

**Misconduct Hearing Decision Record T/DS Giles Kitchener**

**Findings on the Balance of Probabilities that the Conduct Failed to meet the Standards of Professional Behaviour**

Sanction	No Further Action	Referral to RPRP	Written Warning - 18 Months	Final Written Warning – 2 Years	Demotion to previous rank	Dismissal Without Notice
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### **BRIEF BACKGROUND**

1. This misconduct hearing relates to the alleged behaviour of Temporary Detective Sergeant Giles Kitchener (hereafter 'the officer') towards his policing colleagues during several months of 2021.

1.2. The Appropriate Authority (AA) in its Regulation 30 Notice filed pursuant to the Police (Conduct) Regulations 2020 (the 2020 Regulations) brings 14 factual allegations against the officer in respect of behaviour that is said to have upset and disturbed some of his policing colleagues.

1.3. The AA alleges that the officer's behaviour breached the Standards of Professional Behaviour (SPB) relating to Authority, Respect and Courtesy, Equality & Diversity, Discreditable Conduct, Fitness to Work and Honesty and Integrity and amounts to gross misconduct.

1.4. The Panel observes that the officer has filed a Regulation 31 response in which he has admitted factual allegations 5 and 12 of the Regulation 30 Notice to the level of 'misconduct'. All other allegations are denied.

1.5. The Panel is grateful for the submissions and assistance provided by xxxx on behalf of the AA and by xxxx for the officer.

1.6. The Panel approached its fact-finding role in the following manner:

- To ascertain the facts (whether as admitted or found proven).
- To ascertain whether the facts as determined by the Panel, constitute a breach of the Standards of Professional Behaviour, as alleged;  
and,
- Whether the breach of the Standards of Professional Behaviour amount to Misconduct or Gross Misconduct?
- What Disciplinary Action (sanction) if required is appropriate?

1.7. In deciding matters of fact, the Panel is fully cognisant that the AA brings the case and the burden of proof of proving the allegations rests with the AA. The standard of proof in misconduct proceedings is the civil standard of the balance of probabilities and the test is a simple unvarying balance of probabilities; what is more likely than not. The seriousness of the allegation of misconduct and/or the seriousness of the consequences for the officer do not require a different standard of proof, merely appropriately careful consideration by the Panel before it is satisfied

of the matter which has to be established. The inherent probability or improbability of the conduct occurring is itself a matter to be taken into account when deciding whether, on the balance of probabilities, the conduct occurred. In making a decision whether the alleged conduct is proven or not, the persons conducting or chairing will need to exercise reasonable judgment and give appropriate careful consideration to the evidence (**See Paragraphs 9.10/9.11. of the Home Office Guidance 2020**).

**THE PANEL'S FACTUAL FINDINGS ON ALLEGATIONS 1-14 OF THE REGULATION 30 NOTICE AGAINST THE OFFICER**

1.8. In reaching its factual findings regarding the allegations the Panel has adopted the helpful approach suggested by Counsel, namely, to consider the factual allegations in three broad categories: (i) Those allegations that have been admitted by the officer, either in his Regulation 31 or during his live evidence, (ii) Those allegations where there is broad agreement on the facts, subject to the relevant context, and (iii) Those allegations that remain in dispute.

1.9. The Panel has also taken into account where relevant the character testimonials submitted on the officer's behalf and also borne in mind the adverse judicial finding against the officer where a civil judge found that the officer lied as a witness. Both the testimonials and the adverse judicial finding are relevant when considering the officer's propensity to act in the manner alleged and to character.

1.10. Turning to the first category of factual allegations, namely, those admitted by the officer:

**Factual Allegation 5 ('Police Signals')**

*'On or about 12<sup>th</sup> March 2021 TDS Kitchener sent an inappropriate WhatsApp message to colleagues containing annotated images of a police officer with the title 'Police Signals Know Your Signs'. The images referred to a police officer killing a single girl' in the context of the murder of Sarah Everard by a serving police officer'.*

1.11. In his Regulation 31 response, the officer accepted the allegation to the level of misconduct. He received the Police Signal Message from a family friend which he forwarded to police colleagues on a WhatsApp group. Realising what he had done, and what the image was, he deleted the message without delay. He further stated that he fully appreciated the impact such images and communications may have on public trust and confidence and deeply regretted forwarding the message.

1.12. In his live evidence and consistent with his Regulation 18 response dated 28/02/2022, he stated that he did not properly think about what the images related to and sent it on without thinking. He wasn't mocking the Everard case at all, nor did he find it funny but accepted it was foolish to share in that manner and he regretted it. He told the Panel that prior to forwarding he had seen only two of the six images in the attachment which read 'Stop Single Girl' and 'Guide her to the Woods'. He said that some days later while in the CID office, he apologised to the two colleagues, Xxxx and and xxxxx who had read and responded to the WhatsApp message.

1.13. The Panel has reviewed the full document titled 'Police Signals, Know Your Signs' which contains six images of a police officer demonstrating signals, together with the WhatsApp exchanges between the officer and his two colleagues. The six police signal images depicted the following sequence: 'Stop Single Girl, Guide Her to the Woods, Block her Escape Route, Knock Out, Assault/Kill, and finally Chop Up Body'.

1.14. From the WhatsApp exchanges dated 12 March 2021, it can be seen that the officer did unilaterally delete his message. However, he was too late as both his colleagues subsequently messaged to say they had seen it before it was deleted. His response was 'Too soon....'

1.15. In their respective live evidence, both Xxxx and Xxxx denied that the officer had met them some days later in the CID office and apologised for sending the WhatsApp messages. Neither of them recalled any meeting or apology from the officer. Xxxx said 'No, I do not believe that he did speak and apologise afterwards. In recalling when she received the message he/she stated 'The whole Everard case rocked policing to its core ....'.

1.16. Xxxx stated 'The Sarah Everard investigation had just occurred and I had seen the images before in the newspapers ... it was extremely derogatory. I did not challenge DS Kitchener as it was there for a second and then deleted'. He further said that he did not recall any apology being said by the officer.

1.17. The Panel has reviewed the evidence and based on the officer's admission finds the factual allegation is proven on the balance of probabilities. However, in relation to the officer's assertion that he later apologised to his two police colleagues for sending the attachment, the Panel finds this assertion is not proven. The evidence from the officer is unsupported by his own Regulation 18 response which made no mention of an apology being given and that position is confirmed in evidence by Xxxx and Xxxx. In the circumstances, the Panel finds the officer is mistaken in his recollection regarding an apology.

**Factual Allegation 12 ('AOJ comments')**

*'On or about 15<sup>th</sup> June and 6<sup>th</sup> July 2021 TDS Kitchener sent text messages to colleagues in which he made abusive comments about the administration of Justice Department (AOJ) calling them 'pricks' and 'wankers'.*

1.18. In his Regulation 31 response, the officer stated that his conduct amounted to the level of misconduct. He accepted that the text message he sent stating 'AOJ wankers are shit like that' was inappropriate and unprofessional in tone and showed a failing of respect and courtesy.

1.19. In his live evidence, the officer explained that the comments in his text message that AOJ were 'pricks' and 'wankers' was not aimed at Xxxx who was moving to AOJ. He said he was frustrated after having worked several hours from home trying to sort out issues which he felt had not been dealt with properly by AOJ. He accepted that his comments were abusive, wrong and unprofessional.

1.20. The Panel has reviewed the evidence including the officer's text messages and based on his admission finds the factual allegation is proven on the balance of probabilities.

**Factual Allegation 4 ('DC Competence')**

*'On various unknown dates TDS Kitchener made disparaging comments about a named Detective Constable's competence, asserting that if he wasn't incompetent, he might be corrupt'.*

1.21. In his Regulation 31 response, the officer said he held a genuine concern about the handling of a forensically sensitive exhibit by the relevant Detective Constable and that he later reported the matter to the individual's line manager. In the circumstances, the officer denied that his comments demonstrated a failure of respect and courtesy.

1.22. The officer explained in his live evidence that the relevant Detective Constable had been sent clear instructions and guidance on how to deal with the 'bloody clothing' arising from an assault with GBH injuries, so when the items arrived without having been properly bagged and documented, the exhibits were forensically useless and effectively destroyed.

1.23. The officer accepted he was angry and that he should not have spoken about the relevant Detective Constable in the manner that he did in front of junior colleagues. He was speaking out loud but was simply considering the options as to what had happened and was not being judgmental. He admitted there were better ways to have dealt with the matter. He should have separated the learning points arising from the situation that he wanted to highlight to his team from his personal frustration with the Detective Constable when making his response. In this regard, the Panel heard evidence from Xxxx. He stated that the officer's email comments made to others in the CID team about the Detective Constable being either incompetent or corrupt 'was too strong and derogatory' as well as being detrimental to that individual's welfare.

1.24. Xxxx stated in her live evidence that the officer said within earshot of colleagues sitting in the open plan office, that the Detective Constable officer was either incompetent or corrupt. She did not know the Detective Constable involved but recognised the officer's comments were serious.

1.25. The Panel has reviewed the evidence and based on the officer's admission, finds the factual allegation is proven on the balance of probabilities.

**Factual Allegation 7 ('Relationship comment')**

*'In May 2021 TDS Kitchener made an inappropriate comment to a female colleague, suggesting that she wanted to be in a sexual relationship with him'.*

1.26. In his Regulation 31 response, the officer said that he did not specifically recall making the comment 'Don't get any ideas' to Xxxx but if he did, he believed it was made in the context of Xxxx discussing the issue of PCs and Police Sergeants in a previous force who had become involved in a relationship. The officer said his comment would have been a joke simply based on the reference to PC/PS and in no way prompted by any thought of a relationship.

1.27. In his live evidence, the officer said that he was aware that Xxxx was in a relationship and as he was married, any comment would simply have been a joke. He did not intend to upset Xxxx and accepted that his comment was misjudged. It was simply a quip about ranks, not relationships.

1.28. Xxxx said in her live evidence that the officer's remark to her 'Don't you get any ideas' as a direct response to Xxxx discussion about relationships between PCs and Police Sergeants was both inappropriate and offensive because the officer knew she was in a relationship and she was aware that he was married. Furthermore, she had never given the officer the slightest hint that she would get an idea of that kind. She said she replied to him in a stern and clearly unamused tone 'Do not worry, I won't' to which he replied 'Alright then, a bit harsh', and looked shocked.

1.29. The Panel has reviewed the evidence and finds the factual allegation is proven on the balance of probabilities based on the officer's admission in live evidence to having made the comment.

**Factual Allegation 9 ('Medical Form')**

*'On or about 12<sup>th</sup> June 2021 TDS Kitchener signed a medical form, purporting to be an Acting Detective Inspector when he wasn't'.*

1.30. In his Regulation 31 response, the officer stated that he followed what, from his previous experience with the MPS, he understood to be acceptable procedure. He made his line manager, Xxxx aware of what he had done, and Xxxx dealt with the matter by way of words of advice.

1.31. In his Regulation 18 response, the officer stated that signing the medical form was simply a matter of expedience and to get the job done. He thought he could act up two ranks and thought little of the issue. He had approached Xxxx and informed him that he had signed the form not because he thought he had done anything wrong but out of the usual practice he was used to from the MPS.

1.32. The Panel heard live evidence from Xxxx. He said that when the officer approached him to make him aware that he had signed the medical form as Acting Detective Inspector (A/DI) he told the officer his actions were not appropriate from a personal integrity and evidential point of view. It was made clear that he should have spoken to the uniform Duty Inspector or city silver beforehand.

1.33. Xxxx said that the officer was seemingly unaware that he had done anything wrong and did not try and hide the fact that he had signed the form. He also felt had the matter not been brought to his attention by the officer, he would most likely not have discovered it.

1.34. Xxxx said he considered the matter had been dealt with by words of advice. He accepted he should have formally recorded the meeting in his day book but had not done so. He further stated that he had disseminated the learning from the incident to other Detective Sergeants at the CID Supervisor's meeting without specifically mentioning the officer.

1.35. The Panel has reviewed the evidence. Based on the officer's admission that he signed the medical form as A/DI (which is also confirmed by Xxxx), the Panel finds the factual allegation is proven on the balance of probabilities.

1.36. Turning to the second category of factual allegations, namely, those where there is [some] broad agreement on the facts, but subject to the specific context.

**Factual Allegation 2 ('Soho comment')**

*'On a date unknown around the early part of 2021 TDS Kitchener made homophobic comments suggesting that he would not be comfortable taking his child to Soho'.*

1.37. In his Regulation 31 response and in live evidence, the officer stated that he recalls a conversation with colleagues prompted by the television series "It's a sin". The central issue in his mind was how, if his son were to be gay, he might as a parent be able to support him, where he might find support, and how he might address any associated challenges. These were matters which the officer raised in a spirit of open discussion as was his style in managing the team.

1.38. During cross-examination, the officer denied there was no context to the discussion and that his comment came out from nowhere as suggested by the evidence of Xxxx. However, he accepted that eyebrows were definitely raised by his comments and that Xxxx and Xxxx looked startled. He denied they were upset.

1.39. The officer was unable to explain to the Panel why he had not apologised to his colleagues given their reaction and said he wished he had dealt with the matter more at the time and that he had no intention to cause upset to anyone. In this regard, he knew that Xxxx was in a same sex relationship and said he had the highest respect for her. He was not a 'loud mouth' and had not tried to provoke his colleagues.

1.40. In his Regulation 18 response dated 28/02/2022, the officer stated that the comments referred in the Regulation 17 Notice ('I don't know what I would do if my son came home and told me he was gay. I wouldn't be dropping him in Soho at 3am') were not together as presented in the allegation. He said I may have used a sentence similar to the first but I immediately rephrased it to clarify that those concerns were about how I would support him. He further stated that any comments around Soho were based on conversations with his friends, some of whom are gay and have frequented the area and his own experience of working there for several years.

1.41. The Panel also heard live evidence from Xxxx and Xxxx who were present when the alleged comments were made. Xxxx said that the officer's remarks were 'almost an off the cuff' comment. He leant back in his seat as if looking to the ceiling said 'I don't know what I would do if my children were gay?' Xxxx replied with something like 'It doesn't matter who your children end up with as a partner, it's how



they are treated' to which the officer replied something like 'What do I do? Take them to Soho or something?'

1.42. During cross-examination, Xxxx said she heard no reference to the television series 'It's a sin'. She admitted that the comments did 'hit a nerve' with her as she identified as 'queer' and is in a same-sex relationship which was openly known, including by the officer.

1.43. She found the officer's comments homophobic and it felt like an 'attack' rather than an enquiry about what the officer would do if his children were gay. The reference to Soho was extremely stereotypical in so far that it presumed all gay men go to Soho. She accepted that it was a short conversation and that it was dropped quickly and not mentioned again by anyone, but noted that afterwards she and Xxxx discussed what had transpired.

1.44. Xxxx said that he, Xxxx and the officer were all seated at the same table in the CID office. He was seated next to Xxxx on one side of the table and the officer was seated opposite him. The officer made a comment like 'I don't know what I would do if my son came home and said he was gay. I wouldn't be dropping him in Soho at 3am'. There was no lead up or context to the comment and he was unhappy with the conversation and wasn't sure what the officer was getting at. After the short conversation, he and Xxxx turned to each other and said words to the effect 'Did he really just say that?'

1.45. The Panel has reviewed the evidence and finds on the balance of probabilities the factual allegation proved. The Panel finds there is no persuasive evidence for the officer's assertion that he made his comment in the context of the TV series 'It's a sin'.

1.46. While there is no dispute that this television series was airing at the time of the incident, the Panel finds no evidence that the officer actually verbalised, explained or contextualised his comments based on the television series. They were all sitting in close proximity and neither Xxxx or Xxxx heard any reference to the television series from the officer.

1.47. The Panel accepts that the officer's comments to Xxxx and Xxxx were heard as 'off the cuff' and appeared to come from 'nowhere'. It is clear from the officer's evidence that they appeared 'startled' and 'eyebrows were raised'. That being said, while the Panel finds that the comment was homophobic in nature, it does not find that it was made as a deliberate or conscious 'attack' on Xxxx.

1.48. The Panel fully understands that it may have felt that way to Xxxx given her sexual orientation, but objectively there is no evidence of any pre-existing animosity or bad feeling between the officer and Xxxx to suggest that he would deliberately attack her in such a crude and insensitive manner. Rather, it would appear that his

comment was intended to simply provoke a discussion on the issues he mentioned. However, the way he presented himself was ill-judged and lacking in any sensitivity. His comments had no purpose and put simply should not have been made by any officer, let alone a supervisor, in the manner it was.

**Factual Allegation 8 ('HAM comment')**

*'In June 2021 TDS Kitchener made an inappropriate comment or comments about a Muslim officer's child having the initials that spelt "HAM".'*

1.49. In his Regulation 31 response, the officer said he was surprised that the initials of the Muslim officer's child spelt 'HAM' and this might be embarrassing and awkward for the Muslim officer. The observation was not intended to be mocking or offensive or discriminatory and he was not 'howling' with laughter when he raised it with his CID colleagues.

1.50. The officer stated in his Regulation 18 response that he spoke to the Muslim officer and raised the matter of the initials and was told it was not an issue. The officer said what he may be guilty of 'is being proud' that he had seen an issue and 'was going to tackle it whereas everyone else would bury their heads in the sand and hope it never got noticed'.

1.51. In his live evidence, the officer said he had only raised the matter with colleagues on one occasion. When he did so he wasn't laughing about the matter and was not making a joke out of it. He simply made a factual observation which had some irony. There were nervous smiles but no howling or laughter from him or anyone else.

1.52. He was not howling with laughter when he discussed it with Xxx. If that had happened, he would have expected to have been challenged which did not occur. He accepted he was not a personal friend or close work colleague of the father of the Muslim child. He further accepted that looking back it was not a matter that needed to be raised and should have been left alone. Although raising the matter with the child's father had not caused any offence, it had caused consternation amongst his colleagues and should have been left alone.

1.53. He further explained that he raised the matter with colleagues as he wanted their views as to whether he should bring the matter of the initials 'HAM' to the attention of the Muslim officer. He accepted that he was told to leave the matter alone and not to bring it to the attention of the Muslim officer but he went ahead anyway as an opportunity arose and he wanted to check his understanding.

1.54. The officer was asked by the LQC if he would have similarly raised the matter of the child's initials with a Jewish colleague or if the initials had read 'COW' with a Hindu colleague. The officer's hesitant and incomplete response showed that he was unsure that he would have acted in the same manner.

1.55. In Xxx's live evidence, he said that there was a general discussion within the CID Team about the child's initials. The discussion was led by the officer who stood up and asked whether he should mention it to the Muslim officer that his child's initials spelt 'HAM'. Xxx said he told the officer to 'forget it completely'. He said that Xxx was present but could not remember if Xxx was also present. He confirmed that there wasn't any laughter or mirth in the manner in which the officer raised the matter. It was also the only occasion that the officer had raised the matter with the team.

1.56. Xxx said in her live evidence that the officer was a bit of a 'joker' in the group and that she could not recall anyone laughing when discussing the matter but noted that when the officer mentioned the matter it was in 'jokey tones'. She confirmed that the officer was told not to approach the father of the child and felt that the officer was acting in a discriminatory manner against the Muslim officer. However, she also candidly acknowledged in cross-examination that by this time her view of the officer had changed as a result of previous incidents.

1.57. Xxx said in her live evidence that when the officer called her over to his desk and spoke to her about the matter that he said he was absolutely 'howling last week when I heard what [the Muslim officer] had named his child'. She said the office went quiet and she got the impression that everyone was as shocked at the comment as she was. Xxx said that she understood that it was the Muslim officer's first child and anticipated that a lot of thought would have gone into the child's name. She told the officer not to send the email about his child's initials. She thought the officer's behaviour was crass and insensitive.

1.58. The Panel has reviewed the evidence and finds on the balance of probabilities the factual allegation is proven. In reaching this view, the Panel finds there was only one occasion when the officer raised the matter of the child's initials with the CID Team. That occasion also involved Xxx who appeared to have had a personal conversation with the officer within the context of the wider CID team discussion as she referenced the 'office went quiet' and she got the impression that everyone was as shocked as she was. The Panel further finds that there was no 'howling' but the officer did make the comments with an underlying 'jokey' tone. The officer has admitted to observing the 'irony' of the situation and Xxx also noted the 'jokey' nature of the officer. The Panel accepts her evidence as credible.

1.59. Finally, the Panel finds there was no legitimate reason for the officer to have raised the matter either with the CID Team or with the father of the child. The inescapable truth is that the officer found the situation amusing and wanted to engage his team because he (mistakenly) thought they would share his sense of humour. They did not.

1.60. His behaviour was disrespectful, mocking and discriminatory towards a Muslim officer and his family. It is striking that the officer was unable to show that he would have sought to express his concerns to other police colleagues who might be Jewish or Hindu, if their children had similar 'ironic' initials. Overall, the Panel rejects the officer's assertion in his Regulation 18 response that he was simply tackling a matter of concern where others would bury their heads in the sand. There was no legitimate concern and he had no business whatsoever in becoming involved in a purely private matter outside his professional remit.

**Factual Allegations 10 & 11 (Drinking Beer & Overtime)**

*'During the evening of Saturday 12<sup>th</sup> June 2021, TDS Kitchener was on duty at Bishopsgate Police Station when he drank cans of beer in the CID office.'*

*'Subsequent to 12<sup>th</sup> June 2021, TDS Kitchener claimed 6 hours overtime for working from his scheduled finish time of 1900hrs on 12<sup>th</sup> June 2021 until 0100hrs the following morning. In a response to the allegation that he had been drinking alcohol on duty on 12<sup>th</sup> June 2021 TDS Kitchener asserted that he had been off duty for some of this time and if this is true TDS Kitchener's claim for 6 hours overtime is false or inaccurate.'*

1.61. In his Regulation 31 response, the officer referred to the account he provided in his Regulation 18 response. He stated that he fully accepted he should have booked off, and that having taken himself off duty, that the same period of time should have been discounted from his overtime claim, and for those admitted errors the officer gave his apologies.

1.62. In his Regulation 18 response, which is consistent with the live evidence he provided to the Panel, the officer stated that on 12 June 2021 he commenced duty at 0700hrs as the Detective Sergeant (DS). There were principally two investigations that day; a robbery and a domestic violence case (DV) which presented complex safeguarding issues. There were no other CID supervisors on that day other than the on-call Detective Inspector (DI). The officer was the sole decision maker and liaison for all crime matters.

1.63. The officer further stated in his Regulation 18 response that it became apparent to him that it was likely that he would have to work past his finish time of 19.00hrs into the evening and so secured authorisation for overtime and a hotel during the day in anticipation of that outcome and the fact that he was also the duty DS due on duty at 07.00hrs on 13 June, a Sunday with reduced travel opportunities.

1.64. At some point after 1900hrs he considered his shift was done and believed that the situation was set that either a charge or the Domestic Violence Powers Notice (DVPN) would be served and he could go off duty but as he was keen to hear the result from the Crown Prosecution Service (CPS) he waited in the CID office and drank some alcohol that he had bought for the conclusion of his shift. While he was sat in the office the result came in from the CPS requesting further tasks, including the submission of a compellability report to be done.

1.65. He checked with Xxxx who was handling the DV matter and his wider CID colleagues who were present, but none of them knew what a compellability report was. Given the circumstances and the urgent need to safeguard the victim, he decided to resume duty to assist his colleagues which he felt was necessary in the best interests of policing. He stated that he believed he told the Duty Officer, Inspector Xxxx that evening that he had had a drink off duty and then needed to resume duty.

1.66. In terms of timings as to when he went off duty and later resumed duty, the officer stated in live evidence that he was unsure of what time he ate his food and drank the cans of lager but the last task he would have undertaken was the MG3 document which is recorded as being signed off at 20.27hrs. He said he would not have eaten until after that. The agreed timeline further shows that a decision from the CPS rejecting the charging authority was communicated at 21.22hrs. The officer said he would have placed himself back on duty sometime shortly after this decision was received as he realised that no one knew what a compellability report was. Therefore, he was off duty for approximately one hour between approximately 20.30hrs and 21.30hrs during which time he had his meal and drank some beer.

1.67. The officer confirmed that once the CPS asked for the tasks to be done which included a compellability report, he felt he could not abandon his officers as it was not something any of them had done before so he opted to resume duty to ensure that it was done.

1.68. At the time, the fact that he had consumed alcohol was not an issue, he was not intoxicated, and the job at hand was his focus. In his view, he had not made a false overtime claim as he was still working at 8pm and continued to do so until 1am when he left the police building. Furthermore, he was not drunk on duty. He believed that he had finished his duty when he had his meal and drunk alcohol, and then realised he needed to work and placed himself back on duty.

1.69. He accepted that he did not record the decision to place himself off/on duty anywhere but considered that was a decision as a Detective Sergeant he felt that he was entitled to make. His focus was on the DV case he was dealing with and it did not cross his mind that he should have emailed someone to record the decision to resume duty. During cross-examination, he accepted that it was unusual for an officer who had gone off duty to place themselves back on duty within a short period especially one who had consumed alcohol.

1.70. In terms of how much alcohol the officer had consumed, he said in live evidence he had a pack of 4 cans of San Miguel beer. He did not drink 3 cans. He drank one can with his microwave meal and had less than half of a second can before emptying it away as he knew at the end of the shift, he would be resuming duty early the next day and therefore did not want to consume the remaining two cans. He therefore offered them to officers Xxxx, Xxxx and Xxxx. Only A/DS Xxxx accepted one can and placed it in his bag. The other two DCs declined and so he emptied the contents of the final can down the sink and put it in the bin.

1.71. He wasn't drunk when he resumed duty and did not think that it would set a bad example to be seen drinking in the station as he had seen supervisors drink alcohol in the building when off duty, so he did not have a problem with it.

1.72. During cross-examination the officer said no officers had seen him drink in the office before. He accepted it was a poor decision to drink alcohol in the office. He accepted that he had asked his colleagues for some chewing gum to take the alcohol smell away before going to the custody area. He accepted that he had failed to take himself off duty which was an error, but still considered himself to be off duty even though he was still doing work tasks that evening, noting there have been numerous occasions when he was required to do things outside of hours.

1.73. The officer said that although Xxxx was experienced in DV matters, he had no prior experience of preparing a compellability report and therefore he had to step in to assist the team to get it done. It was not his recollection that it took Xxxx only a short while before he got to grips what was needed by the CPS. Had that been the case the officer's actions would have been very different that evening.

1.74. The Panel also heard live evidence from Xxxx, Xxxx and Xxxx.

1.75. Xxxx said that on the 12 June she worked the CID night turn cover from 19.00hrs to 07.00hrs on Sunday 13 June. She was paired with Xxxx on the same shift. She said that although it was only an estimate, at around 19.30hrs she saw the officer bring a 4 pack of San Miguel lager to his desk which she thought he had taken from the fridge. He also had a Tesco ready meal with him.

1.76. She was not offered a drink by the officer, but Xxxx was given a can although she did not see him drink it. She said there was no explanation why the officer was drinking alcohol while on duty and he said nothing about it. Likewise, she made no comment to the officer about drinking alcohol but was dumbfounded that he was behaving as if he was at home. She thought she saw him open two cans of lager; she could not say that he had drunk the three cans. The first drink was about 7.30pm or even 8pm.

1.77. The cans of lager were put in the bin of the CID office which were within her view. She saw the officer go to the bin on two occasions. The first occasion she remembered making a comment about crushing the can against his head before he put it in the bin. The second can of lager was put in the bin before he was about to go home which she said was around 0030hrs on Sunday 13 June. When she put her pizza box into the bin later in the evening, she found three cans in there.

1.78. Xxxx also recalled that that about 2300hrs, the officer asked her and Xxxx for any chewing gum as he was going to the custody suite. She made comment to him along the lines 'Is that so they can't smell you?' and he laughed and said 'Yes'. During cross-examination, it was suggested that the officer was off duty when he was drinking alcohol and then came back on duty and did not drink again. She disagreed with that position.

1.79. Xxxx recalled in his live evidence that he said to the officer it was 'a bit early for that' when he saw him drinking alcohol in the office. He said that although he made the comment, it made him feel uncomfortable as the officer was his line manager. He said that he did not know whether the officer was on or off duty but he personally did not think it was allowed to drink alcohol at all on police premises.

1.80. Xxxx said in his live evidence that he worked the same day shift as the officer on 12 June. He was seated beside the officer and recalled it was one of the most intense days that required him to work beyond his shift hours until very late. He was frazzled by the end of it. He had no recollection of the officer booking back onto duty as there was no need for him to do so as he was very experienced in DV cases and capable to deal with the issues arising from the DV case. Furthermore, he did not recall receiving much assistance from the officer during the evening to get the DV case 'over the line'.

1.81. He had never seen any alcohol in the police station before and believed that it had no place in a police building. He did not ask the officer if he was off duty when he saw him drinking but assumed he was off duty, as you would have to be a fool to consume alcohol in front of colleagues if you were still on duty. He said he did not recall how much the officer had consumed by the end of the evening but if his witness statement said he had consumed two or three cans of beer while he (Xxxx) was in the office then he would stick with his statement which was closer in time to the event.

1.82. The Panel has also reviewed the written evidence of Duty Inspector Xxxx dated 09/08/2021 regarding what was said to him by the officer on the evening of 12 June.

1.83. Inspector Xxxx stated that he was not aware that the officer had allegedly consumed alcohol whilst on duty on 12 June 2021. As far as he could recall, the officer did not tell him that he had resumed duty after consuming alcohol which would have been very unusual and therefore something that he believed he would recall. In fact, he did not recall having any conversations with the officer during the evening.

1.84. The Panel has carefully reviewed the evidence and has borne in mind the character evidence provided and also weighed in the balance the adverse judicial finding made by a civil judge regarding the officer's previous lying. The Panel makes the following findings below on the balance of probabilities.

1.85. In relation to whether the officer went off duty or not during the evening of 12 June, the Panel finds that he did not go off duty at the end of his designated shift at 19.00hrs, or as he suggests around 20.30hrs. The Panel finds that he continued working after the conclusion of his designated shift hours until around 1am on Sunday 13 June when he left the police station to his hotel.

1.86. The Panel does not find the officer's evidence credible or reliable that he went off duty and then resumed duty. In this regard, he said that he anticipated from early in the day that he would need to work beyond his shift hours and therefore secured authorisation for overtime and a hotel. When his shift finished, the Panel finds that he remained in the CID office engaged in various work matters which can be seen from the agreed timeline for the 12 June in the case bundle (at page 106). This was consistent with his earlier expectation when he booked his hotel.

1.87. The evidence from the agreed timeline shows that the officer was actively involved in receiving emails on work related matters after his day shift ended at 19.00hrs. At 19.19hrs, he received an email from A/DS Xxxx regarding the DVPN. At 20.27, the officer signed off the MG3 charging advice in the DV case. At 20.55hrs, the officer signed off the Supervisor's checklist regarding charging advice. At 21.00hrs the officer sent an email to A/DS Xxxx about the Supervisor's checklist. There are further activities undertaken by the officer listed in the timeline until his recorded booking off time at 01.00hrs.

1.88. The officer claimed that he resumed duty on or around 21.30hrs and said that he had informed Inspector Xxxx of this fact and that he had consumed alcohol.



Inspector Xxxx has stated that he has no recollection of any conversation with the officer on 12 June. The Panel finds that Inspector Xxxx has no reason to lie. As the Duty Inspector he said it was unusual for an officer to resume duty after consuming alcohol and therefore it is something that he believed he would have remembered if it had happened. The officer also agreed that it would have been unusual to resume duty in the circumstances.

1.89. Additionally, the officer did not formally log off duty even though he would have had no reason to believe that he would have been required to resume duty. He said he had to resume duty to help his team. However, A/DS Xxxx who the Panel finds to be a credible witness confirmed there was no necessity for the officer to have resumed duty as he was more than capable of dealing with the DV case on his own and in any event the officer was not of any great assistance. Taken together, all of these factors suggest to the Panel that it is highly improbable that the officer went off duty and then resumed duty as he has suggested.

1.90. The more plausible reason for the officer's explanation about going off duty and then resuming duty is because the officer is well aware that it is a breach of the Code of Ethics for police officers to drink alcohol on duty. The evidence that the officer was drinking alcohol on police premises is incontrovertible. The only avenue therefore available to the officer to avoid a breach of professional standards is to state that he was off duty during the period that he consumed alcohol and then for him to resume duty in order to avoid being accused of making a false claim for overtime.

1.91. In the circumstances, the Panel finds the officer's evidence regarding factual allegation 10 to lack all credibility. Accordingly, the Panel finds that he did consume alcohol whilst on duty at Bishopsgate Police Station. Based on the evidence of A/DS Xxxx who was seated next to him, the Panel finds he drank 2-3 cans of lager. Based on the evidence of Xxxx who the Panel also finds to be a credible witness, the Panel finds that the officer commenced drinking alcohol latest from on or about 8pm until late into the evening.

1.92. In light of the Panel's findings regarding factual allegation 10, the allegation concerning a false overtime claim falls away and is found not proven.

**Factual Allegation 14 ('Extreme pornography comment')**

*'On or about 9<sup>th</sup> July 2021 TDS Kitchener made inappropriate comments about his views on extreme pornography'*

1.93. In his Regulation 31 response, the officer said there was a conversation with colleagues about the definition in law of 'extreme pornography'. The officer did not know that it did and believed that he asked a colleague to look it up. The officer did not express any personal view in relation to 'rape pornography' as distinct from his understanding of the definition in law.

1.94. In his Regulation 18 response, the officer recalled that in the news there was a reference to extreme pornography. As part of this desire to promote collective learning there was a discussion about the definition as to what was extreme pornography under the relevant legislation rather than what they thought was extreme. It was a professional conversation with colleagues and he never expressed a view that rape should not amount to extreme pornography.

1.95. In his live evidence, the officer said that he could not recall who had started the conversation but it started as a result of a news article. He accepted that he did 'shrug' when discussing whether rape was extreme pornography but denied that it was prefaced with him saying 'Well...'. He further accepted that his 'shrug' might have given the impression that he was expressing a personal view that rape was not extreme pornography. When asked 'Why did he not apologise?'. He replied he was taken back and irritated by the remark made by Xxx that she hoped he was not bringing up his boys to hold such views. He said he did not speak to her after that exchange and accepted that his knowledge of the law was out of date.

1.96. Xxx gave live evidence. She said the conversation about extreme pornography arose following a press article she had mentioned to the team about Wayne Couzens having watched extreme pornography and the possible link to his subsequent action in murdering Sarah Everard.

1.97. She said the officer asked 'What do you count as extreme pornography?' She replied bestiality and rape. The officer agreed with bestiality but said 'Well' and then shrugged in relation to rape being extreme pornography. She said that her interpretation of his response was that he would not count rape as extreme pornography. She found this shocking and told him that she hoped as a father that he was not giving his boys that attitude.

1.98. Xxx said that she did not challenge the officer as she was awaiting a decision regarding transferring to another team, and in any event very shortly afterwards the officer was taken off the team. She did not recall any conversation about the legal definition of pornography.

1.99. During cross-examination, Xxx confirmed that she did interpret the officer's response as his personal view. She rejected the idea that it was simply the officer

asking a question about the legal definition of extreme pornography. Furthermore, she had no recollection of Xxxx being asked to check the legal definition of extreme pornography.

2.0. Xxxx said in his live evidence that he had no recollection of being asked to look up something about extreme pornography at the officer's request.

2.1. The Panel has reviewed the evidence and finds on the balance of probabilities the allegation is proven. In reaching its decision, the Panel finds that the officer is mistaken that he requested Xxxx to look up any legal definitions about extreme pornography.

2.2. Neither Xxxx nor Xxxx heard any request from the officer to do so. The Panel accepts their evidence. In the circumstances, the Panel does not accept the officer's version of the conversation that he was simply asking a question as to whether rape was part of the legal definition of extreme pornography. Having found that he did not ask for any legal definition checks, the Panel is also aware that the officer has accepted that his 'shrug' could have given the impression of a personal view that rape was not extreme pornography. Accordingly, the Panel finds that Xxxx was not unreasonable in interpreting the officer's response as his personal view.

2.3. Turning to the third and final category of factual allegations, namely, those where there remains a clear factual dispute. These four allegations are addressed below.

**Factual Allegation 1 ('Slavery comment')**

*'On or about 9<sup>th</sup> March 2021 TDS Kitchener made an Inappropriate comment about slavery, suggesting that it was a good thing'.*

2.4. In his Regulation 31 response, the officer said he did not recognise the language 'Slavery got shit done'. He does not hold the view that slavery was, or is a positive institution and would not have used such language. Furthermore, he volunteered for the role of modern slavery single point of contact in the City of London Police and would not hold such an idea.

2.5. In his Regulation 18 response and consistent with his live evidence, the officer said he did have a conversation in the office when reparations had been completed for slave owners and it had made the press, but noted that Xxxx was not part of that discussion.

2.6. Xxxx said in live evidence that on 09/03/2021 when she was in the CID office along with T/DC Xxxx and Xxxx she overheard the officer who was standing by the

water fountain in her sight say to Xxxx 'I am a big fan of slavery, slavery got shit done'. She did not recall Xxxx's reaction or xxx as they were both out of sight.

2.7. Xxxx said she did not hear anything before the officer made the comment or after. Once the comment was made, she looked up and recognised it was the voice of the officer. She was shocked by the comment.

2.8. Xxxx also gave evidence. He confirmed that he never heard any comments about slavery. He was sure had it been said, he would have challenged it and he would have remembered it.

2.9. The Panel has reviewed the evidence and finds on the balance of probabilities the factual allegation is not proven. There is a paucity of evidence put forward by the AA pointing to the officer as the person who made the slavery comment. The officer has been identified only by his voice. Xxxx said that he did not remember any comments about slavery being made and had such comments been made he would have remembered them and challenged the officer. The Panel accepts his evidence as persuasive in the circumstances and corroborative of the officer's denial.

### **Factual Allegation 3 ('Lesbian comment')**

*'On a date around the early part of 2021 TDS Kitchener made homophobic comments to a female officer about her sexuality, including 'You Dress like a typical lesbian', or similar words'.*

2.10. In his Regulation 31 response, the officer said he did not recognise the language 'typical lesbians' and believed that he would not use that language. However, he did recall a conversation in which there was a discussion of stereotypes and how in different ways stereotypes can operate. He believed, in that context, he may have asked his colleague how she had chosen what she was wearing. The conversation was not meant to hurt or ridicule.

2.11. In his Regulation 18 response, the officer stated that he didn't have any thoughts as to what a typical lesbian was or would dress like and would not have made comments around such a thing.

2.12. In her live evidence, Xxxx said that the comment made by the officer namely that 'You dress like a typical lesbian' or words to that effect was made 'off the cuff'. There was no prior conversation. She responded by 'Oh yes, straight hair, straight trousers and flat shoes, must be a lesbian'. She mentioned that on another occasion he had mentioned her canvas belt, which comment again seemed to come from nowhere. The comments did not seem like a joke and were said in a direct way.

2.13. Xxxx said the officer's comments were hurtful and were directed at her sexuality. She felt ridiculed because she dressed sensibly and appropriately for her

role and no one had ever commented on her dress. She admitted that the remarks did change her working relationship with the officer. It was during Covid-19 and she felt isolated as there were few people around to discuss her concerns. At that time the face of the City of London Police was the officer.

2.14. The Panel has reviewed the evidence and finds that it comes down to Xxx's word against the officer. The Panel is aware that in his Regulation 18 response the officer did not raise that his comment was made in the context of stereotypes from yesteryear and how this had influenced dress. That explanation only appeared in his later Regulation 31 response.

2.15. There is also evidence admitted by the officer that he had previously commented on Xxx's clothing concerning a canvas belt which comment appeared to come from nowhere. Furthermore, on this occasion Xxx did make a retort to the officer's alleged statement clearly indicating that something was said to her that she did not like. Taking these factors into account including the character evidence, and weighing in the balance the adverse judicial comment made by a civil judge about the officer's previous lying, the Panel finds the evidence of Xxx to be more credible compared to the officer. Indeed, the officer accepted in evidence that he knew of no reason why Xxx would lie or fabricate allegations against him. Accordingly, based on the balance of probabilities, the Panel finds the factual allegation is proven.

**Factual Allegation 6 ('Skirt comment')**

*'On a date unknown around early April 2021 TDS Kitchener made a comment about a colleague's skirt not being short enough'.*

2.16. In his Regulation 31 response, the officer stated that he did recall having cause to raise a matter of appropriate/dress with Xxx but he never advised her that she should wear a shorter garment, to the contrary he advised her that her skirt was too short. It therefore followed that the officer did not suggest that she should wear a shorter garment to influence his supervisory decisions.

2.17. In his Regulation 18 response and consistent with his live evidence, the officer said that he remembered that he had admonished Xxx on one day for the shortness of her skirt. He said he recalled being annoyed regularly at her clothing – it was often not that smart. He said on one particular day he looked along the lines of the desks and could see that the skirt was above mid high as Xxx was sat down. He thought it was too short and he told her so and that she accepted his comment. Other than that occasion, he struggled to think of another occasion where he would have said anything as alleged. He did not recollect at all saying something as alleged.

2.18. Xxx said in her live evidence that while the officer was in conversation with Xxx, she told him she would be sending him a PA request and asked him to close the occurrence. At the time she was wearing tights and a black skirt which fell just

above the knee. He replied if you want that job PA'ed, you should have worn a short skirt'. She then laughed and said 'I am wearing a skirt, so PA the job'. The officer then replied 'It will have to be shorter than that'.

2.19. Xxxx said this was the first such comment made to her by the officer and she felt it necessary to keep up the banter and therefore the response she gave was necessary to be included in the jokey conversation.

2.20. During cross-examination, Xxxx was asked about another occasion when she was told by the officer that her skirt was too short. She strongly denied that the officer had ever spoken to her about the suitability of her clothing, especially as she took great care to wear suitable clothing to work. She said had the officer brought it up, she would have been 'pretty offended' and would have remembered.

2.21. The Independent Panel Member asked the officer to explain what the work policy said about suitable clothing. He replied that he did not locate the policy so did not know what it said. He was then asked by the Independent Member to explain in the absence of the work policy what benchmarks he had used to determine the suitability of Xxxx's clothing when he spoke to her. The officer was unable to respond fully to the question and struggled to answer it in any meaningful way.

2.22. The Panel also heard from Xxxx. He had no recollection of the alleged comment about clothing being made by the officer to Xxxx. He said he would like to believe that he would have remembered and challenged it.

2.23. The Panel notes that as Xxxx is unable to recall anything of the comment that it is the word of Xxxx against the officer.

2.24. Having considered the evidence, the Panel finds on the balance of probabilities the allegation is proven. The Panel has reached this decision on the basis that it has found Xxxx to be a more credible witness than the officer. In this regard, despite claiming that he had admonished Xxxx on another occasion for wearing unsuitable clothing, he was unable to provide any detail regarding the benchmarks he had applied regarding suitable clothing. This suggests to the Panel that no admonishment occurred as stated by Xxxx.

2.25. Furthermore, the officer stated that Xxxx simply accepted being admonished. The Panel does not accept the officer's evidence. The Panel heard the evidence of Xxxx. She was adamant that she was never approached by the officer and would have been 'pretty offended' had the officer mentioned anything about her clothing. She would also have remembered it. The Panel accepts the evidence of Xxxx as credible and reliable. In reaching its decision, the Panel has taken into account the

character evidence, and weighed in the balance the officer's adverse judicial finding for lying.

**Factual Allegation 13 ('Cardigan comment')**

*'In July 2021 TDS Kitchener made an inappropriate comment to a female colleague about the fit of her cardigan and the size of her breasts'.*

2.26. In his Regulation 31 response, the officer stated that he may have made a comment about the cardigan which was very small and appeared not to be functional (asking her whether it did up) but he did not make any comment about Xxxx body (and specifically did not refer to her breasts/chests). The officer said he regretted any comment that caused Xxxx upset or to become self-conscious as that was not his intention.

2.27. In his Regulation 18 response, consistent with his live evidence the officer stated that xxx was wearing a cardigan that was very small and more an accessory than a practical device. He may have asked her if it did up, but not in reference to her chest despite how she seems to want to take it. He said they worked together as a pair without incident and he thought they had a good relationship as friends. During cross-examination, when asked 'Why was it important to ask Xxxx the question?' the officer stated that 'It was a genuine light enquiry'.

2.28. Xxxx gave live evidence on the matter. She stated that in July 2021 she had come into the CID office and approached the officer's desk. He was seated and she was standing. He said 'Can I ask you a question?' to which she replied 'Yes'. He then replied 'Does that cardigan actually fit over your chest?' whilst looking at her chest area. She said she looked down and closed her cardigan. It was a 'one-off' comment that made her feel uncomfortable and self-conscious. She did not confront or challenge the officer's behaviour.

2.29. During cross-examination, it was explained to Xxxx that the officer accepted that he was seated and she was standing. However, he denied mentioning anything about her 'chest' and took her cardigan to be an accessory rather than an object of any use which formed the basis of his question. Xxxx stated that she disagreed with the officer's version and reiterated that he did mention her chest. She also accepted that she had 'gossiped' about the officer in the office.

2.30. The Panel has reviewed the evidence and finds on the balance of probabilities the allegation is proven. In reaching its decision, the Panel is mindful that the defence has suggested that at the time of the incident the officer and Xxxx were friends and the officer did not consider he had done anything offensive, but subsequent discussions and gossip involving Xxxx have led to the allegation.

2.31. The Panel has considered the issue of collusion and also fabrication as the defence suggestion alludes to, but has found no merit in the submission for two reasons. First, while Xxxx did admit to openly gossiping about the officer with other colleagues, the evidence of this occurring relates to when A/DS Xxx said he saw Xxxx and Xxxx in the main CID office on 25 June 2021 and asked them to stop. The allegation regarding Xxxx cardigan did not occur until July 2021, and there is no evidence of any further discussion amongst colleagues relating to this matter. Second, the officer stated in evidence that he knew of no reason why Xxxx would make up lies or fabricate allegations against him. Accordingly, the Panel finds no merit in the defence submission on this issue.

2.32. The officer admitted to asking Xxxx if the cardigan which was very small and appeared not to be functional was capable of being done up. It is obvious that the reference to being functional and capable of being done up could only have reasonably meant across Xxxx chest area. It could not have meant any other part of her anatomy as the officer was sat down looking towards her chest area.

2.33. In the circumstances, the Panel finds it highly improbable given his admitted comments and 'light enquiry' that he did not mention Xxxx chest as part of his question. He said they were good friends. In the Panel's view, this is a case where the officer had no legitimate business making any enquiry of DC Xxxx's attire. She was a junior female colleague in his team and he was her supervisor. He overstepped the professional boundaries by making a highly inappropriate and sexist comment.

### **Summary of Factual Findings**

2.34. Based on the Panel's factual findings, Allegations 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13 & 14 are found proven. Factual Allegations 1 and 11 are found not proven.

### **To ascertain whether the facts as determined by the Panel constitute a breach of the Standards of Professional Behaviour**

2.35. The Panel has considered the proven facts and is mindful that in considering this question, it has to exercise reasonable judgement and give appropriate and careful consideration to the evidence. The Panel is also aware that when applying the Standards of Professional Behaviour in any decision or misconduct hearing they



shall be applied in a reasonable, transparent, objective, proportionate and fair manner and, due regard shall be paid to the nature and circumstances of a police officer's conduct, including whether his or her actions or omissions were reasonable at the time of the conduct under scrutiny. The Panel notes that all police officers are in a position of trust and responsibility whether on or off duty.

2.36. Turning to the alleged breaches of the Standards of Professional Behaviour in relation to the proven factual allegations set out in the Regulation 30 notice. These are below (recalling that factual allegations 1 (slavery) & 11 (overtime) were found not proven and are therefore not included):

**Factual Allegations 2, 3, 6, 7, 8, 13, 14**

**Authority, Respect and Courtesy** - This standard provides that an officer must carry out their role and responsibilities in a professional manner, avoid any behaviour that might impair their effectiveness or damage either their reputation or that of policing and ensure that their behaviour and language could not be reasonably perceived to be abusive, oppressive, harassing, bullying, victimising or offensive by the public or policing colleagues.

**Equality and Diversity** - This standard provides an officer will act with fairness and impartiality and will not discriminate unlawfully or unfairly. Specifically, the standard requires an officer to consider the needs of protected characteristic groupings and to actively seek or use opportunities to promote equality and diversity.

**Discreditable Conduct** – This standard requires an officer to behave in manner whether on or off duty that does not bring discredit on the police service or undermine public confidence in policing.

2.36. Based on the Panel's findings in relation to factual allegations 2, 3, 6, 8 & 13, the Panel finds each proven factual allegation has breached the Standards of Professional Behaviour relating to Authority, Respect & Courtesy, Equality and Diversity and Discreditable Conduct because police officers are expected to treat people fairly and with courtesy and respect and not make their colleagues feel uncomfortable or upset.

2.37. Although the Panel has found factual allegations Nos. 7 & 14 proven, the Panel does not consider that its findings constitute a breach of the alleged Standards of Professional Behaviour relating to Authority, Respect & Courtesy, Equality and Diversity and Discreditable Conduct.

2.38. The Panel views the exchanges at factual allegation 7 to have been made against a 'jokey' context on both sides and therefore does not rise to the threshold of a breach of the alleged Standards.

2.39. In relation to factual allegation 14, the Panel finds that the working relationship between Xxx and the officer had already deteriorated by the time of this incident which may have heightened the tension between them. This can be seen by the personal comments made by Xxx about how the officer was raising his boys and his annoyance and irritation towards her.

### **Factual Allegations 4 & 12**

**Authority, Respect and Courtesy** - This standard provides that an officer must carry out their role and responsibilities in a professional manner, avoid any behaviour that might impair their effectiveness or damage either their reputation or that of policing and ensure that their behaviour and language could not be reasonably perceived to be abusive, oppressive, harassing, bullying, victimising or offensive by the public or policing colleagues.

2.40. Based on the Panel's findings in relation to factual allegations Nos. 4 & 12, the Panel finds each proven factual allegation has breached the Standards of Professional Behaviour relating to Authority, Respect & Courtesy because police officers are expected to treat people fairly and with courtesy and respect.

### **Factual Allegation 5**

**Authority, Respect and Courtesy** - This standard provides that an officer must carry out their role and responsibilities in a professional manner, avoid any behaviour that might impair their effectiveness or damage either their reputation or that of policing and ensure that their behaviour and language could not be

reasonably perceived to be abusive, oppressive, harassing, bullying, victimising or offensive by the public or policing colleagues.

**Equality and Diversity** - This standard provides an officer will act with fairness and impartiality and will not discriminate unlawfully or unfairly. Specifically, the standard requires an officer to consider the needs of protected characteristic groupings and to actively seek or use opportunities to promote equality and diversity.

**Discreditable Conduct** – This standard requires an officer to behave in manner whether on or off duty that does not bring discredit on the police service or undermine public confidence in policing.

2.41. Based on the Panel’s findings in relation to factual allegation 5 only, the Panel finds the proven factual allegation has breached the Standards of Professional Behaviour relating to Authority, Respect & Courtesy, Equality and Diversity and Discreditable Conduct because police officers are expected to treat people fairly and with courtesy and respect and not send disrespectful and misogynistic text messages about a high profile and ongoing murder investigation.

### **Factual Allegation 9**

**Honesty and Integrity** – This standard requires an officer to be honest and act with integrity at all times and not compromise or abuse their position.

**Discreditable Conduct** – This standard requires an officer to behave in a manner whether on or off duty that does not bring discredit on the police service or undermine public confidence in policing.

2.42. Based on the Panel’s findings in relation to factual allegation 9, the Panel finds the proven factual allegation has not breached the Standards of Professional Behaviour relating to Honesty and Integrity and Discreditable Conduct because the officer was honest and acted in accordance with his previous experience when he signed the medical form as an A/DI. He did not hide anything from his line manager nor did he think he had done anything wrong. The matter was dealt with through ‘words of advice’ by his line manager, Xxxx. The Panel finds as a matter of fairness that the course followed by Xxxx to address the misunderstandings on the part of the officer should be treated as the end of the matter.

### **Factual Allegation 10**

**Fitness to Work** – This standard requires an officer when on duty to be fit to carry out their responsibilities. Specifically, it prohibits the consumption of alcohol when on duty.

**Discreditable Conduct** – This standard requires an officer to behave in a manner whether on or off duty that does not bring discredit on the police service or undermine public confidence in policing.

2.43. Based on the Panel's findings in relation to factual allegation 10, the Panel finds the proven factual allegation has breached the Standards of Professional Behaviour relating to Fitness to Work and Discreditable Conduct because police officers should not drink alcohol when on duty.

**Summary of Proven Factual Allegations Relating to Breaches of the Standards of Professional Behaviour**

2.44. The proven factual allegations that give rise to breaches of the Standards of Professional Behaviour are as follows:

- Allegation 2 - Soho comment
- Allegation 3 - Lesbian comment
- Allegation 4 - DC Competence
- Allegation 5 - Police Signals
- Allegation 6 - Skirt comment
- Allegation 8 - HAM comment
- Allegation 10 - Drinking Beer
- Allegation 12 - AOJ comments
- Allegation 13 - Cardigan comment

2.45. The proven factual allegations that do not give rise to any breaches of the Standards of Professional Behaviour are as follows:

- Allegation 7 - Relationship comment
- Allegation 9 - Medical Form
- Allegation 14 - Extreme Pornography comment

**Whether the breach of the Standards of Professional Behaviour amount to Misconduct or Gross Misconduct?**

2.46. Having found multiple breaches of the Standards of Professional Behaviour, the Panel went on to consider the issue of seriousness of the proven conduct to determine whether the proven conduct amounts to 'misconduct' or 'gross misconduct'. The Panel is mindful that 'Misconduct' is defined as a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action and 'Gross Misconduct' is defined as a 'breach of the Standards of Professional Behaviour that is so serious as to justify dismissal.

2.47. In considering the issue of seriousness of the proven conduct, the Panel has assessed the officer's culpability for the misconduct; the harm caused by his misconduct and has identified the existence of any aggravating and mitigating factors relevant to the conduct. In undertaking this task, the Panel is acutely aware that the conduct of the officer is to be judged according to the circumstances prevailing at the time it occurred and not now. It is a contemporaneous assessment.

2.48. In terms of culpability, the Panel finds that the officer is solely responsible for his poor behaviour towards fellow policing colleagues. Despite being a leader and supervisor, he consciously chose a course of action to be deliberately provocative without any consideration for the sensitivity of others that he led or respect for the protected characteristics of colleagues. He showed no respect for their personal boundaries often recklessly straying into their private lives where he had no legitimate purpose resulting in consternation, upset and hurt from those who were the audience and/or target of his behaviour. It was his responsibility as a police leader to role model the principles and standards set out in the Code of Ethics, yet he disregarded the sensitivities of others and conducted himself as if he were immune from any accountability as demonstrated by drinking alcohol in front of his colleagues while on duty. His conduct is characterised by a pattern of inappropriate comments about sex, sexuality, appearance, race, religion and/or ethnicity which is never acceptable and is always serious.

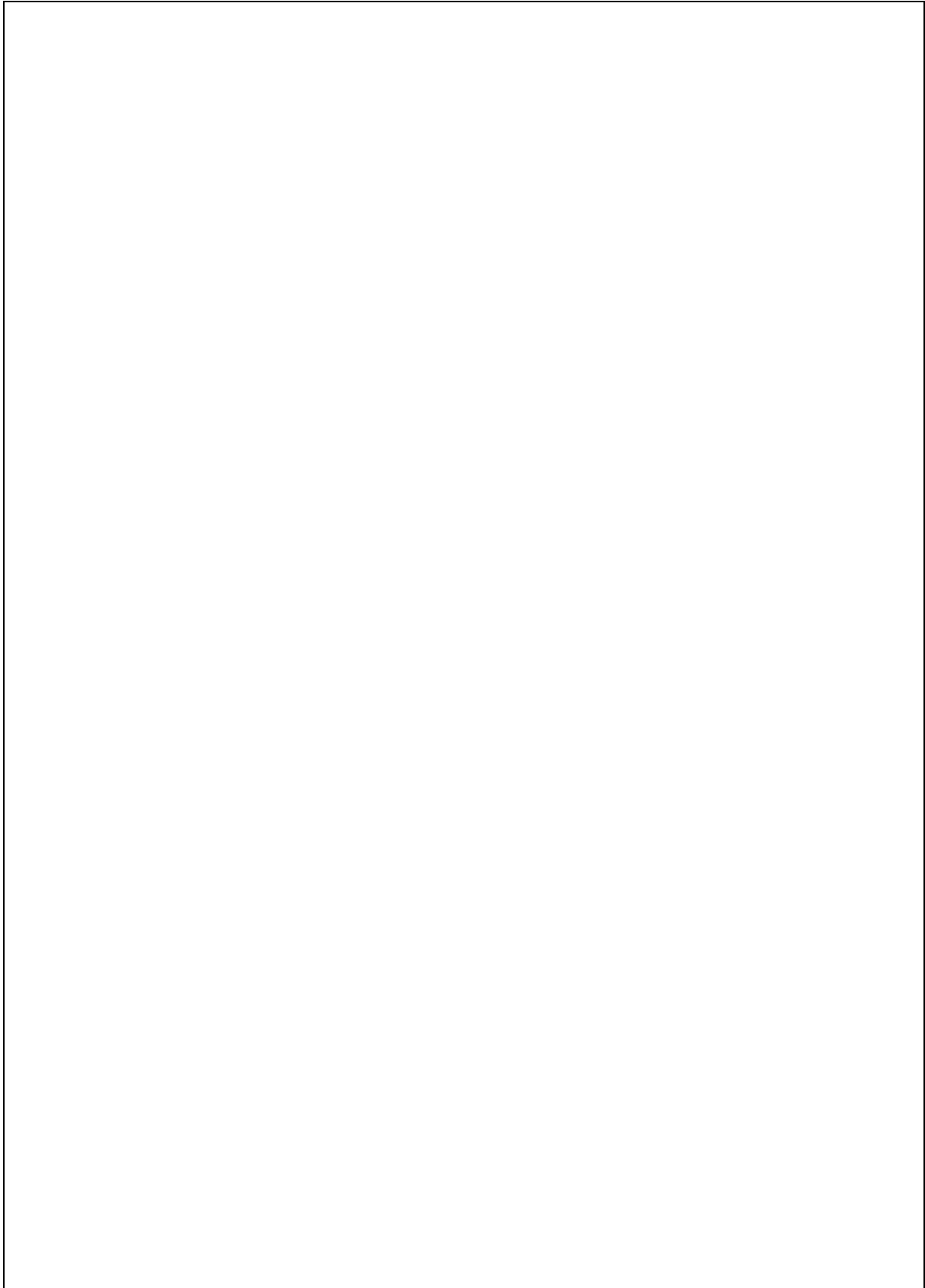
2.49. The impact of the harm caused by the officer's actions is significant and can be viewed in several ways. Harm has been caused to junior female and male officers in his team who were hurt, upset or shocked by his behaviour. The Panel also considers that the officer's conduct would harm public confidence if the circumstances were known to the public.

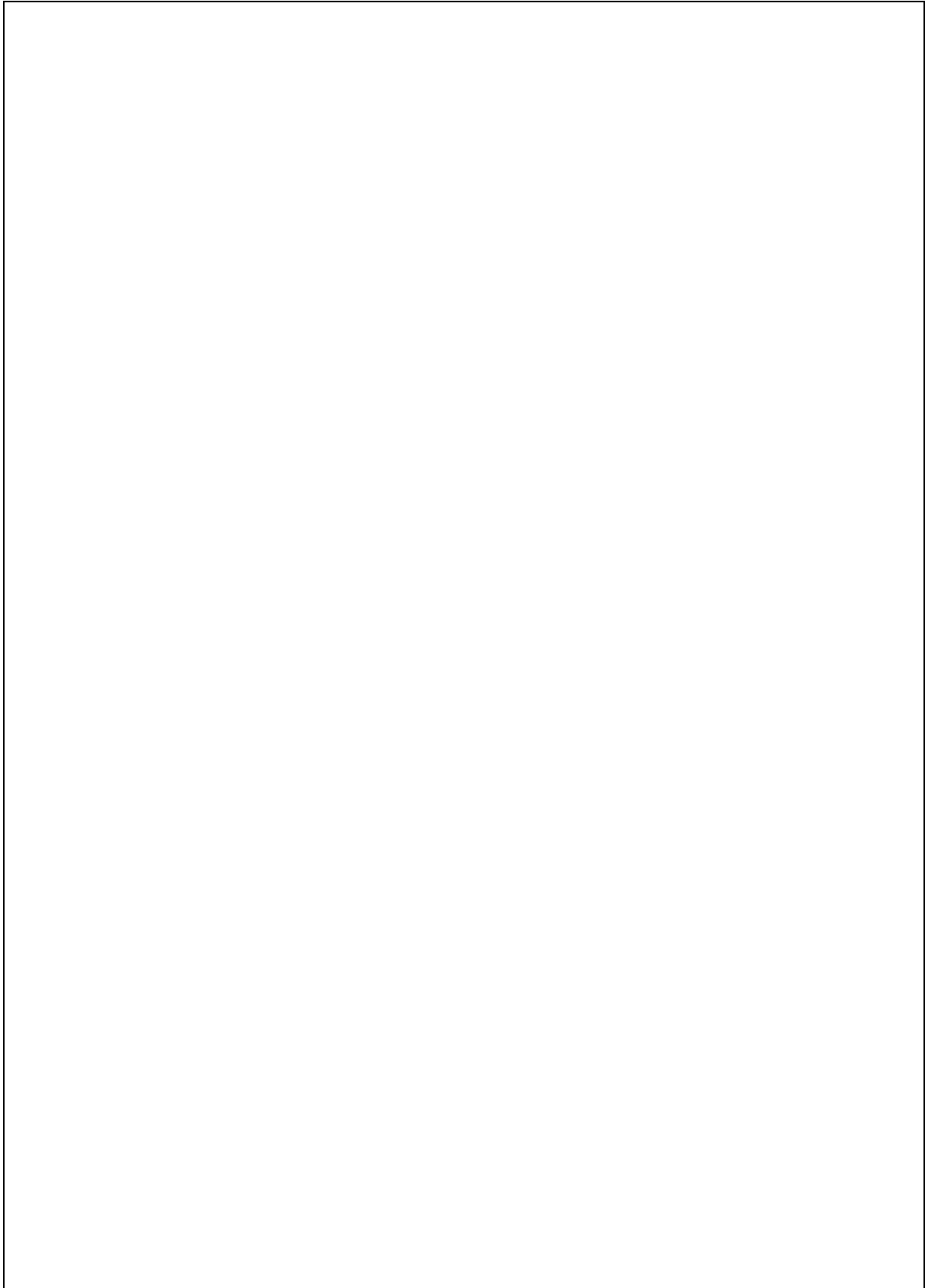
2.50. The Panel has also considered the presence of any aggravating factors relevant to the officer's conduct and finds the abuse of trust, deliberate conduct, regular, repeated or sustained behaviour over a period of time, multiple victims, an

element of unlawful discrimination, a significant deviation from policy regarding the consumption of alcohol on duty, the scale of national concern about officers sending misogynistic and other inappropriate text messages on WhatsApp Groups, failure to act as a leader and role model, together with multiple breaches of the Standards of Professional Behaviour all amount to aggravating factors.

2.51. Turning to the presence of mitigating factors relevant to the conduct of the officer, the Panel finds that his early admission and acceptance of responsibility in respect of two of the fourteen factual allegations, together with the expressed lack of intention to cause any hurt or upset to his colleagues stated through his Counsel constitutes some limited mitigation.

2.52. Having assessed the seriousness of the conduct of the officer, DS Kitchener, the Panel finds his culpability to be at the higher end of the scale and that the proven allegations taken individually and/or collectively against him amounts to **Gross Misconduct**.







**To be read to the Officer Concerned - Appeal**

Under Regulation 45 of the Police Conduct Regulations;

- (a) if the officer admitted the officer's conduct amounted to misconduct, against any disciplinary action imposed under regulation 42, or
  - (b) if (after the officer denied misconduct) the person conducting or chairing the misconduct meeting found that the officer's conduct amounted to misconduct, against that finding or any disciplinary action imposed under regulation 42.
- (2) The only grounds of appeal under this regulation are that -
- (a) the finding or disciplinary action imposed was unreasonable;
  - (b) there is evidence that could not reasonably have been considered at the misconduct meeting which could have materially affected the finding or decision on disciplinary action, or
  - (c) there was a serious breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding or decision on disciplinary action.
- (3) An appeal under this regulation must be commenced by the officer concerned giving written notice of appeal to the appropriate authority -
- (a) before the end of 7 working days beginning with the first working day after the report is given to the officer under regulation 43 (unless this period is extended by the appropriate authority for exceptional circumstances), and
  - (b) stating the grounds of appeal and whether a meeting is requested.

<b>Time / Date</b>	
<b>Signature</b>	