POLICE APPEALS TRIBUNAL

IN THE MATTER OF POLICE ACT 1996
AND IN THE MATTER OF POLICE APPEALS TRIBUNAL RULES 2020
AND IN THE MATTER OF T/DC SUKHINDER BASI

Heard at Chesford Grange Hotel, Kenilworth, CV8 2LD

On 12 July 2022

Before: Ms S Fenoughty (Chair), Chief Constable C Guildford and Ms J Ord

Between

FORMER TRAINEE DETECTIVE CONSTABLE SUKHINDER BASI

Appellant

AND

THE CHIEF CONSTABLE OF WARWICKSHIRE POLICE

Respondent

Representation
For the Appellant: Mr C Banham
For the Respondent: Mr B Branston

DECISION AND REASONS

1. This is a determination made in accordance with The Police Appeals Tribunals Rules 2020 which provide for the hearing of appeals made by a police officer against a decision made under the Police (Conduct) Regulations 2020.

2. This decision is made in the appeal of former T/DC Basi who appeals against the decision made on 2 December 2021 that she be dismissed from the Warwickshire Police Service without notice.

BACKGROUND

3. The allegations before Chief Constable Debbie Tedds at the Accelerated Misconduct Hearing on 2 December 2021 were:

    1. *System Audits show that, on 26 March 2021, she accessed police systems, namely Genie and Athena, to obtain and review records (including paediatric medical reports) relating to an ongoing investigation into alleged offences against children without a lawful policing purpose to do so.*

    2. *On interview with officers from the Anti-Corruption Unit on 4 June 2021, she admitted passing information from those systems to a third party – being an extended family member of the individuals under investigation.*

4. The appellant faced an allegation that her conduct engaged the standards relating to confidentiality, honesty and integrity, discreditable conduct, and, if proved, her conduct amounted to gross misconduct.

5. CC Tedds did not have to make any findings of fact in order to conclude that the appellant's actions amounted to gross misconduct. This was because this was an accelerated misconduct hearing, the appellant did not dispute the facts, and acknowledged that her actions amounted to gross misconduct and breach of the standards as alleged.

6. At the hearing on 2 December 2021, CC Tedds heard submissions from Imran Ghouri, Acting Detective Sergeant, the appellant's Federation Friend, and from Katharine Grasby, Head of Legal, for the respondent. She also heard from the appellant. She took into account all the documentation, including character references and a written submission from the appellant.

7. CC Tedds concluded that the breaches of the Standards of Professional Behaviour were so serious that dismissal without notice was the appropriate and proportionate outcome.

LAW

8. The Police Appeals Tribunals Rules 2020 came into force on 1 February 2020, and apply to this appeal against a decision made in accordance with the Police (Conduct) Regulations 2020.

The Police Appeals Tribunals Rules 2020

Circumstances in which a police officer may appeal to a tribunal

Rule 4 (4) The grounds of appeal under this rule are—

(a) that the finding or decision to impose disciplinary action was unreasonable;

(b) that there is evidence that could not reasonably have been considered at the original hearing which could have materially affected the finding or decision on disciplinary action, or

(c) that there was a breach of the procedures set out in the Conduct Regulations, the Complaints and Misconduct Regulations or Part 2 of the 2002 Act or unfairness which could have materially affected the finding or decision on disciplinary action.

Statement of tribunal's determination

Rule 26
(1) The tribunal must determine whether the ground or grounds of appeal on which the appellant relies have been made out.

(2) Where the tribunal determines that a ground of appeal under rule 4(4)(b) or (c), rule 5(6)(b) or (c) or rule 6(4)(b) or (c) has been made out, the tribunal may set aside the relevant decision and remit the matter to be decided again in accordance with the relevant provisions of the Conduct Regulations or the Performance Regulations (as the case may be).

The Home Office Guidance (published 5 February 2020) applying to this case covers the Standards of Professional Behaviour for police officers and sets out the procedures for dealing with misconduct and for appeals to the Police Appeals Tribunal. The guidance refers to the Standards of Professional Behaviour set out in Schedule 2 of The Police (Conduct) Regulations 2020. The following standards are relevant in this case:

Honesty and Integrity

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

Confidentiality

Police officers treat information with respect and access or disclose it only in the proper course of police duties.

Discreditable Conduct

Police officers behave in a manner which does not discredit the police service or undermine public confidence, whether on or off duty.

APPEAL

9. On her behalf, counsel for the appellant, Mr Colin Banham, set out the grounds of her appeal in a document dated 7 February 2022. Her appeal was based on all three grounds under Rule 4(4), and were set out in more detail as follows:

Ground 1 – Fresh Evidence;
Ground 2 – Failure to Follow Structured Approach;
Ground 3 – Failure to Consider Issues under the Equality Act 2010;
Ground 4 – Disproportionate Outcome;
Ground 5 – Consideration of Inadmissible Material.

10. In his representations of 23 March 2022, Mr Banham added further submissions. The fifth ground of appeal was dismissed under Rule 15.

11. In his oral submissions, Mr Banham invited the tribunal first to consider the question of fresh evidence. He submitted that, if the appeal succeeds on this basis, it would be appropriate for the matter to be remitted to a special case hearing to be conducted by the chief officer of another police force, on a "clean slate" basis. Neither he nor Mr Branston considered that it would be appropriate for the tribunal to determine the matter if this ground of appeal were successful.

12. The appellant wishes to rely on her medical records and an email from her husband pursuant to Rule 4(4)(b). Mr Banham referred to a number of entries in the medical records which he said indicated **(REDACTED**), which had a significant effect on her and was directly linked to the behaviour alleged.

13. Under Rule 4(4)(b), firstly the appellant must show that the new evidence could not reasonably have been considered at the original hearing with reasonable diligence. Mr Banham submitted that, **(REDACTED)** and lack of legal representation she would not have thought to place the evidence before the hearing. He argued that a generous construction of the rules was appropriate, where important matters relating to the appellant's **(REDACTED**) needed to be determined and applied to the issues.

14. Secondly, it must be shown that the fresh evidence could have materially affected the decision on disciplinary action. Mr Banham submitted that, had it been taken into account, it could have had a significant mitigating effect on the outcome, such that dismissal was not found to be necessary. This was a case where there was a lack of integrity, not dishonesty, **(REDACTED)** affected her actions, and should be taken into account in the consideration of culpability and harm as part of the assessment of the seriousness of the misconduct. There would be sympathy and understanding of her situation, and the perception of the harm to the reputation of the police would be minimised if members of the public knew all the facts.

15. Mr Banham submitted that the appellant's **(REDACTED)** was not simply a matter of personal mitigation, but should have been taken into account to mitigate the seriousness of the misconduct. He submitted that the Chief Constable had confused personal mitigation with mitigation of the seriousness of the misconduct, and that she had a duty to enquire about the medical position.

16. Mr Banham submitted that, even if the evidence could have been obtained with reasonable diligence, that should not be determinative, as it would be just and fair to admit the evidence. He submitted that it would be unduly harsh not to admit the evidence, as the Chief Constable was to some extent aware that there was an issue. He cited **Jasinarachchi *v* General Medical Council [2014] EWHC 3570** as authority for the principle that the interests of justice must be the overriding factor.

RESPONDENT'S SUBMISSIONS

17. Mr Branston indicated that, having seen the full extent of the fresh evidence, the respondent agreed that it would be appropriate for the matter to be remitted for a fresh hearing. He did not concede that the evidence could not have been made available with reasonable diligence, but accepted the point regarding fairness.

EVIDENCE

18. The Tribunal has been provided with the documentation available at the hearing, together with transcript of the hearing, the outcome document, appellant's grounds of appeal and further submissions, and the Respondent's response to the appeal.

DECISION

19. The tribunal considered it appropriate first to determine whether the grounds of appeal under Rule 4(4)(b) were made out, as suggested by the parties' representatives.

20. At paras 44 - 45 of the grounds, Mr Banham submitted:

> "44. It is not in the public interest now for the strict *Ladd v Marshall* 'straightjacket' to apply (*TZ v GMC* [2015] EWHC 1001 (Admin), citing *Muscat v Health Professions Council* [2009] EWCA Civ 1090). This also relates to fresh evidence relating to outcome (*Jasinarachchi v GMC* [2014] EWHC 3570 (Admin)).
>
> 45. This approach applies to appeals before the *PAT (R (on the application of O'Connor) v Police Appeals Tribunal* [2018] EWHC 190 (Admin))."

21. In **O'Connor**, the court considered the application of the *"Ladd v Marshall"* principles in proceedings before the PAT. It said:

"I do not accept Mr Gold's assertion that the wording on Rule 4(4)(b) imposes a straightjacket that precludes the Police Appeals Tribunal from applying Ladd v Marshall principles as they are applied in the civil litigation arena by reason of the specific wording of CPR 52.21(2). The Rule precludes evidence that could reasonably have been considered at the original hearing. The Rule imports a test of reasonableness which, in my opinion, provides a basis for aligning the approach of the Police Appeals Tribunal and the approach of the civil courts. That, for the reasons that I give in paragraph 173 and 174 above, seems to me to be a desirable conclusion as well as a justifiable one. In my judgment the principles of Ladd v Marshall applied by the courts should be the principles applied by the Police Appeals Tribunal. On any view that does not involve a wholesale departure from the original Ladd v Marshall principles. It is clear that they remain of highly persuasive importance."

22. The principles in **Ladd v Marshall [1954] EWCA Civ 1** are that:

> *"In order to justify the reception of fresh evidence or a new trial, three conditions must be fulfilled:*
>
> > *first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial:*
> >
> > *second, the evidence most be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive:*
> >
> > *thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible."*

As identified by Mr Banham, these principles have been applied less strictly in civil proceedings. In **O'Connor**, it was made clear that, in the PAT, the **Ladd v Marshall** principles are of *"highly persuasive importance"*, and should be applied as they are in the civil courts. However, there are also specific rules governing the admission of fresh evidence in the PAT, and the requirements of these Rules must be met in order for an appeal to succeed.

23. There are two elements of an appeal under Rule 4(4)(b); firstly it must be shown that the new evidence could not reasonably have been considered at the original hearing. Secondly, it must be shown that it could have materially affected the decision on disciplinary action.

24. As regards the second element, the representatives for both parties agreed that the medical evidence and the statement from Mr Basi show the background to the appellant's behaviour, and how **(REDACTED**) her decision-making at the relevant time, and could have materially affected the decision on disciplinary action.

25. However, the first element of Rule 4(4)(b) must also be made out. As observed in **O'Connor**, "*The Rule precludes evidence that could reasonably have been considered at the original hearing. The Rule imports a test of reasonableness which, in my opinion, provides a basis for aligning the approach of the Police Appeals Tribunal and the approach of the civil courts.*

26. The tribunal considered whether the fresh evidence could reasonably have been considered at the original hearing. Although the respondent did not concede this point, Mr Branston did not make a positive submission to the effect that the appellant could, with reasonable diligence, have made this evidence available.

27. In principle, the tribunal was of the view that it should be a straight forward matter to obtain one's own medical records to support a claim that relied on the effects of a health condition. However, it is that same health condition which Mr Banham submits was a factor in her decision to attend the hearing without this evidence, which the parties both agreed could have made a difference to the outcome.

28. In the absence of a substantive challenge to the appeal under Rule 4(4)(b) the tribunal took the view that it could find that the appeal was made out under this ground. It was of the view that a generous interpretation of the Rule would justify finding that the fresh evidence could not have been made available to the hearing with reasonable diligence, given all the circumstances. It reached this finding on the particular facts of this case, and in the unusual situation where this ground of appeal was not resisted at the hearing.

29. Having found the appeal to be made out under Rule 4(4)(b), the tribunal had to decide whether to deal with the matter itself, or to remit the matter for rehearing. Its powers stem from the Police Act 1996, which states:

> *85.— Appeals against dismissal etc.*
>
> *(1) The Secretary of State shall by rules make provision specifying the cases in which a member of a police force or a special constable [, or a former member of a police force or a former special constable,] 2 may appeal to a police appeals tribunal.*
>
> *(2) A police appeals tribunal may, on the determination of an appeal under this section, make an order dealing with the appellant in any way in which he could have been dealt with by the person who made the decision appealed against.*
>
> *(3) The Secretary of State may make rules as to the procedure on appeals to police appeals tribunals under this section.*

30. It was argued at the hearing that the wording of Rule 26(2) obliged the tribunal to remit the case for rehearing if the appeal succeeded under R4(4)(b). The power to remit was added in the 2012 Rules. The explanatory notes at the end of the 2012 Rules say:

> *"Rule 22(2) and (3) of these Rules make new provision in relation to the situation where a Tribunal determines that there is fresh evidence, or that there was a procedural default or other unfairness, that could have materially affected the decision appealed against. In this situation, under section 85(2) of the Police Act 1996 the Tribunal may deal with the appellant in any way that he could have been dealt with by the maker of the decision appealed against. But the Tribunal, which will not have heard all of the evidence, will not be well placed to determine how the matter should have been decided had the fresh evidence been available in the original proceedings or the procedural failure or other unfairness had not occurred. Rule 22(2) and (3) allows the Tribunal to remit the matter for re-hearing in these circumstances."*

31. Rule 26 of the 2020 Rule mirrors Rule 22 of the 2012 Rules. In the context of the powers conferred by the Police Act, it is reasonably clear that this power to remit a case is an additional way for a tribunal to deal with case where an appeal is allowed under Rules 4(4)(b) or (c). It does not replace the powers under the Police Act.

32. The explanatory note confirms that the tribunal may deal with the appellant in any way they could have been dealt with by the original decision-maker. The additional power

allows for rehearing in cases where the tribunal would not be well placed to determine how the matter should have been decided, had the new evidence been available.

33. The tribunal took the view that, having found the grounds of the appeal to be made out, it could have dealt with the matter, as the fresh evidence was not disputed. However, it also had the power to remit the matter for a new hearing, which would result in an appealable decision. In the unusual circumstances of this case, it determined that the appropriate course of action would be to remit the case for a fresh hearing. Representatives for both parties confirmed their understanding that such a hearing would take the form of an accelerated hearing, before the Chief Constable of another force.

Conclusion

34. The tribunal found that there was fresh evidence which could have materially affected the Chief Constable's finding, which is accordingly set aside. It therefore remits the case, under Rule 26 of the Police Appeals Tribunals Rules 2020, to a fresh hearing to be decided again in accordance with the relevant provisions of the Conduct Regulations.

Back-pay

35. The appellant's representative invited the tribunal to note that she would receive back-pay, subject to a deduction in respect of her part-time job. The respondent made no representations on this matter.

36. Schedule 6 to the Police Act 1996 states, at paragraph 7:-

> *(1)Where an appeal is allowed, the order shall take effect by way of substitution for the decision appealed against, and as from the date of that decision or, where that decision was itself a decision on appeal, the date of the original decision appealed against.*
>
> *(2)Where the effect of the order made by the police appeals tribunal is to reinstate the appellant in the force or in his rank, he shall, for the purpose of reckoning service for pension and, to such extent (if any) as may be determined by the order, for the purpose of pay, be deemed to have served in the force or in his rank continuously from the date of the original decision to the date of his reinstatement.*

37. The tribunal confirms that, by operation of law its decision takes effect from 2 December 2021. The effect of its decision is the reinstatement of the appellant. In the circumstances, it determines that the respondent should pay the appellant back pay owing for the period from 2 December 2021 to 12 July 2022, subject to a deduction equivalent to all income she received in respect of other employment during that period.

Costs

38. No application for costs was made, so the Tribunal therefore made no order for costs.

Sara Fenoughty
Chair of the Police Appeals Tribunal
14 July 2022