



**WRITTEN DECISION OF ACCELERATED MISCONDUCT HEARING
AND NOTIFICATION OF ENTITLEMENT TO POLICE APPEALS
TRIBUNAL**

Regulation 63 Police (Conduct) Regulations, 2020

Officer's Name: **Ryan THEAKER Force No. 1767**

Rank: **Former Constable**

This is to notify you that as a result of an investigation into whether your conduct may have breached the Standards of Professional Behaviour the Appropriate Authority has determined that the 'special conditions' as defined in Regulation 49(2)(a&b) of The Police (Conduct) Regulations 2020 are satisfied and has referred the matter to an Accelerated Misconduct Hearing.

The details of your conduct that it is alleged has breached the Standards of Professional Behaviour can be found below together with how that conduct is alleged to amount to gross misconduct.

The findings

I will first cover the application by the AA to conduct this hearing in the absence of former Constable Theaker.

I am satisfied that the former officer is aware that the hearing is taking place and he has elected not to attend. He gave notification to this effect.

I am satisfied that it is appropriate to continue in the officer's absence and this is supported by the Home Office guidance 2020 at para 11.06

In making my decision in this case I have considered the evidence that has been presented to me in the bundle that I have been provided with.

Before considering the finding I will first deal with the issue that the AA has covered in her opening in relation to the admissibility of the evidence relied upon in this case. The evidence in question is data that has been obtained from former PC Theaker's mobile telephone.

Former PC Theaker was arrested for unrelated matters and as part of that arrest his mobile phone was seized.

The material that has led us to the AMH today does not relate to the offence for which former PC Theaker was arrested but section 32 does enable the seizure and retention of material beyond that which relates to the original offence.

I am satisfied that former PC Theaker's mobile phone was lawfully seized and likewise the evidence which is relevant to this case lawfully seized and retained.

It is from the seizure of this phone and the subsequent analysis that the WhatsApp group 'turn the volume down' and the videos that the former officer shared on the group that forms the basis of these misconduct proceedings.

For the sake of completeness if I had determined that the evidence was inadmissible using my discretion, I would nevertheless have admitted it in evidence.

Although this is not a criminal case, I have considered section 78 of PACE and that it is fair to admit this evidence into the AMH because the former officer has fully accepted that it is he who sent these videos.

Secondly, I have considered the public confidence in the case, and it is of the utmost importance that our communities can have faith in the impartiality and fairness of the officers and staff that they come into contact with.

I have considered Article 8 of the Human Rights Act which I agree is engaged as these were private messages, however taking into account article 8 (2) and the stated case *BC and others v Chief Constable of Scotland (2021)* I am of the view that this material is so blatantly of discriminatory and vile nature which is so beyond the expectations of a police officer they have no legitimate expectations of privacy or alternatively that its use in these proceedings is proportionate.

I find that the admission of this material is proportionate and appropriate.

In making the findings I reminded myself that the burden of proof is on the AA and I have applied the standard of proof in civil cases, namely the balance of probabilities.

I have also taken cognisance of the Police (Conduct) Regulations of 2020 in determining whether this is misconduct or gross misconduct.

I have considered the four stages as set out in the Police (Conduct) Regulations 2020.

I will consider the first three parts now

a) Determination of the facts based upon what is admitted by the former officer or proven on the balance of probabilities.

The facts in this case are not disputed – they have been set out very clearly by the AA in her opening.

The incontrovertible evidence in this case – the videos speak for themselves they are ableist in nature.

Along with the fact that former PC Theaker has accepted being part of a private WhatsApp group he has admitted to sending these deeply offensive videos.

I am satisfied both that the facts are proven, the former officer has admitted the facts as well.

b) The second stage in determining on the basis of those facts that the former officer has breached the standards of professional behaviour alleged.

Based on the evidence of the nature of the videos that have been sent within this WhatsApp chat and I am more satisfied that former PC Theaker has breached the standards of professional behaviour namely

- Authority, respect and courtesy
- Diversity and Equality
- Discreditable conduct.

Behaviour of this nature completely discredits the police service and has a huge impact on the confidence of the public that we will act with fairness and impartiality whether on or off duty.

Authority, Respect and Courtesy.

The former Chief Constable was very clear about his expectation in relation to standards of behaviour and his commitment to inclusion was clear from the support that he gave to the networks including the DSN and the webinar that he did after the murder of George Floyd.

As Chief Constable I have been very clear with the organisation about my priority in relation to inclusion, which remains and I have developed the leadership strategy which is very clear about this priority and the behaviours that I expect in the way in which we treat members of our community and indeed each other.

The officer quite simply cannot have failed to know what the standards are in relation to discriminatory behaviour and language.

Through these videos the former officer has showed a complete lack of respect and courtesy for members of our community and for his colleagues who are committed to providing a high level of service to our communities.

Discreditable conduct.

At a time when trust and confidence has been impacted in recent years, and again when the former Chief Constable and I have set out very clearly that the number one priority for policing has to be building trust and confidence in our communities in Merseyside Police, the former officer has completely undermined the hard work, commitment and professionalism of every other Police Officer, Police staff member and volunteer working for Merseyside Police.

I remind the former officer of the oath that he took when he joined the police –
‘that I solemnly and sincerely declare and affirm that I will well and truly serve the Queen in the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people; and that I will to the best of my power; cause the peace to be kept and preserved and prevent all offences

against people and property; and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully and according to law.

He has failed to abide by the oath that he took.

I have considered the College of Policing Code of Ethics from 2014 which set out very clearly that members of the police force

- Should do the right thing.
- That we are answerable for our decisions, acts and omissions.
- We treat people fairly.
- We treat everyone with respect.

The former officer has completely failed to behave in accordance with the Code of Ethics.

The communities of Merseyside should quite rightly be disgusted by this case.

I am entirely satisfied that the standards of professional behaviour alleged have been breached.

Former PC Theaker is completely accountable for the way he has conducted himself during the period in 2021.

c) The third whether the breaches found amount to Gross Misconduct.

I have taken cognisance of the Police Conduct regulations of 2020 in determining whether this is misconduct or gross misconduct.

Gross misconduct meaning that a breach of the standards of professional behaviour so serious that a dismissal would be justified if he had still been a police officer.

The video on this WhatsApp chat are vile in nature and members of the community and FORMER PC Theaker own colleagues would struggle to have confidence that they would be treated fairly by him.

Former officer PC Theaker has also admitted to sending these deeply offensive videos.

His culpability is high – he chose to send not one, but two messages that were ableist in nature which he accepts is wrong.

I consider the harm caused by these messages to be considerable.

There can be no other finding other than of Gross Misconduct for

- Authority, respect and courtesy
- Diversity and Equality
- Discreditable conduct.

The Sanction

During the adjournment I have considered the submissions provided and I have given due regard to the record of service.

As per the College of Policing Guidance on outcomes I have considered the rationale for imposing a sanction including reference:

- to the **seriousness of the conduct**
- the former Officer's culpability
- and the harm caused by the misconduct.

The aggravating factors of the fact that two videos were shared across two different months.

Trust and confidence in policing was at a low following the murder of George Floyd by a US Police officer and nationally all police forces were working hard to restore that trust and confidence.

And whilst the officer would not have known it when he sent this message, the 9/3/21 is the day that Former Officer Wayne Couzens was arrested for the murder which has significantly impacted on trust and confidence in policing which is why it is imperative that policing continues to place importance on it.

Former PC Theaker has highlighted his immaturity as a mitigating factor which I have considered, but for me he took his oath, has been trained and the policy and guidance is in place – he simply cannot have known that videos of this nature are incompatible with the role of a police officer.

In his regulation 54 notice the officer accepts that he has breached the standards of behaviour but that they do not amount to gross misconduct, which I completely disagree with.

There is a suggestion that the sending of such videos does not compromise his public facing duties.

There is also a suggestion that there is no evidence that he has actually exhibited bigoted behaviours in the real world.

I find it incredulous that this has been submitted as part of the reg 54 notice – the former officer has been proactive in either searching and finding these videos online and sending them in the group or has received them from someone else and then proactively forwarding them.

He must have known that these videos were highly offensive and ableist – this is proactive discriminatory behaviour taking place in the real world, and that is exactly what members of our community would think.

In relation to the **seriousness of the conduct** – this is a finding of gross misconduct in case of

- **Authority, Respect and Courtesy**
- **Diversity, Equality and inclusion**
- **Discreditable conduct.**

The conduct of the former officer is incredibly serious and completely undermines the trust and confidence that our communities have in Merseyside Police.

The public, and most importantly, the communities of Merseyside have an expectation that they can have trust and confidence in their police force and that the officers and staff abide by the standards of professional behaviour and can be trusted to do the right thing.

He has completely failed to do this.

His culpability is very high.

I think that the **harm** caused by this case is significant - at a time when Merseyside Police are working incredibly hard to engage with **all** of our communities through our community engagement, our investment and commitment in relation to the Police Race Action Plan and delivery of the NPCC Diversity, Equality & inclusion strategy – this officer have completely undermined this.

I have no hesitation in giving the sanction as follows: -

The former officer PC Theaker has no place in policing and had he not already resigned the sanction would have been immediate dismissal without notice.

The officer will also be placed on the Police Barred List.

I hope that the communities of Merseyside recognise that the behaviours of this officer are not reflective of the behaviours demonstrated by the majority of Merseyside officers and that Merseyside Police are committed to improving trust and confidence and such behaviour will absolutely not be tolerated.

To confirm the finding of the Special Case Hearing and the outcome imposed is as follows:-

Outcome	Indicate Below
Would have been Dismissed without notice if still a serving officer	x
Final Written Warning	
Extension of Final Written Warning	
Gross Misconduct Not Proven – Case returned to Appropriate Authority	
Gross Misconduct Not Proven – Case dismissed	

Appeal Rights

You have the right of appeal to the Police Appeals Tribunal against any finding of gross misconduct made by the Chief Constable at this hearing unless that finding was made following acceptance by you that your conduct amounted to gross misconduct.

You also have the right of appeal to the Police Appeals Tribunal against any disciplinary action imposed as a result of that finding. The Tribunal can increase any outcome imposed as well as reduce or overturn the decision of the special case hearing.

Your appeal must be based on one or more of the following grounds:

- That the finding or decision to impose disciplinary action was unreasonable
- That there is evidence that could not reasonably have been considered at the special case hearing which could have materially affected the finding or decision on disciplinary action, or
- That there was a breach of procedures set out in The Conduct Regulations, the Complaints and Misconduct Regulations or Part 2 of the 2002 Act or unfairness which could have materially affected the finding or decision on disciplinary action.

You have **10 working days** beginning with the first working day after the day you have been served with this notice to provide the Police and Crime Commissioner with written notice of appeal. Application outside this period can be considered by the Chair of the Police Appeals Tribunal under Rule 9 of the Police Appeals Tribunal Rules 2020.

Should you wish to request a transcript of the misconduct proceedings (or part of the proceedings) then this should be made in your notice of appeal.

On receipt of your appeal notice the Police and Crime Commissioner will as soon as practicable supply the respondent (The Chief Constable), and in the case of a 'specified appeal' the IOPC, with a copy of the notice of appeal. The respondent shall then within 15 working days of receipt of the notice of appeal supply to the Police and Crime Commissioner a copy of this hearing decision notice, any documents made available to the panel who conducted your hearing and a copy of any transcript of the proceedings requested by you. A copy of any such transcript shall at the same time be supplied to you.

You are also required to provide to the Police and Crime Commissioner a statement of the relevant decision and your grounds for appeal, and any supporting documents. If your appeal is based on the ground that there is evidence that could not reasonably have been considered at the misconduct hearing which could have materially affected the finding or decision on disciplinary action then you must also supply a list of any proposed witnesses as defined in Rule 13(5)(c) and a witness statement from each of those witnesses. If you consent to the appeal being determined without a hearing, then this consent must be given in writing.

These documents shall be supplied before the end of 20 working days from the day on which you are supplied with a copy of the transcript, or if no such transcript was requested before the end of 35 working days from the day you gave notice of appeal to the Police and Crime Commissioner. The Police and Crime Commissioner shall then supply a copy of those documents provided to the respondent as soon as practicable.

The respondent then has 20 working days from receipt of those documents to supply the Police and Crime Commissioner with a statement of response to the appeal, any supporting documents, and a list of any proposed witnesses as defined in Rule 13(9)(c) together with a witness statement from each proposed witness. The respondent must also give in writing any consent for the appeal to be determined without a hearing.

At the same time as supplying the above documents to the Police and Crime Commissioner the respondent shall provide you with a copy of those documents save in the case of the supporting documents a list of those documents only need be supplied. The Police and Crime Commissioner will then provide to the Chair a copy of all documents supplied to it under these Rules.

Both you or the respondent may apply to the Police and Crime Commissioner for an extension to a relevant period as defined in Rule 14(1). This application must set out the reason for such application and the period of extension required. A copy of the application will be supplied to the other party who will be asked if they consent to the extension. If the other party does not consent then the application will be forwarded to the Chair who will determine if an extension shall be granted and for how long.

Under Rule 15, on receipt of the supplied documents the Chair shall determine whether the appeal should be dismissed on the basis that either the appeal has no real prospect of success or there is no other compelling reason why the appeal should proceed. If the Chair considers that the appeal should be dismissed, before making his determination, he shall give you and the respondent notice in writing of his view together with the reasons for that view. You and the respondent may make written representations in response to the Chair before the end of 10 working days and the Chair shall consider any such representations before making his determination. The Chair shall give you, the respondent and the relevant Police and Crime Commissioner notice in writing of his determination. Where the Chair determines that the appeal should be dismissed the notification shall include the reasons for the determination.

Where an appeal has not been dismissed under Rule 15, the Chair must determine whether the appeal should be dealt with at a hearing. The Chair may determine that the appeal should be dealt with without a hearing, but only if you have so consented. Where the appeal is to be dealt with at a hearing the Chair shall give you and the respondent his name and contact details.

At any time following the provision of the documents mentioned in Rule 13(5) and (9), you or the respondent (the "requesting party") may apply to the Chair for disclosure of any document by the other party which is relevant to the appeal. The Chair may request the disclosure of any such document by the other party and where it is disclosed, a copy must be given to the chair and to the requesting party. Where a party does not comply

with a request to disclose under paragraph (2), the party must give the Chair and the requesting party his reasons for non-disclosure in writing.

The Chair must cause you and the respondent to be given written notice of the date, time and place of the hearing at least 20 working days, or such shorter period as may with the agreement of both parties be determined, before the date of the hearing. Where you or the respondent (or both) have proposed witnesses under rule 13, the Chair must determine which, if any, witnesses may give evidence at the hearing. No witness may give evidence at the hearing unless the Chair reasonably believes that it is necessary for the witness to do so, in which case the Chair must where the witness is a police officer, cause that person to be ordered to attend the hearing; and in any other case, cause the witness to be given notice that his attendance is necessary and of the date, time and place of the hearing.

You have the right to be represented at a hearing by a relevant lawyer or a police friend. Where you are represented at the hearing by a relevant lawyer, you may also be accompanied at the hearing by a police friend. If you choose not to be represented, the hearing may take place and the appeal may be determined without you being represented. The respondent has the right to be represented at a hearing by a relevant lawyer or by an officer of the police force or by the chief executive of the relevant Police and Crime Commissioner.

Subject to these Rules, the procedure at a hearing shall be determined by the tribunal. The tribunal may proceed with the hearing in the absence of either party, whether represented or not, if it appears to be just and proper to do so and may adjourn it from time to time if it appears necessary to do so. Unless the tribunal determines otherwise, the evidence adduced by you must be given first. Witnesses giving evidence at the hearing may be subject to questioning and cross-questioning. Any question as to whether any evidence is admissible, or whether any question should or should not be put to a witness, shall be determined by the tribunal. A verbatim record of the evidence given at the hearing must be taken and the relevant Police and Crime Commissioner must keep such record for a period of at least two years from the date of the end of the hearing.

The hearing shall be held in private, however, the tribunal may allow a person to attend all or part of the hearing as an observer for the purposes of training. In certain circumstances as prescribed in the Rules, the complainant, an interested party, or a representative of the IOPC shall also be allowed to attend the hearing.

The tribunal must determine whether the ground or grounds of appeal on which you rely have been made out. The determination of the tribunal must be based on a simple majority but must not indicate whether it was taken unanimously or by a majority. The chair must prepare a written statement of the tribunal's determination of the appeal and of the reasons for the decision. As soon as reasonably practicable after the determination of the appeal the chair shall cause you, the respondent and the Police and Crime Commissioner to be given a copy of the written statement, but, in any event, you must be given written notice of the decision of the tribunal before the end of 3 working days beginning with the first working day after the day on which the appeal is determined.

Any request for an appeal must be forwarded to:

Police and Crime Commissioner for Merseyside.

Vetting of individuals is critical to manage risks to the Force, and to ensure the integrity of everyone who works for Merseyside Police. Vetting is completed in line with the Vetting Code of Practice and its associated National Guidelines, APP on Vetting 2021. Section 8.50.1 of APP on Vetting 2021 states that following the conclusion of a misconduct hearing or meeting where the officer, special constable or member of staff is not dismissed but has been issued with a written warning or a final written warning, a review of vetting clearance should be carried out. The review includes a consideration of the applicant's suitability to maintain the level of clearance held and to continue in the post they occupy.

I have been served with a copy of this notice:-

Signed: _____

Date: _____

I have been served with a copy of the R –v- Edwards notice:-

Signed: _____

Date: _____

CHIEF CONSTABLES MEMORANDUM

Regina –v- EDWARDS Disclosure of Disciplinary Convictions

I refer to Merseyside Police Special Order Dated 30th June 1993, regarding the above. The detail of the misconduct conviction recorded against you has already been served upon you.

You must reveal the **full details of the wording of the charge(s)** relating to these convictions to the Crown Prosecution Service in accordance with the instructions contained in Chapter 18 of the Disclosure Manual (see Merlin). Failure to reveal your disciplinary record and/or any criminal convictions recorded against you may render you liable to further disciplinary proceedings.

The earliest date of expunction from your personal record of these convictions is in line with the Police (Amendment) Regulations 2008. At the appropriate time the Personnel Department will arrange for the conviction to be expunged from your personal record. You should inform the Crown Prosecution Service accordingly, when this has been done.

If you have any queries regarding this matter, the staff in the Professional Standards Department will be pleased to assist you.
