

IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2012

AND IN THE MATTER OF

FORMER DETECTIVE CHIEF SUPERINTENDENT CLARK

OUTCOME REPORT

Introduction

1. The hearing for former Detective Chief Superintendent Clark (“Mr Clark”) was held in public on days between 24 April 2023 and 9 May 2023 and a Notice was published to that effect in accordance with the Police (Conduct) Regulations 2012 (“the 2012 Regulations”). The Regulation 21 Notice was issued pursuant to the 2012 Regulations, and it was alleged that Mr Clark had behaved in a manner which amounted to Gross Misconduct.
2. In summary, the Appropriate Authority (“AA”) alleged that Mr Clark forwarded emails which attached documents from his City of London Police (COLP) email account to his personal email account; that he forwarded some or all of the documents to Mr Horne; that he obstructed the IOPC investigation by denying in interview the allegations, by disposing of his mobile telephone handset when he knew the device contained evidence which was relevant to the IOPC investigation, and by failing to disclose to the IOPC that he had changed handsets on 12 July 2018.
3. The AA alleged that Mr Clark’s conduct amounted to a breach of the Standards of Professional Behaviour (SPB) in relation to “Honesty and Integrity”, “Orders and Instructions”, “Confidentiality” and “Discreditable Conduct” and these breaches were so serious that they amounted to Gross Misconduct.
4. On 31 March 2023, Mr Clark filed his Regulation 22 response and denied that his conduct amounted to Gross Misconduct. Whilst he accepted he forwarded emails which attached the documents from his COLP email account to his personal email address, he denied

forwarding the documents to Mr Horne. He also denied obstructing the IOPC investigation by his conduct.

Burden and Standard of Proof

5. The burden is on the AA to prove on the balance of probabilities that Mr Clark behaved in the manner alleged and in doing so he breached the relevant Standards of Professional Behaviours (SPB). Further, the AA must satisfy the panel to the same standard that the manner of the breach is of such a nature or degree that it amounts to Gross Misconduct.
6. The panel reminded itself that it does not need to make a finding on every issue and need only make findings on those issues which it believes to be relevant and material to the allegations. The panel has, however, resolved enough to reach a clear judgment in this case.
7. The panel approached its task in the following stages:
 - i) Are any of the facts admitted?
 - ii) What facts have been proved by the AA on the balance of probabilities?
 - iii) Of the admitted or proved facts, has the AA satisfied the panel on the balance of probabilities that the relevant SPB have been breached?
 - iv) If so, has the AA satisfied the panel on the balance of probabilities that it is Gross Misconduct, namely the breach is so serious that dismissal would be justified?

The Proceedings

8. The panel carefully considered all the documentation put forward by Mr Clark and on behalf of the AA. The panel was grateful to Mr Collins KC for the AA and Mr Shaw for Mr Clark for their assistance throughout the proceedings.
9. The panel also received oral evidence from Mr Brailsford-Hart, Mr Horne, Ms Durnell and Mr Clark and we shall come to our assessment of the witnesses later on in the judgment. We also received character evidence from [REDACTED] and [REDACTED] and took into account their evidence.

Preliminary Hearing

10. Given the estimated length of the hearing, the Legally Qualified Chair (“LQC”), with the agreement of the parties, chaired a virtual preliminary hearing (on Microsoft Teams) on 24 April 2023 and issued a number of directions including the requirement for the parties to settle a document containing agreed facts.

Preliminary applications

Call Data Records

11. On the first day of the hearing (24 April 2023), Mr Shaw submitted to the panel that the Call Data Records for the mobile phones of Mr Horne and Mr Clark should be provided in the form of a spreadsheet as the existing documents were not in a usable format. Later that day, the AA indicated that it had used software to convert the document into an original Excel format but it could not be verified that this had been done accurately.
12. Further to his written submissions dated 24 April 2023, Mr Shaw made an application on the second day of the hearing (25 April 2023) for the AA to provide the Call Data Records in a different format as the version served in Excel format was still “unworkable”.
13. The AA subsequently confirmed (on 25 April 2023) that it was in possession of the Call Data Records in CSV format. Consequently, the panel directed that the AA should provide the Call Data Records in CSV format by 1.30 pm on 25 April 2023, and for any written analysis to be provided to the AA/the panel by 6 pm on the same day.
14. Consequently, the panel determined that it would hear evidence from Mr Horne on the third day of the hearing (26 April 2023) after the parties had had the opportunity to analyse the Call Data Records in full. On 26 April 2023, Mr Shaw prepared a colour coded summary of the Call Data Records [297].

Regulation 31 (4) of the Police (Conduct) Regulations 2012

15. In its opening note, the AA represented that the Chair should permit Mr Horne, as a witness in the misconduct proceedings, to be accompanied by one other person in

accordance with Regulation 31 (4) of the 2012 Regulations. Mr Shaw agreed that it would be a fair approach.

16. Given the unusual circumstances of this case, the LQC exercised her discretion to permit Mr Horne to be accompanied by his solicitor.

Supplemental Regulation 22 Notice

17. On the fourth day of the hearing (27 April 2023), Mr Shaw served a supplemental Regulation 22 Notice on the AA, copied to the panel.
18. The panel noted the late service of the supplemental notice. However, as Mr Collins KC would have the opportunity to cross examine Mr Clark about its contents, the panel determined that it would be in the interests of justice to permit the inclusion of the supplemental Regulation 22 Notice.

Further documents

19. On the fifth day of the hearing (28 April 2023), the AA indicated that, with the agreement of Mr Clark, it would provide the panel with the witness statement of Deputy Chief Constable Gavin Stephens (as he then was) [299] and email comments from Dame Lynne Owens [300]. These documents were provided on the sixth day of the hearing (2 May 2023).

Submission on allegation 3

20. At the end of the AA's case, Mr Shaw submitted that allegation 3 was "fundamentally flawed" as there was no obligation on Mr Clark to adhere to the Standards of Professional Behaviour since this allegation arose out of Mr Clark's conduct after he had resigned from the COLP.
21. Mr Collins KC opposed the submission and represented that it would defeat the purpose of the regulations to allow an officer in Mr Clark's position to escape the requirements of the regulations by his decision to resign.
22. Following discussions with the parties, the panel determined that this was a matter that would fall to be considered in due course during its overall consideration of the case.

Legal authorities

23. During the course of the proceedings, Counsel drew our attention to a number of legal authorities including case law in relation to legal professional privilege (see paragraph 29 below).
24. Counsel also reminded us of the dishonesty test set out in *Ivey v Genting Casinos* [2017] UKSC 67 which in the context of the case is outlined as follows:
- i) What was the actual state of Mr Clark's belief as to the facts?
 - ii) Was Mr Clark's conduct dishonest by reference to the standard of ordinary decent people?
25. We shall come to the application of this test later on in our judgment.
26. We also noted the other legal authorities put before us including: *R (Dutta) v GMC* [2020] EWHC 1974, *Watson's application for judicial review* [2022] NIQB 59, and *Chief Constable of Thames Valley Police v Police Misconduct Panel* [2017] EWHC 923 (Admin).

Legal professional privilege

27. The issue of legal professional privilege arose in this case as Mr Horne provided copies of conference notes with his legal team prior to a misconduct hearing that he himself had faced on 15 January 2018.
28. In his statement of 17 August 2020, Mr Horne stated that he had partially waived privilege so that relevant extracts of his files could be provided to the investigation. He said he did not believe that any further waiver was proportionate or necessary. [A1163]
29. Mr Shaw submitted that as Mr Horne has been selective about the documents disclosed, *"the panel is entitled to take that failure to disclose, what may well be relevant documents, into account when it considers the evidence DAC Horne gave."* [paragraph 48 of the final written submissions]. Mr Shaw drew the panel's attention to *R (Belhaj) v DPP* (No 2) (DC) [2018] 1WLR and *Hellard v Irwin Mitchell* [2012] EWHC 2656 (Ch) in support of his application.
30. Mr Collins KC submitted that *"Mr Horne relied on his (new) legal team to identify all documents relevant to this issue. There can be no suggestion, therefore, of "cherry picking."* The issue relating to Mr

Maleary was only one small issue for Mr Horne among many much larger ones at the hearing.....There was no need for any of the legal material relating to the other issues to be made available...".

31. Mr Collins KC submitted that neither *R (Belhaj) v DPP* (supra) or *Hellard v Irwin Mitchell* (supra) assists Mr Clark.
32. The panel considered the arguments put forward carefully. As a starting point, we did not consider that the authorities put forward by Mr Shaw assisted Mr Clark's case given the different contextual background upon which those principles were predicated.
33. We also noted Mr Shaw's assertion that "*such disclosure as was made, was done so to deal with the criminal (and now discipline) allegation he faced and to lay the foundation of a defence, pursuant to section 55 (2) subsection b), c) and d) of the [Data Protection] Act.*"
34. Nevertheless, the panel considered that as the matter regarding Mr Glenn Maleary was only one aspect of the wider case against Mr Horne at the hearing on 15 January 2018, the panel would not have been assisted by any of the other material in relation to the other issues. Furthermore, as Mr Horne was cross examined at length about matters including the relevant conference notes, the panel was able to inform its assessment of those documents accordingly.
35. For those reasons, we were satisfied that the partial waiver of privilege did not prevent the panel from taking into consideration the documents provided by Mr Horne. Accordingly, the panel did take into account the conference notes when carrying out its overall assessment of the case.

Agreed facts

36. There was a large amount of material in this case and the panel was greatly assisted by the statement of agreed facts provided by the parties, as set out at **Annex A**, as this enabled the panel to focus on the key issues.
37. The panel noted from the Statement of Agreed Facts that the following parts of the Regulation 21 Notice was agreed:
 - i) Paragraphs 1-27

- ii) Paragraphs 30-35 and 37
- iii) The first sentence of paragraph 36.

38. Accordingly, the panel focused its deliberations on the remaining parts of the Regulation 21 Notice namely paragraphs 28, 29, the second line of 36, and paragraphs 37 and 39 to 48.

Witnesses

39. All the witnesses attended in person. Set out below is our assessment of the evidence given by the witnesses about the allegations.

40. Whilst we took into account the character evidence of [REDACTED] and [REDACTED] we noted that neither of these witnesses provided evidence relating specifically to the allegations faced by Mr Clark. We found they provided sincere evidence and it was clear to the panel how highly they regarded Mr Clark.

41. **Mr Brailsford-Hart:** the panel found Mr Brailsford-Hart to be a credible witness who provided considered responses to questions about the Force Information Security Policy. We apportioned appropriate weight to his evidence.

42. **Ms Durnell:** Ms Durnell's evidence was largely limited to her observations about Ms Dakoutros' report as she did not conduct the analysis herself. The panel found Ms Durnell to be a credible witness.

43. We shall come to our assessment of Mr Horne and Mr Clark's evidence later on in our judgment.

44. With regards to the specific allegations:

Allegation 1 – forwarded emails from his COLP email account to his personal email account

45. There was no dispute that Mr Clark sent the documents to his personal email address. Neither was there an issue that he knew or should have known that this was a breach of Force policy and/or good information security practice.

46. It was clear from Mr Clark's Regulation 22 response that he was aware of Force policy but asserted that the *"the organisation operated a state of 'wilful' blindness over emails being sent to officers' personal emails at this time"* and it was *"the common, unwritten custom and practice for officers and staff to utilise personal technology to provide work around"*.
47. Under cross examination, Mr Clark accepted that it was wrong of him to send the documents to his personal email address. He also accepted that he should have changed the protective marking of the documents before he sent them.
48. Furthermore, Mr Brailsford-Hart, the Force Director of Information gave evidence that through the introduction of appropriate policies and technical controls, the practice that Mr Clark described was no longer the norm by the time to which this allegation pertains. The panel, having apportioned appropriate weight to Mr Brailsford-Hart's evidence, was satisfied that there had been a shift in organisational culture by the relevant time.
49. The panel found that even if such an organisational culture had continued to exist by the relevant time, it considered that, Mr Clark (as a senior officer at the time) should not have acquiesced in any perceived culture of using personal technology.
50. Furthermore, Mr Clark would have been expected to know that the documents should contain a "restricted" marking at the very minimum as they contained personal information about a third party.
51. For all those reasons, the panel found this allegation (allegation 1), on the balance of probabilities, **proven**.

Allegation 2 – forwarded some or all of the documents to Mr Horne

52. There was a clear dispute of fact between Mr Clark and Mr Horne in this regard. Consequently, the panel found itself in the position of having to decide which of these two very senior officers was being untruthful.
53. In broad terms, Mr Horne's evidence was that Mr Clark sent the documents to him by WhatsApp which he then copied and pasted into a pre-existing email chain to Mr Hardcastle, his solicitor.

54. Conversely, Mr Clark denied that he forwarded some or all of the documents to Mr Horne. It was his case that he had sent the documents from his COLP email account to his personal email address to enable him to complete Mr Glenn Maleary's vetting form as he was unable to work from his work mobile phone.
55. In resolving this issue, we drew assistance from *R (Dutta) v GMC* [2020] EWHC 1974 and first considered the documentary evidence including the Data Call Records and contemporaneous records.
56. Given our determination on the issue of legal professional privilege, this included the notes of the conference between Mr Horne, Mr Beggs KC, Mr Hardcastle and Deputy Chief Constable Stephens. Against that backdrop, we then went on to consider the oral evidence of the witnesses.

Documentary evidence

57. The key documentary evidence put before us included:
- (i) **Conference note 24 October 2017:** Mr Horne informed his legal team that "...*Dave Clark Temporary Commander said heard issue with Glenn and said wish hadn't taken him. Said tasked fraud investigation as result to his brother. I said if tell me formally need conversation but haven't caught up since as going through the Chief Officer selection*" [A49].
 - (ii) **Itemised O2 bill:** the itemised bill for Mr Clark's work phone [296] showed an interaction between Mr Clark and Mr Horne at 10:17 (duration of one second) on 14 November 2017.
 - (iii) **Immigration stamp in Mr Clark's passport:** During the course of giving evidence, Mr Clark produced his passport which was endorsed with an immigration stamp dated 14 November 2017, exhibit DC/01 [298].
 - (iv) **14-20 November 2017:** Mr Horne's file note regarding his conversation with Mr Clark which he said took place on 14 November 2017 about Mr Glenn Maleary. The file note states that '*at 1017hrs DC texted me with the following, "FYI - see waap to follow that GM sent to*

one of my admin staff after a recent outburst - this episode is another that was documented." No such waap followed and I did not respond. I assume the NCA systems did not allow its progression.' [A57].

(v) 11 January 2018:

- a) Conference note drafted by Mr Horne's lawyer: Mr Horne informed his legal team that there were documents concerning Mr Glenn Maleary, and the information came from Mr Clark [A52]
- b) Conference note compiled by Mr Horne: *"I need to get the text message and the documents from David Clarke"* [B43]
- c) At 18:10, Mr Horne telephoned Mr Clark and left a 25-second voice message.
- d) At 18:53, Mr Horne sent two text messages to Mr Clark
- e) At 19:02, Mr Clark sent a text message to Mr Horne
- f) At 19:03, Mr Horne sent a text message to Mr Clark
- g) At 20:34, Mr Clark then called Mr Horne (the call lasted 5 minutes 51 seconds).
- h) At 21:14, Ms Wadmore sent an email to Mr Clark's City of London Police (COLP) email account, entitled "Reports (NOT PROTECTIVELY MARKED)". The email attached documents entitled: "GM Statement Nov17.docx; GM.docx; FW: REPORT" [A712]
- i) At 21:38, Mr Clark forwarded the email to his personal email address [A712]
- j) At 21:46, Ms Wadmore sent a second email to Mr Clark's COLP email account. The email was entitled "Report (NOT PROTECTIVELY MARKED)" and attached a document entitled "T/DCS Maleary report" [page 295 of the Core Bundle].

(vi) 12 January 2018:

- a) At 09:44, Mr Clark forwarded the second email to his personal email address [A36]
- b) At 10:06, Mr Horne emailed Mr Hardcastle with the documents [A40]
- c) At 10:33, Mr Horne's legal team had an email discussion about the documents [A42]
- d) At 10:37, Mr Clark telephoned Mr Horne who called him back. The call lasted 47 seconds.
- e) At 14:31, Mr Hardcastle (Mr Horne's solicitor) sent an email to Essex Police: *"We understand that there is material held by the City of London police in relation to Glenn*

Maleary's behaviour, including oppressive / abusive behaviour to subordinates, which is directly relevant to a matter in issue" [A71]

(vii) **14 January 2018:**

- a) Email from Mr Beggs QC (as he then was) to Mr Hardcastle at 12:34 [A43] referring to: Kerrie Wadmore memo of 17 July 2017; Mr Clark's email of 19 July 2017 to the Head of COLP PSD; T/Supt Ratcliffe's memo of 14 Nov 17.
- b) Email from Mr Hardcastle at 12:52 to Mr Beggs QC [A44] stating that *"...it was certainly my expectation that MH would just re-receive the whatsapp message in which he was told that COLP may have relevant documents. I never thought there was any prospect of the documents themselves being provided and we certainly never asked for them. It was always my intention that the request would go via the AA for disclosure with the whatsapp helping us to narrow down / focus our request."*

Assessment of documentary evidence

58. The panel was struck by the timings of the key communications and placed significant weight on this. In particular we noted that:

- (i) At 21:14 on 11 January 2018, Ms Wadmore sent the documents to Mr Clark's COLP email address 40 minutes after Mr Clark and Mr Horne spoke on the phone for 5 minutes and 51 seconds.
- (ii) Mr Horne sent Mr Hardcastle the documents 16 minutes after Mr Clark forwarded the second email to his personal email address at 09:44 on 12 January 2018.
- (iii) On 12 January 2018, at 14:31, Mr Hardcastle sent an email to Essex PSD requesting material relating to Mr Glenn Maleary's behaviour.

59. Against this background, we then went on to consider Mr Horne and Mr Clark's oral evidence having regard to the documentary evidence before us.

Mr Horne's evidence

60. In assessing Mr Horne's oral evidence, we reminded ourselves that Mr Horne is facing misconduct proceedings himself for requesting and receiving confidential police information from Mr Clark. We were cognisant of his circumstances and took this into account when considering the weight to attach to his evidence.

61. Nevertheless, we found Mr Horne to be a reasonably credible witness to the extent of his interaction with Mr Clark and attached appropriate weight to his evidence. We took into account his evidence that the purpose of the call with Mr Clark on 11 January 2018 was to request the documents.
62. We had a few reservations about some aspects of Mr Horne's file note regarding his conversation with Mr Clark which he said took place on 14 November 2017 [A57].
63. Whilst it was clear from the O2 billing that an interaction between Mr Horne and Mr Clark took place on 14 November 2017 [296], the panel observed that Mr Horne may have completed the note on separate occasions over a period of time given the confusion over the date of the document (dated 10 November 2017 about a conversation on 14 November 2017 but said to be completed on 20 November 2017). We also observed that the file note contained several references to the disclosure process and the panel questioned Mr Horne's motive in creating the note although we noted Mr Horne's account that he created the file note as he considered it to be a significant conversation.
64. We noted the reference to the text message from Mr Clark at 10:17 at paragraph 6 of the file note. We observed that this matched one of the entries on the itemised O2 bill [296] which confirmed there was a communication interchange at 10:17 (duration of one second) on 14 November 2017.
65. We also noted the reference, in the file note to a conversation with [Dame] Lynne Owens in paragraph 7 of the file note. In this regard, we took into account the email comments of Dame Lynne Owens [300] of 16 March 2021 who confirmed that Mr Horne told her that the complainant in his conduct case had been "*up to something*" in the COLP. She said she "*stressed to him that he should be really careful in using that sort of information and...he should speak to his police friend and/or legal team before taking any steps.*"
66. We also took into account Mr Clark's evidence that he did not recall the conversation at on 14 November 2017. Moreover, Mr Clark said the conversation could not have taken place on 14 November 2017 as he travelled to New York City from Heathrow on that date. We considered the immigration stamp (of 14 November 2017) in Mr Clark's passport [298] but we did not place any weight on it as we were not provided with details of his flight time to New York City.

67. Given all the circumstances, the panel was satisfied that there was a conversation between Mr Clark and Mr Horne on 14 November 2017 where there was a discussion about Mr Glenn Maleary's behaviour.

68. We did not consider the absence of records of phone calls (apart from the interaction previously identified) on 14 November 2017 to be a significant factor. We were satisfied that contact may have been made in various ways including on social media platforms such as WhatsApp.

Witness statement of Deputy Chief Constable Stephens (as he then was)

69. In considering Mr Horne's account that he had obtained the documents from Mr Clark, we took into account DCC Stephens' statement of 12 February 2021. DCC Stephens said he was aware from the discussion at the conference on 11 January 2018 that *"DAC Horne knew of another potential witness that had evidence of Supt. Maleary's behaviour, which had not been disclosed to DAC Horne's legal team by the AA. I understood that this evidence was held by Commander Clark of the City of London Police."*

70. DCC Stephens also confirmed there was a brief discussion as to who should follow up with Commander Clark and *"recalled that the task was left with Mr Horne as they had already been in contact."*

71. The panel apportioned weight to the witness statement of DCC Stephens as within this he appeared to be giving honest and impartial evidence.

Mr Clark's evidence

72. The panel first asked itself whether Mr Clark's account was plausible having regard to the documentary evidence. We then went on to consider his assertion that he was entitled to send the documents.

Vetting form

73. Mr Clark said he forwarded the documents to his personal email address as he intended to use its contents to populate the "behaviours" section of Mr Glenn Maleary's vetting form.

74. As part of our consideration, we took into account that the SAF1 vetting form was not completed until 22 January 2018 [A840]. We noted Mr Clark's evidence that he experienced domestic upheaval due to a flood in his home [A840]. Nonetheless, the panel observed that Mr Clark would not have delayed the completion of the SAF1 form for as long as he did if it had been such a pressing matter.
75. Even if we accepted Mr Clark's account about the completion of the SAF1 form, we considered that there would have been no urgency for him to have sent the documents to his personal email address, and for the vetting form to be completed that night.
76. The panel attached significance to the chronology and timings of the text/phone calls between Mr Clark and Mr Horne and the emails from Ms Wadmore. We were not persuaded that the timings of the various interactions were a series of unfortunate coincidences.
77. We rejected Mr Clark's account that the conversation with Mr Horne at 20.34 on 11 January 2018 was a routine work call (as Mr Horne was not going to be around for the next two weeks) given the proximity in timings to the receipt of Ms Wadmore's email forty minutes after their conversation.
78. The panel also found Mr Clark's evidence to be inconsistent in several respects. First, Mr Clark said Ms Wadmore had sent him the wrong document [A839] but he said the document was blocked due to its excessive size [A838].
79. Secondly, the panel agreed with the AA that Mr Clark would not have needed to create a document – as he asserted in his interview [A838] – as it was his intention to “cut and paste” the information into the “behaviours” section of the vetting form. Furthermore, the panel rejected Mr Clark's assertion that he encountered difficulties in creating a document for the first time that evening. The panel did not find this to be a credible account as the system had been in operation for some time.
80. Thirdly, Mr Clark appeared to shift his position when he was asked whether he had sent any emails from his COLP email account to his personal email account at the IOPC interview. He initially said “*he had no idea*” [851] but changed his account to “*..it's absolute common practice...*” [860]

81. Consequently, we rejected Mr Clark’s account as being implausible and also found that he sent the emails to his personal email address as a way of disguising his intentions.

Entitlement to send the documents

82. It was Mr Clark’s case that he would have no reason to conceal the disclosure of the documents as he would have been entitled to do so as part of his duties as a police officer.

83. Mr Clark’s evidence was that *“anyone else other than [him] would get into trouble because he was Mr Glenn Maleary’s line manager and he was also dealing with Mr Maleary’s performance during the relevant time.”*

84. Mr Shaw also submitted on behalf of Mr Clark that *“...having been supplied with some or all of the documents, [Mr Horne’s] legal team needed and were entitled to, DAC Horne needed to show that they had originated from a legitimate source.”* [paragraph 15 of the Final Written Submissions].

85. The AA refuted Mr Clark’s assertion as it *“ignores the fact that he had no role in Mr Horne’s disciplinary process, and is at odds with the view taken at the time by Mr Horne and his legal team.”* [paragraph 74 of the AA’s closing submissions].

86. Having considered the submissions, the panel concluded that Mr Clark was not entitled to provide the document directly to Mr Horne. Apart from the fact that he had no legitimate reasons for supplying the document to Mr Horne directly, the panel also failed to see how it could be said that Mr Clark was the only officer who was entitled to provide the documents to Mr Horne.

87. Consequently, we rejected Mr Clark’s assertion that he was named as the source as Mr Horne needed to show that the documents came from a legitimate source.

Conclusion

88. We had established that by 11 January 2018, Mr Horne knew that Mr Clark had evidence of Mr Glenn Maleary’s behaviour and he had agreed to follow this up with Mr Clark. The panel also found the sequence and timings of the communications to be consistent with Mr Horne’s account.

89. Having rejected Mr Clark's account that he had sent the documents to his personal email address to enable him to complete Mr Glenn Maleary's vetting form, the panel came to the conclusion that he sent the documents to his personal email address to conceal the transmission of the documents to Mr Horne.
90. In arriving at our conclusion, the panel apportioned weight to the conference note of 11 January 2018, compiled by Mr Horne's legal team and which referred to Mr Horne identifying Mr Clark as the source of the information about Mr Glenn Maleary.
91. Given the circumstances of the case, we were satisfied that Mr Clark forwarded the documents to Mr Horne on or around 11 to 12 January 2018 as he may have been motivated to assist Mr Horne.
92. Accordingly, we found this allegation (allegation 2), on the balance of probabilities, **proven.**

Allegation 3 – obstructed the IOPC investigation by denying the allegation in interview

93. In determining whether Mr Clark obstructed the IOPC investigation by denying that he had forwarded the documents to Mr Horne, the panel first considered Mr Shaw's submission that Mr Clark was not obliged to adhere to the Standards of Professional Behaviour as this allegation arose out of Mr Clark's conduct after he had resigned from the Force.
94. Mr Collins KC submitted that as the interview was conducted as part of the investigation into Mr Clark's conduct whilst he was a serving officer, allegation 3 was brought properly pursuant to Regulation 5 of the 2012 Regulations. Accordingly, Mr Collins KC submitted that *"Regulation 5(2)(a) should be interpreted in such a way as to include conduct which, although occurring after resignation, is intimately bound up with conduct occurring before resignation."*
95. We also noted Regulation 5 (7) of the 2012 Regulations which provides that the allegations may be taken together and treated as a single allegation for the purposes of any provision of these Regulations.

96. The panel was persuaded by Mr Collins KC's submission and found that as the IOPC interview would not have taken place but for Mr Clark's alleged conduct when he was a serving police officer, the panel determined that allegation 3 was properly brought. To conclude otherwise would be – as Mr Collins KC put it – *“be inimical to the maintenance of public confidence in policing”*.

Substantive allegation

97. Having found that allegation 3 was properly brought, the panel then went on to consider whether Mr Clark obstructed the IOPC investigation by denying that he had forwarded the documents to Mr Horne.

98. It may be considered by some that Mr Clark was merely putting forward his own account when he was interviewed by the IOPC on 5 and 6 March 2019. It does not necessarily follow that just because an officer puts forward an account which is later not accepted by a misconduct panel then they must be by definition obstructing the investigation.

99. Nevertheless, we had already found that Mr Clark had forwarded the documents to Mr Horne. By our findings, we were satisfied that as shown by documentary evidence, Mr Clark was not giving a truthful account of his actions on or around 11 to 12 January 2018 when he was interviewed. Consequently, we found that he obstructed the IOPC investigation.

100. Accordingly, we found this allegation (allegation 3), on the balance of probabilities, **proven.**

Allegation 4 – obstructed the IOPC investigation by disposing of his mobile phone handset

101. The AA's case was that Mr Clark knowingly disposed of his mobile telephone handset on 12 July 2018 to obstruct the IOPC investigation.

102. Mr Clark's explanation was that he did so because he wanted to “sync” his mobile device with his I-pad pro which he had purchased earlier.

103. In determining this issue, the panel reminded itself about the relevant timescales:

- i) Mr Clark's house was searched on 5 July 2018 and two electronic devices registered to him were not found.
- ii) On 12 July 2018, Mr Clark exchanged his mobile phone handset at Car Phone Warehouse.
- iii) On 12 July 2018, the IOPC informed Mr Clark's welfare officer that Mr Clark should submit his devices for inspection.
- iv) Mr Clark said he learnt about the IOPC's request on 16 July 2018.

104. The panel took into account Mr Clark's evidence that "*if he had a criminal mind*" he would have disposed of his mobile phone well before 12 July 2018 as he was served a Regulation 16 notice in April 2018. He said the investigation officer had every opportunity to ask him to hand his device over.
105. The panel also noted Mr Clark's evidence that he spoke to the lead investigator on 5 July 2018 (when the search warrant was executed) and offered to surrender his devices to IOPC that day but that offer was refused.
106. Nonetheless, the panel considered the close proximity between the execution of the search warrant and the exchange of his handset one week later to be significant. The panel also noted that there is no record of Mr Clark's handset being returned to Car Phone Warehouse.
107. Furthermore, Mr Clark provided an inconsistent account about where his old handset was. When he was interviewed on 5 March 2018 and asked where the handset was now, he said "*I've no idea*" [A934]. Under cross examination, Mr Clark said he saw a Car Phone Warehouse employee "*literally break it and throw it in the bin.*"
108. The panel was also struck by Mr Clark's claim that his handset contained evidence to support his account [A934]. On that basis, the panel considered it implausible that Mr Clark would have disposed of the handset in the circumstances that he described.
109. Even if we accepted Mr Clark's account that he simply changed his phone, the panel questioned why he did not retain his old handset. The panel found that Mr Clark's account that the lead investigator told him that the IOPC could get the information they needed without the handset is not a credible explanation.

110. For all those reasons, the panel found this allegation (allegation 4), on the balance of probabilities, **proven.**

Allegation 5 – obstructed the IOPC investigation by not disclosing that he had changed handsets on 12 July 2018

111. As a starting point, the panel took the view that Mr Clark, as a very senior and experienced officer at the relevant time, would have been familiar with the investigative process including the interrogation of mobile phones as part of an investigation.
112. The panel noted that Mr Clark was aware that it was the handset which was in his possession on 5 July 2018 (the date the search warrant was executed) which had been requested by the IOPC [A933].
113. The panel found it implausible that Mr Clark would not have mentioned that he had changed handsets on 12 July 2018 as he would have been aware that the contents of the handset would have been downloaded and used as part of the IOPC investigation.
114. The panel accepted Mr Clark's account that it was an upsetting experience for him for his house to be searched by investigators on 5 July 2018. We also noted his account that he was wary of having any interaction with IOPC investigators as a result.
115. Nonetheless, the panel considered that Mr Clark should have disclosed to IOPC that he had acquired a new handset, or at the very least asked his welfare officer to raise it on his behalf. By failing to do so, the panel was satisfied that Mr Clark obstructed the IOPC investigation.
116. The panel also accepted the AA's submission that Mr Clark's actions with regards to his mobile phone was an attempt to disguise the transmission of the documents to Mr Horne.
117. The panel found this allegation (allegation 5), on the balance of probabilities, **proven.**

Standards of professional behaviour (SPB)

118. The panel then went on to consider whether, by his conduct, Mr Clark had breached the SPB of “Honesty and Integrity”, “Orders and Instructions”, “Confidentiality” and “Discreditable Conduct.”

119. In relation to the SPB, the panel reminded itself that the Code of Ethics states that, with regards to:

- i) **Honesty and Integrity:** Police officers will be honest and act with integrity at all times, and will not compromise or abuse their position.
- ii) **Orders and Instructions:** Police officers will give and carry out lawful orders only, and will abide by Police Regulations.
- iii) **Confidentiality:** Police officers will treat information with respect, and access or disclose it only in the proper course of their duties.
- iv) **Discreditable Conduct:** Police officers will behave in a manner, whether on or off duty, which does not bring discredit on the police service or undermine public confidence in policing.

120. We approached our assessment on each allegation individually:

Allegation 1 - forwarded emails from his COLP email account to his personal email account:

121. With regards to allegation 1, the panel considered whether Mr Clark had breached the SPB of “Honesty and Integrity”, “Orders and Instructions”, “Confidentiality” and “Discreditable Conduct.”

Orders and Instructions and Confidentiality

122. By virtue of our findings that: (i) Mr Clark had forwarded the documents from his COLP email account to his personal email account in breach of Force policy and/or good information security practice; and (ii) that the information was not accessed in the course

of police duties, we were satisfied that he had breached the SPB of “Orders and Instructions” and “Confidentiality”.

Honesty and Integrity

123. In determining whether Mr Clark had breached the Standard of Honesty and Integrity, we had regard to the *Ivey v. Genting Casinos* test. We took the view that he forwarded the documents from his COLP email account to his personal email account to conceal the transmission of the documents to Mr Horne.

124. The panel was satisfied that Mr Clark’s conduct was dishonest by reference to the standard of ordinary decent people in light of all the circumstances of the case, and that he had breached the Standard of Honesty and Integrity in relation to allegation 1.

Discreditable Conduct

125. On the basis of our findings, we were satisfied that Mr Clark, by acting in breach of Force policy, would undoubtedly have an adverse impact on public confidence in policing.

126. The public rightly expects an officer to maintain the highest standards of behaviour and the panel was satisfied that Mr Clark’s conduct would result in members of the public losing trust and confidence in the policing profession.

127. Therefore, we concluded that Mr Clark breached the Standard of Discreditable Conduct in relation to allegation 1.

Allegation 2 - forwarded some or all of the documents to Mr Horne

128. Turning to allegation 2, the panel considered whether Mr Clark had breached the SPB of “Honesty and Integrity”, “Orders and Instructions”, “Confidentiality” and “Discreditable Conduct.”

Orders and Instructions and Confidentiality

129. By virtue of our findings that: (i) Mr Clark had forwarded some or all of the documents to Mr Horne in breach of Force policy; and (ii) that the information was not

accessed in the course of police duties, we were satisfied that Mr Clark had breached the SPB of “Orders and Instructions” and “Confidentiality”.

Honesty and Integrity

130. Again, given our findings and having had regard to the *Ivey v. Genting Casinos* test, we were satisfied that Mr Clark’s conduct was dishonest by reference to the standard of ordinary decent people, as he disguised his actions to avoid detection and put forward an explanation which we had rejected.

131. The panel was satisfied that Mr Clark had breached the Standard of Honesty and Integrity in relation to allegation 2.

Discreditable Conduct

132. On the basis of our findings in relation to allegation 2, we were satisfied that Mr Clark’s actions in forwarding the documents to Mr Horne in breach of Force policy, would undoubtedly have an adverse impact on public confidence in policing.

133. Therefore, we concluded that Mr Clark breached the Standard of Discreditable Conduct in relation to allegation 2.

Allegation 3 - obstructed the IOPC investigation by denying the allegation in interview

134. Turning to allegation 3, the panel considered whether Mr Clark had breached the SPB of “Honesty and Integrity”, and “Discreditable Conduct.”

Honesty and Integrity

135. Again, given our findings and having had regard to the *Ivey v. Genting Casinos* test, we were satisfied that Mr Clark’s conduct was dishonest by reference to the standard of ordinary decent people, as he did not provide a truthful account when he was interviewed by the IOPC.

136. Accordingly, the panel was satisfied that Mr Clark had breached the Standard of Honesty and Integrity in relation to allegation 3.

Discreditable Conduct

137. On the basis of our findings, we were satisfied that Mr Clark by failing to provide a truthful account in interview, would undoubtedly have an adverse impact on public confidence in policing.

138. We concluded that Mr Clark breached the Standard of Discreditable Conduct in relation to allegation 3.

Allegation 4 - obstructed the IOPC investigation by disposing of his mobile phone handset

139. Turning to allegation 4, the panel considered whether Mr Clark had breached the SPB of “Honesty and Integrity” and “Discreditable Conduct.”

Honesty and Integrity

140. Again, given our findings and having had regard to the *Ivey v. Genting Casinos* test, we were satisfied that Mr Clark’s conduct was dishonest by reference to the standard of ordinary decent people, as he disposed of his mobile handset when he knew that it had been sought for the purposes of the investigation and (by his own admission) contained relevant evidence.

141. Accordingly, the panel was satisfied that Mr Clark had breached the Standard of Honesty and Integrity in relation to allegation 4.

Discreditable Conduct

142. On the basis of our findings, we were satisfied that Mr Clark by failing to provide a truthful account in interview, would undoubtedly have an adverse impact on public confidence in policing.

143. We concluded that Mr Clark breached the Standard of Discreditable Conduct in relation to allegation 4.

Allegation 5 - obstructed the IOPC investigation by not disclosing that he had changed handsets on 12 July 2018

144. Turning to allegation 5, the panel considered whether Mr Clark had breached the SPB of “Honesty and Integrity” and “Discreditable Conduct.”

Honesty and Integrity

145. Again, given our findings and having had regard to the *Ivey v. Genting Casinos* test, we were satisfied that Mr Clark’s conduct was dishonest by reference to the standard of ordinary decent people, as he failed to disclose to the IOPC that he had changed handsets on 12 July 2018 whilst being aware that it was the handset which was in his possession on 5 July 2018 which the IOPC required [A933].

146. Accordingly, the panel was satisfied that Mr Clark had breached the Standard of Honesty and Integrity in relation to allegation 5.

Discreditable Conduct

147. On the basis of our findings, we were satisfied that Mr Clark, by failing to provide a truthful account in interview, would undoubtedly have an adverse impact on public confidence in policing.
148. We concluded that Mr Clark breached the Standard of Discreditable Conduct in relation to allegation 5.

Misconduct or Gross Misconduct

149. Further to our findings that Mr Clark breached the relevant Standards, the panel then went on to consider whether his behaviour amounted to Misconduct or Gross Misconduct.
150. Again, we approached our assessment on each allegation individually.
151. The panel first reminded itself that Regulation 3 of the 2012 Regulations (in the context of a former officer) defines Gross Misconduct as being “a breach of the Standards of Professional Behaviour so serious that dismissal would be justified, and in this case, had

Mr Clark remained in service”. Misconduct is defined as being “a breach of the Standards of Professional Behaviour.”

152. We further reminded ourselves that the purpose of the police misconduct regime is to: maintain public confidence in and the reputation of the police service; uphold high standards in policing and deter misconduct; and to protect the public.

Allegation 1 - forwarded emails from his COLP email account to his personal email account

153. Given our findings, and as the core values of “honesty and integrity” and “Orders and Instructions”, “Confidentiality” are fundamental requirements for any police officer, we concluded that Mr Clark’s behaviour in relation to allegation 1 amounted to **Gross Misconduct**.

154. In arriving at this conclusion, the panel took into account that Mr Clark was a very senior officer during the relevant time and could be expected to be a role model. Instead, he knowingly breached Force policy, and/or good information security practice.

Allegation 2 - forwarded some or all of the documents to Mr Horne

155. Again, given our findings, and as the core values of “Honesty and Integrity” and “Orders and Instructions”, “Confidentiality” are fundamental requirements for any police officer, we concluded that Mr Clark’s behaviour in relation to allegation 2 amounted to **Gross Misconduct**.

156. The panel viewed this allegation as the most serious of the allegations and was satisfied that Mr Clark not only knew that what he did was in breach of Force policy, and/or good information security practice, but also sought to conceal his actions.

Allegation 3 - obstructed the IOPC investigation by denying the allegation in interview

157. By our findings, the panel was satisfied that Mr Clark dishonestly failed to provide a truthful account when he was interviewed by the IOPC.

158. As it is incumbent for police officers to be honest and to act with integrity, the panel concluded that Mr Clark's behaviour in relation to allegation 3 amounted to **Gross Misconduct**.

Allegation 4 - obstructed the IOPC investigation by disposing of his mobile phone handset

159. As a senior officer during the relevant time, Mr Clark would have known about the investigative process and that it had been sought for the purposes of the investigation.

160. Given his conduct, and as it is incumbent for police officers to be honest and to act with integrity, the panel concluded that Mr Clark's behaviour in relation to allegation 4 amounted to **Gross Misconduct**.

Allegation 5 - obstructed the IOPC investigation by not disclosing that he had changed handsets on 12 July 2018

161. Again, as a senior officer during the relevant time, Mr Clark could have been expected to have known that the contents of his mobile phone would be downloaded and used as part of the investigation. However, he failed to disclose to the IOPC that he had changed handsets previously.

162. Again, given his conduct, and as it is incumbent for police officers to be honest and to act with integrity, the panel concluded that Mr Clark's behaviour in relation to allegation 5 amounted to **Gross Misconduct**.

Conclusion

163. As set out in the reasoning above, the panel found that each of the five allegations brought against Mr Clark had been proven, and that by his conduct, he had breached the SPB relating to "Honesty and Integrity", "Orders and Instructions", "Confidentiality" and "Discreditable Conduct."

164. In assessing his behaviour, in respect of each of the allegations and cumulatively, the panel found that Mr Clark's behaviour amounted to **Gross Misconduct**.

Sanctions

165. Having come to the conclusion that Mr Clark's conduct amounted to Gross Misconduct, the panel went on to determine the appropriate outcome.

166. In determining the appropriate outcome, the panel applied the principles set out in *R (on the application of the Chief Constable of Greater Manchester Police) v Police Misconduct Panel* [2018] 11 WL UK 822 and *R (on the application of Chief Constable West Midlands Police) v Panel Chair, Police Misconduct Panel v Former officer "A" – Interested Party* [2020] EWHC 1400 (Admin) which emphasise the importance of following the structured approach as set out in the College of Policing (CoP) Guidance on Outcomes in Police Misconduct Proceedings (2023).

167. In summary, the panel:

- (i) Assessed the seriousness of the conduct and behaviour of Mr Clark
- (ii) Reminded itself of the purpose of imposing sanctions, namely:
 - Maintaining public confidence in and the reputation of the police service;
 - Upholding high standards in policing and deterring misconduct; and
 - Protecting the public.
- (iii) Arrived at an outcome which most appropriately fulfilled the purpose of imposing sanctions in the light of the seriousness of Mr Clark's conduct.

Seriousness of the Conduct and Behaviour

168. In assessing the seriousness of Mr Clark's behaviour in respect of the findings, the panel considered the following factors in line with the guidance in the CoP Guidance on outcomes:

- The culpability borne by Mr Clark for his actions.
- The harm caused by Mr Clark's actions.
- The existence of any aggravating factors.
- The existence of any mitigating factors.

Culpability

169. We first assessed Mr Clark's culpability arising from his actions found proven. The panel found that Mr Clark's misconduct was intentional and deliberate with a degree of planning thereafter to disguise his actions.
170. The panel noted paragraph 4.12 of the CoP Guidance which states that *"Culpability will also be increased if the officer was holding a position of trust or responsibility at the relevant time. All police officers are in a position of trust, but an officer's level of responsibility may be affected by specific circumstantial factors, such as rank, their particular role and their relationship with any persons affected by the misconduct"*. The panel determined that, as a very senior officer at the time, Mr Clark's culpability was increased.
171. The panel also noted from the CoP Guidance that misconduct involving Operational Dishonesty and Data Protection should be considered especially serious. Whilst we noted that this was a case of Operational Dishonesty, we took into account that the proven dishonesty in this case was unconnected to a police operation or investigation.
172. Furthermore, we noted from paragraph 4.34 of the CoP Guidance that there is *"both a public expectation and a legal requirement that information obtained during the course of policing duties should be treated in strictest confidence, properly protected and used only for legitimate policing purposes"*. We also took note of paragraph 4.37 of the CoP Guidance that a more serious outcome would be appropriate where there has been an onward disclosure of the documents and attempts to cover up improper accessing of data.
173. Given our findings that Mr Clark had forwarded the documents to Mr Horne and his subsequent attempts to disguise the transmission of the documents, the panel determined that Mr Clark's culpability was increased as a result.
174. Given the overall circumstances, we concluded that Mr Clark's culpability in this case was high.

Harm

175. The panel went on to consider the harm caused. In considering this issue, we considered paragraph 4.69 of the CoP Guidance which states that *"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.”

176. The panel had no doubt that Mr Clark’s proven misconduct would be likely to cause reputational harm to the police service and undermine public confidence in policing especially given Mr Clark’s senior position in the COLP at the time.

177. Given all the factors outlined above and based on our assessment of harm caused, the panel found that Mr Clark’s actions had caused high harm.

Aggravating factors

178. The panel then went on to consider the list of potential aggravating factors set out in the CoP Guidance which worsened the seriousness of the misconduct in this case. We found several aggravating factors present:

- i) Premeditation, planning and targeting
- ii) Abuse of trust, position, powers or authority
- iii) Concealing wrongdoing in question and/or attempting to blame others
- iv) Regular, repeated or sustained behaviour over a period of time
- v) Continuing the behaviour after the former officer realised, or should have realised, that it was improper.

Mitigating factors

179. The panel did not find any mitigating factors which reduced the seriousness of the misconduct.

Character references

180. Having assessed the seriousness of the Gross Misconduct found proven, the panel then went on to consider the character references submitted on behalf of the officer.

181. Given the purpose of police misconduct meetings, the panel kept in mind the fact that personal mitigation will carry limited weight and less than it might do in a different context [as explained by Holroyde J as he then was in *The Queen (on the application of Williams) v Police Appeals Tribunal* [2016] EWHC 2708 (QB)]. Nevertheless, the Panel did take account

of the following matters:

- (i) That Mr Clark did not have any previous disciplinary matters recorded against him.
- (ii) The bundle of character references submitted on his behalf, which contained many references to Mr Clark's commitment to public service and strong work ethic.

Outcome

182. The panel then went on to consider the outcome which would most appropriately fulfil the purposes of imposing sanctions in the light of the seriousness of Mr Clark's conduct. In doing so, we have given proper emphasis to the strong public interest in the maintenance of public confidence. We were also mindful of the declaratory purpose of maintaining high professional standards and for prevention and protection purposes.

183. The panel drew assistance from paragraph 20.66 (e) of the Home Office Guidance which provides that where there is a finding of gross misconduct and disciplinary action is imposed, it can only be one of dismissal as there is no option to enforce other sanctions given the termination in the former officer's employment status and employment record.

184. In other words, as Mr Clark has already resigned, there are only two potential outcomes, namely disciplinary and no disciplinary action. Therefore, we reminded ourselves that:

- (i) If we were to decide that the conduct did not justify the sanction of dismissal, no disciplinary action would be taken; and
- (ii) Disciplinary action can only be the outcome if Mr Clark would have been dismissed if he had not ceased to be a member of the police force.

185. Given our findings that Mr Clark's culpability was high and high harm had been caused, **the panel determined that Mr Clark would have been dismissed if he had not ceased to be a member of the police force.**

186. We did not consider that no disciplinary action would have been sufficient to uphold public confidence in and respect for the police service and would be insufficient to reflect the importance of upholding high standards in policing and deterring

misconduct.

187. Accordingly, **disciplinary action** is imposed for Mr Clark's actions.

Barred list information

188. The LQC has considered the relevant provision under the Police Barred List and Advisory List Regulations 2017 ("the 2017 Regulations") and is satisfied that a report containing details of this case (in accordance with Regulation 3 of the 2017 Regulations) should be sent to the College of Policing within 5 working days. This is because there is no reason to depart from the general principle.

Right of Appeal

189. Mr Clark should be notified that he has a right of appeal to the Police Appeals Tribunal. The AA will provide a notice as to the procedure to be followed in that regard.

Chiew Yin Jones – Legally Qualified Chair

John Vaughan – Independent Panel Member

Commander Umer Khan – Police Panel Member

10 May 2023