



Neutral Citation Number: [2021] EWHC 1248 (Admin)

Case No: CO/2404/2020

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT AT BIRMINGHAM**

Birmingham Civil Justice Centre  
Priory Courts, 33 Bull Street, Birmingham, B4 6DS

Date: 12/05/2021

**Before :**

**THE HONOURABLE MRS JUSTICE STEYN DBE**

-----  
**Between :**

<b>THE QUEEN</b>	
<b>on the application of</b>	
<b>THE CHIEF CONSTABLE OF</b>	<b><u>Claimant</u></b>
<b>NOTTINGHAMSHIRE POLICE</b>	
<b>- and -</b>	
<b>POLICE APPEALS TRIBUNAL</b>	<b><u>Defendant</u></b>
<b>-and-</b>	
<b>POLICE SERGEANT JONATHAN FLINT</b>	<b><u>Interested</u></b>
	<b><u>Party</u></b>

-----  
-----  
**John Beggs QC and James Berry** (instructed by **East Midlands Police Legal Services**) for  
the **Claimant**  
**Jason Pitter QC and Michael Rawlinson** (instructed by **DAC Beachcroft**) for the **Interested**  
**Party**

Hearing date: 23 March 2021  
-----

**Approved Judgment**

**Mrs Justice Steyn :**

**A. Introduction**

1. The Chief Constable of Nottinghamshire Police brings this claim for judicial review of the decision of the Police Appeals Tribunal (“the PAT”) of 11 June 2020. The PAT allowed an appeal brought by Police Sergeant Jonathan Flint against the sanction of dismissal imposed by a Police Misconduct Panel (“the Panel”) and substituted a final written warning. The claim comes before this court with the permission of Pepperall J.
2. The disciplinary case against PS Flint arose from an incident on 24 April 2017 when PS Flint and Police Constable Elliott attended the home address of Ms Sharon Bowen. Ms Bowen made a complaint to the Chief Constable about the officers’ conduct, which was investigated. Following a hearing on 5-7 November 2019, the Panel found 12 out of 13 allegations of misconduct were proven against PS Flint and that his conduct cumulatively amounted to gross misconduct and imposed the sanction of dismissal. On appeal, the PAT also considered that his conduct was so serious as to amount to gross misconduct but, having found (amongst other matters) that the Panel’s finding of lack of integrity was unreasonable, substituted a lesser sanction. The case against PC Elliott was heard separately, at a misconduct meeting, and a finding of misconduct on one allegation was made.
3. The Chief Constable challenges the PAT’s decision on five grounds:
  - i) The PAT materially misdirected itself in both law and fact in that it failed to recognise the distinction between honesty and integrity;
  - ii) The PAT’s finding that the Panel’s reasoning was internally inconsistent was irrational;
  - iii) The PAT irrationally quashed sound inculpatory findings of fact made by the Panel;
  - iv) The PAT failed to correctly apply the test in rule 4(4)(c) of the Police Appeals Tribunal Rules 2012; and
  - v) The PAT irrationally quashed the sanction of dismissal imposed by the Panel which was a sanction reasonably open to the Panel on the facts and/or erred in law in its approach to substituting a sanction of a final written warning.

**B. The facts**

4. On 24 April 2017, an enforcement agent (or bailiff), Mr Richard Allen, attended the home of Ms Bowen to secure payment of a debt. As she was entitled to do, Ms Bowen refused Mr Allen entry to her home. While Mr Allen was there, two young males, who were described as Ms Bowen’s “relatives”, and “an older lady” who was Ms Bowen’s aunt, Ms McHale, arrived. Mr Allen noticed that a parcel was missing from the boot of his car, which he had left open, and that there was a scratch on the passenger door of his car. He suspected the two young males were responsible and he rang the police. The conduct of PS Flint and PC Elliot, who attended the scene in response to Mr Allen’s request prompted Ms Bowen to file a complaint against them two days later.

5. Following an investigation, the Appropriate Authority (“AA”) initially determined that both officers had a case to answer in misconduct only (not gross misconduct) and referred both officers to a misconduct meeting (rather than a misconduct hearing). Ms Bowen appealed to the Independent Office of Police Complaints (“the IOPC”) against that determination. The IOPC partially upheld Ms Bowen’s appeal, finding that PS Flint had a case to answer in respect of gross misconduct and recommending that he attend a misconduct hearing, but accepting that PC Elliott had a case to answer in misconduct only. The AA accepted the IOPC’s recommendation and referred PS Flint to a misconduct hearing.

*The regulation 21 notice*

6. On 11 October 2019, PS Flint was served with a regulation 21 notice, in accordance with the Police (Conduct) Regulations 2012 (2012/2632) (“the 2012 Regulations”). The regulation 21 notice stated the “particulars of misconduct” as follows:

“1. You instructed Ms Bowen to let you into the property to search for the parcel which Mr Allen had said was taken from his car, and threatened to use force to enter if she did not do so. In that respect, you misrepresented your police powers without justification;

2. You spoke to Ms Bowen in an aggressive and/or overbearing manner, which was inappropriate and unprofessional;

3. You spoke to Ms McHale in an aggressive and/or overbearing manner by shouting at her, this was inappropriate and unprofessional;

4. You misrepresented your police powers and/or used an aggressive/overbearing manner to unfairly induce Ms Bowen to allow you inside. As such, you entered the address unlawfully and were a trespasser inside the address.

5. Once you entered the address with PC Elliott and Ms Bowen, she locked the door behind you to prevent Mr Allen from entering the address and carrying out his duties. You instructed Ms Bowen to unlock the door, by which you were unreasonable in both your demeanour and/or that you suggested to her that she was falsely imprisoning you and PC Elliot;

6. You unreasonably disregarded Ms Bowen’s assertion that she was attempting to keep Mr Allen out of the property, as she was entitled to do;

7. You threatened to use CS spray against Ms Bowen if she did not give you the key;

8. You thereafter used force on the person of Ms Bowen in order to take the key from her. The use of force was unlawful in that

a. you were not lawfully on the premises and therefore were not lawfully entitled to use force in the circumstances and/or

b. the force used was disproportionate and unreasonable;

9. You thereafter arrested and/or assisted in the arrest of Ms Bowen to prevent a breach of the peace. This arrest was unlawful as:

a. You were not lawfully on the premises; and/or

b. It was unnecessary to arrest Ms Bowen; and/or

c. The sole or main purpose of effecting the arrest was to enable you to incapacitate Ms Bowen with handcuffs and thereafter recover the key to the property;

10. You applied handcuffs and/or assisted in the application of handcuffs to Ms Bowen which:

a. was unlawful and/or

b. was inappropriate in the circumstances and/or

c. were applied too tightly, in which respect you failed to have sufficient regard for Ms Bowen's welfare, having purported to take her into your custody;

11. Your main purpose in carrying out the conduct at paragraphs 1-9 above was to facilitate Mr Allen's entry to the premises. You had no lawful authority to do so.

12. You thereafter spoke to Mr Allen about Ms Bowen in a disrespectful and offensive manner, referring to her as a 'fucking loony'.

13. You failed to complete a use of force form in relation to the incident, or otherwise ensure that one was completed. This was a breach of Nottinghamshire Police policy."

7. The Standards of Professional Behaviour alleged to have been breached were, as defined in Schedule 2 to the 2012 Regulations:

**"Honesty and Integrity**

Police officers are honest, act with integrity and do not compromise or abuse their position."

**"Authority, Respect and Courtesy**

Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

Police officers do not abuse their powers or authority and respect the rights of all individuals.”

**“Use of Force**

Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.”

**“Orders and Instructions**

Police officers only give and carry out lawful orders and instructions. Police officers abide by police regulations, force policies and lawful orders.”

**“Duties and Responsibilities**

Police officers are diligent in the exercise of their duties and responsibilities.”

**“Discreditable Conduct**

Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty. Police officers report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.”

8. The regulation 21 notice alleged:

“The conduct, if proved, amounts to gross misconduct for the following reasons:

- a) You misused your police powers to enable Mr Allen to enter the house in order to remove Ms Bowen’s personal possessions;
- b) In order to do so, you misled Ms Bowen about the law and sought to intimidate her into permitting you to do so;
- c) You used excessive and disproportionate force against Ms Bowen without justification and misused your police powers in arresting her so that you could recover the key to the property;
- d) The conduct overall does serious damage to the reputation of Nottinghamshire Police.”

***The regulation 22 response***

9. On 1 November 2019, PS Flint served his regulation 22 response. The response (settled by Mr Michael Rawlinson, junior Counsel for PS Flint, who appeared below and throughout) contended the regulation 21 notice was deficient, repetitious, duplicitous and confusing and invited the AA to reflect and “to draft fewer succinct allegations”. In the regulation 22 response, PS Flint:

- i) Accepted allegations 2, 3, 12 and 13 and, in each instance, that this amounted to misconduct;
- ii) In respect of allegation 1, he accepted that “*he made a mistake regarding his powers*” which amounted to misconduct, but denied any deliberate misrepresentation;
- iii) In respect of allegation 4, he accepted that “*when he initially referred to having the power to enter the property to search for stolen property he made a mistake*”, but did not accept that he entered the property unlawfully as he “*ultimately genuinely entered to search for both suspects and property*”. The response further contended:

“The first part of this allegation is duplicitous, dealt with already in allegations 1 and 2 and adds nothing to those allegations. To the extent that this allegation asserts that the conduct the subject of allegations 1 & 2 was “done unfairly to induce Ms Bowen to allow you inside”, it is denied.”

- iv) In respect of allegations 5 and 6, he denied misconduct or gross misconduct. He accepted that he had asked Ms Bowen to unlock the door, but denied his conduct was in breach of any of the Standards, stating he was concerned about his own and his colleague’s safety being locked in the property. He denied that Ms Bowen ever said she had locked the door to prevent Mr Allen gaining access, and so said he did not disregard any such assertion.
- v) He accepted the comment alleged in allegation 7 was made, but denied misconduct.
- vi) He denied allegations 8, 9 and 10.
- vii) In respect of allegation 11, the regulation 22 response said:

“This allegation, yet again, adds nothing to the allegations already made. They are duplicitous and on one view parasitic upon Allegations 1-9 being found proved. It purely goes to the motivation of the Accused Officer in acting as he did rather than being a freestanding breach of the Standards of Professional Behaviour. It is covered by Allegation 1.

If in fact the Accused Officer did have that motivation as alleged by the AA, it is this fact that amounts to a deliberate misrepresentation of his powers and renders the entry unlawful in the first instance.

If however in fact the Accused Officer initially mistakenly but genuinely believed he could enter to search for property, and thereafter entered for that reason and/or allied to a genuine belief that suspects were on the premises, his entry would be lawful.

For the avoidance of doubt, PS Flint had attended due to reports of criminal offences and his conduct was in furtherance of that investigation. For the sake of completeness, this allegation is denied.”

***The Panel’s decision***

10. The hearing before the Panel took place on 5-7 November 2019. The Panel members were Jane Jones (the legally qualified chair), Superintendent Kieran English (the senior police member) and Susan Ward (the independent member). The Panel heard live evidence from PS Flint, PC Elliot and Ms Bowen, viewed Mr Allen’s body worn video (“BWV”) footage of the incident, as well as considering the written statements and evidence.
11. The Panel’s findings can be summarised as follows:

<b>No.</b>	<b>Summary of Allegation</b>	<b>Admitted/ Proved</b>	<b>Standards Breached</b>
1	Misrepresented powers of entry, and threatened use of force to enter, without justification	Admitted and proved	Duties and Responsibilities
2	Aggressive and overbearing manner towards Ms Bowen	Admitted and proved	Authority, Respect and Courtesy Discreditable Conduct
3	Aggressive and overbearing manner towards Ms McHale	Admitted and proved	Authority, Respect and Courtesy Discreditable Conduct
4	Trespasser on the premises having unfairly induced Ms Bowen to permit entry by misstating powers and/or aggressive/overbearing manner	Proved	Authority, Respect and Courtesy Orders and Instructions Duties and Responsibilities Discreditable Conduct
5	Unreasonable in demeanour and/or allegation of false imprisonment once door locked by Ms Bowen	Proved	Authority, Respect and Courtesy
6	Disregarded Ms Bowen’s assertion that she locked door to keep out Mr Allen	Not proved	
7	Threat to use CS spray against Ms Bowen if she did not hand over key	Proved	Authority, Respect and Courtesy Use of Force Discreditable Conduct
8	Use of force against Ms Bowen to take the key from her	Proved	Authority, Respect and Courtesy Use of Force Discreditable Conduct
9	Unlawful arrest of Ms Bowen	Proved	Authority, Respect and Courtesy Duties and Responsibilities Use of Force

			Discreditable Conduct
10	Unlawful application of handcuffs to Ms Bowen	Proved	Use of Force Authority, Respect and Courtesy Duties and Responsibilities
11	Carrying out the conduct at allegations 1-9 with the main purpose of facilitating Mr Allen's entry, without lawful authority	Proved	Honesty and Integrity (integrity only) Authority, Respect and Courtesy Discreditable Conduct
12	Spoke about Ms Bowen in a disrespectful manner	Admitted and proved	Authority, Respect and Courtesy Discreditable Conduct
13	Failure to complete a use of force form	Admitted and proved	Duties and Responsibilities

12. In respect of the allegations which concerned PS Flint's manner towards Ms Bowen and Ms McHale, the Panel found:

"2 ... Sgt Flint repeatedly talked over Ms Bowen, asked her none of the obvious questions, closing down every attempt by her at dialogue and ignoring her requests for information. He gave instructions and did not listen. ..."

"3 ... He was rude to and dismissive of a person who he obviously regarded as an interfering distraction, when actually she was an eye-witness to the offence he was supposed to be investigating and her statement of the legal position was more accurate than his own. ..."

13. In respect of the allegations concerning the use of force against Ms Bowen:

- i) Allegation 7: The Panel noted the fact PS Flint threatened to use CS gas was accepted, and found it could be heard on the video and was proven. The Panel stated:

"It does not follow that such a threat would be unreasonable in any circumstances or that the use of a threat would necessarily amount to misconduct and the allegation might have been more appropriately framed. Having said that we do find that in this particular context and time frame such a threat was disproportionate and unnecessary. It only served to heighten fear in what was already a volatile situation."

- ii) Allegation 8: The Panel found that the use of force to take the key from Ms Bowen was unlawful both because PS Flint was not lawfully on the premises and because the force used was disproportionate and unreasonable.
- iii) Allegation 9: The Panel found that the arrest of Ms Bowen was unlawful on all three bases alleged, that is, because PS Flint was not lawfully on the premises, it was unnecessary to arrest Ms Bowen and the sole or main purpose of effecting the arrest to enable PS Flint to incapacitate Ms Bowen with handcuffs and to recover the key to the property.



- iv) Allegation 10: The Panel found that allegation 10 was proved on all three bases: the application of handcuffs to Ms Bowen was unlawful, inappropriate and they were applied too tightly. The Panel found that:

“The application of handcuffs was not done by Sgt Flint himself, although as the arresting and senior officer present, he did have some responsibility for the welfare of the person he had purported to take into custody”.

14. The Panel found, in respect of allegations 1, 4 and 11:

**“1. You instructed Ms. Bowen to let you into the property to search for the parcel which Mr Allen had said was taken from his car and threatened to use force to enter if she did not do so. In that respect you misrepresented your police powers without justification.**

This is found to be proved. This did happen. Sgt Flint justified his entry by reference to a search for stolen property; “let me tell you what I can do. There’s parcels been stolen out of his car. I suspect they are in this house. Therefore I think ...” He did not in law have a right of entry for this purpose. He did misrepresent his police powers. There is no justification for the misrepresentation.

In order to properly assess which Standards of Professional Behaviour are breached with regard to this first allegation it is necessary to make further decisions regarding at least the first question set out at the top of page 3 of the Case Summary, as prepared by Counsel for the Appropriate Authority. Firstly, did Sgt Flint make a mistake about his police powers or did he deliberately misrepresent them to Ms Bowen?

We think that at the time he stated his power inappropriately he was mistaken about his actual powers.

The Standard engaged here is Duties and Responsibilities because he has not been diligent in the correct use of his powers.”

**“4. You misrepresented your police powers and/or used an aggressive/overbearing manner to unfairly induce Ms Bowen to allow you inside. As such, you entered the address unlawfully and were a trespasser inside the address.**

It is argued for the officer that this is duplicitous – or at least so similar to the first allegation that it should not be separately pleaded. It does contain the same elements of a statement of powers that did not exist and an unfair inducement being given to enter the premises. There is some merit in this submissions – although the conclusion of the allegation is different, which justifies it appearing as a separate allegation.

He did misrepresent his police powers, as we have already stated with regard to allegation 1. He did use an aggressive and overbearing manner to induce Ms Bowen to allow him inside and that was unfair. The allegation continues that “As such, he entered the address unlawfully and were a trespasser inside the address”. The second part of this does not really flow from the “as such” but requires a separate determination. The question to be asked here is whether the Officer did in law have a right to enter the address. This is regardless of his knowledge of this law or his ability to state it correctly. His power to enter is found in s.17 of the Police and Criminal Evidence Act 1984. This permits entry to premises if the purpose is to arrest a person for an indictable offence. This would have to relate to the theft, not the criminal damage. The power is only exercisable if the officer has reasonable grounds for believing that the person whom he is seeking is on the premises. This brings us to the second question that the Appropriate Authority have posed on page 3 of their Case Summary, namely

Did PS Flint genuinely believe that entry to the premises was necessary and lawful to locate the suspects for that offence (namely the theft of a parcel) and was that belief based on reasonable grounds?

The Panel think that he might have hoped the suspects were in the property. His gut instinct as an experienced officer who was familiar with the area might have told him this, but his grounds for believing this cannot be objectively justified. The reasons he has given to support such a belief do not bear scrutiny and some of those matters were not within his knowledge at the time. There are few if any logical grounds for thinking that the suspects might have been there. So, we do not think that he actually had a power of entry. Therefore, he did enter the address unlawfully and was in fact a trespasser inside the address. So, allegation 4 is proved in all its aspects.

...

We have considered Honesty and Integrity; Again, we think that the misrepresentation here arises from ignorance and mistake as opposed to dishonesty. We have wrestled with the question of whether what we consider to be an unintentional abuse of position engages the Standard of Integrity and we will err on the side of caution here and say that it does not.

The Standard of Authority, Respect and Courtesy is engaged however, as is Orders and Instructions and Duties and Responsibilities and Discreditable Conduct.”

**“11. Your main purpose in carrying out the conduct at paragraphs 1-9 above was to facilitate Mr Allen’s entry into the premises. You had no lawful authority to do so.**

The Panel have no doubt that this is proven. The only sensible interpretation of Sgt Flint’s actions and comments from the very outset is that he wanted to facilitate what he thought was the aim of Mr Allen, namely to ensure that his visit to the premises was not in vain.

The Standards engaged here are Dishonesty (sic) and Integrity – on the basis of Integrity, Authority, Respect and Courtesy and Discreditable Conduct.” (emphasis added)

15. The only allegation found not proved was allegation 6, in respect of which the Panel found:

“Due to the Officer’s continued arrogance and disdain for all interruptions Ms Bowen was never allowed to articulate what was undoubtedly her desire that Mr Allen be kept out of the property. The Officer’s defence to this is that she never made such an assertion so he could not have disregarded it. Technically, this is correct, so we do not find this allegation proven. The reason why we do not find it though hardly bathes the Officer in glory.”

16. The Panel addressed the seriousness of PS Flint’s misconduct, having regard to the Guidance on Outcomes in Police Misconduct Proceedings issued by the College of Policing (“the Guidance on Outcomes”), addressing culpability, harm and aggravating and mitigating factors, before concluding that taking their findings of misconduct in their entirety they amounted to gross misconduct. The Panel observed: “Culpability is increased here because the Officer was holding a position of responsibility and indeed his actions did influence those of a junior officer.” Under the heading “Aggravating factors” they stated:

“A feature of this case has been a significant deviation from the law. We think this arose from a position of ignorance and arrogance as opposed to [being] planned and dishonest.”

17. Under the heading “outcome”, having set out the purposes for which outcomes are imposed in police misconduct proceedings the Panel observed:

“We have gone on to choose the outcome which most appropriately fulfils these purposes, given the seriousness of the conduct proved. We have started with the least serious option.

We have found numerous allegations and breaches of six of the Standards of Professional Behaviour, several of them repeatedly. Whilst the timeframe of this incident was quite tight, there was a range of conduct constituting several different elements. This was not one bad decision but a series. As a matter of gross

misconduct, which by definition is a breach so serious that dismissal would be justified, caselaw very strongly points to an outcome of dismissal. To do otherwise really needs to be justified by something exceptional.

The call out, the duties of the Officer and the circumstances on the day in question were not extraordinary in any way. The Officer knew the location and should have been more than able to deal with the situation. He managed instead to show ignorance of the law, arrogance towards the public and a high-handed and intolerant attitude. He set the tone, he set the pace. There should have been no particular pressures on him. Yet only a few minutes later he has unlawfully entered the home of a socially vulnerable woman, has arrested her and applied unlawful force and allowed her rights to be violated against her specific wishes.

Bearing in mind the purposes of the proceedings and in particular the need to maintain public confidence we consider that the only proper outcome is dismissal without notice.” (emphasis added)

### **C. The PAT’s decision**

18. PS Flint appealed to the PAT against the sanction of dismissal imposed by the Panel. Although he did not appeal against the decision that his conduct constituted gross misconduct, his grounds of appeal challenged some of the findings on which the Panel’s decision was based.
19. The (remote) hearing of his appeal took place before the PAT on 5 June 2020. The Tribunal members were Mrs Nahied Asjad (the legally qualified chair), Assistant Chief Constable Kerrin Wilson (the senior police member) and Steve Matthews (the retired police member). The PAT promulgated its decision on 11 June 2020.
20. At §§32-44 the PAT addressed PS Flint’s grounds (1)(a) and (2)(a), brought pursuant to rule 4(4)(c) and rule 4(4)(a), respectively, of the Police Appeals Tribunals Rules (2012/2630) (“the PAT Rules 2012”), by which PS Flint contended:
  - i) The finding or decision on disciplinary action was materially affected by unfairness in that the Panel revisited the same conduct on multiple occasions, made illogical, inconsistent and contradictory findings and improperly aggregated the seriousness of the misconduct found.
  - ii) The finding or disciplinary action imposed by the Panel was unreasonable in terms of the inconsistency of some of their findings, including in finding that an aggravating feature was abuse of position in circumstances where it had been found not to be intentional.
21. The PAT held that grounds (1)(a) and (2)(a) were made out. Having observed that there was inconsistency in the Panel’s findings because of the way the regulation 21 notice was drafted which was “far too complicated”, including three allegations (1, 4 and 11) directed to PS Flint’s actions in securing entry to the property, the PAT stated:

“36 ... The findings that emerged from the way in which the regulation 21 [notice] was drafted led to the following inconsistent findings.

37 The Panel made an express finding that the Appellant made a mistake and deliberately did not misrepresent his police powers when he instructed Ms Bowen to let him into the property. They made an express finding that there was no improper abuse of position but an unintentional one borne out of ignorance and mistake. All of these findings are the direct opposite of:

- a. Misrepresentation to unfairly induce – which requires a deliberate act
- b. Facilitating an aim – namely letting the bailiff into the premises – which again requires a deliberate act

38 If this was an improper motive case, then there would have been deliberate misrepresentation in the instruction given to open the door and not a mistaken one. If this was an improper motive case the Panel would have found the standard of honesty and integrity breached in relation to Allegations 1 and 4. But it didn't. The Panel only found a breach of the standard of duties and responsibilities in respect of Allegation 1 and only found a breach of the standards of Orders and Instructions, Duties and Responsibilities and Discreditable Conduct in respect of Allegation 4. It<sup>[1]</sup>s relevant to note that the Panel specifically addressed its mind to the gravamen of Allegation 4 and whether the entry was lawful, irrespective of why he said he was going and said this:

*Again, we think that the misrepresentation here arises from ignorance and mistake as opposed to dishonesty.*

So by this point, twice in relation to the Allegations 1 and 4, the Panel has expressly ruled out any dishonest conduct.

39 It is difficult to see therefore how a finding in relation to Allegation 11 can reasonably stand in the light of those findings.  
...

40 Having expressly ruled out an abuse of position in relation to Allegation 4 and arguably Allegation 1 as well, it is unreasonable to conclude that that conduct contained within these allegations was for an improper motive. Allegation 11 includes 1, 2,3 and 4, 5, 6, 7, 8 and 9 for which at no point did the Panel find an abuse of position. They only found a lack of diligence, lack of authority, respect and courtesy, use of force and discreditable conduct. It was unreasonable therefore for a finding of lack of integrity to be made, for an allegation that relies on other

allegations for which no breach of honesty and integrity were made and only an unintentional abuse of position was found.

41 The Panel's findings were unclear and open to misinterpretation and for that reason they were unreasonable."  
(emphasis added)

22. The PAT also found "breaches of procedures and some other unfairness" in that, contrary to the Home Office guidance, the regulation 21 notice did not make clear the "behaviour that is alleged to have fallen below the standard expected of a police officer"; and accepted PS Flint's submission regarding the "aggregation of seriousness".
23. The PAT addressed grounds (1)(b) and (1)(c) at §§45-48. It is unnecessary to refer to ground (1)(c), which the PAT found was not made out. In ground (1)(b), PS Flint contended (pursuant to rule 4(4)(c)) that (a) the Panel failed to deal with the undisputed fact that there was a period of 2 minutes and 31 seconds between PS Flint and PC Elliott arriving at the premises; (b) the Panel failed to deal with the submission that the two officers were in possession of essentially the same information; (c) there was no evidence to support the Panel's finding that PS Flint influenced the decisions of PC Elliott; (d) the weight of the evidence (in the form of a log entry minutes before PS Flint arrived which said "offender left scene but may return" and PC Elliott's evidence, misconduct interview and hearing) suggested PC Elliott had returned to the address because he had been told that by the Control Room; and (e) the weight of the evidence was that both officers independently of each other came to the same conclusion that the suspects had or may have returned back to Ms Bowen's address, based on what they had been told by control and/or seen on the log.
24. The PAT found:

"45. Ground 1(b) is partially made out. There was some unfairness.

46. There were aspects of PC Elliott's evidence that should have been addressed by the Panel. In particular, the Panel when assessing outcome referred to the seniority of the Appellant and his position of trust and how it influenced PC Elliott. There was discrepancy in the evidence that was given in relation to this arising, however, from what was said at the hearing and what was said during the Misconduct meeting. PC Elliott's Regulation 36 decision was before ... the Panel and mentioned as an ancillary matter. Apart from noting that it was helpful, the Panel made no mention of the factual findings. They should have done so however, given the discrepancy in evidence and the importance of it."
25. Ground 2(b) alleged (pursuant to rule 4(4)(a)) that the Panel misapplied the legal test for dismissal. The PAT found this ground was made out and, having misdirected itself as to the law, the Panel's approach to outcome was unreasonable. The PAT said:

"50. The Panel stated:

*As a matter of gross misconduct, which by definition is a breach so serious that dismissal would be justified, caselaw very strongly points to an outcome of dismissal. To do otherwise really needs to be justified by something exceptional.*

51. The Appellant, both Counsel and this Tribunal are left in the unenviable position of having to surmise or at worse guess what caselaw the Panel could have been referring to. The Appellant and the public are entitled to know the legal basis upon which a decision that leads to dismissal, is based on. A finding of gross misconduct does not lead to a presumption of dismissal that can only be overcome by something exceptional. This was not a case where a finding of operational dishonesty was made. In that regard we cannot accept the submission made by Counsel for the Respondent that the comment made by the Panel that the Appellant “set the tone, set the pace, yet only a few minutes later unlawfully entered the home of a socially vulnerable woman...” was consistent with him not being operational. It would be grossly unfair to the Appellant to read into a Panel<sup>1</sup>'s reasoning something as significant as that.”

26. Ground 2(c) alleged the outcome imposed by the Panel was unreasonable. In respect of this ground, the PAT simply said that it was made out for the reasons given earlier in respect of the other grounds.
27. The PAT went on to remake the decision. They said:

“56. We accept that the conduct of the Appellant was so serious as to amount to gross misconduct. Gross misconduct does not mean automatic dismissal. Had that been the intention of Parliament, they would have excluded other outcomes from consideration.

57. The purpose of misconduct proceedings is three fold:

- maintain public confidence in and the reputation of the police service
- uphold high standards in policing and deter misconduct
- protect the public

58. We have considered the lowest sanction first – namely Management Advice. This would have some useful purpose in that appropriate training could be arranged, an action plan produced, and the Appellant could be held to account for his behaviour by robust management by an Inspector. But such an outcome would not mark the seriousness of this gross misconduct borne out by arrogance and perhaps ignorance –

which can sometimes be seen as unconscious bias by ordinary members of the public.

59. ... We are willing to give you a chance to redeem yourself and to learn from this experience. And to make sure that you do so, you will be subject to a final written warning for a period of 18 months.”

**D. The Court’s approach on judicial review of PAT decisions**

28. The approach to be taken by the court on a claim for judicial review of a PAT’s decision was set out by Burnett J in *R (Chief Constable of Dorset) v PAT & Salter* [2011] EWHC 3366 (Admin):

“19. ... Proceedings in the Administrative Court seeking to challenge the decision of a Police Appeals Tribunal do not arise by way of appeal, but by way of a claim for judicial review. In those circumstances, a claimant in judicial review proceedings must establish a public law error before the decision of that Tribunal could be quashed.”

“25. At each level in the disciplinary process, the decision maker or decision making body is expert in nature. It knows and understands how the police service works. It knows and understands the importance of maintaining integrity amongst police officers. It knows and understands the impact that serious misconduct can have on the force concerned and the police service in general. Parliament has provided that the Tribunal is the appellate body for these purposes. There is no further appeal to the High Court. The Tribunal is subject to the supervisory jurisdiction of this court. I have already observed that the approach of this court in judicial review is different from the approach adopted when sitting in an appellate capacity from the Solicitors Disciplinary Tribunal. Absent another error of law on the part of the Police Appeals Tribunal its decision on sanction could be interfered with only on classic *Wednesbury* grounds, in short that on the material before it no reasonable Tribunal could have reached the conclusion that it did.”

29. Endorsing this approach in *Chief Constable of Northumbria v PAT & Barratt* [2019] EWHC 3352 (Admin), Freedman J observed at [21]:

“The Administrative Court should guard against the misuse of its jurisdiction by Chief Constables seeking to mount what are effectively “undue leniency” appeals to decisions of misconduct panels or PATs.”

**E. (1) Alleged failure to recognise the distinction between honesty and integrity**

***The parties’ submissions***



30. The Chief Constable submitted that the PAT's conclusion that the Panel's finding of lack of integrity on allegation 11 was inconsistent with the Panel's findings on allegations 1 and 4 demonstrates a failure to recognise and apply the well established distinction between dishonesty and lack of integrity. In respect of allegations 1 and 4, the Panel found that PS Flint had not been dishonest. The PAT's conclusion that it was logically inconsistent to find that he acted with a lack of integrity in respect of allegation 11 showed that the PAT proceeded on the incorrect basis that the words "honest and act with integrity" in the Code of Ethics were conjunctive rather than disjunctive. Mr John Beggs QC, Counsel for the Chief Constable (who, like Mr Berry, did not appear below), submitted that the Panel had shown discernment in being prepared to find that an officer of PS Flint's rank had a mistaken understanding of his powers, while also looking at the conduct as a whole and in particular PS Flint's fixed determination to facilitate the bailiff's entry into Ms Bowen's house, and finding his conduct lacked integrity.
31. There was no dispute that the words "honesty and integrity" should be read disjunctively. Mr Jason Pitter QC, Counsel for PS Flint (who did not appear below), submitted the PAT identified and applied the distinction and concluded there was no lack of honesty or integrity in this case. While it is proper to draw a distinction between honesty and integrity in many cases, it was not a distinction which had any real application on the particular facts of this case. The key issue was whether PS Flint was deliberately dishonest or mistaken. If he had an improper motive – that is, if he was improperly seeking to gain entry for the bailiff – that would have been dishonest. Yet the Panel found he was mistaken, not dishonest.

### *Decision*

32. It is common ground that the concepts of honesty and integrity are distinct. In *Chief Constable of Thames Valley Police v Police Misconduct Panel & White* [2017] EWHC 923 (Admin), McGowan J addressed the distinction between these concepts in the Standards of Professional behaviour, at [15]:

“It is obvious that deliberate dishonesty on the part of a police officer would, almost invariably, amount to gross misconduct. The standard of honesty expected by the public of its police service is high and must be jealously guarded by those responsible for its maintenance. Equally the public is entitled to expect that police officers will maintain the required standards of integrity but as Sir Thomas Bingham MR set out in *Bolton v Law Society* [1994] 1 WLR 512 at 518 D,

“If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust. A striking off order will not necessarily follow in such a case but it may well. The decision whether to strike off or suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case.”

A lapse of integrity is very serious but can fall short of the quality of a lapse of honesty. Integrity in this context is not used in the sense of freedom from moral corruption rather in the sense of a failing to act in the right way, not behaving as the totally correct police officer would, in some way falling short of the whole. It is explained for police officers as "doing the right thing".

33. In *Wingate v Solicitors Regulation Authority* [2018] EWCA Civ 366; [2018] 1 WLR 3969, the Court of Appeal gave extensive consideration to the distinction between honesty and integrity in professional disciplinary proceedings. Jackson LJ said:

“[95] As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty...

[97] In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson P in *Williams* at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.

...

[100] Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse.

...

[102] Obviously, neither courts nor professional tribunals must set unrealistically high standards, as was observed during argument. The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public. ...”

34. Allegation 1 concerned PS Flint’s conduct in instructing Ms Bowen to let him into her home, and his threat to use force to enter if she did not do so. The Panel found “*he was mistaken about his actual powers*” and made no finding that this conduct in respect of allegation 1 was dishonest or lacking in integrity. Allegation 4 concerned PS Flint’s conduct in unfairly inducing Ms Bowen to let him enter her home by misrepresenting his powers and by using an aggressive/overbearing manner, such that he was a trespasser. The Panel wrestled with the question whether the Standard of integrity was engaged, but said it was not. The Panel found the misrepresentation arose from

*“ignorance and mistake as opposed to dishonesty”* and the abuse of position was *“unintentional”*.

35. In my judgment, the PAT’s conclusion that the finding of lack of integrity in respect of allegation 11, which concerned PS Flint’s main purpose in carrying out the conduct in (amongst others) allegations 1 and 4, was unreasonable does not disclose a misdirection regarding the distinction between honesty and integrity.
36. First, it is wrong to characterise the PAT’s decision as finding an inconsistency between, on the one hand, a finding that conduct was not dishonest and, on the other hand, a finding that the same conduct lacked integrity. The Panel’s findings in respect of allegations 1 and 4 addressed (implicitly in respect of allegation 1 and expressly in respect of allegation 4) integrity as well as dishonesty, and found no lack of integrity in the conduct which was the subject of allegations 1 and 4. The inconsistency was between findings that the same conduct did not lack integrity and that it did.
37. Secondly, while I accept the Chief Constable’s submission that it would have been logically possible for PS Flint to have been mistaken about his powers of entry to search for stolen property or suspects (and so been mistaken in his representation of those powers), and at the same time to have misused the powers he believed he had to seek entry for a different, improper purpose, such conduct would have been dishonest, as well as lacking in integrity. It would have been an intentional abuse of power. The distinction between dishonesty and lack of integrity would not have been material. However, it is impossible to square this theoretical scenario with the Panel’s conclusions in respect of allegations 1 and 4.

**F. (2) Alleged error in finding that allegations 1 and 4, and 11, could only give rise to the same conclusion**

***The parties’ submissions***

38. The Chief Constable submitted that the PAT reached an irrational conclusion in finding that it was only possible to arrive at the same decision for allegation 11 as for allegations 1 and 4. He submits that allegations 1 and 4, and allegation 11, addressed different types of conduct. With respect to allegation 11, the Panel had to consider whether PS Flint’s motive for entering the property was improper, irrespective of whether technically he had a lawful basis to use a police power. In addition, allegations 1 and 4 concerned only PS Flint’s own entry onto the premises, whereas allegation 11 concerned PS Flint’s actions in facilitating the bailiff’s entry by opening the door for him.
39. Mr Beggs submitted that once it is understood that the allegations were addressing different conduct and different stages, it is clear that the Panel’s findings of mistake in respect of allegations 1 and 4, and of lack of integrity in respect of allegation 11 could logically stand together and the PAT’s decision to the contrary is irrational. Mr Beggs acknowledged that if PS Flint had an improper motive, the representations he made to attain his own entry (as addressed in allegations 1 and 4) might be said to have lacked integrity, but he submitted the Panel did not err in choosing to address each allegation on a narrow basis, considering PS Flint’s motive only under allegation 11.
40. Mr Pitter submitted that it is not possible to separate out allegation 11 in the way that the Chief Constable seeks to do because it was an overarching allegation which relied

upon the conduct alleged in allegations 1-9. Moreover, he submitted that the Panel would have had to explained and given reasons for making a free-standing finding of lack of integrity, if that was what it was doing. In the absence of reasons, the decision was rightly impugned by the PAT as being unreasonable and/or materially unfair.

### *Decision*

41. In considering this challenge to the rationality of the PAT's decision, it is important to bear in mind that the approach to be taken by this court on a claim for judicial review of the PAT's decision is distinct from the approach taken by the PAT on the appeal from the Panel under rule 4(4)(a) of the PAT Rules 2012. In *R (Chief Constable of Durham) v PAT & Cooper* [2012] EWHC 2733 (Admin), Moses LJ observed at [6]-[7]:

“The imposition of a test which asks whether the decision of the misconduct panel was unreasonable has led some to take the view that that imported a test of *Wednesbury* unreasonableness, a test appropriate to that applied by this court in questions of public law. That, in my view, is erroneous. As many courts have concluded before this court, the test is not one of *Wednesbury* unreasonableness. Firstly, the test must be seen in its correct statutory context, namely that of a specialist appeal tribunal considering the decision of a misconduct panel. A *Wednesbury* unreasonableness test is that test which is conventionally adopted where courts review decisions of the executive or expert panels; it is in such cases necessary to impose a high standard before intervention, so that the courts do not merely substitute inexpert views for those on whom primarily the responsibility of making a decision lies. Secondly, the appeal panel is itself an expert panel, as this case fully demonstrates. ...

7. It follows therefore, to my mind, that the test imposed by the rules is not the *Wednesbury* test but is something less. That does not mean that the appeal tribunal is entitled to substitute its own view for that of the misconduct hearing panel, unless and until it has already reached the view, for example, that the finding was unreasonable. Nor, I should emphasise, is the Police Appeals Tribunal entitled, unless it has already found that the previous decision was unreasonable, to substitute its own approach. It is commonplace to observe that different and opposing conclusions can each be reasonable. The different views as to approach and as to the weight to be given to facts may all of them be reasonable, and different views may be taken as to the relevance of different sets of facts, all of which may be reasonable. The Police Appeals Tribunal is only allowed and permitted to substitute its own views once it has concluded either that the approach was unreasonable, or that the conclusions of fact were unreasonable. None of what I say is revolutionary or new.”

42. The Panel faced a difficult task because of the unfortunate way in which the allegations were drafted. As I have said in §37 above, as a matter of logic, it is possible that PS

Flint could have (mistakenly) believed that, technically, he had power of entry, while at the same time intending to misuse it for an improper purpose. It is also possible that the reason for the apparent inconsistency between the finding of lack of integrity in respect of allegation 11, but not in respect of allegations 1 and 4, was that the Panel was seeking to separate out overlapping and duplicative allegations, by dealing with narrow aspects of the conduct alleged under each allegation. But the Chief Constable's submission that this is what the Panel in fact did is an attempt to engineer backwards from the result, in the absence of any explanation.

43. In my judgment, the PAT's decision is not irrational. The PAT said it is *difficult* to see how the finding in relation to allegation 11 can reasonably stand with the Panel's earlier findings. That is undoubtedly true. It is not impossible: it is possible to speculate, as the Chief Constable has done, as to how the findings might stand together if only a narrowly confined aspect of PS Flint's conduct was addressed in respect of allegations 1 and 4. But that does not detract from the PAT's key finding at §41 that the Panel's findings were "*unclear and open to misinterpretation and for that reason they were unreasonable*".

**G. (3) Alleged irrational quashing of sound inculpatory findings**

***The parties' submissions***

44. The Chief Constable relied on a number of authorities in support of the proposition that a first instance tribunal's findings of primary fact, particularly if founded upon an assessment of the witnesses, are close to being unassailable, the most recent being *Kalma v African Minerals Ltd* [2020] EWCA Civ 144 in which Coulson LJ observed at [48]:

"In my view, the appellants repeatedly came close to, and often crossed, the clear boundary as to what can and cannot be argued on an appeal of this sort. It is unnecessary to set out in detail the proper approach of an appellate court to appeals that raise issues about the first instance judge's findings of fact. The Supreme Court has regularly explained that, unless a critical finding of fact has no basis in the evidence, or is based on a demonstrable misunderstanding of relevant evidence, or a failure to consider such evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonable be explained or justified: see *Henderson v Foxworth Investments Limited* [2014] UKSC 41, Lord Reid at paragraph 67; *Volcalfe Ltd v Cia Sud Americana de Vapores SA* [2018] UKSC 61, Lord Sumption. This applies equally to findings of primary fact and any inferences to be drawn from them: see *Staechelin v ASLBDD Holdings & Others* [2019] All ER 429."

45. He submitted that in circumstances where the Panel, unlike the PAT, watched the BWV footage and had the advantage of hearing Ms Bowen, PS Flint and PC Elliott give evidence, there was no rational basis on which the PAT could interfere on appeal with the Panel's finding that it had no doubt that PS Flint's motivation for his actions towards

Ms Bowen was that he wanted to facilitate Mr Allen gaining access to the property to recover goods.

46. Mr Pitter submitted that the Chief Constable's approach seeks to artificially elevate the finding of fact with respect to allegation 11 as being more sound than the Panel's conclusions in respect of allegations 1 and 4. There is no justification for doing so, and the PAT's conclusion that the Panel's findings with respect to allegation 11 were unclear, confusing and appeared to be inconsistent with their other findings provides a sufficient reason to reject this rationality challenge.

### *Decision*

47. The finding that PS Flint's main purpose was to facilitate the bailiff's entry into the premises was a primary finding of fact for which there was clear support on the BWV footage. But the Panel's decision jumped from the finding as to PS Flint's motive to a conclusion that he breached the integrity Standard, without addressing the question whether he knew that it was improper to seek to assist a bailiff to gain entry for the purposes of recovering property, or whether he was mistaken about that, too.
48. In my judgment, the PAT's decision cannot properly be characterised as quashing the primary finding of fact. The finding in respect of allegation 11 that the PAT effectively quashed was the finding of lack of integrity. The PAT's decision was that having expressly ruled out an abuse of position it was unreasonable to conclude that the conduct contained within those same allegations was for an *improper* motive; and the finding of lack of integrity fell to be quashed because the Panel's decision did not clearly explain the finding of lack of integrity. That was a rational conclusion that the PAT was entitled to reach.

## **H. (4) Material unfairness with respect to the PC Elliott evidence**

### *The parties' submissions*

49. The Chief Constable raised two points under this ground. The first is that the PAT failed correctly to apply the test in rule 4(4)(c) of the PAT Rules 2012 that any unfairness must be material. The PAT found that "there was some unfairness" but did not state that the unfairness was material or give any reasons as to why the unfairness was material.
50. The Chief Constable's second point is that what the PAT referred to as "some unfairness" could not rationally have been found to amount to unfairness, still less material unfairness. The PAT's decision suggests the Panel failed to address unspecified "*aspects of PC Elliott's evidence*". The only indication of what evidence is being referred to is the PAT's statement that there was a "discrepancy in the evidence" as between PC Elliott's misconduct meeting and PS Flint's misconduct hearing before the Panel, relating to the Panel's reference, when assessing outcome, to "the seniority of the Appellant and his position of trust and how it influenced PC Elliott".
51. The Chief Constable submitted that the seniority of PS Flint, and the fact he was holding a position of responsibility, was not a matter of evidence or dispute. He was a Police Sergeant and the senior officer present. Leaders in policing are subject to additional expectations with respect to their conduct, in accordance with §§1.4.4-1.4.5 of the Code

of Ethics. The Chief Constable submits that the finding that PS Flint's conduct influenced PC Elliott was consistent with the evidence that the Panel itself heard from PC Elliott, as well as with the factual findings made at the misconduct meeting for PC Elliott.

52. In respect of the first point, the Interested Party submitted in his skeleton argument that it is implicit in the finding, read in context, that the unfairness was material. However, in oral submissions Mr Pitter suggested that in saying there was "some unfairness" the PAT did not appear to be saying the unfairness was material or giving it any particular prominence in their decision.
53. However, insofar as the Panel treated his influence as an aggravating feature, he maintained the criticism of the Panel made by PS Flint on appeal to the PAT and in his skeleton argument for this hearing. Accordingly, in relation to the second point, it is submitted on behalf of PS Flint:
  - i) the Panel's conclusion that PS Flint influenced the decisions of PC Elliott was "*simply not borne out by any of the evidence before the Panel whatsoever, nor was it borne out of any finding within PC Elliott's Regulation 36 determination*";
  - ii) the Panel failed to deal with the undisputed fact that there was a period of 2 minutes and 31 seconds between PS Flint and PC Elliott arriving at the premises;
  - iii) the Panel failed to deal with the submission that the two officers were in possession of essentially the same information; and
  - iv) the weight of the evidence (in the form of a log entry minutes before PS Flint arrived which said "offender left scene but may return" and PC Elliott's evidence, misconduct interview and hearing) suggested:
    - a) PC Elliot had returned to the address because he had been told that by the Control Room; and
    - b) both officers independently of each other came to the same conclusion that the suspects had or may have returned back to Ms Bowen's address, based on what they had been told by control and/or seen on the log.

### ***Decision***

54. In my judgment, it is implicit in the PAT's decision that the unfairness to which they referred at §§45-46 was material. Not only had they set out the rule 4(4)(c) test earlier in their decision, but in §46 they said the Panel should have mentioned the factual findings in PC Elliott's Regulation 36 decision "*given the discrepancy in evidence and the importance of it*". I bear in mind that Mr Pitter did not assert that the PAT found material unfairness in relation to this aspect of the decision, but it seems to me that reflected the difficulty he had in justifying the conclusion, rather than the terms in which the conclusion was stated.
55. While I reject the Chief Constable's contention that the PAT failed to apply the test of material unfairness in rule 4(4)(c), I accept his contention that the PAT failed to give

adequate reasons for finding any material unfairness. It is impossible to understand from the PAT's decision how it is said that the way the Panel addressed evidence from or relating to PC Elliott was unfair.

56. The Panel made it clear that their conclusions were based on the evidence they themselves heard:

“Firstly, the observation that Sgt Flint has not been dealt with in the same way as PC Elliott. We note that the role of the two officers was different, their rank was different, their role profiles within the police were different, their actions were different, and their attitudes were different. Further, these proceedings against Sgt Flint are as a result of an IOPC recommendation. This is a matter of public law. This Panel cannot sit as an appellate body of their decisions. We can only deal with what is presented to us. It is not our role in these circumstances to go behind the decisions that brought that case here.

Secondly, we note the findings of the regulation 36 misconduct meeting that PC Elliott had, as presented to us as additional evidence, and it has been helpful to see some of what was said during that process. Nevertheless, we would like to make it clear that we in no way consider ourselves bound by the factual findings of that process.”

57. The PAT's decision suggests it was important, in fairness to PS Flint, for the Panel to refer to the factual findings made following PC Elliott's regulation 36 meeting. However, the Panel's conclusions that PS Flint's actions influenced PC Elliott find *support* in the Regulation 36 decision. The Regulation 36 Determination stated:

“Through his own geographical knowledge PC Elliott was aware that the males may have returned back to the address using another route. Upon arrival at the address he was also aware that they could have got back into the property without being seen from the front of the address. He saw that Sgt Flint wanted to gain access to the address. Although there was no briefing or conversation from PS Flint or further information provided from another party to suggest that the males were in the address, PS Flint's actions added to his rationale that the offenders were in the address.

PC Elliott stated that he did not hear PS Flint saying that he wanted to enter to search for property and his belief was that the motivation to enter was to search for the subjects....

PC Elliott had already formed the suspicion that the subjects may have returned to the address. To arrive at the address and see a supervising officer adamant to go into the premises confirmed for him that they were in there. The only action PC Elliott could have taken to further his belief was to speak to PS Flint and confirm clarity around why the subjects were believed to be in



the address; however PS Flint's demeanour at the time did not lend itself to allow for those questions to be asked combined with a collapsing time frame being instigated by PS Flint.

It is a viable assumption for PC Elliott to make that a more senior officer with greater knowledge of the law, who has been at the scene the longest, would have all the information available. If the officer is attempting to get into the address then PC Elliott upon arrival, having already formed the opinion that they may have returned, would draw the conclusion that Sgt Flint wanted to get into the address because he was more informed than PC Elliott and thus aided the belief the subjects to be in the address.

Therefore regardless of Sgt Flint's intentions and whether his entry was lawful, at the point of entry PC Elliott believed the subjects were in the address and he had a lawful power to enter the premises under section 17 PACE to search for the two outstanding subjects." (emphasis added)

58. The reference to PS Flint stating his intention to enter the premises to look for *property* flows from the fact that PS Flint could be heard on the BWV footage justifying his entry by reference to a search for stolen *property*. As PS Flint acknowledged before the Panel, he had no power to enter Ms Bowen's house to search for property. A power to search for *suspects* in respect of an indictable offence such as theft was dependent on having reasonable grounds for belief that the suspects were on the premises: s.17 Police and Criminal Evidence Act 1984.
59. The Panel's conclusion that PC Elliott was influenced by PS Flint's conduct also finds support in the evidence PC Elliott gave to the Panel. In response to the suggestion that what turned his suspicion into belief that the suspects were on the premises was the actions of PS Flint, PC Elliott said "*My belief came from the actions of Sergeant Flint, the information I was given on the radio. It was a combination of my layout, my knowledge of the layout of the locale.*"
60. The fact that PC Elliott arrived at the scene 2 minutes 31 seconds after PS Flint was one of the reasons that when PC Elliott saw the more senior officer seeking to enter the premises he assumed that PS Flint had a reasonable belief the suspects were on the premises. It is not apparent how the undisputed timeline assists PS Flint in countering the finding that his conduct influenced PC Elliott.
61. The submission that the two officers were in possession of essentially the same information ignores the fact that PS Flint's stated justification for seeking entry was to look for stolen property, whereas PC Elliott made reference to looking for suspects. It also ignores the fact that PC Elliott's belief was based in part on the conduct of a more senior officer who had been at the scene longer. That was not part of the information on which any belief PS Flint held could be based.
62. In my judgment, in the absence of any clear or adequate reasons for finding that the Panel's conclusions were unfair, the PAT's ruling that ground 1(b) was made out is irrational.

**I. (5) Alleged irrationality in quashing the sanction of dismissal**

*The parties' submissions*

63. First, the Chief Constable acknowledges that the Panel's statement that, where gross misconduct is established, "*caselaw very strongly points to an outcome of dismissal*" and that "[t]o do otherwise really needs to be justified by something exceptional" is not a correct statement of the law. However, his contention is that when the decision is considered as a whole, it is apparent that the Panel did not in fact approach its decision as to sanction on this incorrect basis. This is demonstrated by the fact that the Panel started by considering the least serious option first.
64. Second, even if the PAT was entitled to re-make the decision in respect of sanction, the Chief Constable's submission is that decisions as to sanction, whether made by the Panel at first instance or by the PAT by way of substitution under s.85(2) of the Police Act 1996, must be reached following the three stage test set out in *Fuglers LLP v Solicitors Regulatory Authority* [2014] EWHC 179 (Admin) at [28]-[29], as summarised and applied to the police misconduct jurisdiction in the College of Policing's Guidance on outcomes in police misconduct proceedings ("the Guidance on outcomes").
65. Third, the Chief Constable submits that given the seriousness of PS Flint's conduct, no rational PAT (or panel) could have come to any conclusion other than that the sanction of dismissal was necessary to fulfil the purpose of maintaining public confidence.
66. PS Flint submits, first, it is clear and obvious that the Panel misdirected themselves as a matter of law concerning the proper test for dismissal, inverting the proper approach in terms of considering the least severe outcome first. While they considered lesser sanctions, Mr Pitter submitted that there is a real danger that they created a more significant hurdle for PS Flint to overcome to avoid dismissal (namely, a presumption of dismissal and a requirement to establish exceptional circumstances) than was legally justified. This ground alone was sufficient to justify setting aside the Panel's decision as to sanction and remaking it.
67. Second, in his skeleton argument PS Flint submitted that the Guidance on outcomes is addressed to those making decisions at first instance and slavish adherence to it is not required in every case. He drew attention to §§1.3 and 1.4 which indicate that the guidance outlines a general framework and it does not override the discretion of the person conducting the hearing. He pointed to §§56 and 58 of the PAT's determination as addressing seriousness. In his oral submissions, Mr Pitter realistically acknowledged that there are ways in which the determination of sanction could be improved and it ought to have been addressed in more detail. But he submitted that it was within the range of what is sufficient and, in any event, if this is the only criticism that is made out, it could be remedied by an order requiring further reasons to be given.
68. Third, he submits that in circumstances where the PAT had concluded that PS Flint's actions were unintentional and not deliberate, borne out of ignorance and mistake, rather than dishonest, it was well within the boundaries of the PAT's reasonable discretion to impose a final written warning.

*Decision*

69. It is common ground that the Panel made an error of law in directing itself that where gross misconduct is established there is a presumption that the outcome should be dismissal, with any other outcome needing to be justified by something exceptional. It obviously follows that the PAT made no error in concluding that the Panel misdirected itself. In my judgment, it is also clear that there is no sensible basis on which the PAT's conclusion that the misdirection was material can be challenged. It was an important direction on the approach to be taken. The fact that the Panel considered less serious sanctions is a wholly insufficient basis for surmising that the Panel did not apply a presumption in favour dismissal and a requirement that exceptional circumstances would be required to justify imposing a lesser sanction. Accordingly, I reject the Chief Constable's first point under this head. On this ground alone, the appropriate sanction therefore fell to be determined afresh by the PAT.
70. In any event, PS Flint had negotiated the rule 4(4) gateway by persuading the PAT that the Panel's decision was unreasonable and materially unfair by reason of the unreasoned inconsistency of the finding of lack of integrity in respect of allegation 11, and the reference to abuse of position as an aggravating factor, with the findings on allegations 1 and 4; and the unreasonable finding that the number of allegations was an aggravating factor, given the degree of duplication and the fact this was a single incident. Consequently, it was open to the PAT to substitute its own views for those of the panel. As HHJ Saffman observed in *R (Chief Constable of Cleveland) v PAT & Rukin* [2017] EWHC 1286 (Admin) at [53]:
- “once the gateway is negotiated, the PAT can deal with the matter on a clean slate basis and can make an order dealing with the appellant in any way in which he could have been dealt with by the panel whose decision is appealed.”
71. I also reject the Chief Constable's contention that the only rational outcome was dismissal. The PAT is a specialist tribunal. Their view that the appropriate sanction was a final written warning is worthy of respect. In my judgment, it is impossible to conclude that the misconduct proven in this case was such that the only sanction that could rationally be imposed was dismissal.
72. However, I consider the Chief Constable's second point under this head is well-founded. The Guidance on outcomes states at §§4.2-4.5 (footnotes, referring to *Fuglers*, omitted):

“4.2 As Mr Justice Popplewell explained, there are three stages to determining the appropriate sanction:

- assess the seriousness of the misconduct
- keep in mind the purpose of imposing sanctions
- choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question.

4.3 Assessing the seriousness of the misconduct is the first of these three stages.

4.4 Assess the seriousness of the proven conduct by reference to:

- the officer's culpability for the misconduct
- the harm caused by the misconduct
- the existence of any aggravating factors
- the existence of any mitigating factors.

4.5 When considering outcome, first assess the seriousness of the misconduct, taking account of any aggravating or mitigating factors and the officer's record of service. The most important purpose of imposing disciplinary sanctions is to maintain public confidence in and the reputation of the policing profession as a whole. This dual objective must take precedence over the specific impact that the sanction has on the individual whose misconduct is being sanctioned."

73. In *R (Chief Constable of Greater Manchester Police) v Police Misconduct Tribunal and Roscoe* (unreported, 13 November 2018) ("*Roscoe*"), HHJ Pelling QC considered a judicial review claim challenging a decision of a police misconduct panel on the basis of a failure to exercise their discretion as to the sanction to be imposed by applying the structured approach identified in *Fuglers* and the Guidance on outcomes. He held:

"16. In my judgment this panel fell into error in the way it approached the sanction. The only way a court or anyone else reading the decision can be satisfied that the correct structured approach had been adopted is if either the panel identifies the structured approach that it is required to adopt expressly in the body of its decision and then explains how it has arrived at the relevant decision applying that approach. If that ideal approach is not adopted but it is apparent from the language used by the tribunal that in substance such an approach in fact has been adopted then the court will not intervene. Obviously however the court will not guess or assume that a correct approach has been adopted if that is not apparent on the face of the decision.

17. As is apparent from two of the authorities referred to earlier in this judgment - *Salter* and *Green* - one of the primary purposes of a sanction in a professional misconduct context is preserving public confidence. It was for that reason that Popplewell J identified as the second stage in *Fugler* the need to keep in mind the purpose for which sanctions are imposed. Whilst it may not be apposite to describe this as a "stage" it is undoubtedly what a panel must keep in mind when deciding the most appropriate sanction. The guidance summarised earlier in this judgment states in clear terms the purpose of the misconduct regime - see paragraph 3.2 - and the need to keep those purposes in mind when arriving at the appropriate sanction - see paragraphs 4.2 and 7.2. In its reasons the panel in this case does

not anywhere state in terms that such has been its approach nor does it explain how applying those principles had led it to the decision it has made nor use language that demonstrates that that is how it arrived at its decision.

18. Although the panel states in the second and third line of its sanction decision that it has applied the principles in the guidance that falls far short of what is required in my judgment. It does not set out expressly or even refer expressly to the correct structured approach identified in *Fugler* summarised in the guidance even though the parties formerly cited *Fugler* to the panel. Even if the language used by the panel could be regarded as sufficient in the circumstances that of itself is not enough unless the reasoning that follows shows that effect has been given to the structured approach by reference to the purpose of sanctions identified in the guidance. The panel has identified certain aggravating factors and certain mitigating factors before then concluding that a final written warning was appropriate. By adopting that approach the panel fell into error because it did not attempt to assess how serious it concluded the misconduct to be. Seriousness is not a binary question. The focus of Chapter 4 of the guidance is on assessing how serious the misconduct is, not whether or not it was serious. Hence the reference for example in paragraph 4.15 to conduct that should be considered '*especially serious*'. The panel should have but has failed to assess the level of seriousness by reference to culpability, harm, aggravating factors and mitigating factors in the structured manner required by the guidance. Having reached a conclusion as to the level of seriousness displayed in circumstances of this case exhibited by the misconduct found to have occurred, the panel ought then to have considered sanction specifically by reference to the need to maintain public confidence in and the reputation of the police service, to uphold high standards, to deter misconduct and to protect the public. There is not a hint within the language used by the panel that this has been its approach.”

74. In this case, the PAT gave brief reasons for imposing a sanction of a final written warning at §§56-59 (see §27 above). The PAT did not refer to the Guidance on outcomes or follow the structured approach of assessing the seriousness of the officer's proven conduct by reference to culpability, harm and aggravating and mitigating factors. Beyond the statements that the conduct was “so serious as to amount to gross misconduct” and that it was “borne out by arrogance and perhaps ignorance”, the PAT's decision did not address the seriousness of PS Flint's conduct.
75. I reject the Interested Party's contention that, as an appellate tribunal, the PAT was not required to take the same structured approach to sanction as the Panel. When remaking the decision, the PAT was standing in the place of the Panel and bound to take the same approach. It was important that in remaking the decision as to sanction the PAT should make clear its assessment of the seriousness of the conduct which remained proven. It

was insufficient to determine that it constituted gross misconduct. As HHJ Pelling QC observed in *Roscoe*, seriousness is not a binary question.

76. The PAT referred to the conduct being borne out by arrogance and perhaps ignorance, but there was no proper consideration of PS Flint's culpability in relation to the differing aspects of his conduct, which encompassed not only the (mistaken) misrepresentation of police powers which was the main focus of the appeal, but also the use of disproportionate and unreasonable force against Ms Bowen, the use of an aggressive and overbearing manner in speaking to Ms Bowen and Ms McHale, including to unfairly induce Ms Bowen to allow him to enter her home, as well as being disrespectful and offensive about Ms Bowen and failing to complete a use of force form. Nor was there any consideration of the harm caused by the misconduct or of the aggravating and mitigating factors.
77. The PAT referred to the three-fold purpose of misconduct proceedings, but these purposes needed to be considered by reference to the level of seriousness of the proven misconduct.

**J. Conclusion**

78. It follows that the PAT's decision to remake the sanction stands, but its decision as to sanction must be quashed. This is not a case in which it is possible to conclude that it is highly likely the decision would not have been substantially different had the correct legal approach been applied. Accordingly, it is appropriate to remit this case for a fresh decision as to sanction to be made, on the basis of the Panel's findings on the allegations, save to the extent that the finding in respect of allegation 11 is quashed, applying the structured approach identified in the Guidance on outcomes.