

IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020

BETWEEN

THE CHIEF CONSTABLE OF WEST YORKSHIRE POLICE

AND

FORMER PC 3626 DAVID CROSSLEY

DECISION DOCUMENT 14th MARCH 2024

The Panel carefully considered and analysed evidence regarding the allegations of misconduct which have been put to Former Police Constable David Crossley.

The panel noted that the allegation was as follows:

It is alleged that; On 5th July 2023, at Leeds Crown Court, you were;

1. Found guilty of :-
 - (a) 2 counts of indecent assault of a girl under 13
 - (b) 5 counts of causing or inciting a girl under 13 to engage in sexual activity and
 - (c) 1 count of engaging in sexual activity in the presence of a child under 13;
2. Sentenced to 10 years' imprisonment and made subject of a sexual harm prevention order of indefinite duration.

These allegations engage and breach the Standard of Professional Behaviour in respect of discreditable conduct and amount to gross misconduct, namely conduct so serious as to justify dismissal or a finding that you would have been dismissed had you remained in service.

Discreditable Conduct:

The panel noted that "discreditable conduct" is defined in schedule 2 of the Police (Conduct) Regulations 2020 as follows:-

"Police officers behave in a manner which does not discredit the 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."

The panel considered the bundle of material which was provided in advance of today's hearing and which shared with the former police constable or his representatives and included the following: -

- A. Regulation 30 Notice.
- B. Case Summary.
- C. Regulation 31 Response .
- D. Transcripts of the video recorded interviews with the victims of the criminal offences.

- E. Order for imprisonment of David Crossley dated 5th July 2023.
- F. Sexual Harm Prevention Order dated 5th July 2023.
- G. Victim Impact statements.
- H. Opening note prepared by the Appropriate Authority.

Proceeding in the absence of the Officer

The panel considered whether to proceed with the case in the absence of Mr Crossley. In this regard the panel noted the submissions within the opening note that the papers relating to the misconduct proceedings were served on the former police constable on 29th November 2023 whilst he was in prison. The former constable replied to these with his Regulation 31 response via his Federation Representative on the 15th of January 2024. Within this response he stated, "I David Crossley will not be engaging in any gross misconduct proceedings" and he further states within his Section 31 response that "I will not be attending in person or via video link". The Appropriate Authority has confirmed that notice of the hearing date and details of the panel composition were emailed on 7th February and acknowledged the same date. A further communication took place regarding Mr Crossley's service record on 23rd February 2024 and that this was responded to on 26th February 2024. This response also confirmed that Mr Crossley will not be attending. It was noted that DC Ikram Ditta, Federation Representative was in attendance and that Mr Crossley further indicated within his Regulation 31 Response that he was happy for the contents of his Regulation 31 Response to be relayed on his behalf by the Federation Representative at the hearing. DC Ditta confirmed that Mr Crossley's position remained as previously stated and that he did not intend to attend the hearing and that he was aware that the hearing was taking place today.

Regulation 37 (1) of the Police Misconduct Regulations 2020 places a positive obligation on the officer or former officer to attend the proceedings. In relation to the specific circumstances of this case provision could have been made for the former constable to attend the hearing via video link in accordance with Regulation 37(2) of the Police (Conduct) Regulations 2020.

Regulation 37(3) states that "the proceedings may be proceeded with and concluded in the absence of the officer whether or not the officer is so represented."

The applicable Home Office Guidance (HOG) 2020, confirms at paragraph 10.34 that "If an officer is detained in prison or other institution by order of a court, there is no requirement on the appropriate authority to have the officer concerned produced for the purposes of the misconduct meeting." It would be presumed that such an approach would be equally applicable to a Hearing, although these provisions are not directly replicated in the Hearing section of the Guidance.

The panel notes that the regulation 30 notice which was served on Mr Crossley on 29th November 2024 includes a paragraph headed Legal Representation which includes the following Information.

"You have the right to be legally represented by a relevant lawyer, of your choice, at a misconduct hearing or an accelerated misconduct hearing. The unavailability of one or more of your preferred lawyers is not a valid ground for delaying a misconduct hearing or an accelerated hearing where an alternative lawyer can be found.

If you choose not to be legally represented at such a hearing, you may be dismissed or receive any other outcome under regulation 42 or 62 without being so represented.”

The panel has considered whether putting off the proceedings would impact upon the ability and/or willingness of the former officer to attend. Mr Crossley has been consistent in their representation that they are not proposing to attend the hearing and there has been no suggestion that the willingness to attend is related to a temporary issue and the panel have not received any medical evidence. The panel were therefore of the view that the hearing should proceed.

It had previously been determined that the hearing would proceed in public, and directions were made at the commencement of the hearing prohibiting the taking of photographs and the use of film or sound recording equipment during the hearing. Those in attendance were also reminded that the victims are entitled to life-long anonymity under Section 1 of Sexual Offences (Amendment) Act 1992. This includes a prohibition on the publishing or broadcasting of their identity or information that might make their identity apparent, including their address or picture.

Factual basis of the allegation.

The Panel, in accordance with Regulation 40 the Police (Conduct) Regulations 2020 ('the Regulations') have considered the first stage of the process; namely a determination of the factual basis of the allegations.

In this respect the panel considered carefully the documentation above and considered the written and oral submissions provided to the panel.

The panel considered the representations from Mr Percival, representing the Appropriate Authority. The panel noted the evidence provided that Mr Crossley had been found guilty of a number of serious sexual offences and had received a 10 year custodial sentence. He had also been made the subject of a Sexual Harm Prevention Order following his conviction for offences which are listed in the Sexual Offences Act 2003. This contains a schedule of prohibited activity designed to protect the public from sexual harm.

The case summary and opening note for the panel detailed the background to these convictions and the accounts provided by two victims as detailed below:-

“The first victim’s account at **C1-58** - the events took place between 1996 and 1998 when she was 9 to 11 years old; and were reported in 2020; this witness describes how she came to encounter Mr Crossley when visiting a friend’s house; and how he perpetrated sexual assaults on her.

The second victim’s account at **C59-92**; this witness describes her relationship with Mr Crossley and how he perpetrated a variety of different sexual offences including inciting sexual activity and engaging in sexual activity in her presence. She was 10-12 years old at the material time, the events taking place between 2011 and 2014”

Mr Crossley was prosecuted in 2023 and found guilty of 8 separate sexual offences involving both of the victims for which he received a total sentence of 10 years imprisonment.

The panel were informed and noted that the sexual offences did not occur whilst Mr Crossley was on duty as a police constable.

Mr Crossley was not in attendance at the hearing but the panel noted that Mr Crossley had detailed his position within his Regulation 31 response:-

“I, David Crossley, will not be engaging in any Gross Misconduct Proceedings. I maintain my innocence and still deny the convictions found against me at Leeds Crown Court on the 5th July 2023.

I do not wish to prejudice any subsequent future appeals against my convictions by partaking in any Gross Misconduct Hearing.”

The panel were informed by the Appropriate Authority within their opening note and submissions that emails from the Crown Prosecution Service dated 9th August 2023 and the Court of Appeal dated 7th February 2024 that there was no record of a current appeal. The panel were further informed that the usual appeal period would have been 28 days from conviction. Leave to appeal could be sought outside this period but there was no evidence that such leave had been requested.

Burden of proof

The panel has reminded itself that the burden of proving the allegations rests upon the Appropriate Authority on the balance of probabilities. The panel has also borne in mind the need to ensure that the Officer receives a fair hearing in order that the panel may make the correct assessment as to the matters in issue.

The panel weighed up the conflicting information – the certainty of the criminal convictions on one hand and Mr Crossley’s denial of the offences, without any additional supporting information or evidence. The panel noted that Section 11 of the Civil Evidence Act 1986 states that :-

“

(1) In any civil proceedings the fact that a person has been convicted of an offence by or before any court in the United Kingdom be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise and whether or not he is a party to the civil proceedings; but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section.”

The Panel finds the following factual basis to the allegations:

On 5th July 2023 Former Officer Crossley was found guilty of

1.

(a) 2 counts of indecent assault of a girl under 13

- (b) 5 counts of causing or inciting a girl under 13 to engage in sexual activity and
 - (c) 1 count of engaging in sexual activity in the presence of a child under 13;
2. Sentenced to 10 years' imprisonment and made subject of a sexual harm prevention order of indefinite duration.

The panel finds the allegations to be proven.

Have they breached standards of professional behaviour.

The panel went onto consider whether in the light of the findings made the former officer had breached the standards of professional behaviour expected of him whilst he was in the employment of West Yorkshire Police as a police officer.

The professional standards expected of the police are contained in the Home Office Guidance, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing dated 5th February 2020

It is submitted that the following standard has been breached:

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. 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."

The panel finds that Mr Crossley has breached the standard of Professional Behaviour relating to Discreditable Conduct. The panel views that this criminal conviction brings discredit on the police service and undermines public confidence in policing. The Panel considered the Home Office Guidance in determining whether a police officer's off-duty conduct discredits the police, the test is not whether the police officer discredits themselves but the police force. Mr Crossley's criminal convictions bring discredit on the police service and undermines confidence in policing.

The panel also considered the College of Policing code of Ethics and the ethical policing principles. The guidance reiterates that "everyone in policing holds a privileged position in society that depends on the consent of the public. Our mission, to help keep the public safe, relies on us having public acceptance and cooperation. We must all strive to deliver an honourable and legitimate police service deserving of the public's support." The Code of Ethics requires officers to behave "in a manner, whether on or off duty, which does not bring discredit on the police service or undermine public confidence in policing". The criminal convictions obtained by Mr Crossley bring discredit on the police service and undermine public confidence in policing.

Misconduct

Having identified the factual basis of the allegations and having identified that these facts constituted a breach of the professional standards the panel went on to consider whether these amounted to

misconduct or gross misconduct or neither. Misconduct is generally defined as unacceptable or improper behaviour. The Police (Conduct) Regulations 2020 further define misconduct as ‘a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action’. Gross misconduct is defined as a breach of the Standards of Professional Behaviour that is “ so serious as to justify dismissal.”

The panel considers that the criminal convictions received by Mr Crossley amount to gross misconduct.

Outcome

Regulation 42(14)(a) of the 2020 Regulations provides: (14) Where the question of disciplinary action is being considered, the person or persons considering it— (a) must have regard to the record of police service of the officer or former officer concerned as shown on the officer's personal record.

The panel were provided with information relating to Mr Crossley’s record and noted that this was a standard service record for the period 1997 – 2022. The panel noted that the offences for which Mr Crossley had been convicted had taken place between two distinct periods being 1996-1998 and 2011-2014. For the majority of these periods Mr Crossley had been employed as a police constable.

In determining an appropriate outcome at a misconduct hearing, the panel must consider and have due regard to “Guidance on Outcomes in Police Misconduct Proceedings” issued by the College of Policing pursuant to section 87 of the Police Act 1996. The Panel had due regard to the 2023 updated version of the Guidance.

The Purpose and Character of Misconduct Proceedings

The panel noted at paragraph 4.2 (on page 15), the outcomes guidance references the case of *Fuglers LLP v Solicitors Regulation Authority [2014] EWHC 179 (Admin)* which includes the explanation of Mr Justice Popplewell :

“There are three stages to determining the appropriate sanction:

1. Assess the **seriousness** of the misconduct
2. Keep in mind the **purpose** of imposing sanctions
3. Choose the **sanction** which most appropriately fulfils that purpose for the seriousness of the conduct in question.

Assessing Seriousness

The College of Policing outcomes guidance says, at paragraph 4.3 (on page 15): Assess the seriousness of the proven conduct, by reference to:

1. The officer’s culpability for the misconduct
2. The harm caused by the misconduct.
3. The existence of any aggravating factors
4. The existence of any mitigating factors.

Culpability - the panel had found that Mr Crossley was culpable for sexually abusing two victims and that as a result of this he received 8 convictions for sexual offences and a 10-year prison term. He singularly perpetrated the crimes against vulnerable individuals.

Conviction for a criminal offence - The relevant guidance at 4.17 notes that It is unacceptable for police officers, who are responsible for enforcing the law, to break the law themselves.

The panel considered that the fact of such convictions, relating to a period when for the most part Mr Crossley was employed as a serving officer, would undermine public confidence in the Police. Mr Crossley has not sought to provide any information for the panel which would address the issue of culpability aside from denying he is guilty of those matters for which he is convicted.

Violence, intimidation or sexual impropriety

It is significant that within both victims accounts they indicate that they were aware that at the time of some or all the offences that Mr Crossley was a police officer. They indicate that this caused them apprehension and fear that they would not be believed and therefore unable to share what had happened to them and receive support to help them. The convictions against Mr Crossley are for serious sexual offences which relate to extended periods of time and two separate victims.

Harm- the panel noted that the guidance states that “Harm will likely undermine public confidence in policing. Harm does not need to be suffered by a defined individual or group to undermine public confidence. Where an officer commits an act that would harm public confidence if the circumstances were known to the public, take this into account.” In the particular circumstances of this matter the accounts provided by the witnesses indicated that they have suffered considerable harm as a result of Mr Crossley’s criminal actions against them. They were vulnerable children at the time of the offences aged between 9-13 years. One of the victims has described being abused as a child as a lifelong sentence. They both detail their feelings of shame and embarrassment because of what was done to them. To their credit their disclosures have enabled convictions to be obtained and a sexual offences protection order to be made to keep the public safe.

Effect on public confidence It is self-evident that convictions of this nature will have a negative effect on the public confidence in the police. There is currently heightened anxiety and national concern about police officers engaging in sexual offending following high profile cases. The former officer’s status as a serving officer meant that the victims were fearful of reporting the offences, even to family members, due to a perceived imbalance of power.

Aggravating factors -These offences and the particular circumstances in which they were committed were a gross breach of trust. The accounts given by the victims suggested that they were deliberately groomed in order to enable the offences to take place with escalating levels of impropriety in Mr Crossley’s conduct. There were two distinct periods when the offences took place between 1996 and 1998 and then subsequently between 2011 and 2014. This represents two sustained periods of impropriety. The victims have spoken about the traumatic effect of the criminal processes associated with the convictions. There is no

evidence of insight or early admission on the part of the former officer. The victims were required to give evidence and be cross examined during the criminal trial.

The panel also noted the presence of specific aggravating factors referred to within paragraph 4.75 of the Outcomes Guidance –

- The offences involved premeditation, planning, targeting and taking deliberate predatory steps.
- There was evidence of malign intent, such as sexual gratification .
- There was evidence of the abuse of the trust placed in him
- There was evidence of regular, repeated or sustained behaviour over a period of time
- There is evidence of serious psychological impact on the victims. These were vulnerable victims and there were multiple victims.
- There is currently a high level of concern about the treatment of women by officers.
- The offences represent multiple proven allegations which breach the standards of professional behaviour.

Mitigating factors -Mr Crossley has not provided any information for the panel's consideration which would suggest mitigating factors are present in the circumstances of the case. There has been limited engagement with the misconduct process. Guidance on personal mitigation is given at section 6 (pages 35-37) of the Outcomes Guidance. "...due to the nature and purpose of disciplinary proceedings, the weight of personal mitigation will necessarily be limited."

Personal mitigation/good character- As detailed above no character statements have been put forward. It is accepted that Mr Crossley had a police career which spanned nearly 25 years, but any value to be attached to this would be limited in the light of the criminal convictions which would have spanned a large proportion of his police career.

The Panel has kept in mind the **purpose and character** of police misconduct proceedings:

- a) The primary purpose is not to punish the officer but to protect public confidence in, and the reputation of, the police service by holding police officers accountable and making clear that improper behaviour will not be left unchecked.
- b) A secondary purpose is to be declaratory of high professional standards, by demonstrating to other officers that misconduct of a certain kind will not be tolerated; and
- c) A final purpose is to protect the public and/or officers or staff by, in appropriate cases, preventing the officer from committing similar misconduct again by excluding them from the police service.

The panel have been mindful of the guidance contained in the judicial review proceedings brought by **R (Green) v Police Complaints Authority**¹, where Lord Carswell stated, in relation to the police service: 'Public confidence in the police is a factor of great importance in the maintenance of law and order in the manner which we regard as appropriate in our polity. If citizens feel that improper behaviour on the part of police officers is left unchecked and they are not held accountable for it in a suitable manner, that confidence will be eroded.'

Sanction

The panel noted that the guidance required them to consider less severe outcomes before more severe outcomes.

Former officer

The panel noted that particular regulations apply to former officers. Where the conduct is found to have amounted to gross misconduct, the panel can only consider two outcomes: disciplinary action or no disciplinary action. Where the finding is gross misconduct and disciplinary action is imposed, this can only be that the former officer would have been dismissed if still serving. No other sanctions can be enforced. If the finding is gross misconduct but the panel determines that dismissal is not justified, then no action will be taken, and the gross misconduct will be recorded.

The panel considers that no less a sanction than dismissal would be sufficient in the circumstances of the case, taking into account the assessment of seriousness above and therefore determines that that the former officer would have been dismissed if still serving and not ceased to be a member of the Police Force due to retirement.

Given the above determination the former officer's name will be placed on the Police Barred list.

Right of appeal

Paragraph 11.158 (on page 144) of the 2020 Home Office Guidance says: A police officer has the right to appeal against the finding or outcome of a misconduct hearing to a Police Appeals Tribunal. The officer must be informed of their right to appeal when notified of the outcome (Regulation 43(2) of the Conduct Regulations). Paragraph 9(1) of the Police Appeals Tribunals Rules 2020 provides that a police officer or a former police officer who wishes to appeal to a tribunal must give notice of the appeal before the end of 10 working days beginning with the first working day after the day on which the officer is first supplied with a written copy of the relevant decision.

This therefore concludes the determination of the panel and. I would like to thank those in attendance today for their careful and considered contribution to the process.

¹ 7 [2004] UKHL 6 at [78]

