

ENGLAND AND WALES / JUDGMENT

Chief Constable of Derbyshire Constabulary (R, on the application of) v Police Misconduct Panel

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Neutral Citation Number: [2026] EWHC 467 (Admin) IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION ADMINISTRATIVE COURT SITTING IN BIRMINGHAM Case No: AC-2025-BHM-000182 Birmingham Civil and Family Justice Centre The Priory Courts, 33 Bull Street Birmingham B4 6DS Date: 9 February 2026 Before : HHJ EMMA KELLY (Sitting as a Judge of the High Court)

- ----- Between : THE KING (on the application of CHIEF CONSTABLE OF DERBYSHIRE CONSTABULARY) Claimant
- and – POLICE MISCONDUCT PANEL Defendant -and-
- (1) PC JACK LARGE
- (2) PC JAMES BARKER Interested Parties
- -----
- ----- Steven Reed (instructed by East Midlands Police Legal Services) for the Claimant The Defendant did not appear and was not represented Julian King (instructed by JMW Solicitors LLP) for the First Interested Party David Toal (instructed by JMW Solicitors LLP) for the Second Interested Party Hearing date: 9 February 2026 Judgment handed down remotely at 3pm on 10 March 2026 by circulation to the parties or their representatives by email and by release to the National Archives.
- ----- APPROVED JUDGMENT HHJ Emma Kelly Approved Judgment HHJ EMMA KELLY: R(CC of Derbyshire Police) v Police Misconduct Panel 1. 2. 3. The Chief Constable of Derbyshire Police (“the Claimant”) challenges the decision of the Police Misconduct Panel (“the Defendant”) of 12 March 2025 (“the Decision”) made in police gross misconduct proceedings against PC Jack Large and PC James Barker (“PC Large” and “PC Barker” respectively and together “the Interested Parties”). By order dated 7 October 2025, HHJ Rawlings granted permission to apply for judicial review on 5 grounds. The Defendant has taken no active part in these proceedings and states that it is functus officio. The Interested Parties oppose the claim. Anonymity 4. A key witness in the case is MB, who is a victim of serious domestic abuse. The Defendant made an order granting MB anonymity in

all public reporting of the misconduct hearing. The Claimant seeks a similar order from the Court. As I indicated at the hearing, I am satisfied that ongoing anonymity is necessary and appropriate taking into account MB's vulnerability and impact on her private life should details of her personal life enter the public domain. Relevant factual background 5. 6. 7. 8. 9. The following summary of the relevant factual background is taken largely from an agreed chronology of events prepared by the Claimant and Interested Parties for the purpose of the judicial review hearing. On 8 March 2023, MB reported to Nottinghamshire Police that she had been assaulted by her on/off partner, Jack Jeffries ("JJ"). On 1 April 2023, the Interested Parties were on-duty as uniformed police officers with Derbyshire Constabulary. At 10.45pm that day, the Interested Parties arrested JJ on suspicion of assault of his father, Benjamin Jeffries ("BJ"). The Interested Parties transported JJ to Ripley police station, where his custody was authorised. On 2 April 2023, at 12.02am and 12.15am, PC Large phoned MB, using his police issued communication device. The first phone call lasted 24 seconds and the second phone call lasted 7 minutes 31 seconds. At 01.29am and 02.09am, PC Barker utilised the Niche police computer system to conduct a search on JJ and accessed the police incident report for the incident involving MB on 8 March 2023. 10. Having interviewed JJ, the Interested Parties sought advice from the Charge Manager, Temporary Police Sergeant French ("T/PS French") . The Interested Parties' intention was to have the investigation concluded as 'No Further Action'. T/PS French disagreed with their suggestion and advised the Interested Parties to: Page 2 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel a) b) c) Inform Nottinghamshire Police that JJ was in custody because he was shown as being outstanding on Niche to be interviewed, for the Nottinghamshire incident; Make enquiries about alternative accommodation for JJ other than MB's address, because of the outstanding domestic assault incident; and Seek advice about alternative accommodation for JJ with their own direct supervision, or custody. On 2 April 2023 at 04.28am, JJ was granted conditional police bail. The conditions of his police bail did not relate to MB. JJ was then released into the Interested Parties' care. On 2 April 2023 at 5.01am, PC Large phoned MB for the third time. The call lasted for 14 seconds. The Interested Parties drove JJ to MB's home address, where they released JJ. On 2 April 2023 at 07.25am, MB phoned Nottinghamshire Police to report that JJ had assaulted her following his arrival that morning at her home. PC Chrusciel and PC Shaw from Nottinghamshire Police attended at MB's home address and arrested JJ at the property. At 07.32am and 09.04am on 2 April 2023, PC Chrusciel's Body Worn Camera Footage ("BWCF") recorded MB disclosing details of the content of her phone calls with PC Large from earlier that morning. On 19 September 2023, JJ was sentenced to a custodial sentence for assaulting MB on 2 April 2023. 11. 12. 13. 14. 15. 16. The misconduct proceedings 17. 18. The misconduct proceedings related to the Interested Parties' involvement in the decision to take JJ to MB's home on 2 April 2023 following his release from custody. The matters which were the subject of the misconduct proceedings were detailed in Notices of Referral of Alleged Breach of the Standards of Professional Behaviour to Misconduct Proceedings, served on each of the Interested Parties pursuant to Regulation 30 of the Police (Conduct) Regulations 2020 ("the Regulations") on 23 October 2024. A reference in this judgment to a Regulation means one of

the Regulations. 19. The Interested Parties faced similar allegations, which were said to amount to gross misconduct. The allegations included: a) b) A failure to safeguard MB despite the officers knowing that JJ had been violent to her in the past and that she had reported JJ to the police for an assault less than a month ago. The making of three telephone calls by PC Large to MB at 00.02, 00.15 and 05.01 hours on 2 April 2023 placing pressure on her to allow JJ to use her Page 3 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel address on being released from custody, and both officers thereafter arranging and taking JJ to MB's address. c) d) A failure by PC Barker to challenge PC's Large's behaviour. A failure to follow the advice of T/PS French as to how to deal to the situation. Each Regulation 30 Notice alleged that the Interested Parties had breached Standards of Professional Behaviour ("SPB") in a manner that amounted to gross misconduct. By Regulation 5, the SPB are those described in Schedule 2 to the Regulations. As to PC Large, it was alleged that SPB as to Duties and Responsibilities; Authority, Respect and Courtesy; and Discreditable Conduct were engaged. As to PC Barker, it was alleged that SPB as to Duties and Responsibilities; Discreditable Conduct; and Challenging and Reporting Improper Conduct were engaged. Each of the Interested Parties responded to the Regulation 30 Notices by serving a written notice, pursuant to Regulation 31. The Interested Parties admitted the alleged breaches of the SPB but asserted that their admitted conduct amounted to misconduct rather than gross misconduct. PC Large accepted he had made three telephone calls to MB at 00.02, 00.15 and 05.01 on 2 April 2023 but that it was likely he only made a request to MB as to whether JJ could stay at her address in the second of those calls. The Interested Parties stated they could not recollect any specific advice given to them by T/PS French. The Defendant conducted the misconduct hearing over 5 days from 6 to 12 March

2025. The Defendant was chaired by Assistant Chief Constable James Abdy sitting with two Independent Panel Members, Ms Fleur Wrigley and Mr Andrew Robotham. The Defendant received legal advice from a legally qualified legal advisor, barrister Mr Oliver Thorne. The Defendant heard oral evidence from MB, BJ, Shelley Jeffries ("SJ") (who is the wife of BJ), T/PS French and the Interested Parties. The Defendant also received other evidence including PC Chrusciel's BWCF from the morning of 2 April 2023. 20. 21. 22. 23. The decision 24. 25. On 12 March 2025, the Defendant provided a written notification of outcome in respect of each of the Interested Parties, pursuant to Regulation 43. The notification in each case included a summary of the reasons for the Defendant's findings and on outcome. The substance of the summary was identical for each of the Interested Parties. The reasons for the Defendant's findings ran to 49 paragraphs ("the Findings"). The Defendant also produced a table of findings, setting out which of the paragraphs of the allegations in the Regulation 30 notices were proved in whole, in part or not at all against each of the Interested Parties. In summary, the Defendant concluded that the Interested Parties' actions amounted to breaches of the SPB as to Duties and Responsibilities, and as to Discreditable Conduct, so as to amount to gross misconduct. The Defendant imposed final written warnings on each of the Interested Parties for a period of two years. Page 4

HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel 26. The Defendant did not accept all of the Claimant's case. Whilst it accepted that PC Large had telephoned MB for a second time at 00.15 and asked whether JJ could use her address, it did not accept paragraphs 1.7.1 and 1.7.2 of the Regulation 30 Notice had been proved. Paragraphs 1.7.1 and 1.7.2 of the Regulation 30 Notice served on PC Large alleged, in relation to the second telephone call at 00:15: "1.7.1 MB had already refused the request and you unreasonably disregarded the information that she had given you. 1.7.2 This placed pressure on MB to comply with the request despite what she had told you about JJ." 27. At paragraph 2.2 of the Regulation 30 Notice served on PC Large, the Claimant when on to allege: "2.2 In respect of your conduct at paragraph 1.7 and 1.12 you failed to treat MB with respect and courtesy as despite being informed by MB that she did not want JJ to reside at her address you made further telephone calls to MB and/or conveyed JJ to MB's address." 28. The Findings dealt with the telephone calls made by PC Large to MB in the following way: "13. The panel have considered the evidence of the three phone calls made that night. The following calls are made...: 00:02 for 24 seconds 00:15 for 452 seconds (7½ minutes) 05:01 for 14 seconds

14. The panel take the view that this sequence of events suggests that [MB's] recollection of the fine details is unlikely to be correct. The first call is short for a meaningful conversation to have taken place. The panel take the view that the meaningful conversation took place in the second call, at 00:15. However, as PC Large accepts, in the second call, 13 minutes later, [MB] did tell him that [JJ] have been violent to her in the past and that she had reported him for assault. The panel have asked themselves whether the evidence establishes that PC Large knew it was approximately one month prior to the conversation. On balance the panel are unable to find that this was said by [MB]. We do note, however, that this demonstrates a distinct lack of professional curiosity. It is noteworthy that he did not ask when this had taken place... ..
16. The panel also find that on balance it was in the second call that [MB] agreed to [JJ] going to her property. We note that she accepts that she did so, although she says it was in the third call. The timeline provides substantial support for the suggestion from PC Large that this call was made at, or on the way to, [MB's] property. It is highly unlikely that this Page 5 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel was done speculatively, hoping that she would agree or that she did so in 14 seconds. More likely, in the panel's view, this call was to say that they would be arriving shortly. Further, the panel find that it is more likely than not that PC Large did say that it was likely to be for one night but that it was in this call. That conclusion is consistent with the timeline. At this point PC Large did not anticipate bail conditions and there the possibility of council accommodation.
17. [MB's] evidence is that she felt pressured into accepting [JJ] being brought to her address by the persistence of the calls. The panel acknowledge that it is possible to be persistent in one call, but [MB] is, in our view (although we repeat honest and helpful), unlikely to be correct when she says that she was asked the question in three separate calls. That is the

[Claimant's] case about persistence and is the only evidence; to go further than that would involve speculation. The panel accept that she felt pressure to say yes, and that she was reluctant and that she mentioned assault. That ought to have been the end of any idea of [JJ] staying there. On balance the panel find that the pressure she felt came from the circumstances, the fact that the request came from a police officer who did not withdraw it when told about the assault or asked further questions about those matters. The evidence does not establish that it was caused as alleged at 1.7.1 and 1.7.2 or by any other improper action by PC Large.” 29. The Defendant's findings on the telephone calls led to following conclusions at [43] –

- [45] of the Findings: “43. We do not find that PC Large acted improperly on the telephone with [MB], albeit that we think that he should have recognised at a much earlier stage that his initial idea, that [JJ] might stay at her address, was misconceived and dangerous.
44. Paragraph 1.10 to 1.14 represents a significant failure to follow instructions and a clear breach of the standards of duties and responsibilities. In the context of this case it is also a clear breach of the standard of discreditable conduct. This conduct does stand to undermine public trust.
45. The reasons set out above, we do not think PC Large acted with a lack of courtesy or respect towards [MB] and nor did he abuse his authority. The panel are concerned about the way her input and position was not properly safeguarded, but we find no evidence that she was spoken to unprofessionally. Paragraph 2.2 is not proved.” 30. On finding both Interested Parties guilty of gross misconduct, the Claimant and Interested parties made oral submissions on outcome and the Claimant relied on 14- page written submissions. The Claimant contended for the dismissal without notice of both Interested Parties. The Regulation 43 notification of outcome included 32 paragraphs of reasons on outcome (“the Outcome Reasons”). The Outcome Reasons included the following: Page 6 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel a) b) c) d) e) f) g) h) i) j) At para. 2: “The panel have followed the approach in Fuglers and the College of Policing guidance on outcome (‘CoP’). We have considered the officer's case is separately.” At para. 3, the Defendant approached the outcome process by assessing the seriousness of the misconduct, by keeping in mind the three-fold purpose of imposing outcomes, and choosing the outcome that most appropriately fulfilled the purpose. At para. 4, the Defendant assessed seriousness by considering culpability and harm. At para. 5-9, the Defendant concluded it was a medium culpability case, taking into account that although the harm was not intentional, it was foreseeable that MB might be the victim of a domestic assault. The Defendant noted that all police officers should be aware of CoP guidance as to the priority to afford to violence against women and girls. At para. 10-18, the Defendant concluded it was a high harm case. The Defendant took into account the COP guidance as to the risk of harm undermining public confidence in policing, and the local and national policing priority to protect vulnerable people. The Defendant identified harm by way of physical harm to MB, psychological harm to MB, and reputational harm to Derbyshire Constabulary and to

policing in general. The Defendant identified the most significant harm as being to the public trust and confidence in policing but did not underestimate the harm to MB. At para. 19, the Defendant identified aggravating factors by way of the conduct amounting to a significant deviation from instructions, and continuing behaviour after the officers should have realised it was improper. At para. 21-24, the Defendant identified mitigating factors, namely that it was a single incident; that the Interested Parties acted pursuant to a legitimate policing purpose and in good faith but got things wrong; the Interested Parties' level of experience, the Interested Parties' admissions, remorse, and acceptance of responsibility; and their demonstration of continued commitment to their duty and support for their colleagues whilst under investigation. At para. 25-26, the Defendant noted the substantial evidence of personal mitigation in the form of character evidence but concluded that the weight they could attach to it was limited albeit it had been taken into consideration. They accepted the misconduct was out of character. At para. 27, the Defendant identified the threefold purpose of the proceedings as being "1. to maintain public confidence in, and the reputation of, the police service. 2. to uphold high standards in policing and to deter misconduct. 3. to protect the public." At para. 28, the Defendant noted that the available outcomes were a final written warning or dismissal without notice. Page 7 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel k) At para. 29-32, the Defendant concluded that "this was a case of mistake, not malice and or idleness" and "taking all the factors, the public are better served by PC Large and by PC Barker continuing to serve than by being dismissed". It imposed final written warnings for two years on each officer. Grounds for judicial review 31. The Claimant relies on five grounds ("Ground(s)"). The first three Grounds concern PC Large only and the approach taken by the Defendant when determining that he did not pressurise MB when he called her three times. The fourth and fifth Grounds concern the Defendant's decision as to the appropriate outcome. The Grounds are as follows:

- (1) The panel erred in law in making key findings that focused on the timings/length of the phone calls between PC Large and MB and not the contents of these phone calls. In doing so the panel fails to consider material evidence and gave no explanation why they made these findings or discounted other key material evidence.
- (2) The panel erred in law in finding that pressure applied on MB was not caused by PC Large and was not improper action by PC Large. These findings are completely contrary to the evidence and contrary to some of the panel's own findings. The panel failed to consider material evidence and gave no explanation why they discounted key material evidence.
- (3) The decision was irrational in all the circumstances. The panel's decision that allegation 2.2 was not proved was one which no reasonable panel could reasonably have come to on the evidence.
- (4) The panel erred in law in making findings on outcome that were inconsistent with the factual findings they had previously made.

- (5) The decision was irrational in all the circumstances. The panel unlawfully decided that the appropriate outcome was a final written warning. This was outside the range of reasonable response given their particular findings about the officers' conduct.

Legal framework

Adequacy of reasons 32. In R (on the application of Chief Constable of Northumbria Police) v Police Misconduct Panel [2022] EWHC 1217 (Admin) ("Northumbria Police"), Fordham J concluded that the public law duty of a panel to give legally adequate reasons adopted in R (Ashworth Hospital Authority) v Mental Health Review Tribunal for West Midlands [2001] All ER (D) 135 at [77], was equally applicable to decisions made by the Defendant. Fordham J summarised the duty at [11]: "(a) Proper adequate reasons must be given that deal with the substantial points that have been raised ... Page 8 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel

- (b) Reasons must be sufficient for the parties to know whether the tribunal made any error of law.
- (e) It is unnecessary for a tribunal to set out the evidence and arguments before it or the facts found by it in detail ...
- (f) It is often difficult to explain why one witness is preferred to another. Generally speaking, a tribunal's decision will not be inadequately reasoned if it does not give such an explanation.
- (g) In assessing the adequacy of reasons, one must bear in mind that the decision will be considered by parties who know what the issues were ...
- (h) However, the reasons must sufficiently inform both [parties] as to the findings of the tribunal ... A tribunal must also bear in mind that its decision may have to be considered by those who were not present at or parties to the hearing...
- (i) In considering the adequacy of reasons the Court is entitled to take into account the fact that the tribunal has a legally-qualified chairman ..." 33. One must take care in judicial review proceedings not to trespass into territory that would amount to an appeal against the merits. In Northumbria Police, Fordham J at [26] described the proper confines of judicial review of the Defendant: "26. The starting point is that judicial review of the Panel does not stand as an appeal on the merits in which the judicial review court substitute its own judgment on questions of fact and judgment for those arrived at by the specialist three-person Panel. What is needed for judicial review to succeed is a material error of approach constituting a public law error. That includes a finding or conclusion which is unreasonable in a public law sense, including being unsupported by evidence or being unsustainable on the evidence. It includes reasoning which breaches public law standards of legal adequacy, including by reference to the points in the Ashworth case. I have in mind not only the specialism of the Panel but also the nature of its process..." Approach of the Defendant to determining outcome 34. The correct

approach to determining the appropriate sanction was considered in *Fuglers LLP v Solicitors Regulation Authority* [2014] EWHC 179 (Admin) (“Fuglers”) by Popplewell J in the context of decision making by the Solicitors Disciplinary Tribunal. At [28] – [33]: “28. There are three stages to the approach which should be adopted by a Solicitors Disciplinary Tribunal in determining sanction. The first stage is to assess the seriousness of the misconduct. The second stage is to keep in mind the purpose for which sanctions are imposed by such a tribunal. The third stage is to choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question. Page 9 HHJ Emma Kelly Approved Judgment *R(CC of Derbyshire Police) v Police Misconduct Panel*

29. In assessing seriousness the most important factors will be (1) the 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 misconduct 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 also be informed by (3) aggravating factors (eg previous disciplinary matters) and (4) mitigating factors (eg admissions at an early stage or making good any loss)...
30. At the second stage, the tribunal must have in mind that by far the most important purpose of imposing disciplinary sanctions is addressed to other members of the profession, the reputation of the profession as a whole, and the general public who use the services of the profession, rather than the particular solicitors whose misconduct is being sanctioned...
33. At the third stage, the tribunal will first consider which category of sanction is appropriate from the range which is available to it...” The decision of a professional disciplinary tribunal on sanction is to be held in great regard and it would require a very strong case for the Administrative Court to interfere with it: *Bolton v Law Society* [1994] 1 WLR 512 (“Bolton”) at 516H and 520A. In other words, the expertise of the Defendant is to be respected and it is not the role of this Court to substitute its own view on the appropriate sanction. The version of Regulation 42(3)(b) in force when the Defendant made the decision on 12 March 2025 provided that the following disciplinary action was available on the finding of gross misconduct: “(i) a final written warning; (ii) reduction in rank; (iii) dismissal without notice.” The wording of Regulation 42(3)(b) changed with effect from 28 May 2025. The revised version retains dismissal without notice as an available sanction but impose an “exceptional circumstances” test to justify lesser sanctions of a final written warning or reduction in rank. On the facts of the index case, a reduction in rank was not an available option as both Interested Parties were already the lowest rank of officer. By section 87(1B) of the Police Act 1996, the College of Policing may issue guidance to the Defendant as to the discharge of disciplinary functions. By guidance dated 2023, the College of Policing produced “Guidance on outcomes in police misconduct proceedings” (“the Guidance”). The Guidance is intended to “assist persons appointed to conduct misconduct proceedings” (paragraph 1.2) and

“should be used to inform the approach taken by [the Defendant] to determining outcomes in police misconduct Page 10 35. 36. 37. 38. 39. HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel proceedings” (paragraph 7.1). The Guidance endorses the approach set out in various case law, including Fuglers. Paragraph 2.8 of the Guidance states: “Consider less severe outcomes before more severe outcomes. Always choose the least severe outcome that deals adequately with the issues identified, while protecting the public interest. If an outcome is necessary to satisfy the purpose of the proceedings, impose it even where this would lead to difficulties for the individual officer.”

Grounds 1-3 The Claimant’s case on Grounds 1-3 40. 41. 42. The Claimant submitted that the first three Grounds can be considered collectively. The essence of the Claimant’s complaint is that the Defendant wrongly rejected MB’s evidence that PC Large asked her to accommodate JJ in all three of the telephone calls made at 12:02am, 12:15am, and 5:01am on 2 April 2023. The Defendant concluded that the only occasion where PC Large asked MB to accommodate JJ was in the second, longer phone call at 12.15am. As to Ground 1, the Claimant submitted that the Defendant failed to consider material evidence in the form of the BWCF from Nottinghamshire Police, and failed to reference the BWCF in the Findings. In doing so, the Claimant submitted that the Defendant wrongly focussed on the timings not content of the material telephone calls. The Claimant submitted that the BWCF was critical evidence in that it recorded what MB said almost immediately following the police arriving at her address to arrest JJ and, as such, was an organic disclosure made without the opportunity to be contrived or embellished. 43. The Claimant’s position was that the BWCF records MB saying: a) b) c) She told the police that she did not want JJ at her home address because he had been violent to her, The police officer (PC Large) kept calling her and kept pressuring her, and, The police officer (PC Large) told her that JJ would only be at her address for one night. 44. 45. 46. The Claimant also relies on a second extract of BWCF recorded from 09.04.30 hours in which MB relays similar information. The Claimant submitted that the Defendant ignored the BWCF in the Findings, which amounts to a failure by the Defendant to take critical evidence into consideration when determining MB’s credibility and the content of the three phone calls. The Claimant argued that the Defendant failed to set out properly how it engaged with the evidence. The Claimant further submitted that the Defendant, having determined that MB was an unreliable witness about the content of the three phone calls, made an inconsistent finding in accepting that her evidence was to be preferred over that of PC Large in relation to her recollection that the officer told her that JJ would only have to stay Page 11 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel with her for one night. The Claimant criticised the Defendant for failing to explain why MB was unreliable in some parts of her evidence but not others. 47. As to Ground 2, the Claimant submitted that the Defendant’s conclusions that PC Large did not act improperly towards MB during the three phone calls (para. 43 of the Findings) and that he had not spoken to her unprofessionally (para. 45 of the Findings) was inconsistent with its own findings. The findings that the Claimant submitted prevented the Defendant’s conclusions are as follows: a) b) c) Para. 17 of the Findings that MB “felt pressure to say yes, and that she was reluctant and that she mentioned assault”. Para. 17 of

the Findings that “the pressure [MB] felt came from the circumstances, the fact that the request came from a police officer who did not withdraw it when told about the assault...” Para. 16 of the Findings that “PC Large did say that it was likely to be for one night”. The Claimant pointed out that the only logical basis for this finding was that the Defendant had accepted that aspect of what MB had said in the BWCF. 48. The Claimant submitted that the Defendant’s conclusion that there was nothing inappropriate about PC Large’s conduct during the three calls was inconsistent with the above findings because: a) b) c) “Knowing that MB was reluctant to accommodate JJ and having been told that JJ had previously assaulted her, it was inappropriate to continue to ask MB to accommodate JJ. The circumstances that the Defendant found pressurised MB were created entirely by PC Large. He was the only police officer called MB and talking to her on the phone calls. The only logical reason why PC Large would tell MB that JJ would only stay with her for 1 night is because he (PC Large) was actively seeking to persuade/pressurise MB to accommodate JJ. PC Large was only required to persuade MB to accommodate JJ because MB had refused/was reluctant to accept JJ at her home. These 2 points are entirely consistent with the account provided by MB in the Nottinghamshire BWCF.” As to Ground 3, the Claimant submitted that the combination of the facts leading to Grounds 1 and 2 led to the Defendant’s rejection of allegation 2.2. being an irrational decision that no reasonable panel could reasonably have come to on the evidence. The Interested Parties’ case on Grounds 1-3 Although the Interested Parties prepared a joint skeleton argument in response to that of the Claimant, Grounds 1-3 concern PC Large only. The essence of the Interested Parties’ submission was that Grounds 1-3 amount to an impermissible challenge of a determination of the cogency of evidence following the Defendant’s assessment of the presentation, credibility and reliability of evidence. 49. 50. 51. Page 12 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel 52. 53. 54. 55. As to Ground 1, the Interested Parties submitted that it is entirely a matter for the Defendant to consider and determine the inherent probability of MB’s case that a great level of detailed conversation had occurred in the short duration of the first and third calls. The Interested Parties contended that there was no requirement for the Defendant to actively refer to the BWCF in the Findings or to otherwise provide written reasons in respect of every factual aspect of the case. They submitted that the account given by MB in the BWCF was not as central a feature of the Claimant’s presentation of the case before the Defendant as compared to the call data and oral evidence from PC Large and MB. As to Ground 2, the Interested Parties submitted that the finding that it was the circumstances that placed pressure on MB, rather than the pressure arising from improper actions by PC Large during the three calls, was a conclusion which was entirely available to the Defendant on the evidence. The Interested Parties further submitted that the finding that PC Large had stated that JJ would only be with MB for one night was not inconsistent with the overall findings as to what took place in each of the three calls. The Defendant was entitled to consider the wider evidence including the evidence of both PC Large and MB, and the call data. As to Ground 3, the Interested Parties do not accept that the Defendant’s conclusion that allegation 2.2 was one that no reasonable panel could reasonably have come to on the evidence. Discussion on Grounds 1-3 The

Grounds are not helpfully drafted and there is significant overlap between the substance of them. The Claimant's generalised approach in drafting the grounds was compounded by the way in which the Claimant's skeleton argument was drafted, and oral submissions were made. However, the source of much of the Claimant's complaint giving rise to Grounds 1-3 stems from the BWCF evidence. The court has not been provided with any transcript of the BWCF. The Claimant's summary of facts and grounds for the claim, and the skeleton argument for the judicial review hearing, provide a summary only of the words alleged to have been used by MB in the BWCF. The Defendant was not provided with a transcript of the BWCF either, and the Claimant's opening note for the misconduct hearing provided a summary only (at para. 55) of what MB said about the contact from PC Large. It is therefore perhaps unsurprising that the BWCF did not loom as large in the Findings as the role the Claimant now wishes it to play. 56. One has to watch the BWCF repeatedly (as I have done) to discern and note down what MB said. There are two main extracts. MB speaks very quickly. In extract 1 she is visibly distressed; the police having arrived at her home very shortly after she was assaulted by JJ. The material extracts from 2 April 2023 are as follows: a) Extract 1: Starting at 07.32.30 (time taken from the BWCF): "...He's been arrested today at his mum's house, and the police rung me earlier and I told em I didn't want them to bring him here and they basically just kept pressuring me [inaudible] and oh just have him for a night he'll go int morning, his mum and dad will have him back and they came and dropped him off here so I've let him come in..." Page 13 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel b) Extract 2: Starting at 09.04.41 (time taken from BWCF): "I were annoyed that the police brought him here earlier because, I already, when they rung me I said I didn't want him here, and that he were violent and I said while he was there can't you interview him coz he was wanted for somethink to do with me, I said, he was wanted for a voluntary interview, can't you do that while he was here and they were like, urm, I don't know, I was saying he was violent and I didn't want him here and they were just saying everything to get me to let him to come...I wor half asleep and they kept ringing me back, I had already said no and they rung me again and asked me again..." A police officer asks what time this occurred and MB continues: "like middle of the night, twelve o'clock, then like two, he didn't get here until five, ... so they were ringing me over and over when I was asleep. Another officer rung me and said oh [JJ] asked me to let you know, like you know those safety things when they tell you whose in cells like...they were like [JJ's] in cells and I said yeah I know I just literally like spoke to an officer like two seconds ago...I wor half asleep and they kept ringing me back and I just thought he could come and just go in the morning..." 57. On the same day (2 April 2023) MB provided a signed, written statement to the police in which she stated: "On 02/04/23 throughout the night I received multiple calls from DERBYSHIRE CONSTABULARY stating that [JJ] was arrested and wanted me informed he was under arrest. The officers that contacted me stated that he will be released and has no where to go and queried whether there was a possibility that he could come stay with me. I refused, stating that this is not ideal as we are not on the best terms and he needs interviewing about an assault on me which hasn't been completed. I felt pressurised to welcome him in due to him having nowhere else to go..."

58. MB then provided a further signed, written statement to the police, dated 4 December 2023 (i.e. over 8 months later). In the second statement, she stated: “[JJ] was arrested for assaulting his dad and Derbyshire police officers kept him in the police station for a few hours and then kept calling me to ask me to have him at my house when they released him. The first call was made at around 2am. I can’t remember the name of the officer who called me and I thought he was calling from Ripley police station. I told the officer I did not want [JJ] at my house because he’d been violent that day with his father and had been violent with me previously. Clearly he would be in a bad mood, but the officers told me to think about it. I reported [JJ] to the police for assaulting me less than a month before and had also reported him for criminal damage more than once prior to this. I explained this to the police officer. He called me again about 30 minutes later and said [JJ] was still there at the police station and they were wondering if he could be released to my address. I again said no. The same officer called a third time, I think between 4 and 5am and he said “he’ll only stay for one night and he’ll go to the council in Page 14 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel the morning, we’ll will make it clear to him he has to go in the morning” and “his mum and dad will probably let him go back tomorrow, they just want him out of the house tonight while things cool down” so I said yes. I only agreed because it was the middle of the night and I thought [JJ] would just go to bed and leave the next day. I found the officer who called me pushy in his manner, trying to persuade me to have [JJ] at my house. Each time the officer called me, it woke me up...” 59. Nearly two years after the index events, MB gave oral evidence at the misconduct hearing before the Defendant. She confirmed the contents of her aforementioned two written statements. She was permitted to provide additional oral evidence in chief to amplify her written evidence. She confirmed that it was the same officer that made all three telephone calls. She maintained that it was in the first phone call that the police notified her that JJ had been arrested for assaulting his father and that in the same call the police asked if JJ could stay with her, she told the officer she would not agree with JJ being released to her house, and she told the officer the reasons why she would not agree. She stated that the reasons she gave to the officer for not wanting JJ to come to her house were that JJ had previously assaulted her, that he was still on bail for assaulting her, that she knew he would be angry and volatile if he came to her house, and that JJ had committed criminal damage to her property.
60. MB then gave evidence that there had then been a second phone call in which the officer told her that JJ was adamant he wanted to come to her property and in which the officer asked if MB had changed her mind, to which she said no.
61. MB stated there was then a third call at around five in the morning when the officer called again and said JJ would only stay for one night as he would go to the council the next day or back to his mum and dad’s address, as his parents just wanted to get him out of the house overnight. MB said the officer said he would make it clear to JJ that he had to go to the council. MB told the Defendant that when the third call was made she had only just woken up, was tired and felt pressurised into agreeing to accommodate JJ but told the officer to

please make sure it was just for one night.

62. MB was cross-examined at the misconduct hearing. She agreed that the first call was a very short call but did not accept that the content of the call was limited to PC Large informing her about JJ's arrest at his parents' house and that he was in custody. She was asked about the second call. When it was put to her that it was a slightly longer call, she said she didn't remember. She did not accept that PC Large only first made the enquiry about whether JJ could stay at her house in the second call. When asked if she had told PC Large about the prior assault by JJ in the second call, she replied "it's hard to say". She did not accept it was during the second call that she agreed that JJ could stay. She could not remember if the third call had been a very, very short call, but did not accept that the call was limited to PC Large saying that they were dropping JJ off nearby. She stated that PC Large referred to JJ going to the council or going to his mum and dad's.
63. PC Large also gave evidence at the misconduct hearing. The evidence in chief and cross examination of PC Large covers the entire chronology of his involvement in the matter from his first arrival at BJ's house to arrest JJ through to JJ being bailed and dropped off at MB's home. The transcript of his evidence reveals that questioning Page 15 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel 64. 65. 66. 67. about what was or was not said during the three telephone calls represented only a very modest proportion of his evidence as a whole. In examination in chief, PC Large stated that, prior to the first call, he had never spoken to MB before and didn't know if the number provided by JJ's parents was her number. His recollection was that in first call he introduced himself, made sure he was speaking to MB and very briefly explained the circumstances. He did not believe that MB mentioned she had been previously assaulted in the first call. He stated that his recollection was that it was during the second longer call that he asked MB if her address was suitable and that was when she provided the information about being previously assaulted by JJ. He stated that MB did not however say she wouldn't be happy to have JJ to stay. PC Large went on to say that the third call was the shortest and he could not remember if he made it on the way to drop JJ at MB's address or when they were already outside her address. He stated that the request that JJ stay at MB's address had been agreed in the second call. PC Large maintained his position in cross examination. He stated that he had not been told in the first call about JJ previously assaulting MB, and that MB had not said she was not prepared to take in JJ. He explained that it was only in the second call that MB mentioned being assaulted but even then MB did not saying anything to indicate that she wouldn't have JJ back to her address. He did not accept he made repeated requests of MB to take JJ. The Defendant's Findings run to some 10½ pages. At paragraph 3 of the Findings, the Defendant made an overall assessment of witness credibility and accepted each of the witnesses was honest and open, doing their best to assist, but that issues were raised as to accuracy of recollection. The Defendant noted the impact of the passage of time and the difficult and traumatic circumstances. The Defendant also recognised that it did not follow that because a witness was honestly mistaken about one thing that they are wrong about other things. The Defendant therefore clearly had in mind the relevance of the credibility of the witnesses to

the fact finding process. The Defendant dealt with its conclusions as to what was said in each of the three calls, and its reasons therefore, at paragraphs 14 – 16 of the Findings. Those conclusions need to be read with the Defendant's general assessment of credibility in paragraph 3. It also needs to be borne in mind that a decision will generally not be inadequately reasoned if does not give an explanation why one witness is preferred to another: Northumbria at [11(f).]

68. Whilst the Defendant did not refer to the PC Chrusciel's BWCF in express terms in its Findings, there was no requirement for it to set out all the evidence and arguments before it in detail: Northumbria Police at [11(a)]. The Defendant had been provided with the BWCF during the misconduct hearing. Although the Claimant now submits that BWCF was 'critical evidence' (para. 55 of Claimant's skeleton argument), that is stating it too highly. The BWCF, nor indeed MB's written statement from 2 April 2023, gave any details as to how many calls took place or what was said in each call. MB's comments in the BWCF are very generalised and said in circumstances where she was highly distressed having just been assaulted. The BWCF was of limited assistance in determining precisely what was said in each of the three calls. It is therefore unsurprising that the Defendant's Findings do not descend into a discussion of the BWCF. The lack of express reference to the BWCF does not, in my judgment, Page 16 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel 69. 70. 71. lead one to the conclusion that the Defendant failed to consider material evidence. The BWCF was clearly there in the mix of evidence before the Defendant. The Defendant, which is a specialist tribunal chaired by a very senior officer with the benefit of professional legal advice, is not required to address every aspect of the evidence before it. The Findings make it clear that the Defendant took the view that the length of the telephone calls, and when the calls occurred within the overall timeline, were relevant factors in determining what was more likely to have been discussed in each call. Such reasoning is sufficient in that it deals with the substance of the issues in dispute. It was self-evidently relevant to consider the length of the telephone calls when determining what was more likely than not to have been discussed in each call. It is noteworthy that MB asserted that a very detailed conversation took place in the first call. It was plainly open to the Defendant to conclude that that was inherently unlikely in a first call lasting just 24 seconds, particularly given it was a first call which would have required introductions and some background context to be given. The Defendant was not required to provide greater reasoning as to why it discounted MB's evidence on the content of each call. The combination of paragraph 3 and 14-16 of the Findings provide adequate reasons taking into account the passage of time, the difficult and traumatic circumstances in which MB found herself, and the independent, objective evidence in the form of the call timings and duration. The Defendant, of course, had the benefit of seeing and hearing the witnesses give oral evidence. In summary, the Claimant's submissions on Ground 1 seeks to impart a public law duty to give legally adequate reasons on the Defendant that goes beyond that which is required. The Defendant drew a distinction between the notion of pressure on MB caused by the circumstances of contact from PC Large (i.e. a police officer making a request and not withdrawing it when

told of an earlier assault), and that of pressure arising from alleged persistent requests in all three calls. Based on the findings of fact made by the Defendant as to the content of the three calls, this was clearly a distinction open to the Defendant to draw. The Claimant's ground 2 includes an assertion that the Defendant's findings were contrary to the evidence. For the reasons discussed above, the Defendant's findings as to the content of the calls were adequately reasoned and ones open for it to reach. To the extent that the Defendant accepted part of MB's account that PC Large told her that JJ would only stay for one night but rejected other aspects of her evidence, the Defendant recognised at paragraph 3 the Findings that an honest mistake about one matter does not mean the witness is necessarily wrong about other matters. Such an analysis is logical and clearly correct. The Defendant was entitled to accept part of MB's evidence but reject other parts. The Claimant submitted that the Defendant's conclusions that PC Large did not act improperly on the telephone with MB (paragraph 43 of the Findings) and had not spoken unprofessionally (paragraph 45 of the Findings) are inconsistent with the Defendant's earlier findings. The difficulty with the Claimant's submission is that it is premised on it being inappropriate for PC Large to continue to ask MB to accommodate JJ (see paragraph 62(a) of the Claimant's skeleton argument). That was not the finding of fact. The Defendant did not accept that PC Large continued to make requests, and instead concluded that the request had been made only in the second call. For the reasons already discussed, that was a finding that was open to it and one which was adequately reasoned. It is therefore logical, perhaps inevitable, that the Page 17 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel 72. Defendant went on to conclude that the allegation 2.2 (namely that PC Large had failed to treat MB with respect and courtesy by making repeated calls after being told by MB she did not want JJ at her address) was not proved. There is nothing inconsistent about the Defendant's decision making in that regard. Ground 2 is not therefore proved. I can deal with Ground 3 in short order as it was presented by the Claimant as being inextricably linked to Grounds 1 and 2. It amounts to an attempt by the Claimant to venture under the guise of a judicial review claim into the prohibited territory that is an appeal against the merits. The decision that allegation 2.2 was not proved comes nowhere close to being irrational. The Defendant made very careful findings of fact as to what had occurred in the three calls and provided adequate reasons for the substance of those decisions. The findings of fact were well within the range of decisions open to the Defendant, indeed they were patently the most probable series of events on the evidence. The Claimant overlooks the lack of specific detail in MB's comments in the BWCF as to the number of calls and the content of each call. It also overlooks details of the comments which tend to suggest aspects of MB's recollection was not reliable such as her reference to the call times, which is described as "like middle of the night, twelve o'clock, then like two, he didn't get here until five". It was known from the call timings that there was no call at 2am. Further, MB's written statement of 2 April 2023 states simply that the officer "queried whether there was a possibility that he could come stay with me". She does not clarify that such a request was made in each of the calls as opposed to one of the calls, or in which call the request was made. In light of the reasoned factual findings, it was not irrational for the Defendant to conclude that the

Claimant had not proved that PC Large failed to treat MB with respect and courtesy. 73. For the aforementioned reasons, Grounds 1-3 fail. Grounds 4-5 The Claimant's case on Grounds 4-5 74. 75. The Claimant made combined submissions on these two Grounds. The essence of the complaint concerns the Defendant's decision to impose a final written warning rather than dismissing both PC Large and PC Barker. The Claimant submitted that the Defendant fell into error when determining that the Interested Parties' actions amounted to mistake rather than malice. The Defendant concluded that the allegations against PC Large at paragraphs 1.10 and 1.11 of the Regulation 30 Notice, and PC Barker at paragraphs 1.9 and 1.10 of his Regulation 30 Notice were proved. The Defendant concluded that the Interested Parties failed to take all three of the steps recommended by T/PS French: a) b) "To contact Nottinghamshire police and advise that JJ was in custody to ascertain whether they would like to interview him in respect of the offence relating to MB. That alternative accommodation needed to be found due to outstanding criminal matters against MB. Page 18 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel c) That you should seek advice/discuss alternative accommodation with your sergeant or with custody." 76. The Claimant highlighted in his submissions that the Defendant had concluded at paragraph 5 the Findings that T/PS French only accessed the 'Niche' system at 03.37 hours, which provided her with information about the earlier assault on MB. As such, her advice to the Interested Parties could only have been after that time in the short window before the Interested Parties took JJ to MB's address shortly after 05.01 hours. 77. At paragraph 29 of the Outcome Reasons, the Defendant concluded that: "the panel's view is that these are inexperienced officers who simply failed to look beyond the immediate task in front of them, that is dealing with the call for service from [BJ]. They failed to examine the wider risk to MB. That is a serious error that culminated in a dreadful position where police officers drove an abuser to the home of his victim. This is a case of mistake, not malice or idleness..." 78. 79. 80. 81. 82. The Claimant submitted the finding that the officers failed to follow T/PS French's advice is critical because it completely changes the context of the proved gross misconduct such that the Interested Parties' actions in taking JJ to MB's home cannot have been a mistake and they could not have been pursuing a legitimate policing purpose in good faith. The Claimant therefore submitted that the Defendant's decision on outcome was thus inconsistent with the factual findings it had made (Ground 4). The Claimant further submitted that the Defendant failed to consider the effect of its finding about the failure to follow T/PS French's advice when assessing the officer's culpability, and when considering whether it was appropriate to accept mitigation from the officers to reduce the severity of their gross misconduct. This, the Claimant submitted, led to the Defendant making a decision as to appropriate outcome that was outside the range of reasonable responses given their factual findings as to the Interested Parties' conduct. The Interested Parties' case on Grounds 4-5 The Interested Parties do not accept that the Defendant's decision on outcome was either inconsistent with the factual findings nor outside the discretion the Defendant had to determine the appropriate sanction. The Interested Parties highlighted that the Claimant herself accepted, at paragraph 70 of her counsel's skeleton argument, that the Defendant had identified the correct process to be

adopted when determining outcome, relying on the Guidance. It was submitted that the Defendant followed the correct process, structuring its written reasons on outcome to address seriousness by reference to culpability and harm, and considering any aggravating or mitigating factors. The Interested Parties submitted that the Defendant's finding that this was a high harm case, nonetheless resulted in the Defendant retaining a discretion as to the appropriate outcome. The Interested Parties accept that paragraph 4.74 of the Guidance was engaged, which indicates that dismissal is likely to follow on a finding Page 19 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel of serious harm, and that a factor of the greatest importance is the impact of the misconduct understanding and reputation of the police profession as a whole. However, it was submitted that the Defendant took care to consider the Guidance, and was clearly alive to the findings as to T/PS French's evidence, as there is express reference to it at paragraph 20 of the Outcome Reasons. The Interested Parties did not accept that relevant personal mitigation could not be taken into account at all by the Defendant. The Interested Parties pointed out that the Defendant made it clear in paragraph 25 of the Outcome Reasons that the weight it could give to personal mitigation was limited, and the Defendant made express reference to paragraphs 6.3 and 6.6 of the Guidance as to the approach to be taken to personal mitigation. The Interested Parties submitted that the Defendant, having heard from all the witnesses, made no error in approaching the assessment of sanction and was entitled to reach the decision it did to issue final written warnings. Discussion on Grounds 4-5 The Defendant made a finding of gross misconduct against each of the Interested Parties. One needs to remember that under Regulation 2(1), gross misconduct means a breach of the SPB "that is so serious as to justify dismissal". The seriousness with which gross misconduct is to be treated is endorsed at paragraph 4.74 of the Guidance, applying Fuglers at [29], which states: "4.74 Where gross misconduct has been found and the behaviour has 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..." It is clear from the Defendant's Outcome Reasons that it had in mind the approach in Fuglers and the Guidance. The Defendant structured its written reasons to consider the seriousness of the gross misconduct and concluded these were cases of medium culpability and high harm. The Defendant was clearly mindful of its finding as to the Interested Parties not following T/PS French's advice as it concluded the significant deviation from the instructions of T/PS French aggravated the seriousness of the gross misconduct. The seriousness was however said to be mitigated by factors including "acting pursuant to a legitimate policing purpose and in good faith but getting things wrong". The Defendant made it clear that the weight it could attach to personal mitigation was limited, and noted paragraph 6.6 of the Guidance to the effect that personal mitigation will not justify a lesser sanction if the gross misconduct is so serious that nothing less than dismissal would be sufficient to maintain public confidence. Whilst the Claimant is critical of the Defendant in receiving personal mitigation, it does not, for reasons that I will come on to, appear to be that factor that

influenced the decision outcome. The Defendant's finding that these were high harm cases resulted in paragraph 4.74 of the Guidance clearly being engaged i.e. dismissal was "likely to follow". The finding that the seriousness was aggravated by a "significant deviation from instructions" 83. 84. 85. 86. 87. 88. Page 20 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel 89. 90. further emphasises the likelihood that the appropriate outcome would be dismissal. The Defendant's decision to exercise its discretion not to dismiss but rather to impose final written warnings clearly called for an explanation. Paragraph 7.6 of the Guidance makes it clear that the Defendant is required to "explain any departures from [the Guidance]". The Defendant's explanation for departing from the Guidance, insofar as there is one, appears rooted in its conclusion at paragraph 29 of the Outcome Reasons, in that this was "a case of mistake, not malice or idleness". The conclusion that this was a case of mistake is not however easy to reconcile with the Defendant's earlier findings of fact that the Interested Parties had failed to follow the advice of T/PS French. [Allegation 1.10 and 1.11 against PC Large and allegations 1.9 and 1.10 against PC Barker.] Moreover, the Interested Parties had been given the advice by T/PS French in the hour or so before they then took JJ to MB's house. It is difficult to understand how the actions in ignoring the recent advice of a senior officer could have been a mistake, which would denote a degree of innocence or inadvertence, rather than anything more culpable in nature. Further, the Defendant's conclusion that this was a case of mistake does not sit easily with the Defendant's finding that this was a medium culpability case within the genre of cases of gross misconduct. In short, the Defendant's written reasons on outcome do not address why it concluded the Interested Parties' actions were a mistake notwithstanding its earlier very serious finding that the Interested Parties had failed to follow a superior officer's advice. Grounds 4 and 5 are bound in the same underlying issue. The lack of explanation in the Outcome Reasons as to why the Defendant concluded this was a case of mistake results in an apparent inconsistency with the Defendant's earlier finding that the Interested Parties did not follow T/PS French's advice, and with its finding that this was a medium culpability instance of gross misconduct. The finding that this was a case of mistake called for a clear explanation to how that sat with the earlier adverse findings about the failure to follow advice. The Outcome Reasons do not provide that explanation. Whilst mindful of the high regard to be had for the outcome decisions of professional disciplinary tribunals (Bolton at [516H] and [520A]), I am nonetheless persuaded that the inconsistency is such that Ground 4 is made out. Further, the lack of reasoned explanation as to why the 'likely' sanction of dismissal was not imposed following the finding of serious harm gross misconduct renders the decision on outcome irrational in light of the required approach at paragraph 4.74 of the Guidance, and the importance attached to maintaining public confidence and the reputation of the police service [Bolton at [518H] and paragraph 2.3 of the Guidance]. A cogent explanation for the apparent departure from the Guidance is lacking in this case. Ground 5 is therefore also made out. 91. The Claimant therefore succeeds on Grounds 4 and 5. The decision on outcome will be quashed and remitted to the Defendant to consider afresh. I make it clear that this judgment should not be interpreted as a conclusion that an outcome other than dismissal without notice could never be justified on

these facts. The appropriate outcome will be a matter for the Defendant to consider afresh, in line with the Guidance and relevant case law. Any departure from the Guidance would need to be explained.

Conclusion

Page 21 HHJ Emma Kelly Approved Judgment R(CC of Derbyshire Police) v Police Misconduct Panel 92. For the aforementioned reasons, the Claimant's claim on Grounds 1 – 3 fails but is successful on Grounds 4 and 5. Page 22

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