Neutral Citation Number: [2022] EWHC 1950 (Admin)

Case No: CO/2766/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 July 2022

Before :

THE HONOURABLE MRS JUSTICE HEATHER WILLIAMS DBE

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Between :

THE QUEEN **on the application of** **THE COMMISSIONER OF POLICE OF THE METROPOLIS**	**Claimant**
- and –	
POLICE APPEALS TRIBUNAL	**Defendant**
(1) DC ASWEINA GUTTY **(2) DIRECTOR GENERAL OF THE INDEPENDENT OFFICE FOR POLICE CONDUCT**	**Interested Parties**

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Anne Studd QC and Daniel Hobbs (instructed by **Directorate of Legal Services**) for the **Claimant**
Colin Banham (instructed by **JMW Solicitors LLP**) for the **First Interested Party**

Hearing dates: 5 – 6 July 2022

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Approved Judgment

Mrs Justice Heather Williams:

Introduction

1. The Claimant applies for a judicial review of the 23 May 2021 decision of the Police Appeals Tribunal ("PAT") to impose a Final Written Warning ("FWW") on Detective Constable Asweina Gutty. The Commissioner submits that the only reasonable outcome was her dismissal without notice. Permission to apply for judicial review was granted by David Pittaway QC, sitting as a Deputy High Court Judge, on 2 November 2021. Pursuant to Hill J's order of 21 March 2022, the case was heard together with Claim CO/3164/2021 which raises similar, albeit not identical, grounds of challenge; and which is the subject of a separate judgment handed down at the same time as this judgment. As is usual, the PAT has adopted a neutral position and has played no active part in these proceedings. The First Interested Party, DC Gutty, has supported the PAT's decision and resisted the Claimant's grounds. The Second Interested Party, the Director General of the Independent Officer for Police Conduct, has taken no active part.

2. On 18 July 2018 DC Gutty pleaded guilty to an offence of assault by beating contrary to section 39, Criminal Justice Act 1988. The offence had been committed against her then partner on 27 May 2018. She subsequently appeared before a special case hearing ("SCH") in respect of a single allegation that she had breached the Standards of Professional Behaviour in relation to Discreditable Conduct as a result of this. DC Gutty admitted the charge and accepted that it amounted to gross misconduct. The decision to dismiss her was successfully appealed to the PAT, who ordered a rehearing on the basis of medical evidence relating to DC Gutty. The second SCH was presided over by Assistant Commander Louise Rolfe who also determined that the officer should be dismissed without notice.

3. DC Gutty appealed the sanction imposed and her appeal was heard by the PAT on 17 May 2021. The PAT allowed the appeal and then re-took the decision on sanction. The Claimant does not challenge the overturning of AC Rolfe's decision but contends that the PAT's re-determination of the appropriate sanction was legally flawed.

4. The Commissioner advances four grounds of challenge, namely that the PAT erred:

    i) In failing to adopt the structured approach to its decision-making required by law ("Ground One");

    ii) In not adequately addressing the seriousness of the fact of DC Gutty's conviction and its effect on public confidence and respect for the police service ("Ground Two");

    iii) In regarding the medical evidence as pivotal and determinative of the public interest ("Ground Three"); and

    iv) By taking into account an irrelevant consideration under the Equality Act 2020 in respect of disability discrimination ("Ground Four").

5. The Commissioner submits that in light of these errors the outcome determined by the PAT was outside the range of reasonable responses open to it and perverse and that,

accordingly, this Court should quash the PAT's decision and substitute it with the sanction of dismissal without notice.

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

The legal framework

Special case hearings

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

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

9. Where gross misconduct is found / admitted, the options in terms of sanction at the SCH are to impose a FWW, extend an existing FWW or dismiss without notice (regulation 55(1)). The decision maker is required to have regard to the record of police service of the officer concerned (regulation 55(10)).

The Police Appeal Tribunal

10. Section 85 Police Act 1996 imposes a duty on the Secretary of State to "by rules make provision specifying the cases in which a member of a police force or a special constable, or a former member of a police force or former special constable" may appeal to a PAT. Appeals are brought under the Police Appeals Tribunal Rules 2012/2630 . Rule 4 sets out the circumstances in which an appeal to the PAT may be brought. These

include an appeal by an officer against whom a finding of gross misconduct has been made at a SCH (rule 4(2)(c)). The appeal may be against that finding and/or against the disciplinary action imposed (rule 4(1)). Amongst other grounds, an appeal may be brought on the basis that the disciplinary action imposed was unreasonable (rule 4(4)(a)). Rule 22(1) states that the PAT shall determine whether the grounds of appeal have been made out. The Chair is required to prepare a written statement of the PAT's determination and the reasons for its decision (rule 22(5)).

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

Determining sanction

The structured approach

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

> "29. In assessing seriousness the most important factors will be (1) culpability for the misconduct in question and (2) the harm caused by the misconduct. Such harm is not measured wholly, or even primarily, by financial loss caused to any individual or entity. A factor of the greatest importance is the impact of the misconduct upon the standing and reputation of the profession as a whole. Moreover the seriousness of the harm may lie in the risk of harm to which the misconduct gives rise, whether or not as things turn out the risk eventuates. The assessment of seriousness will be informed by (3) aggravating features (e.g. previous disciplinary matters) and (4) mitigating factors (e.g. admission at an early stage or making good any loss)…
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> 30. At the second stage, the tribunal must have in mind that by far the most important purpose of imposing disciplinary sanctions is addressed to other members of the profession, the reputation of the profession as a whole, and the general public who use the services of the profession, rather than the particular solicitors whose misconduct is being sanctioned…"

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

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

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

Sanction of dismissal

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

> "22. …The reasons which underpin the strict approach applied to solicitors and barristers apply with equal force to police officers. Honesty and integrity in the conduct of police officers in any investigation are fundamental to the proper workings of the criminal justice system. They are no less important for the purposes of other investigations carried out by police forces…The public should be able unquestioningly to accept the honesty and integrity of a police officer. The damage done by a lack of integrity in connection with the investigation of an alleged offence may be enormous. The guilty may go free. The innocent may be convicted. Large sums of public money may be wasted. Public confidence in the integrity of the criminal justice system may be undermined. The conduct of a few may have a corrosive effect upon the reputation of the police service in general."

16. Mr Justice Burnett went on to identify factors that the decision maker should have regard to when considering the appropriate sanction (para 24). He said that cases of

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

Personal mitigation

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

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

18. An analogous approach applies to police officers. In *Salter*, Burnett J said that as the most important purpose of the sanction was to maintain public confidence in the police and maintain its collective reputation, "personal mitigation is likely to have a limited impact on the outcome" (para 24 ii)). This approach was endorsed by the Court of Appeal in *Salter*: Maurice Kay LJ at para 25.

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

> "66. …the importance of maintaining public confidence in and respect for the police service is constant, regardless of the nature of the gross misconduct under consideration. What may vary will be the extent to which the particular gross misconduct threatens the preservation of such confidence and respect. The more it does so, the less weight can be given to personal mitigation. Gross misconduct involving dishonesty or

> lack of integrity will by its very nature be a serious threat: save perhaps in wholly exceptional circumstances…Gross misconduct involving a lack of integrity will often also be a serious threat. But other forms of gross misconduct may also pose a serious threat, and breach of any Standards may be capable of causing great harm to the public's confidence in and respect for the police.
>
> 67. This does not mean, of course, that personal mitigation is to be ignored…On the contrary, it must be taken into account…But where the gross misconduct threatens the misconduct of public confidence and respect in the police – as gross misconduct often will – the weight which can be given to personal mitigation will be less that would be the case if there were no such threat, and if the disciplinary body were a court imposing a punishment. Whether the circumstances are such that the sanction of dismissal is necessary will be a fact-specific decision: where the facts show dishonesty, case law establishes that dismissal will almost always be necessary, and dismissal will often be necessary where the misconduct involves a lack of integrity; where the facts show that one of the other Standards has been breached, the appropriate outcome will depend on an assessment of all the circumstances, with proper emphasis being given to the strong public interest in maintenance of respect and confidence in the police and consequentially less weight being given to personal mitigation."

The Court's jurisdiction

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

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

21. In *R (Wilby-Newton) v Police Appeals Tribunal & Chief Constable of South Yorkshire Police* [2021] EWHC 550 (Admin) Julian Knowles J noted that this applied with particular force where this Court was asked to overturn a particular sanction imposed for misconduct, as in that type of case: "the PAT with its expertise are better placed

than the Court to determine what is required by way of sanction to maintain confidence in policing", but that it may apply with lesser force where the Court is asked to intervene because of an alleged error of law (para 86). In *Williams*, Holroyde J recognised: "I have to pay appropriate respect to…[the PAT's] experience and expertise in balancing the public interest and the individual circumstances of a defaulting police officer" (para 74).

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

The College of Policing Guidance

23. The College of Policing's "Guidance on outcomes in police misconduct proceedings" ("the CoP Guidance") is issued by the College of Policing pursuant to section 87 of the Police Act 1996. The parties accept that it reflects the principles identified in the case law. The document is intended to ensure consistency and transparency in assessing conduct and imposing outcomes (para 1.2). The guidance states that it does not override the discretion of decision makers, who will determine the appropriate outcome in each case based on its particular facts and circumstances (para 1.3). It was accepted that the panel had to exercise its discretion in accordance with the structure identified in the guidance in *Roscoe* (para 14) and in *R (Chief Constable of West Midlands Police) v Panel, Chair, Misconduct Panel & Officer A* [2020] EWHC 1400 (Admin) ("*Officer A*") (para 30). In *Officer A* Eady J addressed the extent to which the panel was required to refer to the CoP Guidance in its decision:

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

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

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

26. Section 4 of the CoP Guidance addresses the assessment of the seriousness of the misconduct. Paras 4.2 and 4.4 adopt the three stage approach identified in *Fuglers* and the four categories by which seriousness is to be assessed (para 12 above). Reflecting the case law, the text states that the most important purpose of imposing disciplinary sanction is to maintain public confidence in and the reputation of the policing profession as a whole and that this must take precedence over the specific impact on the individual whose misconduct is being sanctioned (para 4.5). It says that personal mitigation is to be considered after assessing the seriousness of the conduct (para 4.6). It recognises that there may be overlap between the categories (para 4.7).

27. The CoP Guidance considers culpability from para 4.10. Para 4.11 states that conduct which is intentional, deliberate, targeted or planned will generally be more culpable than conduct which has unintended consequences (although the consequences will be relevant to the assessment of harm). Para 4.12 says that where the harm is unintentional, "culpability will be greater if officer could reasonably have foreseen the risk of harm". Para 4.13 recognises that culpability will be increased if the officer was holding a position of trust or responsibility at the relevant time. Para 4.15 indicates that the types of misconduct which the guidance then addresses are "especially serious". The first of these is where there has been a conviction or caution for a criminal offence. The text (without reproduction of the footnotes) states:

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

> fundamental breach of the public's trust in police officers and inevitably brings the profession into disrepute.
>
> 4.20 Any criminal conviction will be serious, however, and likely to have an adverse impact on public confidence in policing. An officer's conviction or caution may be disclosed to the prosecution and defence during the course of a criminal trial, with the potential for undermining the investigation and the prosecution."

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

29. There is also a section headed "Violence, intimidation or sexual impropriety", which includes the proposition that misconduct involving violence undermines public trust in the profession and is therefore serious (para 4.39).

30. The CoP Guidance then addresses the harm caused by the officer's actions, indicating that this can be considered in various way. The text refers to harm caused to particular individuals; and the factors identified include physical injury and psychological distress (para 4.57). The guidance recognises that harm may also be caused on a wider basis:

> "Effect on the police service and/or public confidence
>
> Harm will likely undermine public confidence in policing…Where an officer commits an act which would harm public confidence if the circumstances were known to the public, take this into account. Always take seriously misconduct which undermines discipline and good order within the police service, even if it does not result in harm to individual victims.
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> 4.58 Assess the impact of the officer's conduct having regard to these factors and the victim's particular characteristics.
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> 4.59 Where no actual harm has resulted, consider the risks attached to the officer's behaviour, including the likelihood of harm occurring and the gravity of harm that could have resulted.
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> 4.60 How such behaviour would be or has been perceived by the public will be relevant, whether or not the behaviour was known about at the time.
>
> 4.61 If applicable, consider the scale and depth of local or national concern about the behaviour in question. A case being reported in local or national media, however, does not necessarily mean that there is a significant level of local or national concern. Distinguish objective evidence of harm to the reputation of the police service from subjective media commentary.

> 4.62 Whether a matter is of local or national concern will be a matter for the person(s) conducting the proceedings based on their experience and the circumstances of the case.
>
> …..
>
> 4.65 Where gross misconduct has been found, however, and the behaviour caused or could have caused serious harm to individuals, the community and/or public confidence in the police service, dismissal is likely to follow. A factor of the greatest importance is the impact of the misconduct on the standing and reputation of the profession as a whole."

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

32. Section 6 of the CoP Guidance addresses personal mitigation. It reflects the case law that I have already summarised. It states that personal mitigation is not relevant to the seriousness of the misconduct and it is to be considered after assessing the seriousness of the misconduct (para 6.2). Further, that "the weight of personal mitigation will necessarily be limited particularly where serious misconduct has been proven" (para 6.4). The primary consideration "is the seriousness of the misconduct found proven. If the misconduct is so serious that nothing less than dismissal would be sufficient to maintain public confidence, personal mitigation will not justify a lesser sanction" (para 6.6). Nonetheless, "personal mitigation is always relevant and should always be taken into account" (para 6.9).

The material facts and circumstances

Background

33. DC Gutty joined the MPS in November 2006, initially as a Police Community Support Officer. She was sworn in as a Police Constable in November 2013. In January 2016 she joined the CID.

34. In early 2017, attendance at a police course dealing with interviewing skills triggered traumatic memories from her childhood and the start of a deterioration in DC Gutty's mental health. She sought help and was referred for counselling. On 7 January 2018 she sought further help and she was assessed by the Claimant's Occupational Health Unit on 19 January 2018, who concluded that she should temporarily refrain from dealing with members of the public, prisoners or suspects. Her workload was to be assessed and adjustments made. On 24 January 2018 DC Gutty was diagnosed with displaying signs and symptoms of complex PTSD. A referral was made for treatment. DC Gutty reported symptoms that included disturbed sleep, anxiety, rapid weight loss, loss of focus, poor concentration and increased migraine attacks accompanied with nausea and dizziness. From 25 January 2018 until after the incident that led to her conviction, she was on sickness absence. On 13 April 2018 she was assessed by Dr Charles Hindler, Consultant Psychiatrist, who considered that her symptoms were reflective of an Emotionally Unstable Personality Disorder / Borderline Personality Disorder and a concurrent Generalised Anxiety Disorder. He advised further treatment and prescribed medication.

The conviction

35. In December 2017 DC Gutty began a relationship with DC Sharon Etheridge. The assault occurred in DC Gutty's flat on 27 May 2018 following an argument that was initially triggered by DC Etheridge putting salt on the food that DC Gutty had cooked. DC Gutty subsequently pleaded guilty to a charge of assault by beating contrary to section 39, Criminal Justice Act 1988 on 18 July 2018 at Hendon Magistrates Court. On 11 September 2018 at the Central London Magistrates Court, she was sentenced to a 12-month Community Sentence Order with a 100 hours of unpaid work and ordered to pay compensation and costs. The criminal proceedings were reported in the national press. In his sentencing remarks the District Judge observed: "This is a serious case, as not only did you hold the victim by the neck, which resulted in her hitting her head; you verbally abused the victim and displayed controlling behaviour". The District Judge also noted that DC Gutty had referred herself for help and that she was due to attend a group trauma therapy programme later that year. I understand that no medical evidence was adduced on her behalf in the criminal proceedings.

36. In an impact statement dated 3 July 2018 DC Etheridge described how the events left her feeling:

> "…downtrodden, belittled and humiliated. I finally decided to leave as I could no longer tolerate her behaviour towards me…the events that day stunned me and made me scared of her, of what she was capable of doing to the people she's supposed to love the most…She made me feel weak, humiliated, hurt, scared, embarrassed and ashamed to be a woman, a mother and a police woman…As police officers we deal with domestic abuse on a daily basis…I never in a million years expected to be the victim of domestic abuse myself…Only now do I genuinely understand that this can happen to anyone, from any walk of life, in any kind of relationship, in any kind of profession…Since that day I have been on an emotional rollercoaster that at times has taken me to some bleak places."

The disciplinary proceedings

37. A misconduct investigation was undertaken and in light of DC Gutty's conviction, on 3 November 2018 the matter was certified as suitable for determination at a SCH. A notice pursuant to regulation 43 of the 2012 Regs informing her of this was served on the officer. The notice referred to her conviction and sentence and then gave as the particulars that:

> "On 27 May 2018 whilst off duty, you assaulted your partner.
>
> It is alleged that these circumstances amount to Gross Misconduct.
>
> In all respects the Appropriate Authority therefore consider your actions to be a breach of the following standard of Professional Behaviour: Discreditable Conduct.

> This behaviour is likely to bring discredit on the police service as a whole because public confidence depends on police officers demonstrating the highest standards of personal and professional behaviour. This type of offending undermines public confidence in the police service."

38. As DC Gutty admitted breaching the Discreditable Conduct standard and admitted gross misconduct, the only issue for the SCH was outcome. At the hearing on 23 November 2018 AC Ball decided that the appropriate sanction was dismissal without notice. DC Gutty appealed this decision to the PAT. Her appeal succeeded. On 1 June 2020, the PAT ordered a rehearing before the SCH on the basis that there was evidence that could not reasonably have been considered at the original hearing which could have materially affected the decision on outcome. Following this decision, DC Gutty returned to work and remained in work until the second SCH decision.

39. The further evidence that prompted the PAT's decision was a report from Dr Hindler dated 10 July 2018. The Claimant did not and does not take issue with the conclusions expressed in this report, namely that DC Gutty:

> "…suffers with an Emotionally Unstable Personality Disorder (EUPD)…This condition appears to arise as a consequence of childhood abuse…
>
> A primary symptom of EUPD involves emotional dysregulation i.e. rapid changes in mood and bouts of anger over which the individual has little control. At times of high levels of emotional arousal a person suffering with EUPD may disconnect from the world (i.e. dissociate – evident to the eye like a brief trance like state) during which the individual is often amnesic for that period of time."

40. Dr Hindler then gave his answers to a series of questions that had been posed in his instructions. Those answers reflected the conclusions that I have set out above. He identified an effect of EUPD as impulsive outbursts of anger perhaps associated with dissociation. He did not consider that the officer's behaviour fell within the scope of non-insane automatism. He said that DC Gutty's assault may have been an overreaction in the context of impulsive anger.

41. A second regulation 43 notice was served in identical terms to the first notice. In her regulation 45 response, DC Gutty referred to the childhood trauma she had experienced; her policing career, including the Quality Service Reports and Letters of Appreciation she had received; the circumstances in which her mental health had deteriorated; her dealings with Occupational Health and the treatment she had received since that time. She gave an account of the assault, saying that DC Etheridge had placed her hand on her arm and she accepted that she had then grabbed her throat and that she had hit her head in consequence. Dr Hindler's report was quoted and relied upon.

42. The second SCH was held on 28 August 2020 before AC Rolfe, who determined that the officer should be dismissed without notice. DC Gutty appealed this outcome.

The Police Appeals Tribunal

43. The PAT Chair determined that the appeal should proceed to a full hearing, which took place on 17 May 2021. The Panel comprised Rachel Crasnow QC (the Chair), ACC David Thorne and retired member Leonie Tromens. The ground of appeal alleged that the dismissal decision was unreasonable within the meaning of rule 4(4)(a) on the basis of the way that the medical evidence was dealt with. The PAT allowed the appeal and then proceeded to re-take the decision on sanction, imposing a FWW.

44. The PAT's written decision was dated 23 May 2021. It set out the "Relevant Factual Background" from para 5. The circumstances of the criminal offence and the sentence were described in para 5. The passages from the District Judge's sentencing remarks and from the victim's statement which I have set out earlier (paras 35 and 36 above) were quoted in paras 6 and 7 of the decision. The PAT then summarised the procedural history and Dr Hindler's report.

45. The PAT then set out the substantive parts of AC Rolfe's decision. This included in relation to DC Gutty's culpability, that offences of violence were particularly serious and likely to terminate an officer's career; that the officer had been convicted of a criminal assault against her then partner; and there was no evidence that her actions were planned, albeit as an experienced police officer she could be reasonably expected to foresee the risk of harm from her actions. AC Rolfe then referred to the serious nature of domestic abuse offences. She took account of DC Gutty's guilty plea and her very clear remorse. As regards to harm, AC Rolfe referred to the psychological impact on DC Etheridge and then considered the impact on public confidence in policing. She addressed Dr Hindler's report later in her decision.

46. Paragraphs 16 – 23 of the PAT's decision summarised the legal framework. The need to follow a structured approach was recognised and reference was made in that context to HHJ Pelling QC's decision in *Roscoe* (para 13 above). The three stage approach identified in *Fuglers* (para 12 above) and the CoP Guidance was set out. The PAT then said:

> "20. Accordingly, a Panel's reasoning, at first instance or appeal level must demonstrate expressly or in substance that it has:
>
> 1. assessed <u>how serious</u> it found the misconduct to be by reference to the categories outlined in the Guidance (Culpability, Harm and Aggravating and Mitigating Factors), rather than simply having found it be 'serious'; and
>
> 2. consider 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'.
>
> 21. This approach requires the Panel to have regard to the purpose of the misconduct proceedings when deciding on disciplinary action, including the maintenance of public confidence in the profession: a factor of particular

> importance in policing (see *R (Green) v Police Complaints Authority* [2004] 1 WLR 725 per Lord Carswell at [78]).
>
> 22. Also relevant to this point is the case law dealing with the weight to be given to personal mitigation in such misconduct cases. In short, the case-law confirms that while personal mitigation may be relevant, the protection of the public and the interests of the profession will be given greater weight because of the nature and purpose of disciplinary proceedings, particular where serious misconduct has been proven…[*Salter, Williams* and *Bolton* were then cited]." (Emphasis in original.)

47. The PAT said that personal mitigation would not be ignored, as there is a public interest in keeping officers who possess skills and experience (as recognised in *Giele v General Medical Council* [2005] EWHC 2143 (Admin)) and there is a sliding scale, with "the more serious the misconduct, the greater the weight given to the interests of the profession, and the protection of the public".

48. Ms Studd QC accepts that these paragraphs accurately set out the law.

49. In paras 24 – 27 the PAT made reference to the Equality Act 2010, noting that in *P v Commissioner of Police of the Metropolis* [2017] UKSC 65, [2018] ICR 560 the Supreme Court had held that the Act could apply to police misconduct panels. The PAT then set out section 15 of the Act which provides:

> "(1) A person (A) discriminates against a disabled person (B) if-
>
> (a) A treats B unfavourably because of something arising in consequence of B's disability, and
>
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
>
> (2) Subsection (1) does not apply if A shows that A did not know and could not reasonably have expected to know, that B had the disability."

50. The PAT went on explain how section 15 operated by way of a two stage causation test: establishing whether the "something" in question was caused by the disability and whether the "something" caused the unfavourable treatment (paras 26 – 27).

51. Between paras 33 – 51 the PAT analysed the Presiding Officer's decision, concluding that it was "unreasonable" within the meaning of rule 4(4)(a). In the course of doing so, the PAT again summarised the required structured approach (para 35). It then said in para 37 that "AC Rolfe correctly identified the factors which fall under the heading of seriousness: culpability (blameworthiness or responsibility for actions). She correctly identifies convictions of violence as especially serious".

52. The concerns that the Panel identified in respect of AC Rolfe's decision included that: she had failed to reach a finding on what was termed the "central issue" (a quote from

counsel's submissions), namely the impact of DC Gutty's mental health condition upon the issue of seriousness; she had decided that the officer could be expected to foresee the risk of consequential harm without considering the impact of her mental health upon foreseeability; and that in addressing harm she had failed to consider how the public would react to someone with the condition that Dr Hindler described.

53. From para 51 onwards the PAT addressed its own determination of the appropriate sanction. The PAT reminded itself of the three fold test (para 52) and that "one of the primary purposes of a sanction in a professional misconduct context is preserving public confidence, it is important to keep in mind the purpose for which sanctions are imposed when determining outcome" (para 52). The PAT said its approach had been to follow and apply para 4.2 of the CoP Guidance.

54. In light of the Claimant's grounds, it is necessary to set out a number of the paragraphs that followed in full:

> "54. …In this case, a key factor in this assessment of seriousness is the extent to which culpability is affected by the mental health experienced by the Appellant. The medical evidence before us makes it more likely than not, in our assessment that the psychiatric condition the Appellant was experiencing at the time of the misconduct had a real and apparent impact on the extent to which she can be considered responsible or blameworthy for the assault. We have reread all the surrounding medical evidence from 2018. In particular we note Dr Hindler's assessment in his July 2018 Report…that 'the Appellant's psychiatric disorder caused mood changes and anger over which the patient had little control'. He noted…'her disassociation i.e. a trance-like state and amnesia'. Further it was said that on the night in question the Appellant was in a generalised traumatised state which was heightened by the triggering of 'emotional arousal' described by Dr Hindler when a glass broke just before the assault.
>
> 55. The doctor states that factors which could have affected the Appellant's ability to appreciate the circumstances are her experience of childhood abuse. He calls her reaction understandable and notes that any over-reaction has a context of impulsive anger. This signifies that her mental state accounts for her behaviour…
>
> 56. Looking at this medical opinion, we find that a reasonable decision would have included the finding that the mental health symptoms contributed to the actions which led to the conviction. The level of contribution is significant to the extent that the officer is far less culpable for her violence [sic] behaviour that she would be regarded otherwise.
>
> 57. This determination upon the 'central issue' impacts upon harm as well as upon culpability. We have followed the COP Guidance at par [4.57]. Whilst we would be content to

> adopt AC Rolfe's determination on harm to the victim, when considering the effect on the police service and/or public confidence the reduced culpability discussed above is entirely relevant to the impact of the misconduct on the standing and reputation of the profession as a whole and thus upon harm to the community and/or public confidence in the police service…Lastly, although we are not clear whether the comment 'As an experienced police officer, DC Gutty could be reasonably expected to foresee the risk of harm arising from her actions' pertained to culpability or harm, we reject it and find the medical evidence discussed above provides a clear basis for our finding that she would not reasonably be expected to have foresee [sic] the risk of harm to her victim the community or the profession."

55. The PAT then turned to aggravating features, finding that "the criminal conviction for an offence of violence in the domestic abuse context very grave. The physical and psychological injury was temporary but at the time the victim was extremely upset" (para 58). The PAT referred to the sentence imposed and the fact that the criminal case was reported in the press. It noted the importance of taking action against domestic abuse and the need to reinforce efforts to ensure that police officers are not domestic abuse perpetrators themselves. It said it had taken care not to double-count factors.

56. In para 59 the PAT said that it accepted the mitigating features relied upon by DC Gutty but had avoided counting her ill-health twice, as it had already been taken into account as reducing her culpability. The PAT referred to DC Gutty having made open admissions from an early stage, showing remorse and insight and acquiring medical treatment.

57. From para 60 the PAT turned to the question of personal mitigation, reiterating its limited effect in gross misconduct cases because the vital purpose in imposing a sanction was the maintenance of police confidence in and the reputation of the policing profession as a whole (para 61). The PAT set out paras 6.2 – 6.9 of the CoP Guidance in full. The PAT then noted that whilst DC Gutty had impressive references and testimonials, personal mitigation only rarely assisted in avoiding dismissal for gross misconduct and that its conclusion was reached "because of the 'central issue' rather than these testimonials" (para 63). It then reminded itself of the three fold purpose of misconduct proceedings (para 64) and that it should begin by reflecting upon the least severe disciplinary sanction available (para 65).

58. The PAT then set out its reasoning and conclusion as follows:

> "66. Our first question is whether a final written warning (FWW) would fail to deter misconduct, fail to protect the public or risk high policing standards being downgraded?
>
> 67. Having taken into account all the factors which went to our views on seriousness, we have reached the view that the 3-fold purpose of misconduct proceedings would be met by the Appellant being given a FWW. This is because the public would, in our view, understand the factors that we have contemplated, including: the original trauma experienced by the Appellant

> which was reignited by workplace demands (the training around taking child witness statements), that she had taken steps to try to help herself (a long time before the incident happened), but found the mental health disorders she experienced overwhelming and that the symptoms resulting from her psychiatric condition were directly related to the misconduct in question.
>
> 68. It is important for the Respondent to be able to demonstrate that it is maintaining high standards of policing whilst deterring misconduct – and to this end – it is important for it to assure itself of the Appellant's current mental health condition and how her treatment has progressed in the last 2-3 years. It may be useful for a risk assessment of the Appellant's current mental health to be undertaken prior to deciding what duties and conditions the officer should return to work under. This would also help inform further steps such as recuperative duties, necessary training or a phased return to work. Such steps are more likely to enable the Respondent to protected the public in any event by ensuring its officers are fit for work and well supported mentally as well as in regards to physical health.
>
> 69. Such steps may overlap with consideration being given to whether any reasonable steps under the Equality Act are needed. We have to say we are somewhat disappointed that occupational health failed to address the question of disability with sufficient rigour in 2018."

59. The PAT went on to say that it would be appropriate for DC Gutty to work outside the area where her ex-partner was stationed.

60. In light of the Claimant's Ground Four it is also necessary to set out the PAT's concluding remarks regarding the Equality Act:

> "71. Given our findings above on unreasonableness and sanction, we need not reach any decision on the question of the Equality Act (or any of the other grounds relied upon by the Appellant) but we urge those conducting SCHs and Misconduct Hearings to maintain a full awareness of their duties relating to disability discrimination particularly where issues of mental health arise.
>
> …..
>
> 74. We also draw attention to the importance of embedding Home Office Guidance about how Misconduct Panels (and SCHs) are to engage with disability discrimination under the Equality Act 2010. We have appended the relevant section of the 2020 edition. We also note that [para 2.9 of the CoP Guidance was referred to]…It must be that all who sit on and appear before SCHs or Misconduct Panels are aware of discrimination law and

> especially positive obligation that exist relating to people with disabilities. If SCH or Misconduct Panels do not heed the provisions of the Equality Act in cases where any form of discrimination is a potential issue, this risks a wasteful incurrence of resources for all involved…and also causes real injustice to individuals who may risk losing their livelihood unlawfully."

Evidence and events post-dating the Police Appeal Tribunal's decision

61. As I indicated to the parties during the hearing, events and evidence which post-dates the PAT decision are of very limited utility, given the Court's role in a judicial review challenge that is based on traditional public law grounds. In the circumstances I will only refer to them briefly.

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

63. I understand that DC Gutty has returned to full-time duties and is subject to some restrictions identified by the IAU. However, she is permitted to undertake work that brings her into contact with the public and to work within the evidential chain as her misconduct did not relate to dishonesty or integrity issues.

The Claimant's Grounds

64. In the Introduction I summarised the four grounds advanced by the Claimant. I will now set out these contentions in more detail, as distilled from the Statement of Facts and Grounds ("SFG").

Ground One

65. The PAT failed to apply the requisite structured approach in that:

    i) It failed to structure its conclusions on the seriousness of the misconduct by reference to: (a) culpability; (b) harm; (c) mitigating factors; and (d) aggravating

factors. Consequently, it did not adequately assess its seriousness (SFG, paras 33, 34 and 38); and

ii) It failed to revisit or identify the relevant factors going to the seriousness of the misconduct and to make an assessment of those factors (SFG, paras 36 and 37).

Ground Two

66. The PAT did not adequately address the seriousness of the fact of the conviction and its effect on public confidence in and respect for the police service in that:

i) It did not work through the CoP Guidance in relation to culpability or harm as it was required to do (SFG, para 42);

ii) It did not adequately analyse whether DC Gutty's assault was intentional, deliberate or targeted as required by paras 4.11 – 4.12 of the CoP Guidance. Nor did it consider the relevance of DC Gutty's position within the CSU, which investigates domestic violence, in accordance with para 4.13 of the guidance (SFG, para 44);

iii) It failed to comment on the seriousness of the offence by reference to the sentence imposed by the criminal court and ignored the comments of the sentencing judge (SFG, paras 45 - 46);

iv) It did not consider or comment upon why offences of violent crime are considered particularly serious, as indicated in para 4.19 of the CoP Guidance or discuss that such offences are likely to terminate an officer's career. Nor did it consider paras 4.39 – 4.41 of the guidance (SFG, paras 47 and 50);

v) The only reference to the seriousness of convictions for violence came in a passing comment in para 37 and there was no proper analysis of why the conviction for an offence of violence was particularly serious for a police officer (SFG, paras 47, 50 and 51);

vi) It did not consider that the conviction could be disclosed to the prosecution and defence during a criminal trial, with the potential to undermine the prosecution and it did not consider the limited deployment options available to the MPS if DC Gutty were retained (SFG, paras 48 – 49);

vii) It wrongly focused on the personal characteristics of the officer rather than wider public confidence (SFG, paras 52 – 54);

viii) When it came to harm, it failed to deal adequately with the harm caused to the public confidence in policing by reference to the CoP Guidance at paras 4.57 – 4.65 (SFG, paras 52 and 53);

ix) It dismissed the gravity of the offending and erroneously concluded that the public would not view the offending as serious if it knew of DC Gutty's mental health issues (SFG, para 54);

x) It did not identify or consider the scale and depth of local or national concerns about domestic violence (SFG, para 55);

xi) It did not identify or consider the relevance of the criminal case being reported in the national press or the effect of such reporting on the public's confidence in the police (SFG, para 56);

xii) It failed to conclude that the conduct inevitably caused serious harm to individuals, the community and/or public confidence in the police service, such that dismissal was likely to follow (as set out in para 4.65 of the CoP Guidance) (SFG, para 57); and

xiii) Other than consideration of the medical evidence, no other analysis in relation to seriousness is ascertainable from the reasons (SFG, paras 58 – 59).

Ground Three

67. The PAT erred in regarding the medial evidence as pivotal and determinative of the public interest in that:

i) It focused too narrowly on the medical evidence providing an explanation for the underlying assault, rather than focusing on the conviction, the sentence and the violence used and the effect of those matters on public confidence in and respect for the police (SFG, para 60);

ii) It ignored / disregarded the conviction, the sentence and the violence used (SFG, paras 61 and 65); and

iii) It failed to adequately consider the protection of the public as the medical evidence indicated that there was a risk of DC Gutty behaving in a similar vein when she was dealing with members of the public in the course of her duties as a police officer (SFG, paras 67 – 73).

Ground Four

68. The PAT erred in taking into account an irrelevant consideration namely the position under the Equality Act 2010, as:

i) The question of disability and the applicability of section 15 of the Act had not been raised at the SCH or as a ground of appeal (SFG, para 78);

ii) In any event, the effect of regulation 4(4)(c), Equality Act 2010 (Disability) Regulations 2010 is that a tendency to physical abuse of other persons is an excluded condition for the purposes of the Act; or, if the officer was a disabled person, in any event her dismissal was justified as a proportionate means of achieving a legitimate aim (SFG, paras 78 – 79); and

iii) Although the PAT's decision said it had not determined Equality Act points, the reasoning showed that the Chair "does not appear to have been able to put the Equality Act issues out of her mind" (SFG, paras 80 – 81).

An additional submission

69. Ms Studd began her oral submissions by saying that when an officer has been convicted of a serious criminal offence the approach that should be taken was analogous to that

which applied where there had been operational dishonesty, so that dismissal was the "almost inevitable outcome" unless there were exceptional reasons not to take that course. She said that the PAT had not approached the matter through this prism. When I pointed out that this was not one of the alleged legal errors advanced in the SFG, she agreed that it was not a ground of challenge in itself, but she said it was the theme that underpinned the Claimant's grounds. I will return to this point after considering the specific errors that are relied upon in relation to Grounds One and Two.

Discussion and conclusions

Ground One

70. In my judgment the PAT followed the structured approach required by the case law and the CoP Guidance and this is apparent from the reasoning set out in its decision. As I have already indicated, the Claimant does not take issue with any aspect of the PAT's summary of the applicable legal principles (para 48 above). In addition, I note that:

i) The PAT directed itself in accordance with the three stages identified in *Fuglers* and replicated in paras 2.3 and 4.2 of the CoP Guidance when it summarised the legal framework (para 46 above), when it assessed AC Rolfe's reasoning (para 51 above) and again when it embarked on re-taking the decision (para 53 above). Moreover, the structure of its decision conformed to this approach. As regards the first stage, the PAT assessed the seriousness of the misconduct at paras 54 – 59 of its decision. As regards the second stage, the PAT then reminded itself of the purpose for which sanctions are imposed at para 64, referencing this again in its paras 66 and 67 (and having addressed this earlier when summarising the law). It then came to the third stage, selecting the sanction it believed most appropriately fulfilled that purpose at para 67 of its decision;

ii) The PAT approached the question of the seriousness of the misconduct by considering, in turn, the four topics of culpability, harm, aggravating and mitigating features between paras 54 and 59 of its decision. This approach accorded with *Fuglers* and para 4.4 of the CoP Guidance;

iii) The PAT addressed personal mitigation from para 60 onwards after it had considered the seriousness of the conduct. This accorded with paras 4.6 and 6.2 of the CoP Guidance;

iv) The PAT repeatedly recognised that the maintenance of public confidence in policing was a factor of particular importance; it did so in its summary of the applicable legal principles and when it came to its assessment in paras 52, 57, 61 and 67 of the decision;

v) When it came on to the third stage, the PAT first considered the least severe available disciplinary action, as it explained at para 65 of its decision. This reflected para 2.9 of the CoP Guidance; and

vi) It took care not to double count either aggravating or mitigating factors (paras 55 and 56 above).

71. The Claimant also complains that the PAT failed to revisit or identify relevant factors going to the seriousness of the misconduct and to make an assessment of them. This criticism is misplaced. It is important to view para 54 onwards of the PAT's reasoning in the context of the decision as a whole. The sole challenge on the appeal related to the way that the Presiding Officer had addressed (or not addressed) the medical evidence. The PAT upheld this contention. There was no challenge to the other aspects of AC Rolfe's evaluation of the elements that went to make up the seriousness of the misconduct. The PAT's decision cited AC Rolfe's reasoning in full. In the circumstances, there was no error of law involved in the PAT saying that (subject to her approach to the medical evidence) it agreed that the Presiding Officer had correctly identified the factors that went to the officer's culpability and had correctly identified that "convictions of violence are especially serious". In these circumstances, when the PAT set out its own reasoning on sanction and came to assess culpability, it unsurprisingly focused on the impact of the medical evidence. The fact that the PAT retakes a sanctions decision afresh, does not preclude it from cross-referring to and adopting in its reasoning those parts of the Presiding Officer's evaluation that it agrees with.

72. Similarly, there was no error of law involved in the PAT saying at para 38 of its decision that it agreed with AC Rolfe's determination of the harmful impact on the victim and then addressing its own assessment of the effect of the medical evidence in terms of the impact that the misconduct had on public confidence in policing. As I have already summarised, the PAT then evaluated aggravated and mitigating factors.

73. Accordingly, I reject the contention that the PAT failed to apply the requisite structured approach. I go on to consider the substance of its reasoning in more detail when I address the issues raised under Ground Two.

Ground Two

74. The number and nature of the points advanced under Ground Two tends to underscore that rather than identifying an error of law, the Claimant is putting forward a detailed textual critique of the way the PAT expressed its reasons and concerns that ultimately amount to no more than an expression of disagreement with the weight the PAT accorded to certain factors and with its overall conclusion.

75. The over-arching point that Ms Studd made orally in relation to Ground Two was that the PAT did not assess the seriousness of the misconduct through the prism of the officer's conviction. Accordingly, I will begin with this, which will incorporate a number of the criticisms made in the SFG (summarised at para 66 above)).

76. The PAT was plainly well aware of DC Gutty's conviction. It began its summary of the relevant factual material by referring to her conviction, her sentence and the District Judge's sentencing remarks (para 44 above). The PAT then set out AC Rolfe's reasoning in full, subsequently indicating at para 37 that it agreed with her assessment of culpability (subject to the medical evidence point). AC Rolfe's reasoning in relation to seriousness, included the recognition that offences of violence are described in the CoP Guidance as particularly serious and are likely to terminate an officer's career. In para 37 of its decision the PAT described convictions for violence as "especially serious". When it came to its redetermination of sanction, it focused on the impact of the medical evidence when it considered culpability for the reason that I have already

explained under Ground One. When the PAT came to aggravating factors it described "the criminal conviction for an offence of violence in the domestic abuse context" as "very grave" and further reference was made to the sentence that DC Gutty received (para 55 above).

77. Accordingly, I conclude that the PAT did assess the seriousness of the misconduct with regard to the officer's conviction. It is inaccurate to say that the PAT "ignored" the sentencing judge's remarks and made only "passing comment" about the seriousness of convictions for violence. Furthermore, para 4.17 of the CoP Guidance recognises that the criminal sentence is not necessarily a reliable guide for the purposes of disciplinary proceedings; and the PAT could permissibly consider that this was all the more so here given that the criminal court's determination was made without the benefit of the medical evidence relating to the officer's mental health conditions.

78. In her oral submissions Ms Studd suggested that it was insufficient for the PAT to refer to the gravity of the conviction when it turned to aggravating features, as this should have formed part of its assessment of culpability. However, I do not consider that anything turns on this. Para 4.7 of the CoP Guidance recognises that the factors will overlap (the main concern being not to double count, which the PAT was mindful of).

79. The PAT did not make express reference to paras 4.16 – 4.20 of the CoP Guidance concerning seriousness in cases of criminal convictions (para 27 above) or to para 4.39 which refers to misconduct involving violence (para 29 above). However, in keeping with the approach described by Eady J in *Officer A* (paras 23 and 24 above), which I respectfully agree with, the question for me is whether the PAT's decision complied *in substance* with the applicable principles and guidance. As Eady J explained, a public law error does not arise simply from the fact that a PAT has not referred in terms to every applicable passage in the CoP Guidance.

80. I consider that the PAT's reasoning indicates that it did adopt the correct approach. It referred to DC Gutty's conviction for violence as "especially serious" and as "very grave" (paras 51 and 55 above) and indicated its agreement with AC Rolfe's assessment of culpability (subject to the medical evidence) which had included her acknowledgement that offences of violence were likely to terminate an officer's career (para 45 above). If the PAT had expressly referenced these passages in the CoP Guidance it would not have led to a materially different assessment of severity; the PAT's approach reflected their contents.

81. Whilst I am satisfied that the PAT did have regard to DC Gutty's conviction for violence when it assessed seriousness, Ms Studd's oral submissions contained a degree of overstatement in so far as she suggested that it was the conviction, rather than the conduct that constituted the offence, that was relevant to the assessment of seriousness. In my judgment it will be both. In addition to the fact of the conviction, the nature of the conduct involved in the offence will impact on the assessment of seriousness. This is entirely consistent with the case law principles I have summarised in paras 15 – 19 and with the CoP Guidance which reflects those principles. I also note that the regulation 43 notice (whilst earlier referring to the fact of the conviction and the sentence imposed) described the particulars of the officer's discreditable conduct by reference to the behaviour constituting the offence, namely her assault on her then partner (para 37 above).

82. The PAT's findings in respect of DC Gutty's state of mind disclose no error of law. The Claimant did not challenge Dr Hindler's conclusions. Furthermore, the Claimant accepted in the submissions made to the PAT that this medical evidence was relevant to the evaluation of both culpability and harm. It cannot sensibly be suggested that the PAT's evaluation of Dr Hindler's conclusions was perverse, albeit the Commissioner considers that they were generous to the officer and disagrees with the weight that the PAT placed on the medical evidence. It was open to the PAT to conclude that her mental health condition had a real impact on the extent to which DC Gutty could be considered blameworthy in relation to the assault, as it explained in paras 54 – 56 of its decision (para 54 above). In turn, it was therefore open to it to conclude, as it did in para 58 of its decision, that the officer could not reasonably be expected to have foreseen the risk of consequential harm to the victim (para 54 above). Accordingly, the complaint that the PAT erred in not adequately addressing whether the assault was deliberate or intentional is not well-founded. Mr Banham took issue with the Claimant's description of DC Gutty's duties in the CSU at the material time, but in any event there is no indication that the officer's position was not taken into account.

83. The points regarding the impact of the conviction on DC Gutty's involvement in the evidence chain and upon her deployment options are without substance. This was not a concern raised before the PAT; the OCU Commander's comments that were made available to the hearing simply asked that if she was retained, DC Gutty be moved from the area where the victim worked. Further, as I have already noted, the officer pleaded guilty to the offence, integrity issues were not involved, and following assessment, she has been permitted to return to duties involving the public which may involve her in the evidence chain.

84. I turn next to the evaluation of harm. The PAT considered the medical evidence not because it wrongly focused upon the personal characteristics of the officer (which were addressed subsequently when it came on to consider personal mitigation), but in order to assess the centrally relevant matter of what effect it had on the impact of the misconduct on public confidence in policing and the reputation of the profession. It explained this in para 57 of its decision (para 54 above). As I have already noted, the Claimant accepts that the medical evidence was relevant to harm. The weight that the PAT placed upon it was a matter for its specialist evaluation, as para 4.62 of the CoP Guidance says (para 30 above) "based on their experience and the circumstances of the case". Having permissibly found that the effect of the medical evidence was to reduce the officer's culpability, there was no irrationality involved in the PAT factoring this into its assessment of how the public would have viewed this misconduct by an officer. The complaint that the PAT was erroneous in concluding that the public would not view the offending as so serious if they knew about the officer's mental health issues, is no more than an expression of disagreement with the PAT's conclusion.

85. Further, the PAT was mindful of concerns about domestic violence. In para 58 of its decision, it referred in terms to the importance of taking action against domestic abuse and the need to reinforce efforts taken to ensure that officers are not domestic abuse perpetrators (para 55 above). The Presiding Officer had considered this matter in more detail and the PAT had already indicated that it agreed with her evaluation of seriousness (subject to the medical evidence). The PAT was also aware that the criminal case had been reported in the national press, referring to it at para 5 of its decision. How much weight the PAT accorded this was a matter for its evaluation, but I note that it

was likely to carry less weight than in some cases given, as the Presiding Officer observed the media interest was some time ago and given that it pre-dated the medical evidence which the PAT was permissibly taking into account.

86. Accordingly, in my judgment, the PAT's approach showed adherence to the substance of paras 4.57 – 4.65 of the CoP Guidance (which it plainly had in mind as para 4.57 was referenced expressly in para 57 of its decision). The PAT did not fail to apply para 4.65 of the CoP Guidance as it considered the impact of the officer's misconduct on public confidence and the reputation of the profession, but permissibly concluded that serious harm would not be caused in this instance given its findings as to the officer's limited culpability.

87. I therefore dismiss Ground Two.

The additional submission

88. As I have already noted, in her oral submissions Ms Studd advanced a broader submission, contending that when an officer is convicted of a criminal offence / a serious criminal offence (the submission was put both ways) then the decision maker's approach should be that dismissal is "almost inevitable", by analogy with the position that applies to instances of operational dishonesty. Apart from the real difficulty that this was not a pleaded ground of challenge (and no application was made to amend the grounds), this submission does not reflect the existing case law or the contents of the CoP Guidance and Ms Studd confirmed during the hearing that she did not take issue with the terms of either. Indeed the Claimant's own SFG relies on a position derived from the case law and the guidance that dismissal was "likely" to follow in circumstances such as these. I record for completeness that after a draft of this judgment was circulated to counsel for typographical corrections, Ms Studd disputed that this submission was additional to her Grounds. She referred to para 29 of the SFG and she said that neither the Court nor the Interested Party had said she was required to amend to pursue this. However, para 29 SFG (which precedes the numbered grounds) explains why the issues raised are of public importance, the contents are not advanced as a ground in itself and do not include the "almost inevitable" submission made orally. Furthermore, when Ms Studd made the submission orally I did raise with her that this was not a pleaded ground (para 69 above). As she then indicated that it was not a ground of challenge, the question of amendment did not arise. In any event, the merits of the point are addressed in this section of my judgment.

89. Whilst my observations should not be taken as diminishing the seriousness of a serving police officer being convicted of a criminal offence – as the PAT rightly said, this was a very grave matter – the case law and the CoP Guidance do distinguish between instances of operational dishonesty (on the one hand) and other instances of gross misconduct including criminal convictions (on the other), as can be seen from my review of the case law at paras 15, 16, and 19 above and by a comparison of paras 4.16 – 4.20 and 5.3 of the CoP Guidance (paras 27 – 28 above). In the case of operational dishonesty dismissal is regarded as "almost inevitable", whereas in relation to convictions for serious offences the position is reflected in the summary at para 4.19 (and para 4.65) of the CoP Guidance that termination will be "likely".

90. It is obvious why such a strict approach of almost inevitable dismissal is adopted in respect of operational dishonesty; whereas a criminal conviction, whilst extremely

serious for a serving police officer, may span a wide range of circumstances and a fact-specific assessment is required (by reference to the recognised structured approach). Although the Claimant placed particular emphasis upon *Williams*, this is entirely consistent with Holroyde J's analysis at paras 66 and 67 of *Williams* (para 19 above). The Claimant also suggested that this Court should give further guidance as to the approach to be taken by those deciding upon sanction in officer misconduct cases involving police convictions. I do not consider that it is necessary to do so; the correct approach has already been clearly identified in the case law and in the CoP Guidance that I have referred to.

Ground Three

91. Ground Three largely re-visits territory that has already been covered by the earlier grounds. As I concluded when considering those grounds, the PAT did not ignore or disregard DC Gutty's conviction or sentence or the fact that the offence was one of violence. I have also explained why the reasoning in the PAT's decision addressed the impact of the medical evidence in particular detail and why this focus entailed no error of law. The weight to be given to the medical evidence was a matter for the PAT and the approach it took to the medical evidence was within the boundaries of reasonable decision making.

92. As regards the other element of Ground Three, the transcript of the PAT hearing indicates that during the course of submissions the Chair asked counsel whether the PAT needed to be updated on the medical position in relation to DC Gutty (Dr Hindler's report having been prepared in 2018). Mr Banham on her behalf indicated that her condition had improved and the treatment she was receiving had been reduced. The Claimant did not suggest that the PAT required additional information in relation to this or that there was an ongoing concern raised by the medical evidence, in terms of the officer's ability to carry out her duties in the future. DC Gutty had been permitted to resume duties with the MPS, with only limited restrictions, between the time of the PAT allowing her first appeal and AC Rolfe's dismissal decision.

93. In these circumstances and in particular where this was not a concern raised by the MPS at the hearing, the Claimant has not shown that the PAT failed to adequately consider the protection of the public if DC Gutty was permitted to remain an officer. This conclusion is reinforced by the fact that the PAT expressly recognised the importance of risk assessment and evaluation of the duties that DC Gutty could undertake both from the perspective of the officer's welfare and the protection of the public in para 68 of its decision (para 58 above).

Ground Four

94. This ground is based on a false premise; the PAT's did not take into account the Equality Act in determining that the necessary and appropriate sanction was a FWW. I have already set out in some detail the reasoning that the PAT *did* employ in arriving at that conclusion. It was coherent, structured and does not suggest that there were gaps that were filled by unstated, irrelevant considerations. DC Gutty did not rely on the Equality Act as part of her appeal. Moreover, the PAT said in terms at para 71 of its reasons that it had not reached any decision on the question of the Equality Act (para 60 above). No basis has been shown for going behind this clear statement.

95. The Claimant relies on the fact that the decision includes reference to discrimination arising from disability as defined in section 15 of the Equality Act. However, the references to the Equality Act were structurally separate from the PAT's decision-making, the reasons for referring to it are apparent and this does not cast doubt on the position I have just set out. Firstly, as it said in para 69 of its decision, the PAT wished to relay its concern that in 2018, before the assault and when the officer sought help, occupational health had failed to address the question of disability with sufficient rigour (para 58 above). The Claimant's submission regarding conditions that are excluded from being a disability under the Equality Act would not apply to the underlying mental health condition that she reported in January 2018 (as opposed to the consequences she faced for committing an assault). Secondly, as shown by para 74 of its decision, the PAT wished to draw the attention of misconduct panels and SCHs to the Home Office Guidance on "Equality Considerations in Hearings".

96. In any event, the crucial point for present purposes is that the Equality Act did not influence the PAT's determination of sanction.

Overall conclusion and outcome

97. For the reasons set out above, the Claimant's challenge fails in respect of each of the four grounds. No basis has been shown for overturning the PAT's decision to impose the sanction of a FWW on DC Gutty. For the reasons it gave, the PAT was entitled to conclude, as it did in para 67 of its decision, that the three fold purpose of misconduct proceedings would be met by a FWW in the unusual circumstances of this case. This conclusion was arrived at in the exercise of the PAT's specialist assessment and in circumstances where it kept in mind the need to maintain public confidence in and the reputation of the police service. In explaining its conclusion, the PAT highlighted the original trauma experienced by the officer; how it had been re-triggering by events preceding the offence, for which she had taken steps to obtain help; and its conclusion that the symptoms of her psychiatric condition directly related to the misconduct. This Court is not exercising an appellate jurisdiction or re-making the decision, which I have found showed a correct understanding and application of the relevant legal principles, did not disclose any errors of law and was within the boundaries of reasonable decision making and not perverse.

98. Accordingly, the claim is dismissed.