

Recent Judicial Review Decisions on Police Misconduct

Isabel Aughterson – Three Raymond Buildings

Mason [2025] EWCA Civ 27
Aka O'Connor

-
- Finding of gross misconduct in respect of sexual harassment of a victim of robbery
 - Final written warning imposed by panel
 - JR brought by O'Connor dismissed and appealed to COA

Mason [2025] EWCA Civ 27
Aka O'Connor

[38] [...] The wording of [the] paragraphs, to be found in the Introduction to the Outcomes Guidance, does not support the appellant's contention that the Guidance mandates a specific approach. It is of note that an "outline" of a "general framework" is provided. The discretion of the Panel to determine outcome depending on the facts of an individual case is highlighted. These are not concepts which reflect the imposition of a "mandated" approach by the Outcomes Guidance.

...

[42] I also agree with the observation of Swift J [in the Court below] that it is unhelpful to speak in terms of a "structured approach". This is not a template. There can be overlapping of the different factors/elements and that is why the attempt by the appellant to impose a mandated or structured approach does not reflect the discretion identified in the Outcomes Guidance still less the approach set out in Fuglers. As Swift J stated at para 29, notwithstanding the detail contained in the Outcomes Guidance "it would be wrong to conclude it is some form of route map for Misconduct Panels that either removes or significantly reduces the opportunity for a Panel to assess matters for itself". The Outcomes Guidance recognises the role and responsibility of the Misconduct Panel in assessing misconduct and sanction and that should be respected.

...

[54] Notwithstanding the listing of aggravating and mitigating factors, I am satisfied that the Panel did not provide an adequate analysis and, resulting from it, adequate reasons for its findings in respect of seriousness and within the finding of seriousness the levels of culpability and harm. These findings were important as they provided the factual basis for the first stage of the Panel's determination upon sanction. In my view the absence of such reasoning is a significant omission and represents an error of law.

Fletcher [2025] EWHC 93 (Admin)

-
- Finding of gross misconduct in respect of sexual touching of an individual under Mr Fletcher's line management (in 2017)
 - Sanction of reduction in rank imposed by panel
 - Panel relies on 4.82 of guidance on outcomes - *“consider the outcome by reference to the standards at the time rather than current attitudes and standards”*

Fletcher [2025] EWHC 93 (Admin)

[24] It could not be rationally concluded that a different standard applied in 2017 in relation to a male police sergeant putting his hands inside the clothing of a female officer and touching her bare buttocks. That conduct was wholly inappropriate then, as it is now. The fact that the culture existing in 2017 may have allowed such conduct to go unchecked, in a way that it hopefully would not now, in no way mitigates what Mr Fletcher did in 2017. The notion that different attitudes and standards applied in 2017 should have played no part in the decision on outcome. The Panel wrongly put this into the balance.

...

[30] Taken as a whole, it is clear that the guidance addresses the need for the conduct in question to be linked to leadership, rather being conduct which undermines the officer's suitability to serve as a police officer at all.

[31] The thrust of the Home Office Guidance is replicated in the Outcomes Guidance at [3.17 – 3.22]. [3.19] makes it clear that reduction in rank is appropriate where a tougher outcome than a final written warning is warranted, but the threshold for dismissal has not been reached. [...]

As a result, likely to be unlawful if panel does not (a) explain why misconduct falls below threshold for dismissal [36] and (b) the officer is fit to be (in respect of Mr Fletcher) a constable but not a sergeant [38]

Nb in both *Fletcher* and *Mason* emphasis of need to consider seriousness before “*purely personal*” mitigation (character). Lord Justice Bean in *Mason* suggests [4.82] of Outcomes Guidance is misleading (unlawful?)

-
- Finding by panel of no case to answer in respect of two allegations of assault and one of inappropriate messages
 - Findings ostensibly under both “*Limbs*” of *Galbraith*:
 - Limb 1: no evidence that an assault was, as alleged, “*sexually motivated*”
 - Limb 2: inherently weak evidence that (i) a separate assault took place and that (ii) text messages exchanged amounted to “*inappropriate sexualised comments*”

- As in the Crown Court, adopting at [12] *Blackstone* commentary:

(a) If there is no evidence to prove an essential element of the offence, a submission must obviously succeed. (b) If there is some evidence which, taken at face value, establishes each essential element, the case should normally be left to the jury. (c) If, however, the evidence is so weak that no reasonable jury properly directed could convict on it, a submission should be upheld. Weakness may arise from the sheer improbability of what the witness is saying, from internal inconsistencies in the evidence or from its being of a type which the accumulated experience of the courts has shown to be of doubtful value (especially in identification evidence cases ...). (d) The question of whether a witness is lying is nearly always one for the jury, save where the inconsistencies are so great that any reasonable tribunal would be forced to the conclusion that it would not be proper for the case to proceed on the evidence of that witness alone.

18. A disciplinary panel – like the magistrates – must not fall into the "trap" of bringing forward the evaluative function which it would have at the end of all the evidence in the case. That is when it comes to adopt its preferred view of the AA's evidence. [...]

19. This is why Nicol J said in R (Husband) v General Dental Council [2019] EWHC 2210 (Admin) (at §15) that "the task is to decide whether the charge could, not whether it would, be made out". It is why Nicol J went on to say (Husband at §42) that: "At this stage, the [panel] was not asking itself whether it did believe the two witnesses, but whether the evidence was sufficient, taken together with [the other] evidence, to support the charges".

Nb. need for caution in respect of reference to Galbraith test in respect of “the case to answer decision” in Home Office Guidance from 8.60.