell J’s four elements for assessment of seriousness: see paragraph 4.49 which lists culpability, harm caused, aggregating factors, and mitigating factors. Between paragraphs 4.4 and 4.9 the Outcomes Guidance states as follows:
- “4.5 When considering outcome, first assess the seriousness of the misconduct, taking account of any aggregating or mitigating factors and the officer’s record of service. The most important purpose of imposing disciplinary sanctions is to maintain public confidence in and the reputation of the policing profession as a whole. This dual objective must take precedence over the specific impact that the sanction has on the individual whose misconduct is being sanctioned.
- 4.6 Consider personal mitigation such as testimonials and references after assessing the seriousness of the conduct by the four categories above.

4.7 There may be overlap between these four categories and/or imbalances between them. Low level culpability on behalf of the police officer such as a failure to respond in good time to an incident, can result in significant harm. Equally an officer may commit serious misconduct which causes minimal harm to individuals or the wider public but may still damage the reputation of the police service.

4.8 Carefully assess the officer's decisions and actions in the context in which they were taken. Where the misconduct has taken place on duty, consider the policing context and whether the officer followed the Colleague of Policing's National Decision Model. Many police officers are required to take decisions rapidly and/or in highly charged or dangerous situations, for example, in a public order or other critical incidents, such decisions may carry significant consequences. Take care not to confuse these consequences with what the officer knew or could reasonably have known.

4.9 Way all relevant factors and determine the appropriate outcome based on evidence, independently of any views expressed by the media."

32. *Thereafter*, between paragraphs 4.10 and 4.72, the Outcomes Guidance considers the four elements in turn. Each of the elements is the subject of detailed commentary. Although this commentary is valuable, the general approach described in paragraphs 4.5 and 4.9 is of greater importance. The general approach will apply to all cases. The matters referred to in the section from paragraph 4.10 may inform the application of the general approach depending on the facts of the case in hand and the misconduct panel's assessment of those facts. Further, a misconduct panel's decision must, in general terms, be consistent with the commentary from paragraph 4.10 of the Outcomes Guidance to meet "have regard" obligation to which a misconduct panel is subject. However, there is no requirement that a decision must cross-refer to any of these paragraphs as if they were a check list, let alone mimic the language they use.
33. The Panel's decision in this case appears in two forms. It appears first in a transcript of the proceedings on 5 October 2021, and then in a *pro forma* document – "Notice of Outcome of Police Misconduct hearing (Regulation 36 Police (Conduct) Regulations 2012)" – into which the main part of the transcript has been cut and paste. In the *pro forma*, but not in the transcript, the text is split into four sections: "Preliminary Hearing/Legal Argument"; "Findings of Fact"; "Findings on Gross Misconduct/Misconduct"; and "Findings on outcome including any aggregating or mitigating factors affecting the seriousness of the failures in standards".
34. The Claimant submits that the Panel failed to comply with Outcomes Guidance by failing to follow a "structured approach". So far as I can tell from the authorities relied on, the term "structured approach" has appeared in judgment of HHJ Pelling in *R(Chief Constable of Greater Manchester Police) v Police Misconduct Panel* (Case 698/2018, judgment November 2018) and in the judgment of Steyn J in *R(Chief Constable of*

Nottinghamshire Police) v Police Appeals Tribunal [2021] EWHC 1248 (Admin). In the latter judgment the words are used simply as a shorthand for the point made at paragraph 4.1 of the Outcomes Guidance, i.e., that seriousness should be assessed taking account of the officer's culpability for the misconduct; the harm caused by the misconduct; aggravating factors; and mitigating factors.

35. The Claimant however, places special reliance on the judgment of HHJ Pelling, especially his observations at paragraphs 16 and 18 of his judgment on the panel decision in issue in that case:

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

...

18. Although the panel states in the second and third line of its sanction decision that it has applied the principles in the guidance that falls far short of what is required in my judgment. It does not set out expressly or even refer expressly to the correct structured approach identified in *Fugler* summarised in the guidance even though the parties formerly cited *Fugler* to the panel. Even if the language used by the panel could be regarded as sufficient in the circumstances that of itself is not enough unless the reasoning that follows shows that effect has been given to the structured approach by reference to the purpose of sanctions identified in the guidance. The panel has identified certain aggravating factors and certain mitigating factors before then concluding that a final written warning was appropriate. By adopting that approach the panel fell into error because it did not attempt to assess how serious it concluded the misconduct to be. Seriousness is not a binary question. The focus of Chapter 4 of the guidance is on assessing how serious the misconduct is, not whether or not it was serious. Hence the reference for example in paragraph 4.15 to conduct that should be considered ‘especially serious’. The panel should have but has failed to assess the level of seriousness by reference to culpability, harm, aggravating factors and mitigating factors in the structured manner required by the guidance. Having reached a conclusion as to the level of seriousness displayed in circumstances of this case exhibited by the misconduct found to have occurred, the

panel ought then to have considered sanction specifically by reference to the need to maintain public confidence in and the reputation of the police service, to uphold high standards, to deter misconduct and to protect the public. There is not a hint within the language used by the panel that this has been its approach.”

HHJ Pelling was correct to make it clear that compliance with the obligation to have regard to Outcomes Guidance is a matter of substance, not form. However, it would be wrong to consider this or any other part of his judgment as applying some form of gloss either to the Outcomes Guidance such that it should be read as requiring a panel’s reasoning to follow one specific course in all cases, or to the well-known content of statutory “have regard” obligations as they apply to statutory guidance.

36. As the Outcome Guidance states, it is a general framework for assessing seriousness of misconduct. It does not require decisions to be expressed or laid out in any prescribed form. In this sense it is unhelpful to speak in terms of a “structured approach”. When the submission is to the effect that a panel failed to have regard to Outcomes Guidance when assessing the seriousness of the conduct before it, the court must consider the decision and reasons as a whole and assess whether the four elements referred to a paragraph 4.4 of the Outcomes Guidance have been considered. It would be wrong to assume that those four elements must be considered separately from each other or in separate parts of the reasoning. Paragraph 4.4 of the Outcomes Guidance is not, in this sense, a template. Depending on the facts of the case in hand one or more of the elements may overlap. For example, one person’s “culpability” or “harm consideration” could be another’s “aggravating factor”. Which category the matter is put into is less important than the fact that the panel has taken it into account. Put shortly, the Outcomes Guidance is not to be applied as if it was intended to create a series of traps for an unwary misconduct panel. The only sense in which a “structured approach” is required is that, considering a decision overall, it should be apparent that the seriousness of the misconduct found to have occurred has been considered methodically in a manner that is consistent with the panel’s obligation to have regard to the Outcomes Guidance.
37. In this case, the Panel’s reasoning, considered in the round, is consistent with the assessment of seriousness explained in the Outcomes Guidance. The Panel made clear findings of fact (by reference both to admissions Mr Mason had made, and to its own assessment of the disputed evidence): (a) that when taking a statement from the Claimant, Mr Mason had asked inappropriate questions because he found her attractive; (b) that he had asked the Claimant whether she was single because he was interested in pursuing a relationship with her; (c) that he asked the Claimant out to dinner; (d) that he had asked if she wore a “Bunny Girl outfit” at work at the Playboy Club; and (e) that he had sent the emails referred to in the complaint in an attempt to establish a relationship with the Claimant. The Panel also set out conclusions on the consequences of those matters so far as concerned the application of the Standards of Professional Behaviour: (a) that they amounted to an abuse by Mr Mason of his position; (b) that Mr Mason had failed to treat the Claimant with respect and courtesy and (c) that they amounted to discreditable conduct because these matters damaged the relationship of trust and confidence between the police and public. All these matters are set out in the “Findings of Fact” section of the version of the decision in the *pro forma* document.

38. Next, as required by regulation 41(15) of the Conduct Regulations, the Panel considered whether the misconduct it had found to have had occurred amounted to gross misconduct. The Panel concluded as follows:

“The Panel has found that DCI Mason sought to exploit his chance encounter with [the Claimant] when he interviewed her at Kentish Town Police Station after she had been the subject of an attempted robbery. He clearly found her attractive and took a number of steps during the interview and the next day in the email messages to establish a relationship with her. His description of her looking amazingly hot and his admission in the email messages of being determined in his pursuit of beautiful women makes it clear that he was attempting to pursue a sexual relationship with her. This was such a fundamentally inappropriate way for him to have acted that the Panel are in no doubt that his behaviour constituted Gross Misconduct.”

39. Finally, the Panel considered the penalty to impose. The “Finding on outcome ...” part of the decision is divided into three parts: (a) “aggravating factors”; (b) “mitigating factors”; and (c) “outcome” and is as follows:

“AGGRAVATING FACTORS

1. There was a sexual motive for the actions of DCI Mason.
2. He was guilty of a breach of trust in the way he dealt with Maria.
3. He continued his behaviour after Maria had suggested he was acting inappropriately.
4. He knew that his actions were inappropriate at the time but continued in his attempt to create a personal relationship with Maria.
5. His behaviour had an adverse impact on Maria in that it caused her to have much less trust in the police and not to seek their assistance subsequently.
6. Maria was the recent victim of a robbery and as a result was vulnerable.
7. There is a very significant level of public concern at the present time about the way in which police officers behave towards female members of the public.
8. DCI Mason has been found to have breached 3 separate Standards of Professional Behaviour.

MITIGATING FACTORS

1. The misconduct was confined to a limited period of time over 2 successive days.
2. DCI Mason made admissions to most of the factual allegations he faced and admitted that his behaviour amounted to Misconduct.

3. DCI Mason had a further opportunity to attempt to create a personal relationship with Maria when she contacted him a few months later to report a burglary but he passed the investigation on to other officers.
4. DCI Mason has shown significant remorse for his inappropriate behaviour.
5. The AA has provided evidence of the excellent service record of DCI Mason since 2011
6. There are no reports of any inappropriate behaviour or misconduct by DCI Mason since the events which are the subject of this case.
7. DCI Mason has provided 7 character references, all of which speak highly of this abilities a police officer.
8. DCI Mason has achieved a number of promotions since 2011, rising from Detective Sergeant to Detective Inspector in 2015 and to Temporary Detective Chief Inspector in 2017. He is now Detective Chief Inspector on the Flying Squad and was recently successful in a Superintendent promotion assessment centre.
9. In 2013, 2015 and 2018 he received commendations for his service in the Metropolitan Police Service (MPS). The award in 2018 was from the Assistant Commissioner for extraordinary leadership, professionalism, resilience and dedication while providing counter-terrorism support to the investigation in response to the Westminster Bridge terrorist attack.
10. The events with which the Panel concerned today occurred almost 10 years ago when public concern about the type of behaviour exhibited by DCI Mason was less pronounced.
11. The Code of Ethics which assists police officers in understanding their duties and obligations was formalised and published in 2014. Prior to this he guidance to police officers was less comprehensive.

OUTCOME

In considering outcome the Panel bore in mind that the purpose of the police misconduct regime is threefold:

1. To maintain public confidence in and the reputation of the police service.
2. To uphold high standards in policing and deter misconduct.
3. To protect the public.

The Panel considered the 3 possible outcomes in ascending order of seriousness. The Panel had in mind that it should choose the least severe outcome which deals adequately with the issues identified. The Panel first considered a final written warning. This would remain in place for at least 2 years and no more than 5 years.

The Panel has determined that the appropriate and proportionate outcome is that DCI Mason is given a final written warning. In considering the appropriate length of time that the final written warning should remain on the officer's record the Panel took into account:

- (a) The seriousness of the conduct
- (b) The circumstances that gave rise to the misconduct.
- (c) The public interest
- (d) The mitigation offered by the officer including previous record of conduct.

The seriousness of the conduct appears from the list of aggravating factors mentioned above. The Panel do not minimise the seriousness of DCI Mason's behaviour. However, this was misconduct over 2 days in an otherwise blameless career which has spanned 22 years and includes several promotions and 3 commendations.

The lapse of time since the events occurred is significant. It is now 10 years since DCI Mason attempted to pursue a relationship with [the Claimant]. The delay in this matter coming before this Panel is mainly due to the delay in [the Claimant] making a complaint to the MPS. The issues arising in this case are currently topical but were much less so in 2011. The matters referred to in the list of mitigating factors above provide strong reasons to support the imposition of a Final Written Warning of less than the maximum duration. However, the public interest in discouraging this type of behaviour is high. This type of behaviour and more serious examples of police officers abusing their position of trust when dealing with female members of the public have been prominent in the media in recent months. The Panel is mindful of this. In the final analysis the Panel must impose an outcome that is proportionate to the harm caused by the actions of DCI Mason. The outcome must deter misconduct in the future by members of the MPS. The outcome must aim to maintain public confidence in and the reputation of the police service. The Panel has concluded that a Final Written Warning for 3 years is the appropriate outcome. The more serious outcomes of Reduction in Rank or Dismissal without Notice would be disproportionately harsh in the Panel's judgement in all the circumstances."

40. It may fairly be said that the way the Panel set out this part of its reasons does not follow the list at paragraph 4.4 of the Outcomes Guidance, as a template. However, looking at the substance of the reasons there was no failure to have regard to the Guidance. The Panel's list of aggravating factors includes the matters going to culpability (items 1, 3 and 4) and considers the harm caused (items 5 and 6). Later, under the heading "Outcome" the Panel referred to its list of aggravating factors as explaining the

seriousness of the conduct. This was consistent with the Guidance. The Claimant submitted otherwise, relying in particular on the observation made by Judge Pelling in the *Greater Manchester* case that “seriousness is not a binary question” (see the passages quoted above, at paragraph 35). That phrase means no more than that a panel should explain its conclusion on seriousness by reference to facts of the case in hand. In the present case the Panel did this; the extent of the seriousness of the misconduct was explained by reference to the list of aggravating factors.

41. I am also satisfied that when the Panel made its decision on the penalty to impose, it did consider the need to maintain public confidence in the police. The Panel said as much under the heading “Outcome”. Further: (a) it identified public concern at the treatment of women by the police as an aggravating factor; and (b) recognised that such public concern was greater now than it had been in 2011 when the events giving rise to the complaint had occurred.
42. The Claimant’s submission to the contrary relies on paragraph 4.65 of the Outcomes Guidance which is to the effect that where “serious harm” has been caused either to people or public confidence in the police “dismissal is likely to follow”. However, in the present case, the submission cannot really be that the Panel disregarded paragraph 4.65 of the Guidance since the passages I have mentioned show that the Panel had the need to maintain public confidence well in mind. Rather, the submission can only be that the Panel fell into error by failing to categorise the harm in this case as “serious harm”. In this way the submission is not so much about an error of principle as about an alleged error of assessment. The submission fails because, absent error on some matter of principle, evaluation of how serious the harm is, is for the Panel, save for example where the conclusion reached was supported by no evidence. On this matter too, therefore, the Panel’s approach was consistent with the Outcomes Guidance. Overall, therefore I reject the Claimant’s submission that the Panel failed to have regard to the Outcomes Guidance.

(2) *Failure to consider matters; reliance on irrelevant matters; conclusion on penalty, irrational.*

43. The remaining part of the Claimant’s submission is that the Panel erred by failing to consider some matters and by attaching undue significance to others. I do not consider the matters relied on in support of this submission, either each in turn or in combination, make good either the submission that the Panel overlooked a material matter (i.e., something a Panel acting reasonably ought to have relied on), or that the Panel relied on some matter it ought not to have done, or that its overall conclusion on penalty was irrational. The first matter relied on is that the Panel did not consider that Mr Mason’s behaviour was “predatory”. However, that is no more than using a different adjective to describe the things the Panel did rely on i.e., that Mr Mason acted in pursuit of a sexual motive and that, inappropriately, he attempted to establish a personal relationship with the Claimant.
44. The second matter relied on is that the Panel did not attach weight to the fact that it had disbelieved some parts of Mr Mason’s evidence, and had instead preferred evidence given by the Claimant. The Claimant submits that the Panel ought to have been considered its disbelief of some parts of Mr Mason’s to compound his misconduct. I do not agree. While doubtless there could be situations where a person’s conduct during

misconduct proceedings could be so grave as to amount to a further aggravating matter, it would be artificial as a matter of routine, to treat every occasion where the evidence of the complainant has been preferred over evidence given by the person facing misconduct proceedings as one that aggravates the disciplinary misconduct.

45. The Claimant's third point is that the Panel was wrong not to regard the complaint as a complaint of discrimination. This has echoes of the Claimant's submission on the Commissioner's approach to the reporting and investigation of the complaint. Broadly, the same response applies. The complaint was a complaint about sexual harassment, a recognised form of discrimination. The Panel clearly saw the complaint as a complaint of harassment and upheld it on that ground. All this being so, the Panel, did not fail to consider the complaint as one of discrimination. In fact, the substance of its conclusion was that sexual harassment a form of discrimination had occurred.
46. Fourth, the Claimant submits that Panel failed to realise that Mr Mason's misconduct amounted to "operational dishonesty". This is a reference to paragraphs 4.26 and 4.27 of the Outcomes Guidance.

"4.26 Operational dishonesty is dishonesty in connection with a police operation. In *Salter* the misconduct concerned an instruction to destroy evidence retrieved at the scene of a road traffic accident.

4.27 Impropriety involving corruption, deliberately misleading or compromising an investigation or wilfully failing to give proper disclosure in a criminal prosecution, is likely to be comparably serious to and/or to involve operational dishonesty. Other examples of operational dishonesty might involve tampering with evidence, interfering with witnesses, or disclosing information held by police for financial reward."

The Panel committed no error by failing to approach its decision on penalty by reference to these matters because that was not the nature of the disciplinary charge made against Mr Mason. There was no evidence that he had mishandled evidence or compromised the investigation of the robbery. Any suggestion that he had would have been entirely speculative.

47. Next, the Claimant submits that the Panel placed too much weight on Mr Mason's previous good service record, and on other mitigation. I do not consider this submission amounts to anything more than disagreement with an assessment (i.e., of the penalty to be imposed) that was reasonably open to the Panel on the evidence before it. The Claimant's case on this point is not improved by the further information that arose from the post-hearing disclosure (see above at paragraph 21). The Panel could only consider the evidence available at the time of the hearing; the complaint referred to in the late disclosure was not made until February 2022.
48. Finally, the Claimant's omnibus submission is that the Panel's conclusion to impose a final written warning to remain in place for 3 years was irrational. I do not accept this submission. In this case the whole is not greater than the sum of the parts that I have

already considered. The Claimant emphasises that in this case the Panel upheld a complaint of sexual harassment; that this had been conduct by a police officer acting in the course of his office; and that the Panel had concluded the misconduct comprised gross misconduct.

49. All that is true. However, in the context of this disciplinary scheme, gross misconduct does not, inevitably result in dismissal. In this case the Panel referred to imposing a penalty that was “proportionate” and was “the least severe outcome which deals adequately with the issues identified”. Both these points reflect the Outcomes Guidance, at paragraphs 2.1 and 2.11, respectively. While this was a case of sexual harassment, the Panel was entitled to have in mind precisely what the harassment had comprised. It was also entitled to attach weight to the fact that the complaint had been made only some 10 years after the misconduct had occurred, and Mr Mason’s previous record of good service, including that there had been no reports that Mr Mason had acted in any similar inappropriate manner on any other occasion. The Panel’s reasons under the heading “Outcome” (see above at paragraph 39) are sufficient to support its conclusion on penalty. That conclusion was properly available to the Panel, it was not irrational.

D. Disposal

50. For the reasons above, I reject the Claimant’s challenges to the decisions of the Commissioner and the Panel. The application for judicial review is dismissed.
51. I have referred above to the very late disclosure made by the Commissioner in this case, at the instigation of the Claimant. The Commissioner has filed two statements that seek to explain how it was that information clearly disclosable in discharge of the Commissioner’s obligation of candour in these proceedings, that was available to the Commissioner from February 2022 shortly after the proceedings commenced in January 2022 and in any event well before the Commissioner’s Detailed Grounds of Defence and evidence were filed and served (on 9 June 2022), came not to be disclosed until October 2023 and even then only at the request of the Claimant’s solicitors. The first statement is by Acting Superintendent Stephen Willers of the Commissioner’s Directorate of Professional Standards; the second is made by Noranne Griffith, the solicitor within the Commissioner’s Directorate of Legal Services with responsibility for the conduct of this case. Each has apologised for what happened; I accept those apologies.
52. The errors that happened in this case underline how important it is that the scope of disclosure required of a defendant to meet the obligation of candour is thoroughly considered against the Claimant’s pleaded case. In this instance, the Statement of Facts and Grounds (at paragraph 3.18) referred to the Allegations of Discrimination Guidance and set out the part of that guidance that investigations should look for evidence of patterns of behaviour, and then pleaded (at paragraph 4.10) a failure to conduct the investigation in accordance with this part of the guidance. Had this pleading been properly considered it ought to have been obvious, certainly by June 2022 when the time came for the Commissioner to file and serve his Detailed Grounds of Defence and evidence, that information about the complaint made by the police officer in February 2022 was disclosable in these proceedings. The Commissioner ought to have addressed this matter at that time. To the extent that Ms Griffith suggests that the late disclosure concerned a matter that was not pleaded in the Statement of Facts and Grounds, she is

wrong. A defendant's obligation of candour is one of the cornerstones of judicial review. The court relies on public authorities thoroughly and conscientiously to ensure that information that is relevant to the issues in the case is drawn to the court's attention. Mistakes do occur, and I am satisfied that this is what happened on this occasion. However, what happened in this case only serves to emphasise that in every case, careful consideration of the Claimant's pleading is one essential first step to identifying the scope of disclosure that is required.
