Neutral Citation Number: [2024] EWHC 1116 (Admin)

Case No: CO/2731/2023
AC-2023-LON-002249

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 May 2024

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE KING	**Claimant**
on the application of	
STEPHEN DALTON	
- and -	
CHAIR OF THE POLICE APPEALS TRIBUNAL	**Defendant**
CHIEF CONSTABLE OF HERTFORDSHIRE CONSTABULARY	**Interested Party**

- -
- -

Kevin McCartney (instructed by **Hempsons LLP**) for the **Claimant**
Matthew Holdcroft (instructed by **Legal Services**) for the **Interested Party**
The **Defendant** did not appear and was not represented

Hearing date: 23 April 2024

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Approved Judgment

This judgment was handed down remotely at 10 am on 14 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mrs Justice Lang :

1. The Claimant seeks permission to apply for judicial review of the decision of the Chair of the Police Appeals Tribunal ("PAT"), dated 21 April 2023, that the Claimant's appeal against the determination of the Police Misconduct Panel ("the Panel"), on 22 November 2022, had no real prospect of success and there was no other compelling reason why the appeal should proceed, applying Rule 11(2) of the Police Appeals Tribunals Rules 2012 ("the PAT Rules 2012").

2. The Defendant has played no part in this claim, apart from filing an Acknowledgment of Service. His decision is defended by the Interested Party ("the IP") who was the Appropriate Authority in the conduct proceedings.

The Panel's decision

3. In summary, on the night of 4 October 2019, the Claimant and other officers attended Wilmington Close, Watford, in response to a report from a local resident that three youths were attempting to break into a bike shed. A handsaw, green pliers/bolt cutters were found at the scene. Three youths were detained by police officers. One of the youths was Richard Smith ("RS") who was subsequently the complainant in the misconduct proceedings. The Claimant arrested RS and handcuffed him. Later, the Claimant walked RS to the rear of a nearby police car, and forced his head downwards onto the vehicle, causing him lacerations of his lip and surrounding tissue, and the left side of his face, and possibly a fractured jaw. The Claimant, with the assistance of SC Sprigens, took RS to the ground where he was given first aid and then taken to hospital.

4. The allegations against the Claimant were set out in the notice served under regulation 21 of the Police (Conduct) Regulations 2012 as follows (with paragraph numbering added):

> "PC Dalton, it is alleged that you have breached the Standards of Professional Behaviour and, in particular, standards relating to:
>
> Honesty and integrity
>
> (1) Your behaviour as set out in the Background Facts at paragraph 24 above has breached this Standard. You knew that [RS] had sustained an injury when you had forced his head against a police vehicle. You were fully aware that he not sustained a face injury when he had been taken to the floor. You dishonestly stated that the injury had occurred when [RS] was taken to the floor.
>
> Authority, Respect and Courtesy
>
> (2) Your behaviour as set out in the Background Facts at paragraph 22 above has breached this Standard. You knew that [RS] had sustained an injury and yet you responded in

> a callous and uncaring fashion. This is aggravated by the fact that you were responsible for the injury.
>
> Use of force
>
> (3) Your behaviour, as set out in the Background Facts has breached this standard. The force you used was neither necessary, nor proportionate, nor reasonable. There was no lawful justification for it.
>
> - (a) The use of handcuffs was not necessary, proportionate or reasonable.
>
> - (b) The continued restraint was not necessary, proportionate or reasonable.
>
> - (c) The *(sic)* thrusting [RS's] head into a police vehicle was not necessary, proportionate or reasonable.
>
> There was no lawful basis for the individual, or cumulative, uses of force set out above.
>
> Discreditable conduct
>
> (4) Your actions have discredited the police service and/or undermined public confidence as is set out in (1),(2) and (3) above.
>
> (5) It is alleged that these matters individually and/or collectively amount to gross misconduct, namely, a breach of the Standards of Professional Behaviour that, if proved, is so serious that your dismissal would be justified."

5. The Claimant was prosecuted for the offence of assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Persons Act 1861, and was acquitted. The Panel considered transcripts of evidence from the Crown Court trial.

6. The Panel also considered witness statements, interviews, and oral evidence from the Claimant, RS, and officers SC Sprigens, PC Williams and PC Mitchell.

7. Most of the incident was captured by the Body Worn Video ("BWV") filmed by SC Sprigens' BW camera which I viewed at the hearing. There was also some CCTV footage. The Claimant switched his BW camera on after the collision with the vehicle.

8. Under the sub-heading 'Witnesses and Evidence', the Panel stated:

> "The Panel heard evidence from PC Dalton whose account in many respects was unreliable, in particular in relation to his assertion that RS did not wish to talk to him at the scene of the incident, RS did not provide his personal details and tried to

> pull away from him and his belief that RS presented as a suicide risk was inconsistent with actions.
>
> The Panel also heard evidence from other officers in attendance namely, SC Sprigens, PC James Williams, PC Adam Mitchell and Richard Smith (RS) the detainee.
>
> The Panel noted that RS's account was in many respects unreliable. RS was unable to recall whether: PC Dalton actually used his PAVA, he was given first aid at the scene and whether his injury was sustained whilst he was on the ground by PC Dalton cutting his face. RS was unable to confirm whether his injury was caused by contact with the police car."

9. Under the sub-heading 'Findings of Fact', the Panel found as follows:

   i) RS appeared compliant during the course of his dealings with the police, and did not appear to pose a physical or verbal threat to any of the officers. He did not show any signs of aggression or pose a threat to the Claimant or the other officers.

   ii) During the course of his interaction with the Claimant, RS appeared lucid. He protested his innocence on several occasions and was visibly distressed.

   iii) RS was handcuffed by the Claimant. However, following RS complaining about the handcuffs hurting his wrist, the Claimant removed one of them.

   iv) RS was seen on the BWV to be "toing and froing" i.e. moving. On more than one occasion, the Claimant said loudly "stop moving about" and "stop pulling away from me".

   v) The Claimant was heard to say "Right" (indicative of him running out of patience with RS) and then he walked behind RS and took hold of his neck/shoulder. The Claimant walked RS towards a nearby police vehicle and forced his head downwards into the vehicle. The Claimant was shocked by the noise caused by the impact of RS's head with the vehicle.

   vi) RS was taken to the ground and started to scream because of the pain from the collision of his face with the vehicle. He was bleeding. In response, the Claimant said in a sarcastic and non-empathetic tone, "Yeah, hurts doesn't it. Don't resist me".

   vii) The Claimant and other officers sought to reassure RS that he would be okay and applied first aid to his head wound. RS was taken to hospital by one of the officers for the wound to be sutured. Upon examination the Registered Medical Practitioner noted that RS had suffered a laceration of his lip that extended to the surrounding tissue, a laceration to the left side of his face, and possibly a fractured jaw.

   viii) The Claimant informed the control room that RS was arrested for going equipped to steal and had suffered a facial injury as a result of him being taken

to the floor, and that RS was obstructive. He omitted to mention to the control room that RS's head had collided with the police vehicle.

ix) However, the Panel concluded on balance, that the Claimant was not dishonest in the information that he provided to the control room which he intended to be a synopsis for police records. Therefore allegation (1) was not proved.

x) The Panel noted that RS did protest his innocence at various stages and could be seen to pull away from the Claimant. However, on balance, the Panel did not consider that RS obstructed or physically resisted the Claimant to the extent that he found it more difficult to carry out his duties. The Claimant appeared to take charge of the incident without any or minimal assistance from other officers present at the scene. He was responsible for the RS's arrest and restraint, the application of handcuffs and subsequent removal, the search of RS.

xi) As regards the use of force, the Claimant maintained that he had genuine welfare concerns for RS and that, if given the opportunity, he would have tried to escape and run into the main road nearby. The provenance of these welfare concerns emanated from one of two male suspects, including RS, whom he heard to say "I'm suicidal". However in the BWV, RS was not heard to say that he was "suicidal" or "I'm going to kill myself" or words to that effect. Further, in his evidence to the Panel, RS denied that he intended to run into the main road, which he considered to be a "stupid" proposition given that he was "not a kid". On the contrary, RS explained that he wished to speak to his friend standing on the other side of the road (one of the three suspects seen at the scene) to talk about whether he could return to his flat after his release from police custody.

xii) Notwithstanding the Claimant's stated concern for RS's well-being, the Claimant did not, in his tone or by his actions, appear to exercise any empathy towards RS. When RS said he was in a bad mood, the Claimant responded saying "I don't care if you are in a good mood or a bad mood" and "you've told me that three times fella". The Claimant failed to ascertain whether there were any relevant risk markers on the police system concerning RS. Nor did he take any steps to safeguard his well-being by, for example, moving RS away from the main road or placing him in the rear of a police vehicle to minimise any risk of harm.

xiii) However, the Panel found that the Claimant's actions in handcuffing RS and detaining him were necessary, proportionate and reasonable, having regard to the need to secure evidence and to prevent escape, and that a suspected co-defendant was across the main road and visible to RS. Therefore the allegations at (3)(a) and (b) were not proved.

xiv) The Panel considered that the allegations at (2), (3)(c) and (4) were proved, and engaged the following Standards of Professional Behaviour: "Authority, Respect and Courtesy", "Use of Force", and "Discreditable Conduct".

xv) The Panel found that the Claimant's conduct, individually and cumulatively, amounted to gross misconduct.

10. In its 'Decision on Outcome', the Panel found that the Claimant was solely responsible for the use of excessive force and the lack of respect and courtesy, as found proven, and that his conduct was intentional and deliberate. Having regard to the 'Guidance on outcomes in police misconduct proceedings', the Panel found that the level of culpability was high. The Panel also found the level of harm was high. The aggravating factors were that the conduct amounted to an abuse of trust and position that involved a vulnerable person to whom the Claimant owed a duty of care, and the scale of concern regarding serious misconduct by police officers. In considering mitigating factors, the Panel took into account that this was a single episode of brief duration. The Panel had due regard to the positive character references and the Claimant's record of service.

11. The Claimant was dismissed without notice.

Appeal to the PAT

12. The Claimant appealed to the PAT under rule 4 of the PAT Rules 2012. The Grounds of Appeal were that:

    i) the Panel's findings and disciplinary action were unreasonable; and

    ii) they were based on misdirections and errors of fact and law, meaning that there was a breach of the procedures or other unfairness which could have materially affected the outcome.

13. In paragraph 4 of the Grounds of Appeal, the Claimant set out 7 specific criticisms of the Panel's decision, at sub-paragraphs (a) – (g), as follows:

    a) the Panel failed to read the Regulation 21 notice until shortly before closing submissions *(not pursued in the claim for judicial review)*;

    b) the Panel failed to direct that PSD officers, DS Tudor and DC Grant provide statements addressing the reason and content of their three meetings with RS at HMP Isis after the Crown Court case and before he gave evidence to the Panel *(not pursued in the claim for judicial review)*;

    c) the Panel wrongly failed to recuse itself following the assertions and questions put by the Independent Panel Member ("IPM") to the Claimant;

    d) the Panel wholly failed to consider crucial witness evidence and made factual errors;

    e) the Panel wholly failed to consider character evidence in respect of the Claimant and RS;

    f) the Panel adopted a flawed approach to assessing credibility/reliability of those witnesses it did consider, namely the Claimant and RS;

    g) the Panel failed to give adequate reasons for the findings made.

14. The Chair of the PAT (Sam Stein KC) conducted a review of the appeal, pursuant to Rule 11 of the PAT Rules 2012. In a preliminary decision, dated 31 March 2023, the Chair set out his initial view that the appeal had no real prospect of success and that there was no other compelling reason why the appeal should proceed. He reviewed his preliminary decision in the light of further written submissions from the parties, pursuant to the Rule 11 procedure, and confirmed it in his final decision to dismiss the appeal, on 21 April 2023.

Judicial review

15. The claim for judicial review was filed on 18 July 2023, which the Defendant complains was not prompt. However, in the exercise of my discretion, I do not refuse permission on that basis since it was filed within the 3 month longstop period.

16. On 1 November 2023, I directed that there should be an oral permission hearing because of the nature of the issues in the claim and the potential need for video footage to be played.

Legal framework

Police (Conduct) Regulations 2012

17. Schedule 2 to the Police (Conduct) Regulations 2012 sets out the Standards of Professional Behaviour which were referred to in this case, as follows:

> "**Honesty and Integrity**
>
> Police officers are honest, act with integrity and do not compromise or abuse their position.
>
> **Authority, Respect and Courtesy**
>
> Police officers act with self-control and tolerance, treating members of the public and colleagues with respect of courtesy.
>
> **Use of Force**
>
> Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.
>
> **Discreditable conduct**
>
> Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.
>
> ……"

PAT Rules 2012

18. The Claimant appealed to the PAT pursuant to rule 4(4)(a) and (c) of the PAT Rules 2012. Rule 4(4) provides that the potential grounds of appeal are as follows:

> "(a) that the finding or disciplinary action imposed was unreasonable;
>
> (b) that there is evidence that could not reasonably have been considered at the original hearing which could have materially affected the finding or decision on disciplinary action; or
>
> (c) that there was a breach of the procedures set out in the Conduct Regulations, the Police (Complaints and Misconduct) Regulations 2012 or Schedule 3 to the 2002 Act, or other unfairness which could have materially affected the finding or decision on disciplinary action."

19. In *R (Chief Constable of Durham) v Police Appeals Tribunal & Ors* [2012] EWHC 2733 (Admin), Moses LJ considered Rule 4(4) of the PAT Rules 2012. He observed that the grounds may overlap in that unfairness may lead to an unreasonable conclusion. He gave the following guidance on unreasonableness, at [6] – [7]:

> "6. The imposition of a test which asks whether the decision of the misconduct panel was unreasonable has led some to take the view that that imported a test of Wednesbury unreasonableness, a test appropriate to that applied by this court in questions of public law. That, in my view, is erroneous. As many courts have concluded before this court, the test is not one of Wednesbury unreasonableness. Firstly, the test must be seen in its correct statutory context, namely that of a specialist appeal tribunal considering the decision of a misconduct panel. A Wednesbury unreasonableness test is that test which is conventionally adopted where courts review decisions of the executive or expert panels; it is in such cases necessary to impose a high standard before intervention, so that the courts do not merely substitute inexpert views for those on whom primarily the responsibility of making a decision lies. Secondly, the appeal panel is itself an expert panel, as this case fully demonstrates. The Chairman of the panel in the instant case was a highly experienced QC practising in the field of criminal law, and herself one of the most experienced Chairs of Police Appeals Tribunals.
>
> 7. It follows therefore, to my mind, that the test imposed by the rules is not the Wednesbury test but is something less. That does not mean that the appeal tribunal is entitled to substitute its own view for that of the misconduct hearing panel, unless and until it has already reached the view, for example, that the finding was unreasonable. Nor, I should emphasise, is the Police Appeals Tribunal entitled, unless it has already found

> that the previous decision was unreasonable, to substitute its own approach. It is commonplace to observe that different and opposing conclusions can each be reasonable. The different views as to approach and as to the weight to be given to facts may all of them be reasonable, and different views may be taken as to the relevance of different sets of facts, all of which may be reasonable. The Police Appeals Tribunal is only allowed and permitted to substitute its own views once it has concluded either that the approach was unreasonable, or that the conclusions of fact were unreasonable. None of what I say is revolutionary or new."

20. An appellant does not have to obtain permission to appeal to the PAT. However, the PAT Chair is required to review the appeal documents lodged by the appellant and the respondent and determine whether or not the appeal should be dismissed under rule 11 of the PAT Rules 2012 which provides:

> "**Review of Appeal**
>
> 11.—
>
> (1) Upon receipt of the documents mentioned in rule 9(4) and (8), the chair shall determine whether the appeal should be dismissed under paragraph (2).
>
> (2) An appeal shall be dismissed under this paragraph if the chair considers that—
>
> (a) the appeal has no real prospect of success; and
>
> (b) there is no other compelling reason why the appeal should proceed.
>
> (3) If the chair considers that the appeal should be dismissed under paragraph (2), before making his determination, he shall give the appellant and the respondent notice in writing of his view together with the reasons for that view.
>
> (4) The appellant and the respondent may make written representations in response to the chair before the end of 10 working days beginning with the first working day after the day of receipt of such notification; and the chair shall consider any such representations before making his determination.
>
> (5) The chair shall give the appellant, the respondent and the relevant local policing body notice in writing of his determination.
>
> (6) Where the chair determines that the appeal should be dismissed under paragraph (2)—

> (a) the notification under paragraph (5) shall include the reasons for the determination; and
>
> (b) the appeal shall be dismissed."

Reasons

21. In his Grounds of Appeal and in his claim for judicial review, the Claimant submitted that the PAT Chair failed to provide adequate reasons for his conclusions. The Claimant referred to *Lawrence v General Medical Council* [2012] EWHC 464 (Admin) and *Gupta v General Medical Council* [2001] UKPC 61, [2002] 1 WLR 1692, at [14].

22. The IP referred to *Davies v Bar Standards Board* [2015] EWHC 2927 (Admin), and correctly summarised the relevant principles as follows:

    i) The reasons must show that the decision maker successfully came to grips with the main contentions advanced by the parties;

    ii) The reasons must tell the parties in broad terms why they won or lost;

    iii) The reasons must be both adequate and intelligible;

    iv) The reasons must relate to the evidence in the case, and be comprehensible in themselves;

    v) The extent of the requirement to give reasons depends on the context, and will not be allowed to become an unreasonable and disproportionate burden: see *R (Asha Foundation) v Millennium Commission* [2003] EWCA Civ 88:

    > "27…. Where reasons are required to be given, the obligation is to give appropriate reasons having regard to the circumstances of the case."

    vi) Reasons can be inferred from other material (*R (Richardson) v North Yorkshire County Council* [2003] EWCA Civ 1860, at [35]).

    vii) Reasons do not need to be lengthy or deal with every point raised (*R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions*; [2001] UKHL 23, [2003] 2 AC 295 at [170]).

23. I refer also to the well-known summary of the authorities given by Lord Brown in *South Bucks District Council v Porter* (*No. 2) v Porter* [2004] UKHL 33; [2004] 1 WLR 1953, at [36], which was applied by the Supreme Court in *R (CPRE Kent) v Dover District Council* [2017] UKSC 79, [2018] 1 WLR 109.

Apparent bias

24. In his Grounds of Appeal, the Claimant contended that the Panel erred in dismissing his application that the Panel recuse itself because of apparent bias on the part of the

IPM. In the claim for judicial review, the Claimant contended that the PAT Chair's analysis of this issue was flawed.

25. The Panel, and subsequently the PAT Chair, were provided with a Note correctly summarising the relevant legal principles, which was drafted by Mr Holdcroft and agreed by Mr McCartney. The Note is attached as an Appendix to this judgment. In the Grounds of Appeal, Mr McCartney referred, in particular, to consideration of apparent bias where a decision-maker expressed a concluded view prematurely: see *Southwark LBC v Jiminez* [2003] EWCA Civ 502, per Gibson LJ at [30]; *Ezsias v North Glamorgan NHS Trust* [2007] EWCA Civ 330, per Maurice Kay LJ at [23]-[24]; *Stanley Muscat v Health Professions Council* [2008] EWHC 2798 (QB), per Silber J. at [50] – [67].

Permission to apply for judicial review

26. The 'Administrative Court Judicial Review Guide 2023' states, at paragraph 9.1.3:

> "The judge will refuse permission to apply for judicial review unless satisfied that there is an arguable ground for judicial review which has a realistic prospect of success."
>
> "Footnote 136: See *Sharma v Brown-Antoine* [2006] UKPC 57, [2007] 1 WLR 780, [14(4); *Attorney General of Trinidad and Tobago v Ayers-Caesar* [2019] UKPC 44, [2]; *Maharaj v Petroleum Company of Trinidad and Tobago Ltd* [2019] UKPC 21; *Simone v Chancellor of the Exchequer* [2019] EWHC 2609 (Admin), [112]….."

27. Even if a claim is arguable, the judge must refuse permission, pursuant to section 31(3C)-(3D) of the Senior Courts Act 1981, if it appears to be highly likely that the outcome for the claimant would not have been substantially different if the conduct complained of had not occurred. See the summary of the principles to be applied in *Cava Bien Limited v Milton Keynes Council* [2021] EWHC 3003 (Admin), at [51] – [53].

Grounds of challenge

28. The Claimant submitted in paragraph 27(a) of the Statement of Facts and Grounds ("SFG") that the decision of the PAT Chair to dismiss the appeal under Rule 11 of the PAT Rules 2012 was irrational/*Wednesbury* unreasonable. I shall return to this ground after considering the specific complaints in the rest of paragraph 27 SFG.

Paragraphs 27(b) and 27(e)(i) SFG

29. In paragraph 27(b) SFG, the Claimant submitted that the Chair's conclusion that the evidence of SC Sprigens and PC Williams was "not hugely significant" was irrational because they were important eye witnesses, and SC Sprigens' evidence before the Panel and at the Crown Court supported the Claimant's account. At the very least, the

Panel should have considered their evidence and explained in brief terms why it was rejected.

30. In paragraph 27I SFG, the Claimant submitted that the Chair failed to provide adequate reasons for his conclusion that the evidence of SC Sprigens and PC Williams was not "hugely significant".

31. In my view, the Chair's conclusions on this issue need to be read in full. He said:

> "Ground 4
>
> 29. The fourth ground suggests that the panel failed to consider crucial witness evidence "without any reference to the content or import of their evidence" (Grounds paragraph 38).
>
> 30. The panel's ruling refers to having considered that the Applicant's evidence was unreliable. The panel is entitled to make such a judgment having heard all of the evidence from all of the officers and having watched the BW Camera footage. This finding of unreliability in relation to the Applicant will then be a focus point for the ruling by the Panel.
>
> 31. The Panel refers to having heard from all of the witnesses and in their findings of fact they summarise, from all of the accounts given, their findings.
>
> 32. In a case where the primary evidence was from BW footage and the Applicant (the panel clearly did not feel overly assisted by RS) the evidence of PC Sprigens and PC Williams was not hugely significant.
>
> 33. Having considered the submissions on this point and having reviewed the findings made by the panel it is my preliminary view that the evidence shows that the panel did consider all of the evidence from all of the witnesses."

32. I agree with the Chief Constable's submission that this ground is unarguable.

33. The core facts were evident from SC Sprigens' BWV. The footage was of high quality, shot at close quarters, and it included sound as well as images. It undermined and/or contradicted key elements of the Claimant's evidence, rendering it unreliable. The Panel found:

> "The Panel heard evidence from PC Dalton whose account in many respects was unreliable, in particular in relation to his assertion that RS did not wish to talk to him at the scene of the incident, RS did not provide his personal details and tried to pull away from him and his belief that RS presented as a suicide risk was inconsistent with actions."

34. Other key findings by the Panel which contradicted or undermined the evidence of the Claimant, SC Sprigens, PC Williams and PC Mitchell must, in my view, have been based wholly or in part on the BWV evidence. For example:

    i) The Panel found that RS appeared compliant and did not pose a physical or verbal threat to the police officers (Judgment/9(i));

    ii) On balance, the Panel did not consider that RS obstructed or physically resisted the Claimant to the extent that he found it more difficult to carry out his duties and the Claimant did not seek or require any assistance from the other officers (Judgment/9(x));

    iii) The Panel did not accept that the Claimant's use of force was justified by "welfare concerns" for RS, in particular, the risk that he was suicidal and might run into the traffic on the main road nearby because:

        a) in the BWV, RS was not heard to say that he was suicidal or similar words. RS explained that he wanted to speak to Cody Houlton, one of the other suspects who was with PC Williams on the other side of the road. In his evidence to the Panel, RS said he wanted to ask Cody Houlton if he could return to his flat for the night, and he denied that he intended to run into the main road which he considered to be a "stupid proposition" as he was "not a kid" (Judgment 9/(xi)).

        b) furthermore, the Claimant did not by his tone or actions demonstrate concern about RS, or take steps to safeguard him by moving him away from the main road or placing him in a police vehicle (Judgment/9(xii)). His lack of empathy was also demonstrated when RS was screaming with pain, after the Claimant forced his face into the police vehicle, when the Panel found that the Claimant spoke to RS in a "sarcastic and non-empathetic tone" (Judgment 9/(vi)).

35. The Panel acknowledged that a lesser use of force on RS, namely, detaining and handcuffing him, was necessary, proportionate and reasonable, whereas forcing his face into the police vehicle did not meet the criteria for the lawful use of force (Judgment/9(xiii), (xiv)). I do not agree with Mr McCarthy's submission that the Panel findings in this regard were contradictory. The Panel did not accept the Claimant's use of force was justified by welfare concerns, because he believed RS was suicidal and might run into the main road and be injured by passing traffic. However, the Panel did accept that the Claimant was justified in detaining RS and using handcuffs because of the risk that RS would try to escape, and that a suspected co-defendant was across the road and visible to RS.

36. I accept the IP's submission that the issues for the Panel were focussed upon the Claimant's intentions and belief, to determine whether the force used was necessary, proportionate and reasonable, in the circumstances. The Claimant was obviously the primary witness as to his intentions and beliefs. The Claimant did not discuss any of these matters with SC Sprigens or any other officer present.

37. The Claimant relied upon the evidence of SC Sprigens that RS appeared unpredictable and volatile, and SC Sprigens' concern that RS might run across the main road. In

giving this evidence, SC Sprigens was expressing his opinion and his assessment of the events unfolding before him. Since those events were clearly recorded by his body worn camera, the Panel members were able to view the video footage for themselves, and make their own assessment.

38. PC Williams gave his opinion on RS's demeanour, saying that he was agitated, when he was first arrested. However, his evidence was limited as he had gone to the other side of the main road to speak to another person involved, by the time of the incident between the Claimant and RS.

39. PC Mitchell described in his witness statement how he arrived on the scene, with SC Sprigens, after the Claimant, and RS "appeared to be shouting over [PC Dalton] and was saying that he was suicidal". At the hearing, he was shown the BWV and he accepted that RS was not recorded as making any reference to suicide or words to similar effect. His explanation for the reference to suicide in his witness statement was that he heard RS saying "he was feeling in a bad way" and/or "I'm in a bad place" and "I've met him previously before where he will say comments like that means his mental state, so I think that's where I've interpreted the suicidal comments from". Mr McCartney, in cross-examination, put it to PC Mitchell that when he was writing his witness statement he must have been "clear" and "certain" and had reached an "independent view" that RS was feeling suicidal. PC Mitchell agreed with Mr McCartney's suggestions. PC Mitchell also described RS as erratic and non-compliant. He did not witness the incident involving the police car.

40. In its Findings of Fact, the Panel found:

> "The provenance of PC Dalton's welfare concerns emanated from one of two male suspects, including RS, who he heard to say, "I'm Suicidal". However, the Panel noted from the available evidence, including the officer's Body Worn Footage, that RS was not heard to say that he was "suicidal" or "I'm going to kill myself" or words to that effect…"

41. In my judgment, it was rational for the Chair to conclude, in paragraph 32, that the primary evidence was from the video footage and the Claimant, and therefore the evidence of SC Sprigens and PC Williams was not "hugely significant".

42. The Panel heard oral evidence from SC Sprigens, PC Mitchell and PC Williams, and had the benefit of their witness statements, as well as a transcript of SC Sprigens' evidence in the Crown Court. The Panel referred to them by name in its decision. Therefore the Chair's conclusion that the Panel did consider all of the evidence from all of the witnesses was a reasonable inference to draw.

43. Given the style of the Panel's decision, which did not set out the evidence of each witness in turn, but instead made overall findings of fact, the Panel was not required to particularise its assessment of the evidence of PC Sprigens. PC Mitchell and PC Williams. The Panel is not expected or required to write its decisions with the degree of detail and analysis expected of a Judge in the High Court.

44. The Chair's reasons as set out in paragraph 32, when read in the context of the ground of appeal and paragraphs 29-33 of the preliminary decision, would have been

perfectly clear to the Claimant and his legal advisers. In my view it is unarguable that the reasons failed to meet the required legal standard, as set out in the authorities I have cited.

45. For these reasons, I consider that these grounds are unarguable and have no realistic prospect of success.

46. If, contrary to my view, the reasons given by the PAT Chair were inadequate, I consider that permission should be refused under section 31(3C)-(3D) of the Senior Courts Act 1981, as it is highly likely that the outcome would not have been substantially different if the conduct complained of, namely, a failure to give adequate reasons, had not occurred.

Paragraphs 27(c) and (d) SFG

47. In paragraph 27(c) SFG, the Claimant submitted that the PAT Chair erroneously categorised the assertions made by the IPM as questions, so as to wrongly justify his conclusion that they did not demonstrate a settled view, despite the fact that the IP conceded that the use of the word 'mockery' without more could be indicative of a concluded view.

48. In paragraph 27(d) SFG, the Claimant submitted that the PAT Chair failed to assess the IPM's state of mind, as evidenced by her assertions to the Claimant. The PAT Chair rejected the ground by reference to the Claimant's state of mind.

49. During the hearing the Claimant applied for the IPM to recuse herself on the ground that her questioning of the Claimant indicated a concluded view on the evidence and the allegations, which led to a perception of bias. The Legally Qualified Chair ("LQC") of the Panel received written and oral submissions on this issue. In his detailed ruling, he recorded the so-called concession made by Mr Holdcroft to the effect that the use of the word "mockery" without more could be indicative of a concluded view on the part of the IPM. He refused the application for the following reasons:

> "The Panel was referred to the legal authorities: *Southwark v Jiminez [2003] (CA), Ezsias v North Glamorgan [2007] (CA) and Stanley Muscat v HPC 2008 (HC)*. The salient principles discerned from the said legal authorities are as follows:
>
> 1. The premature expression of a concluded view or the manifestation of a closed mind may amount to the appearance of bias.
>
> 2. A provisional view expressed by a panel is not to be equated with a pre-determination of the relevant issues.
>
> 3. It does not follow as a corollary that the expression of a preliminary view of the evidence by a panel member, predicated upon an erroneous understanding of the evidence, is evidence of bias on the part of the panel member.

4. Proof of alleged bias requires consideration of behaviour throughout the course of the hearing.

5. An expression of scepticism by a panel member is not indicative of bias unless it conveys an unwillingness to be persuaded of a factual proposition.

6. The panel is entitled to try to obtain answers to points which trouble the panel and are considered to be of great relevance to the outcome of the case.

7. Each case is to be considered on its own facts.

The fair-minded observer – objective test

The relevant test to be applied is whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the panel was biased.

In the case of *Helow (AP) v Secretary of State for the Home Department [2008] UKHL 62* Lord Hope stated that:

"The observer who is fair-minded is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious… she will take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as the headlines… She is fair-minded, so she will appreciate that the context forms an important part of the material which she must consider before passing judgment."

Decision

In considering whether, in the context of this case and having regard to the alleges breaches of Professional Standards of Behaviour, the fair-minded observer would conclude that the IPM had reached a concluded view, I had regard to the evidence adduced during the hearing including the witness statements of PC Dalton and his oral evidence and that of the other officers in attendance when Richard Smith was detained.

The Regulation 21 Notice alleges that, PC Dalton acted in breach of the Standards of Professional Behaviour namely, Honesty and Integrity, Authority, Respect and Courtesy, Use of force and Discreditable Conduct. As regards the Standard of Authority Respect and Courtesy it is alleged that, PC Dalton knew that Richard Smith had sustained an injury (for which PC Dalton was responsible) and he still responded in a callous and uncaring fashion.

> Furthermore, it is alleged that PC Dalton's conduct discredited the police service and or undermined public confidence in the service.
>
> On balance, having regard to the IPM's questions and tone of the questioning, I have concluded that the fair minded and informed observer would not conclude that the IPM's questions provided evidence of a concluded view and that there was a real possibility that the panel was biased. In all the circumstances, I do not consider that the fair-minded observer would attribute to the IPM an inability or reluctance to change her mind when faced with a rational basis for so doing. Further, the questioning of PC Dalton could not reasonably be viewed as being protracted, repeated or badgering and thereby indicative of a concluded view om the part of the IPM. Furthermore, the IPM's questioning of PC Dalton related to Richard Smith's welfare and care and attention, as demonstrated by PC Dalton, which is germane to the factual issues to be determined by the panel when considering which relevant facts are proven and whether the proven conduct amounts to a breach of the Professional Standards of Authority, Respect and Courtesy and Discreditable conduct."

50. The Claimant appealed to the PAT against this ruling, on the ground that the Panel wrongly failed to recuse itself. The 'Grounds of Appeal' stated at paragraph 25:

> "When PC Dalton gave evidence the IPM made assertions and asked a series of questions which clearly demonstrated that she had formed a settled view of the evidence. It is necessary to consider all the questions asked by the IPM, but two of the most egregious examples are as follows:
>
> Q: I saw that video on Monday morning when we first came. And I was shocked because it was a shocking thing to watch
>
> (a little later the IPM stated…)
>
> Q: Because what we have seen is both of you heading towards the back of that car and Mr Smith's head colliding with it
>
> A: yes
>
> Q: and then he goes to the floor
>
> A: yes
>
> Q: and then you make a mockery of his injury. By saying 'yes it hurts doesn't it?' Because you knew it would hurt. Because you pushed him into that car."

51. For completeness, I add the Claimant's response which was as follows:

> "I manoeuvred him into the car, and I said yes it hurts …. Poor use of language I was acknowledging that he has an injury and that if that was me that was injured it would have hurt, so yeh I presume it would have hurt him".

52. In his preliminary decision, the PAT Chair stated as follows:

> "**Ground 3**
>
> 21. The third ground refers to the refusal of the recusal application which followed questions being asked by the IPM. Those questions are set out within the Grounds at paragraph 25.
>
> 22. The first of those questions concerns the BW camera footage which the IPM described as a "shocking thing to watch". At page 372 of the transcript (after the Qs from the IPM), Mr Dalton was referred to his interview by his own Counsel, Mr McCartney, and asked about his own viewing of the BW footage:
>
> "KM Just coming back where it says I was provided with a copy of BW footage camera 1 taken by SC SPRINGENS I am aware of how the incident appears from the angle of BW camera and wish to expand my statement of the 4th of October that's the statement that we see on page 37
>
> SD Yes
>
> KM So I want to come back to the question that was asked of the panel say er I am aware about the incident appears from the angle of the BW camera, when you saw Mr SMITH erm hitting the back of that car erm how did you feel and what did you think
>
> SD As the panel said it looks horrible it sound of it, everything about it looks bad it looks horrible it's the only way, I can describe it, its not a nice thing."
>
> 23. Having viewed the BW Camera footage it is easy to see why both the IPM and the Applicant would describe it as either shocking or horrible. The fact that the IPM asked a question which included that point of view does not, in my preliminary view, mean that such an expression in the circumstances of this case demonstrate bias or the appearance of bias.
>
> 24. The second question from the IPM which forms the basis of this ground of appeal was putting that the Applicant made a "mockery of his injury. By saying 'yes it hurts doesn't it? Because you knew it would hurt. Because you pushed him into that car".

> 25. It is my preliminary view that the panel was entitled to test this question as a matter which they would need to decide and I would suggest that if the question had had a precursor to it along the lines of 'Did you make a' followed by "mockery of his injury……?" then it is unlikely that this Ground would have been pursued. The fact that the form of the question was akin to a statement is what seems to have created the basis for this appeal ground. The transcript in fact shows that the Applicant treated what the IPM put as a question.
>
> 26. During the recusal application the parties helpfully agreed a note of the applicable law which is set out at paragraph 18 of the Response. The questions put do not in my preliminary view demonstrate that there is or arguably that there may be proof of bias or the appearance bias from the IPM, not that there is any basis for an argument that there was bias or the appearance of bias throughout the course of the hearing (agreed legal note point 4).
>
> 27. It is also my preliminary view there is no basis for any suggestion that the IPM's questions "convey an unwillingness to be persuaded of a factual proposition" (legal note point 5). Further the panel is entitled to obtain answers to points which trouble the panel and are considered to be of great relevance to the outcome of the case (legal note point 6).
>
> 28. I have considered the relevant case law set out by the Applicant in his Grounds of Appeal at paragraphs 27 – 30 and I have come to the preliminary view that there is no arguable basis for an argument that a fair minded and informed observer (who had been present throughout and was aware of the process and procedure), having considered the facts, would consider that there was a real possibility that the tribunal was biased."

53. I have had regard to the authorities cited during the proceedings below and in this Court.

54. In my judgment, the Claimant's grounds are unarguable and have no realistic prospect of success.

55. The IPM's questions were directly relevant to the issues that the Panel had to determine. The words used by the Claimant to RS, after he was injured, were the subject of a specific allegation in the Regulation 21 notice which stated:

> "You knew that [RS] had an injury and yet you responded in a callous and uncaring manner. This is aggravated by the fact that you were responsible for the injury."

56. The Panel was entitled to ask searching questions on this topic, to enable it to decide whether or not the allegation was proven. Having listened to the BWV, the Panel found as a fact that the Claimant responded to RS's injuries and screams of pain by

saying "in a sarcastic and non-empathetic tone …. "yeah, hurts doesn't it. Don't resist me"" (Judgment/9(vi)). The IPM used the word "mockery" in her question, which I consider has a similar meaning to "sarcastic", in the context of this episode. Whether or not the Claimant was addressing RS in a "callous and uncaring tone", or as he claimed, he was simply acknowledging RS's injury and his pain, was a matter on which the Panel had to make a finding.

57. The IPM began this part of questioning by saying:

> "I saw that video on Monday when it first came and I was shocked because it is a shocking thing to watch."

58. The Claimant agreed with her, saying "Absolutely". In re-examination, the Claimant confirmed:

> "As the panel said it looks horrible it sound of it, everything about it looks bad it looks horrible it's the only way, I can describe it it's not a nice thing."

59. Thus, it was common ground that the image of RS hitting the car, and the sound that it made, was "shocking". The IPM was not exaggerating or using unfair or biased language.

60. The IPM was careful to make it clear that she was referring to her first view of the BWV, with other Panel members, in their preliminary meeting on the first day of the hearing (Monday). She was describing her first impression of the incident, without having heard any explanation from the Claimant or submissions on his behalf. There was nothing in this exchange, or any subsequent exchange, to indicate that this was the IPM's settled or concluded view, or that she had a closed mind.

61. On reading the transcript, it is plain that the IPM was asking the Claimant a series of questions, at the appropriate time in his evidence, which she was entitled to do. The Claimant responded to them as if they were questions. The IPM is not a trained lawyer or judge, and so formulated her questions as a lay person would do. She was entitled to some latitude in this regard. Exactly the same points could have been put to the Claimant by a judge or a barrister, with rather more finesse, which would not have given rise to any challenge on the grounds of a settled view or bias. As the PAT Chair said, if the question had been "Did you make a mockery of his injury…" then there would be no cause for complaint.

62. The so-called concession made by Mr Holdcroft for the IP is a reference to an exchange between counsel at p.438 of the hearing bundle ("Bundle") as follows (corrections to transcript agreed with counsel at the hearing and inserted in brackets):

> "KM: ….is it the AA's position that was appropriate communication with the witness
>
> MH …that is the most difficult phrase, it is very, it is in the form of an [assertion] but when one sees it with the following answer its clearly been understood as a question.

> KM Sorry [to] push [on] [~~for~~] it I'm anxious to be able to deal with this submission is it the AA's position that ..looked at as a whole there can be no complaint by the reasonable observer of that … [assertion]
>
> MH I think that values the point if that was the only question it would be objectionable on its own that question could reasonably [give rise to an inference of bias] [~~could reasonably be bias to an inference (inaudible~~)] when its seen against the context of a nine page transcript however, its mediated by the context of that transcript."

63. I do not consider that Mr Holdcroft's concession is of any particular significance since, as Mr Holdcroft said, the words used by the IPM have to be considered in their context, not in isolation. When considered in their context, I agree with the conclusion of the PAT Chair when he said:

> "there is no arguable basis for an argument that a fair minded and informed observer (who had been present throughout and was aware of the process and procedure), having considered the facts, would consider that there was a real possibility that the tribunal was biased."

64. Turning now to paragraph 27(d), the starting point is the Panel's decision which the Claimant has appealed against. The Panel carefully assessed the IPM's questions, from the perspective of the fair minded and informed observer. On appeal, the PAT Chair reviewed the Panel's decision, having regard to the Claimant's criticisms in his Grounds of Appeal. The Chair applied the correct legal test, namely, that of the fair minded and informed observer of the IPM's conduct. The Chair assessed the IPM's questions in their proper context, which was the IPM's legitimate inquiry into the allegations made against the Claimant and the evidence given by the Claimant. In my view, the Claimant's challenge is misconceived and unarguable.

Paragraph 27(e)(ii) SFG

65. The Claimant submitted that the core issues set out in paragraph 13 SFG required resolution. There was a conflict between the evidence of the four officers and the complainant RS; a conflict between the interpretation of the video footage by the IP and the eye witness accounts of the officers. The Panel failed to grapple fairly with the inconsistencies as required (see *R (Chief Constable of Durham)* at [12]-[13]). The Panel adopted a flawed approach by making findings in respect of credibility before resolving conflicts in the evidence, and the PAT Chair failed to give adequate reasons for rejecting this submission.

66. This ground of challenge seeks to re-open the evidential issues under the guise of a failure by the PAT Chair to give adequate reasons. Judicial review is not an appeal on the merits. As the PAT Chair held, the Panel considered the evidence from all the witnesses (paragraph 33) and its findings of fact were clear (paragraph 38). I refer to Judgment/33-43 which address some of the key evidential issues.

67. In my view, it must be obvious to the Claimant and his legal advisers that the Panel found against him in a number of key respects. In so far as the other officers were in a position to give probative evidence, it is sufficiently clear from the findings of fact where the Panel either accepted or rejected their evidence.

68. The Claimant's list of core issues in paragraph 13 SFG were not agreed or adopted by the IP or the Panel as a framework for decision-making, and they were not obliged to address the issues in the way in which the Claimant has done.

69. I have had regard to the authorities cited by the parties on the duty to give reasons and *Khan v GMC* [2021] EWHC 374 (Admin) at [107]-[108] in which the court held that the tribunal had erred in making an initial finding on the witness' credibility and then proceeding to consider the allegations. *Khan* was decided on its own facts, and I take a different view in this case.

70. In my view, the Panel's decision does not even arguably disclose the flaws contended for by the Claimant. The Panel summarised its assessment of the reliability of the two main witnesses – the Claimant and RS – under a sub-heading called "Witnesses and evidence" and then proceeded to set out its factual findings under the sub-heading "Findings of fact". In my view, this is just a style of drafting. It cannot conceivably give rise to an arguable allegation that the Panel wrongly assessed reliability before assessing the evidence. It is obvious from a fair reading of the decision as a whole that the Panel has considered the chain of events in detail, decided which evidence it accepted and rejected at each stage, which necessarily included an assessment of the reliability of the Claimant's evidence, and made its findings of fact. I have no doubt that the examples of unreliability listed in the section titled 'Witnesses and evidence' were an integral part of the deliberations of the Panel members when making their findings of fact.

71. The Panel could have adopted other styles of drafting and set out its assessment of reliability within the 'Findings of Fact' or in a separate section after the 'Findings of Fact'. It was a matter for the discretion of the Panel as to how and where it inserted its summary of the 'Witnesses and evidence' in its Decision. The option that the Panel chose does not disclose any arguable error of law, in my view.

72. In conclusion, I do not consider it is arguable that the PAT Chair failed to address the grounds of appeal or failed to give adequate reasons.

73. If, contrary to my view, the reasons given by the PAT Chair were inadequate, I consider that permission should be refused under section 31(3C)-(3D) of the Senior Courts Act 1981, as it is highly likely that the outcome would not have been substantially different if the conduct complained of, namely, a failure to give adequate reasons, had not occurred.

Paragraph 27(e)(iii) SFG

74. The Claimant accepts that both counsel addressed the Panel on the good character direction in their closing submissions. However, he submits that the PAT Chair failed to give adequate reasons as he failed to address how the Panel had appropriately applied the law when assessing the Claimant's credibility and propensity, as the Panel

made no reference to the good character direction in the context of its factual findings, but only when considering outcome.

75. The PAT Chair said:

> "**Ground 5**
>
> 34. The fifth ground suggests that the panel failed to consider the character evidence. It is my preliminary opinion that this is a fundamentally flawed suggestion. The panel's finding refers to PC Dalton's record of service and RS's character was made clear in the evidence about him, not least that he gave evidence remotely from prison. The panel's view of RS was in any event that he was in many respects unreliable."

76. The Claimant referred me to the case of *Nwosu v Solicitors Regulation Authority* [2023] EWHC 2405 (KB) in which Jay J. reviewed the authorities at [36] to [45].

77. In *Shaw v Logue* [2014] EWHC 5 (Admin) there was no good character direction and the tribunal made no reference to the good character evidence. Jay J. held that an experienced tribunal would have considered the good character evidence as well as its saliency and that it was not required formally to set out the relevant legal principles.

78. In *Khan*, there was a good character direction from the chair but not in the tribunal's reasons. Julian Knowles J. held that whilst a disciplinary tribunal must take good character evidence into account in its assessment of credibility and propensity, it is not required slavishly in its reasons to give a self-direction to that effect. It is sufficient, if the matter is raised on appeal, if the appeal court is able to infer from all the material that the tribunal must have taken good character properly into account. In that case the inference could be made

79. In *Nwosu* itself Jay J. held, at [45]:

> "In my judgment, it would have been preferable had the SDT set out its understanding of the legal position, namely, that good character evidence is relevant to the issues of both propensity and credibility. However, in line with my own decision in *Shaw v Logue*, it is not a fundamental legal requirement. It is clear from all the available material that the SDT must have had the appellant's good character well in mind and have understood the weight capable of being placed on it, given that it featured so strongly in Mr Goodwin's closing submissions. Mr Counsell's submission that it is inconceivable that the SDT did not have good character in mind seems to me to be well founded."

80. In the light of these authorities, it is clear that there was no legal requirement for the Panel to refer to the character direction in terms in their decision. The question is merely whether the court is satisfied that the Panel properly took it into account.

81. Mr Holdcroft set out the standard character direction in his closing submissions to the panel (p.450 of the Bundle) and made submissions about its application in this case. Mr McCartney accepted Mr Holdcroft's formulation of the character direction as correct. He made detailed submissions on the Claimant's good character and good service record (pp 460-461 of the Bundle). Helpfully, he also made submissions on how his good character was relevant to the issues to be decided by the panel, as follows:

> "So, when Police Constable Dalton, says that his intention was to move Mr Smith not to injure him, it should be judged in the context of that background on those positive assessments of his character, evidenced not just by the assessment of others but evidenced by the actions he took in respect of other difficult situations, that even many professional police officers would have shied away from. You've been given an accurate and succinct description of the law in relation to good character by Mr Holdcroft both in terms of credibility and propensity, of course a matter for you what weight you give to it, but the rhetorical question might be asked, what was it about this situation that would have caused Police Constable Dalton to act in the manner that is alleged by the AA as opposed to [an act which had good intentions going wrong] *(transcript amended by agreement with counsel and inserted in brackets)*."

82. In my view, the submissions by counsel must have reminded the Panel that they were required to take into account the Claimant's good character, in particular his good service record, when making their findings of fact. The Panel specifically records at the beginning of its Decision that it has considered *inter alia* the Claimant's Record of Service. In my judgment, the Claimant has no realistic prospect of success in persuading a Court that this Panel, with its legally qualified chair, failed to take into account the Claimant's good character when making its decision.

83. In the light of this, I consider that the PAT's reasons on this ground were adequate and met the required legal test, and the Claimant's reasons challenge is unarguable.

84. If, contrary to my view, the reasons given by the PAT Chair were inadequate, I consider that permission should be refused under section 31(3C)-(3D) of the Senior Courts Act 1981, as it is highly likely that the outcome would not have been substantially different if the conduct complained of, namely, a failure to give adequate reasons, had not occurred.

Paragraph 27(a) SFG

85. The Claimant submitted that the decision of the PAT Chair to dismiss the appeal under Rule 11 of the PAT Rules 2012 was irrational/*Wednesbury* unreasonable.

86. The PAT Chair approached the issue of what was unreasonable for the purpose of Rule 4(4)(a) and 4(4)(c) disjunctively. The Claimant submitted that in *Chief Constable of Durham*, at [5], Moses LJ recognised that procedural failures may give rise to an unreasonable decision.

87. The Claimant's 'Further Submissions' to the PAT Chair contended at paragraph 25:

> "25. Paragraph 40 of the preliminary decision provides an analysis of 'unreasonableness' regarding the range of factual conclusions a tribunal might reach. The complaints in this case arise from procedural irregularity which materially affected the outcome; if correct it is the approach of the tribunal that renders the conclusions of the tribunal unreasonable. By way of example, no determination can be reasonable if the tribunal has failed to consider significant evidence, failed to apply the good character direction, or has come to a settled view before the accused has finished his evidence. Further, reasons cannot be adequate if they fail to explain why important evidence was rejected. The required deference to a specialist tribunal is greatly reduced when the matters subject to appeal are determinations resulting from a flawed process."

88. The PAT Chair set out his Conclusions as follows:

> "**Conclusions**
>
> 39. The test to be considered at this stage is whether the proposed Appeal has "no real prospect of success" and there is "no other compelling reason" why the appeal should proceed. The decisions made by the panel show, in my preliminary view, that the relevant issues had been analysed and step-by-step rational decisions reached which were within the range of possible conclusions.
>
> 40. In reaching this conclusion I have reminded myself of the judgement of Moses LJ in the case of R (on the application of the Chief Constable of Durham) v (1) PAT (2) Cooper [2012] EWHC 2733 (Admin) at paragraph 6-7. That the test of unreasonableness must be (paragraph 6) "seen in its correct statutory context, namely of a specialist appeal tribunal considering the decision of a misconduct panel" and that (paragraph 7) "it is commonplace to observe that different and opposing conclusions can each be "reasonable". The different views as to approach and as to the weight to be given to facts may all of them be "reasonable" and different views may be taken as to the relevance of different sets of facts, all of which may be "reasonable".
>
> 41. In summary therefore and having considered the Grounds of Appeal and the Respondent's response I have come to the preliminary conclusion that there is nothing which shows or could show that the original rulings, decisions (or procedure) could be said to be unreasonable or unfair under Rule 4(4)(a) or (c)."

89. In his final decision, the PAT Chair confirmed the conclusions in his preliminary decision.

90. In my judgment, the PAT Chair's decision does not disclose any arguable error of law. The PAT Chair was entitled to reach his conclusions, on the basis of material before him, and for the reasons he gave. The Claimant's submission that the decision to dismiss the appeal under Rule 11 of the PAT Rules 2012 was irrational is unarguable and has no realistic prospect of success. As I have found that the Claimant's allegations of procedural irregularity are also unarguable, the issue raised in paragraph 25 of the Claimant's Further Submissions does not arise.

91. For the reasons I have given, permission to apply for judicial review is refused.

Appendix

Counsel's Note on Bias

Relevant Authorities

Southwark LBC v Jiminez [2003] EWCA Civ 502, [2003] I.C.R. 1176
Ezsias V North Glamorgan NHS Trust [2007] EWCA Civ 330
Muscat v Health Professions Council [2008] EWHC 2798 (QB)

Themes extracted from the Authorities

It is inevitable that a decision maker will react to the evidence before them. The decision maker is fully entitled to try to obtain an answer from the party which might otherwise be subject to an adverse finding to points which trouble the decision maker as being points of great relevance to the outcome of the case.

A measure of disclosure by the decision maker of their current thinking is permissible. However, it does not sanction the premature expression of factual conclusions or anything which may prematurely indicate a closed mind.

Equally it is permissible for the decision maker to indicate the need for compelling evidence to persuade them of a fact. An expression of scepticism is not suggestive of bias unless the judge conveys an unwillingness to be persuaded of a factual proposition whatever the evidence may be.

The question is whether the fair minded and informed observer having considered the facts would conclude that there was a real possibility that the tribunal was biased.

The premature expression of a concluded view or the manifestation of a closed mind by the tribunal may amount to the appearance of bias.

A provisional view, even if expressed in trenchant terms, is not to be equated with pre-determination.

The Test

The test is an objective one.

(1) a judicial decision may be vitiated by the appearance of bias no less than actual bias and that the test for such apparent bias is whether the fair-minded and informed observer (who had been present throughout and was aware of the

process and procedure), having considered the facts, would consider that there was a real possibility that the tribunal was biased: see Porter v Magill [2002] 2 AC 357, 494H, para 103, per Lord Hope of Craighead,

(2) that the premature expression of a concluded view or the manifesting of a closed mind by the tribunal may amount to the appearance of bias.