Neutral Citation Number: [2023] EWCA Crim 1464

Case No: 202301678 B2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE LIVERPOOL CROWN COURT
HHJ Watson KC
T20210975

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/12/2023

Before :

PRESIDENT OF THE KING'S BENCH DIVISION
MR JUSTICE BENNATHAN
and
HH JUDGE GUY KEARL KC

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Between :

Mohammed Adnan Ali	**Appellant**
- and -	
Rex	**Respondent**

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- -

Jane Osborne KC and Katy Appleton (instructed by **Brooklyn Law Solicitors**) for the **Appellant**
Anne Whyte KC and Martin Reid (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing dates : 22nd November 2023

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Approved Judgment

This judgment was handed down remotely at 10.30pm on 7th December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Dame Victoria Sharp, P :

Introduction

1. On 24 April 2023, following a trial in the Crown Court at Liverpool before His Honour Judge Watson KC and a jury, the applicant was convicted of 15 counts of misconduct in public office and 5 counts of sexual assault. On 23 June 2023 he was sentenced to a total of 5 years' imprisonment, made up of sentences of between 2 and 3 years for each of the sexual assaults, and of 5 years for each offence of misconduct in public office, with all the sentences to run concurrently.

2. The applicant applies for leave to appeal against conviction and sentence. Those applications have been referred to the Court by the Registrar of Criminal Appeals. The conviction application relates to the following counts of misconduct in public office: counts 1, 3, 4, 5, 7, 13, 14, 15, 16, 17 and 20. There is no conviction application therefore for the remaining misconduct in public office convictions (counts 6, 18 and 19), nor for the sexual assault counts (counts 2, 8, 9, 10, 11 and 12). The sentence application relates to all counts.

3. The provisions of the Sexual Offences (Amendment) Act 1992 apply to the 5 counts of sexual assault. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the complainant of that offence. There are no reporting restrictions in respect of the offences of misconduct in public office. However, care will need to be taken in reporting the name or details of any complainants in the misconduct offences to ensure that they are not also complainants in the sexual assault offences.

The facts and the prosecution

4. The applicant joined Greater Manchester Police as a special constable in 2007 and became a full-time police constable in 2009. In 2013 he was injured in the line of duty, returning to work the following year. From the summer of 2013 he had the voluntary role of Trafford Police Cadet Leader, which put him in charge of cadets.

5. It is necessary to say something about the cadet and apprenticeship schemes as they were operated by the Greater Manchester Police (GMP) at the material time. The intention of the cadet scheme was to improve young people's opportunities and life skills in some of the more disadvantaged areas of the country. The scheme was designed to promote and encourage a practical interest in policing amongst young people aged between 13 and 17 years old, and to provide training which would encourage positive leadership within communities and develop qualities of good citizenship. The scheme

aimed to have a minimum of 25 per cent of the total cadets who were considered to be "vulnerable" either to crime (committing or being a victim), to exclusion, or to abuse. The scheme was to include those at risk of offending or re-offending. Each unit had a leader (a police officer or a PSCO).

6. The apprenticeship scheme was launched in 2013. It was designed to create opportunities within GMP for young people aged 16 and upwards. The scheme combined training and employment for young people. Apprentices performed an important role working alongside Police Officers and staff in a variety of teams providing administrative support, and were given training and support to assist with progression into permanent positions within GMP. GMP apprenticeships lasted 12 months, in which apprentices studied an intermediate apprenticeship in Business Administration or in Customer Service. There were a number of apprentices allocated to the Trafford Volunteer Police Cadets, who worked at Stretford police station.

7. From July 2016 the applicant was Trafford District Student Officer Development and Assessment Coordinator which meant that he supervised the two apprentices appointed to Stratford Police Station, and was dealing with 16 and 17 year olds who were civilian apprentices on a daily basis. The applicant was aged between 29 and 32 during the period covered by the indictment. Many of the cadets and apprentices were hoping to become, or were at least considering becoming, full time police officers. The Cadet Scheme had a reporting chain, but the identity of the senior officer responsible for cadets changed frequently, so in reality the applicant was also in day-to-day control of the Cadet Scheme. For economy of reference, we will use the term "cadets" to encompass both cadets and apprentices in this judgment.

8. In October 2018, the senior officers in Trafford District were made aware of an inappropriate text message conversation between the applicant and a cadet. The applicant was arrested and suspended from duty while an investigation was carried out. A number of further complainants then came forward. Each reported sexualised behaviour by the applicant towards them, in the form of sexual assaults, inappropriate telephone or social media messages, and verbal comments. The indictment period was between 1 October 2015 and 21 October 2018 and there were nine complainants. The complainants were all young. It is not necessary to name any of them, and to avoid the risk that doing so will lead to the identification of those complainants protected by the provisions of the Sexual Offences (Amendment) Act 1992, we shall refer to all of them by initials.

9. We can summarise the various allegations as follows:

    i) Count 1: JM, aged 16; the applicant sent him sexualised messages and images;

    ii) Count 2 (sexual assault): SH, aged 15; the applicant placed his hand on her thigh in a car;

    iii) Counts 3, 4: JB, aged 17; the applicant placed hands on his shoulders and made sexualised remarks;

    iv) Count 5: BH, aged 17; the applicant sent sexualised remarks and messages;

v) Counts 6, 7: CC, aged 16-18; the applicant sent inappropriate images and sexualised messages;

vi) Counts 8, 9, 10 (8 and 9 are sexual assault): CB, aged 18; the applicant took her to his room and kissed her; he touched her leg under a table; he offered to send her picture of his penis;

vii) Counts 11-16 (11 and 12 are sexual assault): JR, aged 16 or 17; the applicant massaged his shoulders, ran his hands down his chest and onto his groin and touched his penis over clothing, and on a separate occasion stroked his side in a sexual way; the applicant sent sexualised messages and images; the applicant made suggestive remarks;

viii) Counts 17-19: JL, aged 17; the applicant made sexualised remarks and sent sexualised messages;

ix) Count 20: JV, aged 17; the applicant made sexualised remarks.

10. At trial, the prosecution relied on the complainants' evidence, evidence of complaint prior to matters being formally reported, and social media and internet-based messaging which had been retrieved predominantly from the applicant's phone. The messaging, which formed the basis of most of the misconduct counts, was alleged to have taken place by SMS and over platforms including Twitter, WhatsApp and Snapchat. The prosecution relied upon the following aspects of the retrieved messages to demonstrate that the messaging was so inappropriate as to amount to misconduct:

i) Messages sent by the applicant stating that he was having, or about to have, a bath, or about aspects of his "morning routine";

ii) Messages that had kisses at the end of them, sometimes multiple kisses;

iii) Requests for the complainants to send the applicant picture messages;

iv) In one instance, explicit messages about sexual acts between the applicant and complainant (though with no evidence that these had in fact occurred);

v) Messages sent at unconventional times of day, including very late at night;

11. The prosecution further relied on:

i) Evidence given by those complainants that engaged with the applicant in these "conversations", that they did so because they were concerned about the potential impact upon their future career (with the police force) if they did not. One complainant said he went as far as sending intimate pictures back, but only because he wanted to keep the applicant "on side" while he was waiting for the result of his police apprentice interview.

ii) Evidence from some of the complainants that photographs were sent to them via Snapchat which showed the applicant in his pyjamas or underwear and in two cases with his genitals visible. The sending of such photographs was the subject of counts 6, 13 and 14. These images were

sent on Snapchat and were not therefore saved. However, similar photographs were identified on the camera roll of the applicant's phone, albeit there was no direct evidence that those specific images had been sent to any of the complainants.

12. The prosecution also relied on guidance provided by the GMP to those, such as the applicant, in leadership roles with cadets. The jury were provided with this guidance in written form. The 'Dos' included: Provide good example of acceptable behaviour; Avoid situations that compromise your relationship with young people within a relationship of trust; Recognise the boundaries between personal and professional life; Make sure your actions cannot be misunderstood; Promote and ensure the welfare of young people. The 'Don'ts' included: Do not take young people to your home or any other place where you will be alone with them; Do not allow or engage in any form of sexual innuendo, flirting or inappropriate gestures and terms; Do not allow or engage in any form of inappropriate touching; Do not make sexually suggestive comments to either a child or young person.

13. The prosecution also adduced evidence of the aftermath of the applicant's conduct. Superintendent Caroline Hemingway held a meeting with cadets and their parents after the applicant's arrest: she described the "*shock, surprise, disbelief, confusion and some anger*" expressed by parents who had entrusted their children to the cadet scheme.

14. The defence case was made clear in the applicant's prepared statements when interviewed under caution and in the conduct of his case at trial. A number of interviews were conducted with the applicant as each complainant came forward and provided evidence. In those interviews, the applicant made no comment but provided prepared statements which in broad terms stated that he had not sought to take advantage of his position in order to try to secure a sexual or improper emotional relationship with any of the complainants, that he had never touched any of the cadets or apprentices inappropriately, and that he had not spent time alone with any cadets who were not cadet leaders, or over the age of 16. At trial, the applicant did not give evidence nor were any witnesses called on his behalf. In relation to the allegations of misconduct in public office, the applicant through cross-examination of the complainants, accepted that messages were sent by him to the various complainants on WhatsApp, Twitter and on Snapchat, but denied that messages either were, were intended to be, or were to be interpreted as, inappropriate. He accepted that "snaps" had been sent to a number of the complainants by Snapchat but denied that any of these had been inappropriate photographs, save for one image sent to JL after his eighteenth birthday. The applicant denied that requests for inappropriate photographs were made on Snapchat.

15. The central arguments for the jury on the misconduct in public office counts were, first, whether the applicant's complained-of activities were carried out when he was *acting as* a public officer; and, second, whether his conduct was so serious as to amount to an abuse of the public's trust, in other words, whether the jury could be sure it was of such seriousness that they should find it to be criminal.

16. At the conclusion of the prosecution case, counsel for the applicant submitted that there was insufficient evidence for a reasonable jury, properly directed, to convict on the following misconduct in public office counts: counts 1, 3, 4, 5, 7, 10, 13, 14, 15, 16, 17 and 20. The submissions related to the two distinct legal elements of the offence. The first submission (relevant to counts 3, 4, 5, 13, 14, 15, 16 and 20) was that there was insufficient evidence that the applicant was a public officer *acting as such*, at the time of those events. The second submission was that the misconduct alleged in counts 1, 3, 4, 5, 7, 17 and 20 was not misconduct of such a degree as to amount to an abuse of the public's trust. The judge rejected both of those submissions.

17. The judge then dealt with the individual counts that were the subject of submissions, holding as follows:

i) Count 1**:** The applicant had interviewed JM for an apprenticeship and was involved in assisting him with a vetting appeal. The submission was limited to the second limb. The judge was satisfied that the circumstances in which the messages and photographs were sent (including a photograph of his bathwater when the applicant was in the bath, messages about needing a massage, and needing someone to scrub his back) were such that the jury would be entitled to conclude that the applicant had a sexual motivation in these communications. As such the jury would be entitled to conclude this was sufficiently grave to amount to a crime.

ii) Count 3 and 4: The submission was made on both limbs. JB was a cadet at Trafford under the applicant who was the unit leader. JB was also an employed police apprentice under the applicant from August 2016. The judge was satisfied that in the circumstances which existed at the time of the alleged misconduct the jury would be entitled to conclude that the applicant's actions occurred whilst he was acting as a public official either as cadet unit leader or as the police officer supervising a police apprentice. The judge was also satisfied that the alleged conduct underlying count 3, (in which the applicant placed hands on JB's shoulders and suggested that JB should go to the applicant's house to have a massage lying down) and count 4 (in which the applicant asked about JB's virginity, his sexuality, and sexual positions) was such that the jury would be entitled to conclude that the applicant had a sexual motivation. The jury would be entitled to conclude this was sufficiently grave to amount to a crime.

iii) Count 5: The submission was made on both limbs. BH was a cadet at Trafford under the applicant who was the unit leader. The Judge was satisfied that at the time of the alleged misconduct the jury would be entitled to conclude that the applicant's actions were while he was acting as a public official as cadet unit leader. The judge was also satisfied that the circumstances in which the applicant made comments to BH about a broad range of intimate sexual matters were such that the jury would be entitled to conclude that the applicant had a sexual motivation. The jury would be entitled to conclude this was sufficiently grave to amount to a crime.

iv) Count 7**:** The submission was made on the second limb. CC was a cadet and cadet leader under the applicant, who was the unit leader. In count 6, the applicant sent CC images of himself in underwear, in the bath, and on bed sheets and it was agreed these were such that the jury would be entitled to conclude that the applicant had a sexual motivation. In count 7, the judge was satisfied that the circumstances in which the applicant sent CC messages about his morning routine, about needing a massage, and which read 'just lay in bed…wish you were here xx' were such that the jury would be entitled to conclude that he had a sexual motivation. As such, he concluded that it was open to the jury to conclude this conduct was sufficiently grave as to amount to a crime.

v) Count 10: CB alleged she was sexually assaulted in counts 8 and 9 and no submission was made on these counts. On count 10, the core submission was that the evidence, namely the question "do you want pictures?", was so weak and vague that it failed under the second limb of *Galbraith* ([1981] 1 WLR 1039) The applicant was CB's cadet unit leader. The judge was satisfied that in the circumstances which existed at the time of the alleged misconduct, the jury would be entitled to conclude that the applicant's actions were whilst he was acting as a public official as cadet unit leader, and that the messages asking if she wanted pictures were such that the jury would be entitled to conclude that the applicant was offering to send pictures of his penis and so had a sexual motivation in these communications. As such, the jury would be entitled to conclude this was sufficiently grave to amount to a crime, and the *Galbraith* submission failed.

vi) Count 13 to 16: The submission was made on the first limb. JR was a cadet (and cadet leader) who also became an apprentice, under the supervision of the applicant. The judge was satisfied that in the circumstances which existed at the time of the alleged misconduct, the jury would be entitled to conclude that the applicant's actions were whilst he was acting as a public official as cadet unit leader and supervisor of JR. In the event that the submission was on both limbs it would fail as well.

vii) Count 17: The submission was made on the second limb. The judge was satisfied that in the circumstances which existed at the time of the alleged misconduct the jury would be entitled to conclude that the applicant's actions were whilst he was acting as a public official as cadet unit leader and supervisor of police apprentices. The judge was satisfied that the circumstances in which the applicant made comments to JL (about being in the bath, needing someone to pull him out, being stiff, wishing JL was in the bath with him, and others) were such that the jury would be entitled to conclude that the applicant had a sexual motivation. As such, the jury would be entitled to conclude that in each case this was sufficiently grave to amount to a crime.

viii) Count 20: The submission was made on both limbs. JV was an apprentice supervised by the applicant, who was his line manager. The judge was satisfied that in the circumstances which existed at the time of the alleged misconduct the jury would be entitled to conclude that his actions were

whilst he was acting as a public official. The judge was also satisfied that the circumstances in which the applicant made comments to JV about his sexuality, and suggesting he should get together with another male apprentice, and others, were such that the jury would be entitled to conclude that the applicant had a sexual motivation. As such, the jury would be entitled to conclude in each case this was sufficiently grave to amount to a crime.

18. During the discussion of legal directions before the summing up, the prosecution sought a direction on cross admissibility in relation to the sexual assault counts. The judge agreed such a direction should be given; and the jury were subsequently directed that if, after looking at them individually, they were sure one or more of the sexual assaults had occurred, they might find a propensity to commit such assaults and use that in considering their verdicts on other counts for the same offence. The prosecution sought a similar direction in respect of the counts of misconduct in public office; that is, in deciding whether the conduct was so serious that it amounted to an abuse of the public's trust, the jury could look at the applicant's conduct overall, rather than assess that second contested element of the offence count by count, each in isolation from the others. The judge declined to give such a direction. We were told by Ms Whyte KC, counsel for the respondent, not that there was any objection to it as a point of principle, but that the judge considered any such direction would be too complicated. Thus, in due course, the jury were given the standard direction about the separate consideration of each count, and a direction on cross admissibility was limited to the counts alleging sexual assaults.

19. In respect of the conviction application, Ms Osborne KC and Ms Appleton for the applicant, submit that the judge was wrong to find a case to answer in respect of counts 1, 3, 4, 5, 7, 13, 14, 15, 16, 17 and 20. In short, it is said first, that the applicant's messages were sent at times and in a personal context such that a reasonable jury could not have been sure they amounted to the applicant *acting as* a public officer. Secondly, the messages may have been ill-judged and inappropriate but they did not reach the required level of gravity when assessed independently such that a reasonable jury could find them to be criminal acts. There was insufficient evidence therefore that the conduct was so serious that it amounted to an abuse of the public's trust.

20. On behalf of the respondent Ms Whyte KC and Mr Reid submit that the judge's ruling was correct. In summary, the nature of the relationship between the applicant and the cadets arose from his public office. He would be seen, and was seen by the complainants, as holding sway over their potential careers as police officers. The cadets' contact details were known to the applicant because of his official role. Thus whether he messaged in or out of office hours was irrelevant. The schemes in which the applicant worked were designed, in part at least, to attract young and vulnerable people in order to improve community relations and to encourage them to consider a career in the police force. The jury were entitled to find that the applicant exploited his role and his connection with those young and vulnerable people for his own sexual gratification. As such his behaviour was sufficiently serious to be found to be criminal.

The Legal Framework

21. The common law offence of misconduct in public office has four elements: see *Attorney General's Reference (No 3 of 2003)* [2005] QB 73:

    i) A public officer acting as such,

    ii) Wilfully neglects to perform his duty and/or wilfully misconducts himself,

    iii) To such a degree as to amount to an abuse of the public's trust in the office holder,

    iv) Without reasonable excuse or justification.

22. At trial and in the instant application there was no dispute that the applicant was a public officer, nor that his actions were deliberately, or wilfully, carried out. It was also conceded that if the other elements of the offence were met, no issue arose of reasonable excuse or justification. We can therefore focus on the two elements of the offence in respect of which it is said that there was insufficient evidence for a reasonable jury to convict on the individual counts.

Acting as such

23. In *Shum Kwok Sher v HKSAR* [2002] 5 HKCFAR 381, Sir Anthony Mason referred to this as acting "*in the course of or in relation to his public office*" (this judgment was cited by Pill LJ in *Attorney General's Reference (No 3 of 2003)* and by Leveson LJ (as he then was) in *R v L* [2011] 2 Cr App R 14). We would emphasise the following points. First, a significant nexus or link between the accused's status and the conduct that is said to amount to the offence is plainly required. Secondly, the fact the act under scrutiny is carried out when the officer is not on duty does not (necessarily) take it outside the bounds of misconduct in public office. In *Knox* [2011] EWHC 1629 (Admin) for example, the convicted officer had been suspended at the time of the offence; and in *R v L*, the unsuccessful appellant acquired police intelligence at work and passed it on to a criminal some days later. Thirdly, it follows that the offence is not limited to conduct by an office holder that specifically *discharges* their duties. It is, for example, no part of the duty of a police officer to sell confidential intelligence to criminals. Nor we might add is it part of a police officer's duties to send sexualised message and content to young people for whom, and directly connected with his uniformed role, he has an actual and pastoral responsibility.

24. In *Johnson v Westminster Magistrates Court* [2019] EWHC 1709 (Admin) at [27] it was said that *"acting as such"* meant acting in the discharge of the duties of that office, but the court's observation has to be viewed in the context of the particular facts of that case (which concerned the validity of a warrant issued against a politician for misconduct in public office in relation to lies allegedly told in the course of political debate). Viewed in that light, we do not consider that the Divisional Court was intending to circumscribe the ambit of the offence more generally.

The seriousness threshold

25. The need for the impugned conduct to be of "*such a degree as to amount to an abuse of the public's trust in the office holder*" requires an assessment to be made of the seriousness of the conduct; and in particular, whether the conduct is so serious that the jury should decide it amounts to a crime. This is a high threshold.

26. In *Attorney General's Reference (No 3 of 2003)* Pill LJ said that:

> "56. The approach in [*Three Rivers DC v Governor of the Bank of England* [2001 UKHL 16]] also demonstrates the many-faceted nature of the tort, as of the crime. It supports the view expressed in the criminal cases, from [*R v Borron* (1820) 3 B & Ald 432] to *Shum Kwok Sher*, that there must be a serious departure from proper standards before the criminal offence is committed; and a departure not merely negligent but amounting to an affront to the standing of the public office held. The threshold is a high one requiring conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder. A mistake, even a serious one, will not suffice. The motive with which a public officer acts may be relevant to the decision whether the public's trust is abused by the conduct. As Abbott C.J. illustrated in *Borron*, a failure to insist upon a high threshold, a failure to confine the test of misconduct as now proposed, would place a constraint upon the conduct of public officers in the proper performance of their duties which would be contrary to the public interest.
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> 57. As Lord Widgery C.J. put it in [*R v Dytham* [1979] QB 722], the leading modern criminal case: the element of culpability "must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment". The constitutional context has changed but the rationale for the offence remains that stated by Lord Mansfield in [*R v Bembridge* (1783) 3 Doug KB 327]: those who hold public office carry out their duties for the benefit of the public as a whole and, if they abuse their office, there is a breach of the public's trust. By way of example, the failure of the constable in *Dytham* to act, in the absence of a justification or excuse, crossed the threshold for this offence.
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> 58. It will normally be necessary to consider the likely consequences of the breach in deciding whether the conduct falls so far below the standard of conduct to be expected of the officer as to constitute the offence. The conduct cannot be considered in a vacuum: the consequences likely to follow from it, viewed subjectively as in *R. v G* [2004] 1 Cr App R 237, will often influence the decision as to whether the conduct amounted to an abuse of the public's trust in the officer. A default where the consequences are likely to be trivial may not possess the criminal quality required; a similar default where the damage to the public or members of the public is likely to be great may do so. In a case like the present, for example, was the death or serious injury

> of the man arrested the likely consequence, viewed subjectively, of inaction, or was it merely an uncomfortable night? There will be some conduct which possesses the criminal quality even if serious consequences are unlikely but it is always necessary to assess the conduct in the circumstances in which it occurs."

27. More recently in *R v Chapman and others* [2015] 2 Cr App R 10 [at 34] Lord Thomas CJ said:

> "The offence requires, as the third element, that the misconduct must be so serious as to amount to an abuse of the public's trust in the office holder. It is not in our view sufficient simply to tell the jury that the conduct must be so serious as to amount to an abuse of the public's trust in the office holder, as such a direction gives them no assistance on how to determine that level of seriousness. There are, we consider, two ways that the jury might be assisted in determining whether the misconduct is so serious. The first is to refer the jury to the need for them to reach a judgment that the misconduct is worthy of condemnation and punishment. The second is to refer them to the requirement that the misconduct must be judged by them as having the effect of harming the public interest."

Discussion

28. The Crown Prosecution Service has produced guidance on the offence of misconduct in public office, which suggests that the following factors may be useful in determining whether sexual misconduct is sufficiently serious to amount to that offence, viz:

    i) The nature and context of the relationship and the balance of power at the time that any sexual advance, activity or intimate relationship began (or was attempted), i.e., was it in the course of a professional relationship, subsequent to a professional relationship or entirely incidental to the suspect's role in a public office.

    ii) Whether the sexual relationship or activity was in exchange for the exercise or failure to exercise a power held by the suspect by virtue of their office.

    iii) Whether there is any evidence that the suspect's role enabled them to exert power, control, or coercion over the victim (the nature and extent of any past or current professional relationship may be relevant).

    iv) Whether the victim was vulnerable (either during a previous professional relationship or at the time the sexual relationship began) and, if so, the extent of the suspect's knowledge of their vulnerability.

    v) Whether it was an isolated incident or a pattern of conduct on the part of the suspect.

vi) The seriousness threshold may be reached on the basis that the public interest is harmed by conduct that has the potential to impact on the objectivity of the suspect in the exercise of their authority or expose them to conflicts of interest or exploitation (whether or not any actual harm is caused and whether or not the relationship was consensual).

vii) The fact that the relationship was consensual is not determinative.

viii) The sexual conduct or relationship may not, in and of itself, amount to an abuse of the suspect's power, but any neglect/breach of duty and/or misconduct that preceded it or facilitated it may do. For example, where a suspect has used the police database to obtain contact details of the victim and/or used the police database to identify and target vulnerable individuals, this is likely to be an abuse of power whether or not a sexual relationship resulted.

29. We agree that these factors can be useful in determining whether sexual misconduct is sufficiently serious in the context of the misconduct offence, but other factors may be material too, depending on the circumstances. As always, all must depend on the facts of the individual case. There may also be cases where it is difficult to draw the line between conduct, with a sexual element, which amounts to a criminal abuse of someone's public office, and private conduct which falls outside the limits of the law. That difficulty does not arise on the facts of this case however, where we have no doubt that there was a proper evidential basis for the jury to find that the applicant was a public officer "*acting as such*" "*in the course of or in relation to his public office*" for the reasons that were well expressed by the judge.

30. These were in summary as follows. As the judge accepted, the Code of Ethics that governs professional standards for police officers does not mean that all actions of a police officer, whether on duty or off duty, are to be considered actions in the course of their public office so that any breach of that code in any context amounts to misconduct. However, the jury were entitled to conclude that public confidence in the police is particularly important because if a police officer abuses his public position, significant harm is caused to the public. The public should be able to trust police officers unconditionally. The jury were also entitled to consider that the Code of Ethics requires officers, for obvious reasons, to maintain those standards on and off duty, online and offline.

31. In this case, the jury were entitled to conclude that the conduct underlying each allegation was always connected with the applicant's status and duties as a police officer and within the performance of that role, as Trafford Cadet Unit Leader and as the Line Manager of apprentices. The jury would be entitled to conclude there was a sufficient nexus between his office and his misconduct. The applicant only had access to the complainants and to their contact details through the course of his work and the jury would be entitled to conclude that he used the pretext of work and his position and office to develop or to attempt to develop inappropriate relationships. Further, each category of victim viewed the applicant as their leader or manager or supervisor or as someone who had the ability through his public office to influence their progression. Whether the complainant was a cadet, cadet leader, or apprentice, the applicant was, at the material time, still acting as a public

officer in that the conduct was, the jury might conclude, misconduct which was incompatible with the proper discharge of the responsibilities of the office.

32. The jury were also entitled to conclude that the misconduct in question was of such a degree as to be calculated to injure the public interest so as to call for condemnation and punishment. In this regard the jury were entitled to consider whether, in acting as he did, the applicant used his office and duties deliberately to target young, vulnerable and impressionable people most of whom aspired to join the police service and many of whom believed he had some power and influence over their advancement. If some may have been flattered or responsive to such conduct or viewed him as a friend that may only indicate the success of his grooming. The assessment of the misconduct was a matter for the jury and would involve an assessment of his motive. The jury could conclude that any underlying sexual context amounted to a breach of public trust due to the misuse of his position and the particular circumstances of cadets and apprentices. As to the requirement that the misconduct must amount to an abuse of the public's trust in the office holder, the threshold was a high one; the misconduct must be deserving of condemnation and punishment.

33. The individual complainants the applicant was communicating with, whether out of hours or not, were cadets to whom the applicant only had access because of his role. Many of the applicant's suggestive or overtly sexual messages were interspersed with other messages about the cadet or apprentice scheme. The communications were flirtatious or sexual in nature. It was no part of his role to communicate with them in that way, but it was part of his role to build a relationship of trust and confidence with the cadets, in respect of whom he had a leadership role. The applicant exploited his authority over the cadets and the opportunity and the access his position afforded him, for his own sexual ends.

34. There was also a proper basis for the jury to conclude that the applicant's conduct in respect of each of the counts in issue, amounted to an abuse of the public's trust in the office holder, and thus amounted to criminal conduct. The recipients of the applicant's communications were younger, subordinate within the cadet scheme, and often vulnerable, as the applicant well-knew. The standards expected of him were set out in simple terms and his conduct was an obvious breach of the explicit guidance he was given. The jury were entitled to conclude that those cadets who replied to the applicant did so in order to keep his goodwill rather than as a matter of genuine choice. There was an ample basis for the jury to conclude that applicant was indulging in this behaviour for his own sexual gratification, and that his conduct harmed public trust and confidence in the police, and the cadet and apprenticeship schemes which they ran.

35. The purpose of the cadet and apprentice schemes was to burnish the reputation of the police force amongst sections of the public and to encourage cadets from diverse backgrounds to consider a career in law enforcement. The applicant's repeated misconduct towards so many young people cannot have had an effect other than to undermine and defeat those laudable aims. There was direct evidence of the damage done to the public interest: specifically, the public meeting held after the applicant's arrest at which shock, disbelief and anger was expressed by parents who had entrusted their children to the cadet scheme run by the police.

36. We would add only this. With respect to the judge, we see no reason why the jury should not have been given a direction on cross admissibility in relation to the misconduct in public office offences, so that in assessing the extent of the abuse of the public interest, the jury could take account of the applicant's pattern of behaviour overall. We are conscious that we have no transcript or written explanation of the judge's reasons for not following this course; and only a short oral explanation of the judge's reasoning from counsel who appeared below. We do not consider however, that such a direction would have given rise to undue complexity in this case. On the facts of this case, where the only issues were, whether the applicant was "acting as a public officer" and whether his conduct met the seriousness criteria, the jury could have been directed first, to look at each misconduct count separately and decide if they were sure the applicant was acting as a public officer when he sent the messages. Second, in assessing the seriousness of the applicant's conduct and whether it met the test of "conduct so serious as to amount to an abuse of the public's trust", they could take into account the conduct from all of the counts where they found the applicant to have been "acting as a public officer" when assessing the overall seriousness of what the applicant had done.

Sentence

37. In his sentencing remarks the judge first considered the sexual assault counts. In his assessment, those assaults fell into category 3 within the Sentencing Council guidelines for sexual assault, which has a starting point of 26 weeks' custody. The judge identified the following aggravating features: the gross abuse of trust, the reputational damage done to the police force, and the serious harm done to the victims of these offences as set out in their victim impact statements. We would add that as he had decided to impose concurrent sentences to address totality, the judge was also entitled to increase the effective sentence to allow for the fact he was passing sentence for 5 separate offences of sexual assault. The judge acknowledged the mitigation available to the applicant: his previous good character; his service as a police officer before he was injured, when stabbed in the line of duty and that there had been considerable delay in the case coming to trial for reasons that were not of the applicant's making. The aggravating factors raised the guidelines category to category 2, with a starting point of 2 years. The judge then passed sentences for the various assaults of 2 years' imprisonment (count 12), 2 years 6 months' imprisonment (counts 2 and 9), and 3 years' imprisonment (counts 8 and 11), making all such sentences concurrent.

38. In passing sentence for the 15 offences of misconduct in public office (counts 1, 3, 4, 5, 6, 7, 10, and 13 to 20) the judge referred to previous decisions of this court and stressed the need for sentences for this offence to act as a deterrent (see *Bohannan* [2011] 1 Cr App R (S) 106). The judge drew attention to the public harm that these offences will have caused to the reputation of the police, the length of time over which the offences were carried out, some 3 years, and that while addressing totality by passing concurrent sentences, it was proper to mark the large number of convictions by increasing the overall, effective sentence. He then passed a sentence of 5 years' imprisonment on each of the misconduct in public office counts, concurrent to the sentences passed for the sexual assaults, making a final effective sentence of 5 years' imprisonment. Restraining orders

were imposed in respect of all the complainants and the applicant was placed on the sex offenders register indefinitely. At a later hearing on 17 July 2023 a Sexual Harm Prevention Order was made in respect of the applicant. None of those various orders are the subject of any application to appeal.

39. On behalf of the applicant, it is submitted that the 5-year term imposed for the sexual assaults and misconduct in public office offences was manifestly excessive. It is submitted, amongst other things, that the judge's use of the aggravating factors such as abuse of trust on the misconduct in public office counts was flawed in that it was only those factors that rendered an otherwise lawful activity criminal; and that insufficient credit was given for mitigating factors such as the delay (some 4 years 6 months between arrest and conviction) and the applicant's previous and commendable service as a police officer. The essential submission made however, is that an overall sentence of 5 years for this offending, even having regard to its seriousness, the number of complainants, and the prolonged nature of it, was too long.

40. This was a complex sentencing exercise with an unusual combination of misconduct in public office offences and substantive statutory offences, and the judge undertook it (as he did the trial itself) with commendable thoroughness and care. We respectfully differ however from the judge in one respect only in that we consider that the 5-year term of imprisonment passed in total, for the misconduct in public office offences was too long

41. The jury were invited to see both types of offending (the sexual assaults and the misconduct in public office offences) as connected, and essentially part and parcel of the same course of improper sexual (mis)conduct. There were also elements common to all the offences, in particular the serious breach of trust that the judge identified, and it was important in those circumstances, not to double count. Further, in respect of two of the complainants, CB (counts 8 to 10) and JR (counts 11 to 16) the communications from the applicant were, in one sense, secondary to the substantive assaults that then occurred. In our view, a total sentence of 3 years imprisonment properly reflects the overall criminality involved in the two types of offending, as well as the importance of deterrence for offences of misconduct in public office. We propose to achieve this result by leaving the sentences for the sexual assaults unchanged, and substituting for the sentences on the misconduct in public office offences, a sentence of three years' imprisonment for each offence, all sentences to be concurrent.

42. Accordingly, for the reasons set out above, we refuse leave to appeal against conviction and grant leave to appeal against sentence. On each of the 15 misconduct counts we quash the sentence of 5 years' imprisonment and substitute for them a sentence of 3 years' imprisonment, all sentences to be concurrent and concurrent to those sentences passed for the sexual assaults. The applicant's total sentence therefore is one of 3 years' imprisonment. To that extent only this appeal is allowed.