

**IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020**

**CONCERNING**

**PC CASEY, PC FRANKS, PC CLAPHAM, PC BOND AND A/PS SIMPSON**

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**REPORT ON PANEL'S FINDINGS AND OUTCOME**

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This judgment is set out in ten parts:

- A. Overview: pages 2 - 3**
- B. Preliminary matters: pages 4 - 7**
- C. Background: page 8**
- D. Analysis of factual allegations: pages 9 - 45**
  - a. The events on Great Western Road and Woodfield Road**
  - b. The events on Goldney Road**
  - c. The events on Oakington Road, Elgin Avenue and on to Lanhill Road**
  - d. The detention of Mr dos Santos**
  - e. The issue of cannabis**
  - f. The detention of Ms Williams**
  - g. A/PS Simpson's conversation with Ms Williams**
  - h. A/PS Simpson's conversation with PC Franks**
  - i. In Vehicle Mobile Application**
  - j. Statistical evidence/Policy reports**
- E. Assessment of witness evidence/findings on specific allegations: pages 46 - 57**
- F. Standards of Professional Behaviour: pages 58 - 63**
- G. Misconduct or Gross Misconduct: page 64**
- H. Reflective Practice Review: pages 65 - 67**
- I. Sanctions: pages 68 - 77**
- J. Appendices: pages 78 - 108**

## **A: OVERVIEW**

1. The misconduct hearing for PC Casey, PC Franks, PC Clapham, PC Bond and A/PS Simpson ('the officers') was held in public on various days between 18 September 2023 and 25 October 2023. A notice of the hearing was published in accordance with the Police (Conduct) Regulations 2020 ('the 2020 Regulations').
2. Regulation 30 Notices were issued pursuant to the 2020 Regulations, and it was alleged that the officers had behaved in a manner which breached various Standards of Professional Behaviour (SPB), and which amounted to Gross Misconduct.
3. In summary, it was alleged that on 4 July 2020 the officers followed, pursued and stopped a car driven by a male, used force to restrain the driver and passenger, who were black, and detained them for a period of time.
4. In their responses pursuant to Regulation 31 of the 2020 Regulations, and at the outset of the hearing, all the officers denied that their behaviour amounted to Gross Misconduct.
5. The burden is on the Director General of the Independent Office for Police Conduct to prove on the balance of probabilities that the officers behaved in the manner alleged and in doing so they breached the various Standards of Professional Behaviour. Further, the Director General must satisfy the panel, to the same standard, that the manner of the breaches were of such a nature or degree that they amount to Gross Misconduct.
6. During the hearing, which took place on various days over a six-week period, the panel heard a significant amount of evidence. The panel reminded itself that it does not need to make a finding on every issue and need only make findings on those issues which it believes to be relevant and material to the allegations. To that end, whilst the panel has listened carefully to all the arguments and specific points put forward, the panel has not attempted to address every single point raised by the parties.
7. The panel approached its task in the following stages:
  - i) Are any of the facts admitted?

- ii) What facts have been proved by the Director General on the balance of probabilities?
- iii) Of the admitted or proved facts, has the Director General satisfied the panel on the balance of probabilities that the relevant Standards of Professional Behaviour have been breached?
- iv) If so, has the Director General satisfied the panel on the balance of probabilities that it is Gross Misconduct, namely the breaches are so serious as to justify dismissal?

### **The Proceedings**

- 8. At the misconduct hearing, the Director General was represented by Ms Monaghan KC, Mr Gold and Ms Pehar.
- 9. PC Casey was represented by Mr Yeo, PC Franks was represented by Mr Williamson KC, PC Clapham was represented by Mr Davies KC, PC Bond was represented by Mr Butt KC, and A/PS Simpson was represented by Mr Hines KC.
- 10. The panel was grateful for the assistance of all Counsel, and in particular for the production of the agreed facts, the Opening Note, and written closing submissions, all of which enabled the panel to focus on the central issues in the case.
- 11. The panel was also grateful to Counsel for the approach they took to enable the panel to consider the redacted statements of Mr Webb (specialist in road traffic collisions instructed by the officers), Mr Sutherland (use of force instructed by the officers) and Mr Bowen–Long (on tasking/deployment of Territorial Support Group officers instructed by the officers) without the need for these witnesses to attend the hearing in person.
- 12. In terms of the hearing bundle, the panel was provided with Bundle A (Regulation 30 and Regulation 31 notices), Bundle B (Evidence), Bundle C (Policy), Bundle D (Training) and Bundle E (Character bundle). The panel also had access to the transcripts of the proceedings which helped to inform our determination.

### **B: PRELIMINARY MATTERS**

#### **Pre-Hearings**

13. On 6 September 2023, the Legally Qualified Chair (LQC) convened a pre-hearing (on Microsoft Teams) and issued a number of case management directions including specified timescales for the service of outstanding material.
14. A second pre-hearing (on Microsoft Teams) was held on 13 September 2023 to resolve various outstanding issues prior to the commencement of the hearing

### **Reasonable adjustments**

15. Reasonable adjustments were put in place during the hearing for PC Franks in the form of frequent breaks, questions being asked at a measured pace, and additional time being given to respond to oral questions.

### **Reporting restrictions**

16. On 27 September 2023, the LQC made reporting restrictions to facilitate the proper conduct of the proceedings and in the interests of justice, pursuant to Regulation 39 (3)(c) of the Police (Conduct) Regulations 2020, prohibiting the publishing or broadcasting in any newspaper, magazine, public computer network, internet website, sound or television broadcast or cable or satellite programme, of:
  - i) Any car registration shown in the 'Cleartone' footage other than that of Mr dos Santos; and
  - ii) The address of Mr dos Santos and Ms Williams.
17. Further, the LQC made it a condition of attendance that no observer shall write down, record and/or otherwise transmit to, or share with any person outside the hearing the address of Mr dos Santos and/or Ms Williams, pursuant to Regulation 39(3)(b) of the Police (Conduct) Regulations 2020.
18. On 12 October 2023, the LQC made similar directions in respect of the names of any persons said or shown to have been stopped or searched on 4 July 2020, other than those of Mr dos Santos and/or Ms Williams, pursuant to Regulation 39(3)(c) of the Police (Conduct) Regulations 2020. The LQC also prohibited the publication of the addresses or

dates of birth of any persons said or shown to have been stopped or searched on 4 July 2020.

### **Release of body worn footage to the media**

19. This case attracted a significant amount of media interest throughout the hearing. Further to the application by the media, and having received representations from the parties, the LQC permitted specific sections of the body worn footage of PC Clapham, PC Bond and A/PS Simpson, as agreed by the parties, to be released to the media on the proviso that:
  - i) The images of Ms Williams and Mr dos Santos' child should be pixelated; and
  - ii) The images of persons shown in the recording whose identity is not relevant to the case, including passers-by, should also be pixelated.
  
20. The LQC was satisfied that this would be a proportionate approach in order to achieve the legitimate aim of maintaining public confidence in, and the reputation of the police service, whilst upholding high standards in policing.

### **Admissibility of policy reports and statistical evidence**

21. It was submitted on behalf of the officers that the reports [items 18,19,21,23 and 24 in the policy bundle (Bundle C)], and The Casey Report should be removed from the hearing bundle as the material is irrelevant and inadmissible; it would be unfair to rely upon it; and the material amounts to a distraction from the real issues of the case.
  
22. The Director General contended that in determining whether the race of the complainants was a more than trivial influence or an effective cause of the officers' actions, it would be necessary for the surrounding circumstances to be considered to enable the panel to draw any inferential conclusions.
  
23. Having considered the submissions from the parties, the LQC determined that these documents are admissible; and it would be a matter for the panel to apportion appropriate weight to the material, having heard the overall circumstances of the case. See **Annex B** for the written reasons.

24. The panel's assessment of the statistical material and policy reports in respect of the officers is set out later on in the judgment.

### **Expert Reports (Optical Physicists)**

25. On 19 September 2023, those who represent the officers made an application for Professor McCall's report dated 8 September 2023 to be admitted into the hearing bundle.
26. On 20 September 2023, further to representations from the parties, the LQC refused the officers' application for Professor McCall's report to be admitted into the hearing bundle on the basis that its admission without an opportunity for the Director General to seek expert evidence in response would cause him significant prejudice. See **Annex C**.
27. As things turned out, on 22 September 2023 those who represent the Director General confirmed that he had instructed Professor Török to provide an expert report in response. On 29 September 2023, the experts provided a Joint Statement of Agreement and Disagreement dated 28 September 2023 which the panel was grateful to receive.
28. Whilst there was a reasonable degree of common ground, there was a key aspect upon which the expert witnesses differed namely whether, and to what extent the occupants in the police carrier could see the driver of the Mercedes as it turned right into Woodfield Road from Great Western Avenue.
29. Professor McCall opined that "*the occupants in the van could not see the occupants of the Mercedes throughout the entire manoeuvre (i.e. the approach and then right turn of the Mercedes in front of the van)*". Conversely, Professor Török took the view that "*the specular reflection from the side window might briefly (between 06:700 and 07:000) have been low enough for PC Casey to see into the car's interior*".
30. The panel therefore had to form a view as to which evidence was most persuasive and resolved this issue as part of its wider analysis of the allegations, as set out below.

## **Disclosure**

31. On 26 September 2023, having heard submissions from the parties, the LQC directed the Director General to provide the officers with such material relating to incidents in May 2018 and August 2022 that was considered to be relevant. See **Annex D**.

## **Further material**

32. On 29 September 2023, the Director General received and served on the officers further material. This consisted of: mobile phone footage taken by Ms Williams and Mr dos Santos; a text message from Ms Williams to a friend at 1.25 pm on the day in question; PC Curtis' note of her attendance at the Tesla showroom; and PC Curtis' witness statement dated 27 September 2023 setting out her conversation with individuals at the Tesla showroom concerning the capability of Mr dos Santos' vehicle (Tesla).
33. There being no objection to the admission of the mobile phone footage, the LQC determined that submissions about the admissibility of PC Curtis' statement and whether Mr dos Santos should be recalled to be asked questions about the new material, should be held before the panel. The LQC also rejected the Director General's submission that the hearing regarding the application should be held in private in accordance with Regulation 33(8)(b) and (c).
34. Having heard submissions from the parties, the panel permitted the admission of PC Curtis' statement and for Mr dos Santos to be recalled for him to be asked questions about the capability of his vehicle (Tesla). We shall come to our assessment of Mr dos Santos' evidence later on in our judgment.

## **Regulation 41(11) of the 2020 Regulations**

35. On 12 October 2023, Mr Davies KC for PC Clapham made written submissions for the admission of supplementary material (namely a 2022 National County Lines Co-ordination Centre Strategic Assessment 2020 – 2021) pursuant to Regulation 41(11) of the 2020 Regulations. The Director General objected to the admissibility of this document.
36. The LQC determined that this document should not be admitted for the following reasons:

- i) It being the 15<sup>th</sup> day of the hearing, with all live evidence having been given by this stage, it was too late a stage for this document to be admitted.
- ii) The panel's attention had been drawn to the specific intelligence briefings in respect of the engagement of women and girls (of relevance to the wider County Lines issue) earlier during the course of A/PS Simpson's evidence.
- iii) In any event, the panel was a professional panel and familiar with the issue of County Lines criminality.

### **Legal authorities**

37. During the course of the proceedings, Counsel drew our attention to a number of legal authorities including *Chief Constable of Greater Manchester Police v Bailey* [2017] EWCA Civ 425, *Qureshi v Victoria University of Manchester* (EAT) [2001] ICR, R (*on the application of Roberts*) *v Commissioner of Police of the Metropolis and another* [2012] EWHC 1977 (Admin), *R v Deputy Industrial Injuries Commissioner ex parte Moore* [1965] 1 QB 456, *King v Great Britain China Centre* [1991] IRLR 513, *Anya v University of Oxford* [2001] EWCA Civ 405, [2001] ICR 847, *Nagarajan v London Regional Transport* [2000] 1 AC 501, and *West Midlands Passenger Transport Executive v. Jaquant Singh* [1988] I.C.R 614.
38. The panel was grateful to Counsel for bringing these authorities to our attention and we drew assistance from these legal authorities at various points during the proceedings.

### **C: BACKGROUND**

39. In determining the allegations, the panel first considered the contextual background leading to the incident.
40. As set out in paragraphs 1-4 of **Annex A**, there was no dispute that in June/July 2020, the Territorial Support Group (TSG) had been set policing objectives to reduce violent offences across the Basic Command Unit. TSG officers were also briefed that gang tensions were high across the borough.



41. On 3 July 2020, TSG supervisors were asked to patrol the Mozart Estate, and other areas including Harrow Road, Ladbrooke Grove, Lisson Green and Shepherd's Bush; and to check daily 'MetBats' briefings for up-to-date intelligence [B:628], [B:565].
42. On 4 July 2020, the TSG unit was assigned to conduct mobile patrols in the areas of Ladbrooke Grove, Shepherd's Bush, White City, Edgware Road and Lisson Green due to on-going gang and youth violence.
43. On 4 July 2020, earlier in the day, PC Franks had also performed a PACE section 1 search on another individual and had stopped another car but had not performed a search.
44. The specific timings are set out in **Annex A** – the agreed facts.

## **D: ANALYSIS OF FACTUAL ALLEGATIONS**

### **Witnesses**

45. The panel heard oral evidence from Mr dos Santos, Ms Williams, Inspector Cotton, PC Casey, PC Franks, PC Clapham, PC Bond and A/PS Simpson. We shall come to our assessment of the witnesses later on in our judgment.

### **Analysis**

46. Given the length of the Regulation 30 Notices against all the officers (which ranged from 11 to 21 pages each), we approached our assessment of the facts across a range of broad themes (as set out below) before proceeding to make our findings against the specific allegations of fact as set out below.
47. The broad themes which we considered were:
  - i) The events on Great Western Road and Woodfield Road
  - ii) The events on Goldney Road
  - iii) The events on Oakington Road, Elgin Avenue and on to Lanhill Road
  - iv) The detention of Mr dos Santos
  - v) The issue of cannabis

- vi) The detention of Ms Williams
- vii) A/PS Simpson's conversation with Ms Williams
- viii) A/PS Simpson's conversation with PC Franks
- ix) In Vehicle Mobile Application (IVMA)
- x) Statistical evidence/Policy reports

**i) The events on Great Western Road and Woodfield Road**

48. There was no dispute that Mr dos Santos was driving a black Mercedes A-class vehicle (with rear seat tinted windows) on Great Western Road on the day in question and turned in front of the police carrier onto Woodfield Road. Neither was there a dispute that PC Casey, the driver of the police carrier, turned left into Woodfield Road.
49. The key issue was **why** PC Casey decided to follow Mr dos Santos' car.

PC Casey

50. It was the Director General's case that PC Casey decided to follow Mr dos Santos' car because he saw that the driver was a black male and suspected him of being a possible gang member.
51. Conversely, PC Casey denied that his actions were due to racial bias. In his reply to caution dated 27 May 2021, PC Casey said that *"he did not know the ethnicity of Mr dos Santos and that he followed the Mercedes because of its "appalling, bizarre driving" [B:404].*
52. There was no dispute that no intelligence had been received that the vehicle had been linked to gang members or criminal activity. To that end, in determining why PC Casey had followed the Mercedes A class, the panel considered:
- a) The intended journey of the police carrier;
  - b) The expert evidence from the optical physicists, Professor McCall and Professor Török;
  - c) The location of the police carrier when PC Bond undertook a VRM check;
  - d) The manner of Mr dos Santos' driving;
  - e) Mr dos Santos and Ms Williams' evidence, and
  - f) The accounts of the occupants of the police carrier.

a) *Intended journey of the police carrier*

53. The panel first considered the intended journey of the police carrier and asked itself whether it was significant that PC Casey had turned left into Woodfield Road after the Mercedes had turned into the road.
54. The Director General contended that PC Casey “*could have continued in the patrol area by continuing to head south on the Great Western Road beyond Woodfield Road and over the bridge*” [paragraph 12 of the Director General’s closing submissions].
55. The panel noted PC Casey’s account (in his reply to caution of 27 May 2021) that seeing of a dark Mercedes with tinted windows may have triggered thoughts of whether it might be gang-related [B:397]. However, PC Casey said “*it was always my intention to turn left there as well because if I had gone over the bridge it would have taken me away from the sort of area we were meant to be patrolling and so after he turned I turned*”. In cross examination, PC Casey said “*I turned into Woodfield Road because at that point, or shortly before that point, the decision had been made not to look for the connected vehicle and to return to our area. And the only reason I’m following the Mercedes is because we’re travelling along the same road*”. [Transcript 02.10.23 138 E].
56. The panel also noted the statement of Mr Webb, a specialist in road traffic accident investigation [at paragraph 9.56] that “[*he*] *could not state if the carrier commenced moving prior to the indicator being turned on, or if the indication was first. The difference is less than one second.*”
57. The panel accepted PC Casey’s account that it was a coincidence that he had turned the carrier’s indicator when he did particularly in light of our assessment regarding the evidence given by the optical physicists.
58. Consequently, we did not consider it to be significant that PC Casey had turned left into Woodfield Road after the Mercedes had turned into the road.

b) *Expert evidence*

59. The panel considered Professor McCall and Professor Török’s respective statements and their joint statement dated 28 September 2023.

60. We noted Professor McCall and Professor Török's agreed position that it was extremely unlikely that Mr dos Santos would have been visible to PC Casey before 06:700 on the police carrier Cleartone footage. The question for the panel was whether PC Casey would have been able to see into the car's interior from 06:700.
61. In this regard, there was a divergence of opinion between the two experts. In Professor McCall's opinion, it would be extremely unlikely but Professor Török took the view that *"the specular reflection from the side window might briefly (between 06:700 and 07:000) have been low enough for PC Casey to see into the car's interior"*.
62. Having regard to the overall circumstances of the case, the panel was not persuaded that PC Casey was able to look into the interior of the car between 06:700 and 07:000 bearing in mind the split second opportunity for that to have taken place.
63. Even if we accepted Professor Török's opinion, we noted that the Mercedes had started to cross the double white line at the junction into Woodfield Road by 06:700 [13:23:04].
64. Accordingly, the panel considered that it was unlikely on the balance of probabilities that PC Casey was able to see inside the Mercedes A class vehicle within this brief time window.

*c) VRM check*

65. It was not disputed that PC Bond performed a vehicle registration check on the vehicle sometime between 13:23:00 and 13:23:59 (paragraph 16 of the agreed facts).
66. The panel concluded from the timings that the vehicle was located between Woodfield Road turning into Elmfield Way when the check was undertaken as it would not have been possible to see the registration number of the vehicle after it had turned into Elmfield Way.

*d) Driving*

67. The panel considered the manner of Mr dos Santos' driving between Woodfield Road turning into Elmfield Road. We drew assistance from paragraph 12.1.6 of Mr Webb's statement in which he states that *"Both vehicle's journey [sic] along Woodfield Road were*

*unremarkable. Had PC Casey wished to stop the Mercedes I would expect to have seen the gap between the two vehicles decrease. The Mercedes was slowed by the car in front of it, that would have allowed the officer to 'catch up' with it should he have wanted to".*

68. Having considered the Cleartone footage closely ourselves, the panel took into account the submission made on PC Casey's behalf about the rapid acceleration and braking by the Mercedes vehicle on Woodfield Road – “[*the Mercedes vehicle*]has eliminated the distance between itself and the silver car in front in the first 2.4 seconds of Woodfield Road...it may well explain why someone thought at an early stage that it was worth getting the VRN to do a vehicle check” [Paragraphs 21-22 of PC Casey's closing submissions].

69. Having viewed the police carrier Cleartone footage, the panel also observed for itself that Mr dos Santos applied the brakes several times during the journey down Woodfield Road. Accordingly, the panel considered that the driving was not entirely unremarkable and may therefore have drawn the attention of the occupants of the police carrier.

*e) Mr dos Santos and Ms Williams' evidence*

70. In his statement dated 8 December 2020, Mr dos Santos said “*I made eye contact with the driver of the police vehicle who was a white male. I had a sense at this moment that the police van was going to follow our car. Perhaps it was a sense from the way the driver looked at me.*” [B:299].

71. Ms Williams in her statement of 24 December 2020 said: “*I could see two white male police officers in the TSG vehicle looking at Ricardo from the front of the van. I noticed that the way they looked was strange and with hindsight I think these officers were discussing whether they should follow us?*” [B:214].

72. Whilst the panel accepted that these may well have been the honest perceptions of Mr dos Santos and Ms Williams, this needed to be considered in the context of the evidence as a whole on this particular point.

*f) Accounts of the occupants in the police carrier*

73. The occupants in the police carrier said that they first became aware of the Mercedes when the police carrier was travelling on Woodfield Road after someone in the carrier

commented along the lines of “*that A class is going for it.*” The panel heard that it was the collective view of everyone in the police carrier that the occupants in the Mercedes needed to be stopped and searched. For instance, in her statement dated 4 July 2020, A/PS Simpson said “*a colleague’s attention was drawn to the black Mercedes A-Class. They commented it was being driven away from them at excessive speed.....*”(B:288).

74. PC Clapham said he could not recall with any clarity what conversations were had in the carrier but was aware that efforts were made to do a check on the VRM and that the IVMA was not working due to overheating (B381).

#### *Assessment*

75. Taking account of all the facts, circumstances, and accounts set out above, the panel was satisfied on the balance of probabilities that PC Casey did not:
- a) See that the driver of the Mercedes vehicle was a black male given the shortness of the split second opportunity that arose between 06:700 and 07:000;
  - b) Make eye contact with the driver of the Mercedes vehicle before it turned;
  - c) Decide to follow the Mercedes by turning left into Woodfield Road.
76. Consequently, the panel found the allegations that PC Casey saw that the driver of the Mercedes vehicle was a black male, made eye contact with him and decided to follow him, on the balance of probabilities, **not proven**.
77. Thereafter, much of the journey from Woodfield Road is not disputed, as evident from the police carrier Cleartone footage and the Incident Data Recorder Briefing Note.
78. We shall come to the specific allegations in relation to PC Casey’s driving later on in our judgment but it was agreed (paragraph 17 -24 of **Annex A**) that:
- ‘17. The silver car continued on Woodfield Road as it turned left.
  18. Mr dos Santos remained behind the silver car and turned right onto Elmfield Way and, after approximately seventy metres, continued on it as it turned left.
  19. PC Casey turned onto Elmfield Way as Mr dos Santos went round the corner and left his view.

20. Mr dos Santos followed the road up to Harrow Road.
21. PC Casey followed the road to Harrow Road, where Mr dos Santos was indicating to turn left.
22. PC Casey accelerated and narrowed the gap between him and Mr dos Santos.
23. Mr dos Santos turned left onto Harrow Road.
24. PC Casey followed Mr dos Santos down Chippenham Road, Goldney Road, Marylands Road and Oakington Road.’

## **ii) The events on Goldney Road**

### *Alleged Pursuits*

79. As a preliminary point, there was no dispute that PC Casey was not authorised to conduct pursuits in accordance with paragraphs 1.7 and 1.9 of the Police Driver and Vehicle Policy – Pursuits Standard Operating Procedure (SOP). The issues were whether:
  - a) PC Casey’s driving amounted to a police pursuit from Goldney Road;
  - b) PC Casey’s driving amounted to a police pursuit from Oakington Road/Elgin Avenue and on to Lanhill Road;
  - c) PC Casey had performed a boxing/blocking manoeuvre to cause the Mercedes vehicle to stop at the junction of Oakington Road and Elgin Avenue.
80. In determining these matters, the panel first reminded itself that the activity is a pursuit if it is a police driver’s intention to stop and speak to a driver where they are maintaining contact with the subject vehicle. In other words, for the activity to constitute a pursuit, PC Casey must have formed the intention to stop Mr dos Santos, and Mr dos Santos was aware that he was required to stop.
81. The panel noted that in paragraph 5 of his Regulation 31 Notice [A:47], PC Casey said “*Between 12:23:38 and 13:25:31, the officer followed the Mercedes on Elmfield Way, Harrow Road, Goldney Road, Marylands Road, and Oakington Road. The officer had formed the intention to follow the vehicle and to observe it but at no stage during this period, did the officer indicate for the vehicle to stop (nor did he believe that if he indicated for him to do so, the driver would not stop)...*”. The panel also observed the conversation between PC Casey and PC Franks (captured on Body Worn

Video footage) during which PC Casey indicated that there was no ‘fail to stop’ as the blue lights were not on.

82. The panel took into account that by the time PC Casey was driving in Goldney Road, the police carrier had reached a speed of at least 45 miles per hour (which was more than twice the speed limit) and noted the Director General’s point that PC Casey’s driving (as framed in his Regulation 30 Notice) was more consistent with a ‘pursuit’ rather than a ‘follow’.
83. Nevertheless, we took on board Mr dos Santos’s evidence that he understood there was no requirement to stop if the police carrier did not have its lights switched on. In his statement of 8 December 2020 [B:299], Mr dos Santos said “*At times (such as on Goldney Road) it was quite some distance away from our car. The van did not have its lights or sirens on and did not signal for us to pull over, but I believed that it was following us because it turned down every road that we did and kept within eye distance from us.*” In evidence, Mr dos Santos also said “*From what I’ve learnt, it’s if the police light is not on, they’re just a regular police vehicle. Only when the lights are on and they indicate for you to stop is when they are, you know, people of authority*” [Transcript 27.09.23 128 D]

#### *Assessment*

84. Given Mr dos Santos’ indication that the van did not signal for him to pull over, the panel was just about satisfied that PC Casey’s driving did not constitute a pursuit from Goldney Road. The panel noted that PC Casey had formed the intention to follow the vehicle but accepted that this was for observation purposes only. Accordingly, the panel found the allegations that PC Casey was engaged in an initial phase of pursuit whilst on the aforementioned roads, on the balance of probabilities, **not proven**.

#### **iii) The events on Oakington Road, Elgin Avenue and on to Lanhill Road – alleged pursuit**

85. In determining whether PC Casey’s driving amounted to a pursuit from Oakington Road/Elgin Avenue to Lanhill Road, we took into account all the material before us including the following:
  - i) The various body worn video footage which showed that PC Franks had started to open the side door of the police carrier with a window hammer in his hand, and as PC



Franks opened the door, Mr dos Santos had started driving on to Elgin Avenue and away from the police carrier.

- ii) Inspector Cotton's statement that in his opinion, *"the spontaneous pursuit albeit it was very short began at about 13.25.33 when the driver of the black Mercedes failed to stop and ended at 13.26.08 some 35 seconds long. This is when the police vehicle pulled up on the right hand side of the black Mercedes which was indicating to turn right and then turned left and making a conscious decision to drive off failing to stop for a constable in uniform. Had the black Mercedes pulled over and stopped having been asked by the police verbally or whether blue lights alerting the black Mercedes as to the presence of police for the driver to stop this would be deemed a routine stop"* (B221)

#### *Assessment*

86. From the evidence before us, the panel was satisfied that PC Casey had engaged in a spontaneous pursuit lasting for 35 seconds from 13.25.33 to 13.25.08. Nonetheless, and for the reasons previously given (including Mr dos Santos' assertion that he was not aware of the requirement to stop as the carrier's blue lights were not switched on), the panel was satisfied on the balance of probabilities that PC Casey was not engaged in a pursuit by this stage.
87. In arriving at our determination, we also noted Inspector Cotton's evidence that: *"...it is not unreasonable to say that [PC Casey] may not have formulated his opinion straight away hence he continued to follow the vehicle"*.

#### **iv)The events on Oakington Road, Elgin Avenue and on to Lanhill Road – alleged boxing/blocking manoeuvre**

88. The central issue is whether the manoeuvre at the Oakington Road junction with Elgin Avenue amounted to a boxing/blocking manoeuvre (which PC Casey was not entitled to perform) or a reinforced stop (which he was as he had a 'RS entitlement' [B:1053] as he was a driver "familiar in the use of a Re-enforced stop – Stationary Vehicle only").
89. There was no dispute that Mr dos Santos crossed the centre of the road at the junction with Elgin Avenue and indicated to turn right, and PC Casey drove to the right of Mr dos Santos, blocking his turn right (paragraphs 25 and 26 of **Annex A**). The panel also noted

that PC Casey activated the police carrier's rear blue and red lights at this junction, as evidenced by the Incident Data Recording Briefing Note [B:229].

90. In determining whether PC Casey had performed a boxing/blocking manoeuvre in this stretch of the road, the panel took into account the following factors:
- i) In his statement of 8 December 2020, Mr dos Santos said, *"I now couldn't turn right as the van was blocking us. This was really confusing and an aggressive move by them. Their lights and siren were not on but they had driven on the wrong side of the road and had now stopped their vehicle next to us. I think I heard the van door slide open. We were now a couple of minutes from our home. I thought that the officers were going to be aggressive towards me from that point. Because we had the baby in the back I thought that I would drive home and pull up outside our house so that if the police did want to talk to me, then at least Bianca and the baby could go indoors. I therefore turned left down Elgin Avenue (after indicating left) and I drove onto Grittelton Road"* [B:299]
  - ii) In Ms Williams's statement of 24 December 2020 [page 214], she said: *"the TSG van came swooping past us on our right hand side and stopped abruptly just ahead of us in the middle of Elgin Avenue. I felt alarmed by this because the police vehicle had driven at speed and on the wrong side of the road."*
  - iii) In his reply to caution dated 27 May 2021, PC Casey said his intention was to carry out a reinforced stop by moving in front of Mr dos Santos' car. He put on his rear lights but not the front ones, as he was trying to avoid causing Mr dos Santos to react further to their presence (B:400).
  - iv) Mr Webb said that: *"the carrier passed to the offside (right) of the Mercedes. The angle of the turn of the front wheels suggest what may have been a slight turn to the left, but the footage is not clear enough to be certain"* (paragraph 7.3.40).

### *Assessment*

91. We asked ourselves whether Mr dos Santos' vehicle had come to a temporary halt at the stage that PC Casey performed the manoeuvre as we understood from Inspector Cotton that a reinforced stop can only be done on a vehicle that has come to a temporary halt [B:223].
92. Having viewed the police carrier Cleartone footage [13:25:31], the panel observed that the Mercedes had appeared to come to a temporary halt but had started moving by the time PC Casey had driven to the right of the Mercedes. We were persuaded by Inspector

Cotton's evidence that this did not make the attempt a breach of that policy [Transcript 29.09.23 67A].

93. Accordingly, the panel found the allegation that PC Casey had performed a boxing/blocking manoeuvre to cause the Mercedes vehicle to stop at Oakington Road and Elgin Avenue, on the balance of probabilities, **not proven**.

#### **v)Detention of Mr dos Santos**

##### *PACE Code A*

94. The panel then moved on to consider the circumstances of the detention of Mr dos Santos and asked itself whether the actions taken by PC Franks, PC Clapham and PC Bond were necessary, proportionate and reasonable.
95. The panel first reminded itself of the relevant provisions within the Police and Criminal Evidence Act 1984 Code A ('PACE Code A'), as set out in the Regulation 30 Notice.
96. These included: the requirement to seek the co-operation of the person to be searched in every case, even if the person initially objects to the search; for all stops and searches to be carried out with courtesy, consideration and respect for the person concerned; and for every reasonable effort to be made to minimise the embarrassment that a person being searched may experience.
97. PACE Code A also specifies that a person's race or stereotypical images that certain groups or categories of people are more likely to be involved in criminal activity cannot be used alone or in combination with another factor as the reason for stopping and searching an individual or their car.
98. In determining whether the officers had acted in accordance with PACE Code A, the panel carefully considered the actions of the officers; and their explanations for acting as they did.

### *Submissions*

99. In summary, it was the Director General's case that the officers acted in an aggressive and confrontational manner towards Mr dos Santos after he had stopped his car on Lanhill Road on a number of grounds (paragraphs 68 – 78 of the Director's Closing Submissions).
100. Relevant factors that were put forward included: the fact that Mr dos Santos had voluntarily stopped his car outside his house; that the officers had already decided to use force to conduct a stop and search at an earlier stage; that the officers used unreasonable force on Mr dos Santos without establishing that Mr dos Santos was unwilling to cooperate; and that the officers failed to inform Mr dos Santos of the object of the search.
101. Conversely, it was the officers' case that the decision to stop Mr dos Santos' vehicle was due to the manner in which it had been driven, the speed at which it was being driven and the convoluted route Mr dos Santos had taken. This, coupled with the delay in opening the car door (by 15 seconds) after it had stopped invoked suspicion. Taken against the operational briefing they received earlier in the day, this provided sufficient grounds for them to stop and search the Mercedes vehicle and its occupants.

### *Key issues*

102. In assessing whether the officers' actions were necessary, proportionate and reasonable, we considered all the material before us and asked ourselves:
- a) Whether it was necessary, proportionate and reasonable for PC Franks to raise his baton as if ready to strike; and for PC Bond to remove a safety hammer from his utility vest in anticipation of using it when no force had been threatened against any of the officers;
  - b) Whether it was necessary, proportionate and reasonable for Mr dos Santos to be handcuffed.
  - c) Whether it was necessary, proportionate and reasonable for the continued detention of Mr dos Santos.

### *National Decision Model (NDM)*

103. During the course of the hearing, the panel's attention was drawn to the National Decision Model (NDM), which is a decision making tool used by police officers to develop a strategy for action [C:1-11]. The panel was informed that the NDM requires police officers to consider the intelligence/information they have about a particular situation, assess the risks posed by the individual concerned, consider the powers at the officers' disposal, identify options and take action. We therefore drew on the NDM framework when considering the officers' actions.

### *Baton/Safety Hammer/Handcuffs*

104. The panel addressed the points at paragraph 102 a) and b) together.

105. There was no dispute that upon the police carrier coming to a stop, PC Franks exited and ran towards the driver's side of the Mercedes. Nor was there a dispute that Mr dos Santos was in the driver's seat and Ms Williams was in the rear seat with a baby.

106. As he approached the car, PC Franks was holding his baton in a 'readiness position'. From the body worn video footage, PC Franks could be seen asking the occupants to get out of the car several times and telling them that they were detained under section 1. PC Bond could also be seen standing next to Mr dos Santos' car, removing a window hammer from his utility vest and saying "detain him, detain him".

107. In considering their actions, the panel asked itself whether PC Franks and PC Bond had correctly assessed the risk presented by Mr dos Santos having regard to the National Decision Model.

108. The panel accepted that Mr dos Santos was seen exiting the vehicle holding his mobile phone in a calm manner and both his hands were visible as he emerged from the vehicle. Nonetheless, the panel concluded that the officers concerned had acted within the range of operational reasons reasonably open to them having considered the potential risk presented for the following reasons:

- i) The officers had received an operational briefing about the area earlier that day about heightened gang tensions in which specific references had been made to a black/dark Mercedes [B:584] and at [B:612] which the panel accepted had been taken into account in the officers' decision-making process.
- ii) PC Casey said he had noticed the model of the car and tinted windows which may have triggered thoughts of whether the car might be gang-related [B:387].
- iii) The officers had perceived that the driver of the vehicle was driving at excess speed, and was seeking to evade them by taking a convoluted route. Although the panel noted from the conversation between PC Franks and PC Casey later on that they could not say what speed the Mercedes was travelling at, the panel was able to form its own view of the nature of the driving from the video footage. Taking all the circumstances into account and the dynamic and real-time nature of the incident, the panel could recognise why this may have captured the attention of the officers in the police carrier.
- iv) The panel had already found that there was a spontaneous pursuit from Oakington Road/Elgin Avenue to Lanhill Road, and Mr dos Santos had driven away from the police carrier. It was common ground that the police carrier did not have its lights or sirens on.
- v) There was a delay of approximately 15 seconds before Mr dos Santos unlocked the car and the officers said they could not see into the vehicle during this time because of the vehicle's tinted windows. The panel accepted the officers' assertions that this increased their risk assessment as individuals have been known to destroy incriminating items or delete mobile phone records to evade detection by the police. We noted PC Franks' account that *"coming around the back of that car, hearing the central locking of the car go on again, amplified [his] risk assessment. Someone might be in that car swallowing items, destroying items, or [his] worst bit either arming themselves or swallowing items, which could be fatal."*[Transcript 03.10.23 99F].
- vi) The panel noted that as Mr dos Santos exited from the car, PC Franks' brought his baton down from a 'readiness position.' The panel also noted that Mr dos Santos

then backed away from the officers, and pulled his arm back when PC Franks attempted to take hold of him. The panel recognised that this was a relevant factor which increased the officers' risk assessment and justified the officers' use of handcuffs on Mr dos Santos as they reasonably believed that Mr dos Santos, by his actions, may have been attempting to escape or was likely to be violent, taking into account the background leading to the incident.

*The continued detention of Mr dos Santos*

109. The panel asked itself whether it was necessary, proportionate and reasonable for the continued detention of Mr dos Santos, and in handcuffs.

110. Amongst other reasons, the Director General submitted that the continued detention of Mr dos Santos, and in handcuffs was unreasonable because:

- i) Mr dos Santos had told the officers that he had two cars with personalised number plates (W17 RUN and W18 RUN) parked outside their home which meant that it was less likely that he used them for gang activity.
- ii) The officers failed to consider the relevance of Mr dos Santos informing them that he was a professional athlete and therefore less likely to be involved in gang activity.
- iii) The officers failed to consider the likely delay from requesting a drugs dog.
- iv) Approximately 30 minutes after Mr dos Santos was detained, PC Bond found Mr dos Santos' driving licence, which would have shown his face and address.
- v) Mr dos Santos was found to be the registered keeper of the vehicle and had owned it for sixteen months.

111. It was the officers' case that the continued detention of Mr dos Santos, and in handcuffs was justified because:

- i) They were under a duty to establish reliable information; and could not simply accept Mr dos Santos' assertions [A: 104]
- ii) They were under a continuing positive duty to other officers to ensure the risk of harm was minimised and the extent of searches had not eliminated the possibility of concealed weapons within Mr dos Santos' clothing or body [A: 104]

- iii) Mr dos Santos remained volatile and unpredictable [Transcript 5.10.23 27B]
- iv) The fact that somebody owned a vehicle and had keys for it did not remove the suspicion that they may have weapons or drugs in the vehicle [Transcript 5.10.23 33E].

### *Assessment*

112. The panel concluded that the officers had acted reasonably in their continued detention of Mr dos Santos having regard to the NDM framework. The panel was persuaded by Counsel for the officers that:

- i) The officers were under a positive duty to establish the relevant facts before releasing Mr dos Santos from handcuffs, and that this included the need to wait for the vehicle to be searched.
- ii) Mr dos Santos was removed from handcuffs immediately after the search of the car was complete. We also noted that at 13:28:55, the officers moved Mr dos Santos from the rear stack to the front stack position to make his position less uncomfortable during this period.
- iii) It was reasonable to detain Mr dos Santos in handcuffs until there was a change of behaviour to reduce the risk assessment. It was common ground that Mr dos Santos repeatedly swore at the officers and shouted over them during the initial detention and search [paragraph 59 of the **Annex A**]. The panel also observed that Mr dos Santos' conduct remained unpredictable and veered from being confrontational to being calm.
- iv) This was a dynamic situation and the panel drew assistance from *Edwin Afriyie v Commissioner of Police for the City of London* [2023] EWHC 1632 KB where the Court held that [at 62] that the Claimant's aggressive behaviour contributed to an objectively reasonable view that aggression or violence might follow on arrest.

113. Having reminded ourselves of the provisions of the Police and Criminal Evidence Act 1984 Code A, and having considered the actions of the officers; and their explanations for



acting as they did, the panel found the allegations that the officers used unnecessary, disproportionate and unreasonable force, on the balance of probabilities **not proven**.

114. On a final note, the panel did consider the officers to have been somewhat robust in their dealings with Mr dos Santos, and could understand why this may have raised some concerns. Nevertheless, having considered all of the facts and circumstances of the case (as outlined above), the panel did not regard the officers' conduct to have be of such a degree as to cross the line in terms of being overly aggressive and confrontational.

### **The issue of cannabis**

115. The panel then moved on to consider whether PC Bond, PC Clapham, PC Franks and PC Casey ('the officers concerned') had been untruthful when they stated that they smelt cannabis.

116. In determining this matter, the panel carefully considered the material put before us including the various body worn video footage, the evidence of Mr dos Santos and Ms Williams, and the various accounts of the officers concerned. We reminded ourselves of the relevant chronology of events, as set out in paragraph 57 of the Director General's Opening Note namely:

*(i) 13:27:50: As PC Clapham was saying to Mr dos Santos, "Now, I can appreciate that you've got a child in the car", PC Bond said at 13:27:51, "smell of weed": D148d (PC Bond);*

*(ii) 13:27:50: Immediately after PC Bond said smell of weed, PC Clapham said, "Detain him for 23 as well, smell of, smell of weed" D148(d) (PC Bond);*

*(iii) 13:28:59: After PC Clapham told PC Franks to detain Mr dos Santos for "smell of weed", PC Franks said, "I can also smell cannabis coming from the car, so you're detained under section 23 of the Misuse of Drugs Act" D148c (PC Clapham); D148d (PC Bond), D148f (PC Franks);*

*(iv) 13:28:02: Mr dos Santos said, "What do you mean you can smell cannabis you pr...? Bruv, do you know who I am? I don't know how you can smell cannabis": D148f (PC Franks);*

*(v) 13:28:07: PC Franks said, "Because I can smell cannabis coming from the car and you tried to avoid us" D148f (PC Franks);*

*(vi) 13:28:08: As PC Franks said he can smell cannabis from the car, Mr dos Santos said, "You can smell cannabis, are you dumb?" D148f (PC Franks).'*

## Analysis

117. As a starting point, the panel discounted the possibility that the officers concerned were mistaken about the smell of cannabis. The panel considered that it was unlikely that PC Bond, PC Clapham, PC Franks and PC Casey, as experienced police officers, would have detected an odour and come to the incorrect view that this was cannabis.
118. The panel therefore went on to ask itself whether the officers were truthful about smelling cannabis; whether they had lied when they stated that they smelt cannabis; or whether they did smell cannabis but were mistaken about the source of the smell.
119. We approached our assessment by considering the allegations against PC Bond, PC Clapham and PC Franks in the first instance before moving on to the allegations against PC Casey whose involvement came later.

### *PC Bond, PC Clapham and PC Franks*

120. The panel first carefully considered the accounts of Mr dos Santos, Ms Williams, and the officers concerned.
121. We reminded ourselves that in his statement dated 8 December 2020, Mr dos Santos said:
- I was outraged by this lie. I believed the officer had intentionally made this up to try and justify stopping our vehicle and searching us when we had done nothing wrong. I am an athlete. I don't take drugs and neither does Bianca. I don't even drink alcohol and I am regularly drug tested as part of being an athlete. Every time I race, I am drug tested. Sometimes our drug tests are spontaneous [B: 301]*
122. In her statement dated 24 December 2020, Ms Williams said:

*“Ricardo and I are professional athletes; we are drug tested on a regular basis. We also had our three-month old son in the car. There is no possible way that PC Franks could have smelt cannabis on him or in the car. I believed it was a deliberately false claim made to justify following our car and then unlawfully searching us and the car whilst we were both in handcuffs”. [B:216]*

## PC Bond

123. PC Bond made a number of statements:

- (i) Statement dated 4 July 2020 [B:296] where PC Bond did not mention about the smell of cannabis. The panel noted his account that his statement was prepared primarily to deal with the use of force on Mr dos Santos.
- (ii) First reply to caution, dated 27 May 2021 [B315 – paragraph 21] in which he said *“After a short while he stood up again, when he was in discussion with PC Franks, who had smelt cannabis, as a result of which I was aware that the search was being conducted under section 23 MDA. This did not surprise me as when I had been in close proximity to Mr dos Santos I smelt cannabis; I had heard him clearly being told by other officers that that was the case and had believed from the outset that the search will also be carried out under the provision of section 23 MDA. This was verbalised and is captured on BWC (sic) footage”*.
- (iii) Second reply to caution, dated 20 July 2021 [B321 – paragraph 4], in which he said *“...it is only when I watched the body worn footage that I remembered that other officers had indicated that section 23 MDA was engaged, and that I was not surprised at that myself, at the time, as I was at the beginning, and thereafter, in close proximity to Mr dos Santos, and the vehicle, and had smelled cannabis.*
- (iv) Regulation 31 notice [A71]: in which he said:  
  
*‘Whilst Mr dos-Santos was detained, the officer smelt cannabis. He remarked upon this which can be heard on the BWV. Cannabis is regularly smelt on the streets of London. The source of the smell is not always apparent. It could come from a suspect, another person in vicinity, a vehicle or nearby window. This would obviously be relevant information for the officer who kept an open mind about the smell and its source’*
- (v) At the hearing, when he was asked why he verbalised the thought that he had smelt cannabis, PC Bond said *“It was an observation I made that if he had -- was in possession of cannabis it would come from that driving. I didn’t know what the source of the cannabis was.”* [16.10.23: 1564-5 of the transcripts of the hearing].

## PC Clapham

124. PC Clapham also made a number of statements:

- (i) Statement dated 4 July 2020 [B:282] in which he said “*I heard PC Franks detain [Mr dos Santos] for a weapons search. I then smelt herbal cannabis. I informed PC Franks of this and further detained him for a drugs search...*”
- (ii) Reply to caution, dated 4 June 2021 [B:379], in which he said “*After I had been near to Mr dos Santos for a few seconds, I clearly smelt what I believed to be the odour of cannabis on him...*”
- (iii) Regulation 31 notice, [A:103], in which it was said “*The defendant officer did smell cannabis; and did and said so immediately*”.
- (iv) In cross examination, PC Clapham accepted that he did not ask Mr dos Santos any exploratory questions as to why there was such a smell. [Transcript: 09.10.23, 1458-9 Q]
- (v) PC Clapham maintained that he did not hear PC Bond say “smell of weed” and clearly smelled cannabis himself [Transcript: 09:10:23, 1476 – E]

## PC Franks

125. PC Franks also made several statements:

- (i) Statement dated 4 July 2020 [B:286] in which he said “*I was then aware that I could smell cannabis coming from the male. I am an experienced officer and can recognise the distinctive smell of cannabis...*”
- (ii) Reply to caution, dated 27 May 2021 [B:371] in which he said “*After PC Clapham made a reference to a section 23, I can see that I told him that I could smell cannabis from the car. In reality, the smell of cannabis had emanated primarily from him and I can see that it might have been better if I had made it clearer that was what had caused me to think that he might be*

*in possession of cannabis, but in the somewhat difficult and confused scenario that we were still dealing with, I mistakenly made a reference to [the] car instead of him...”*

- (iii) Regulation 31 notice dated [A:134] in which he said he did smell cannabis.
- (iv) When giving evidence, PC Franks said *“I could smell cannabis when I was stood right next to Mr dos Santos. So I suspected that it was coming from him. I could clearly smell it, coupled with his behaviour, his aggressive, resistive behaviour to police and the driving he had just exhibited, the evasive nature of it, the poor nature of it. I furthermore suspected that he would be in possession of cannabis, either on him or in the vehicle”* [Transcript 05.10.23, 25E].

### Assessment

126. Before we set out our assessment of the relevant material before us, we would like to make a few points.

127. As Mr dos Santos was not challenged by Counsel for the officers concerned in respect of his assertion that he has never taken drugs or drunk alcohol, the panel fully accepted that Mr dos Santos had never taken drugs, and it was satisfied that any smell of cannabis did not emanate from him or from his vehicle.

128. The panel also noted that:

- i) Mr dos Santos and Mr Williams are professional athletes, regularly drug tested and were coming back from training on the relevant day.
- ii) Their three month old baby was in the car with them at the time.
- iii) No drugs had been found on Mr dos Santos, in the car, or where PC Casey had walked the route in the vicinity.
- iv) Mr dos Santos offered to have a drug test but this offer was not taken up.
- v) A/PS Simpson did not say she smelt cannabis and it was clear from the body worn video footage that she had gone to the car to unbuckle the baby.

- vi) Neither Ms Williams nor the baby smelt of cannabis.
- vii) PC Stafford did not say he smelt cannabis and he had spoken to Mr dos Santos at 13:34 to ask for his identification details.

129. Moving now to the respective officers:

#### PC Bond

130. The panel accepted that on the balance of probabilities there may have been a smell of cannabis in the general vicinity, but that this would have emanated from a source which was not Mr dos Santos or his vehicle.
131. The panel noted that Mr dos Santos was already detained under Section 1 PACE and that there would be no discernible advantage for PC Bond to provide an additional ground in respect of the use of drugs.
132. It was PC Bond's case that he was simply making an observation about the strong smell of herbal cannabis that had come into the area. The panel asked itself whether it was possible that the smell of cannabis had emanated from another source for example a passer-by, a vehicle or a nearby building.
133. As we could not discount this possibility given that cannabis is regularly smelt on the streets of London, we took the view that it was not implausible that there may have been a smell of cannabis in the area and that this had come from another source. The panel accepted PC Bond's account that in his various explanations he was referring to a general vicinity-only smell, and that he was simply making an observation about the strong smell of herbal cannabis that had come into the area.
134. Out of completeness, we should say that we took the view that we did in respect of PC Bond as he did no more than say "smell of weed". At no point did he state that either Mr dos Santos or the Mercedes vehicle smelt of cannabis, and that after his initial observation about a smell in the area he had no involvement with Mr dos Santos in respect of his detention under section 23 of the Misuse of Drugs Act 1971.

135. Given all the circumstances, the panel found, on the balance of probabilities, the allegation that PC Bond did not smell cannabis, **not proven**.

#### PC Clapham

136. It was PC Clapham's case that he did smell cannabis and said so immediately. In considering his account, the panel took into account the following factors:

- (i) PC Clapham interrupted himself, mid-way through speaking to Mr dos Santos and immediately after PC Bond said "*smell of weed*", PC Clapham said to PC Franks "*Detain him for 23 as well, smell of, smell of weed*".
- (ii) Up to this point, PC Clapham did not say that he could smell cannabis.
- (iii) On the various body worn video footage, PC Clapham was not seen to stop to check or attempt to verify the smell of cannabis himself.
- (iv) PC Clapham did not ask Mr dos Santos any exploratory questions about the smell of cannabis for example whether he had been in the presence of someone who had been smoking cannabis.

137. Our findings in respect of PC Clapham and this issue will be set out below following our assessment in respect of PC Franks.

#### PC Franks

138. Moving on to PC Franks. It was PC Franks' case that he could smell cannabis when he was stood right next to Mr dos Santos. Again, in considering his account, the panel took into account the following factors:

- i) PC Franks was the first person at the scene but the last person to say he smelled cannabis. The panel noted that he only said "*I can also smell cannabis coming from the car*" after PC Clapham asked him to detain Mr dos Santos.

- ii) The panel noted from the body worn video footage that PC Franks said he could smell cannabis coming from the car twice: the first time was in response to PC Clapham’s instructions, and the second was in response to Mr dos Santos’ question about how he could smell it [B:1202]
- iii) PC Franks also said he could smell cannabis a third time, fifteen minutes later at 12:41, when he was under no immediate pressure [B:1218]
- iv) However, in his reply to caution dated 27 May 2021, PC Franks admitted that his initial account (that he could smell cannabis coming from the car) was incorrect and that the odour had emanated from Mr dos Santos, which caused him to write on the stop and search slip that “[he] could smell cannabis coming from the person” [B555]. In evidence, he said he wanted to “Make it clear that the smell, [he believed] emanated from Mr Dos Santos” [Transcript 03.10.23 43 G]
- v) In evidence, PC Franks said “*I could smell the odour of cannabis. At that point I was in no rush to further detain Mr Dos Santos for a section 23 Misuse of Drugs Act search. Because at that point he was already detained for section 1. He was in handcuffs. He wasn't going anywhere. And we were trying to calm the situation down, so that we could effectively carry out the stop and search...*” [Transcript 03.10.23 42 – F]

#### Conclusion in respect of PC Clapham and PC Franks

139. Having considered the evidence before us, the panel came to the conclusion that PC Clapham and PC Franks were untruthful in stating that they smelt cannabis.

140. The panel observed the references by PC Clapham and PC Franks about the smell of cannabis was done in quick succession and in a space of a minute (between 13:27:50 and 13:28:59).

141. Neither PC Clapham nor PC Franks were seen to attempt to verify the smell themselves for instance by asking exploratory questions of Mr dos Santos or pausing to check the smell before detaining Mr dos Santos under section 23 of the Misuse of Drugs Act 1971.



142. Their swift detention of Mr dos Santos, after PC Bond's observations, appeared to the panel to be based solely on PC Bond's comment and we considered that PC Clapham and PC Franks had no objective basis for suspecting there was cannabis in the car or in Mr dos Santos' possession.

143. Given their actions at the time, the panel rejected PC Clapham and PC Franks' assertion that they detained Mr dos Santos for section 23 because they smelt cannabis.

*Further observations - PC Clapham*

144. Had PC Clapham smelt cannabis, it seemed highly incongruous that he only chose to mention it when he was mid-way through speaking to Mr dos Santos about something else and immediately after PC Bond's observation.

145. We also rejected PC Clapham's contention that he had not heard PC Bond's comment given PC Clapham's proximity to him at the relevant time. Furthermore, the panel considered it to be highly implausible that PC Clapham would have instructed PC Franks to detain Mr dos Santos within a split second of PC Bond making his remarks if he did not hear PC Bond's comment.

146. Having accepted that any smell of cannabis that there may have been did not emanate from Mr dos Santos, the panel was struck by PC Clapham's assertion in his reply to caution dated 4 June 2021 [B:379], in which he said he clearly smelt what he believed to be the odour of cannabis on Mr dos Santos.

147. Furthermore, PC Clapham appeared to instruct PC Franks to detain Mr dos Santos without appearing to engage with the NDM framework at the 'information gathering' stage. For instance, if PC Clapham had smelt cannabis, he might have been expected to assess what further information he would need at that stage to assess his understanding about the source of the smell before instructing PC Franks to detain Mr dos Santos. The fact that his instruction to PC Franks occurred a split second after PC Bond made his general observation and did not appear to be based on anything other than the purported smell of cannabis persuaded the panel that PC Clapham had been untruthful.

### *Further observations - PC Franks*

148. Similarly, had PC Franks smelt cannabis from the outset, the panel found it hard to understand that he chose to wait until PC Clapham had asked him to detain Mr dos Santos under section 23 of the Misuse of Drugs Act 1971.
149. Furthermore, PC Franks had already accepted that he was incorrect about where the smell had come from, initially attributing it to Mr dos Santos' vehicle before changing his account to say the smell emanated from Mr dos Santos.
150. The panel was also unpersuaded by PC Franks' account about the point at which he said he could smell cannabis and his assertion that he was in no rush to further detain Mr dos Santos for a section 23 Misuse of Drugs Act 1971 search as he was at that point already detained for section 1] [Transcript 3.10.23 42 F].
151. Similarly, having accepted that the smell of cannabis did not emanate from Mr dos Santos the panel was also struck by PC Franks' assertion in his reply to caution, dated 27 May 2021 [B:371] that the smell of cannabis had emanated primarily from Mr dos Santos.
152. In the same vein, in accordance with the NDM framework, PC Franks could have been expected to assess what further information he would need at that stage to assess his understanding about the source of the smell before detaining Mr dos Santos. Instead, PC Franks moved to detain Mr dos Santos within a minute of PC Clapham's instruction and without asking any exploratory questions of Mr dos Santos.

### *Motivation*

153. Instead, the panel was satisfied that PC Clapham and PC Franks were motivated by their desire to support the observations of a fellow officer without taking any steps to verify the smell for themselves before detaining Mr dos Santos further under section 23 of the Misuse of Drugs Act 1971. The panel was persuaded by the Director General's contention that having embarked on this course of events, both officers were now "trapped in the lie".
154. Whilst the panel came to the above findings, we did not accept the Director General's contention that PC Clapham and PC Franks had in effect engaged in a sophisticated

thought process in terms of weighing up how their respective powers under section 23 of the Misuse of Drugs Act 1971 and section 1 of PACE 1984 might interlock or complement each other.

155. Consequently, the panel found on the balance of probabilities, the allegation that PC Clapham and PC Franks did not smell cannabis, **proven**.

### *Conclusion*

156. In arriving at our conclusion that PC Clapham and PC Franks were untruthful in stating that they smelt cannabis, the panel apportioned significant weight to the:

- i) Specific timings in which the two officers corroborated each other in quick succession [see paragraph 115 above] having heard PC Bond's general observation;
- ii) Significant inconsistencies in the various accounts put forward by the officers; and
- iii) Officers' assertions (which the panel has concluded are untrue as Mr dos Santos was not challenged on this aspect) that the smell emanated from Mr dos Santos.

### *PC Casey*

157. Moving now to the allegation that PC Casey had been untruthful when he alluded to the smell of cannabis.

158. The panel first reminded itself of the relevant chronology of events as set out in paragraph 78 of the Director General's Opening Note.

159. "...PC Casey's body worn video, D154a, showed:

- (i) 13:33:11: PC Casey spoke to PC Skultety from across Mr dos Santos' car;*
- (ii) 13:33:16: PC Casey said he could hear PC Skultety and walked round to her;*
- (iii) 13:33:20: PC Skultety said a dog had or was being requested and that she had not yet gone in the car;*
- (iv) 13:33:23: PC Casey agreed and suggested PC Skultety observe the baby;*
- (v) 13:23:26: PC Casey said he was getting a wee whiff of something;*

(vi) 13:23:28: PC Skultety said Mr dos Santos had been detained for section 23;

(vii) 13:23:32: PC Casey said there was certainly a whiff of something.

160. The panel also considered CAD 3527 04/07/2020 (B:943) specifically at:

05:12: Erm that CAD that we created for the vehicle stop can we request a drugs swipe please, is there any available; and at

09:59: Erm apologies, can we request a drugs dog as well please to Lanhill Road.

161. The panel considered PC Casey's statements:

i) Reply to caution, 27 May 2021 [B:395], in which he said at [405]: *"At one stage, I could be heard speaking to PC Skultety about a smell..."*

ii) Regulation 31 notice [A: 49] in which he said he could smell a "wee whiff of something" and "there is certainly a whiff of something" [because he could smell cannabis].

iii) The panel also considered PC Casey's evidence at the hearing:

[Transcript 2.10.23 – 174 G]

*Q. Just before that, Police Constable Skultety had told you that there was a dog on the way.*

*A. Yes.*

*Q. You will have appreciated that that was a drug stop [sic], would you not?*

*A. Yeah, I would have made that assumption, I think, to search the car, yes.*

*Q. So you had the radio telling you there was a drug swipe. You had Police Constable Skultety telling you there was a dog, that you assumed would be a drugs dog before you made the whiff comment.*

*A. Or at the time of it, yes.*

*Q. That is why you referred to "the whiff", is it not?*

*A. I referred to the whiff because I could smell cannabis.*

*Q. That is not true, Police Constable Casey.*

*A. Yes, it is.*

## Analysis

162. It was PC Casey's case that when he made the "whiff comment", he was not aware that anyone else had said they had smelt cannabis. PC Casey also said that he did not hear the commentary on the police radio i.e. the reference to a 'drug swipe' at 05:12 and 'drugs dog' at 09:59. PC Casey accepted that he made the assumption (further to his conversation with PC Skultety) that a 'drugs dog' was on the way to search the car. We also noted that PC Casey made his observation occurred after Mr dos Santos had been searched.
163. In the same way that the panel approached our assessment in respect of PC Bond, the panel was satisfied that PC Casey was making a general observation about the smell of cannabis in the area but had not attributed it to Mr dos Santos.
164. Taking all these factors into account, and having assessed the evidence as a whole, the panel found, on the balance of probabilities, the allegation that PC Casey did not smell cannabis **not proven**.
165. Before moving on from the issue of the smelling of cannabis, the panel would wish to emphasise why it has taken a different approach in its findings in respect of PC Bond and PC Casey to that which has been taken in respect of PC Clapham and PC Franks. The reasons for this are:
- i) PC Bond and PC Casey were not directly involved in the decisions around the detention of Mr dos Santos, and the reasons/grounds for these.
  - ii) PC Clapham and PC Franks were on the other hand directly involved, and they were responsible for determining the grounds for Mr dos Santos' detention.
  - iii) PC Bond and PC Casey both made general remarks about being able to smell cannabis, and at no stage did either seek to indicate that the smell was connected in any way to Mr dos Santos or his vehicle.
  - iv) PC Clapham and PC Franks on the other hand both repeatedly stated that not only was there a smell of cannabis, but that this was most certainly coming either from Mr dos Santos and/or his Mercedes vehicle. These assertions were patently untrue in the light of the panel's findings in respect of Mr dos Santos not being a cannabis user and the thorough police search leading to the finding of no cannabis nor any items associated with the consumption of cannabis.

- v) Whilst PC Bond and PC Casey both may have developed or added to their explanations as the investigation and subsequent proceedings progressed, they were both broadly consistent in the accounts that they gave at various stages.
- vi) On the other hand, the panel found a number of inconsistencies in the various accounts given by PC Clapham and PC Franks, as set out in the narrative above. The panel regarded these inconsistencies as being a significant indicator of their overall untruthfulness, a matter that will be returned to when the panel's assessment of breaches of standards is covered.

### **Detention of Ms Williams**

#### *PACE Code A*

166. The panel then moved on to consider the circumstances of the detention of Ms Williams and asked itself whether the actions taken by A/PS Simpson were necessary, proportionate and reasonable. Again, the panel reminded itself of the relevant provisions of the Police and Criminal Evidence Act 1984 Code A ('PACE Code A'), as pleaded in the Regulation 30 Notice.

167. We have already outlined extracts of the relevant PACE Code A provisions and the National Decision Model (NDM) framework and do not rehearse them again here.

168. In assessing whether A/PS Simpson's actions were necessary, proportionate and reasonable, we asked ourselves the following questions and made an overall assessment based on the circumstances of the case:

- i) Whether A/PS Simpson tried to pull Ms Williams from the car
- ii) Whether it was necessary, proportionate and reasonable for Ms Williams to be detained in handcuffs
- iii) Whether the continued detention of Ms Williams was necessary, proportionate and reasonable

*Whether A/PS Simpson tried to pull Ms Williams from the car*

169. In determining these questions, the panel first considered the agreed facts at **Annex A**.

The relevant sections are set out below:

67. 13:26:32. Ms Williams opened the driver's side, rear passenger door and exited the car.

68. 13:36:34. A/PS Simpson took hold of Ms Williams right wrist, PC Skultety took hold of Ms Williams left arm. A/PS Simpson said Mr dos Santos was being detained for a search under section 1 of PACE.

68. 13:26:43. Ms Williams retreated back inside the vehicle.

69. 13:26:48. A/PS Simpson told Ms Williams to get out of the car, that she was going to be detained under section 1 of PACE, and that they had made off from police.

70. 13:36:59. A/PS Simpson and PC Chaudry pulled Ms Williams out the car.

71. 13:27:03. A/PS Simpson told Ms Williams that she was being detained under section 1 of PACE for a search for weapons.

72. 13:27:07. Ms Williams was handcuffed to the front by PC Skultety.

170. As it was common ground that A/PS Simpson and PC Chaudry pulled Ms Williams out of the car, the panel found, this allegation, on the balance of probabilities **proven**.

*Use of handcuffs*

171. There was no dispute that Ms Williams was handcuffed to the front by PC Skultety [see paragraph 72 of the **Annex A**]. The panel also observed from the various body worn video footage that A/PS Simpson held Ms Williams for PC Skultety to handcuff her.

172. The issue was whether it was necessary, proportionate and reasonable for Ms Williams to be detained in handcuffs.

173. The Director General submitted that Ms Williams opened the car door herself and exited the car looking distressed and despite making no threats to the police or attempting to assault them, A/PS Simpson treated her immediately as a suspect and placed her in handcuffs. The Director General also submitted that A/PS Simpson should have attempted to use tactical communication to calm Ms Williams and use force only as a last resort.

174. It was A/PS Simpson's case that Ms Williams attempted to push past her and get her out of the way. When unsuccessful, she then went back into the car and refused to come back out when requested so to do." [Regulation 31 Response at A:28]

175. Having considered the material put before us including the NDM framework, the panel concluded that A/PS Simpson had acted within the range of operational reasons reasonably open to her, having considered the potential risk presented, for the following reasons:

- i) The context around the nature of the TSG deployment: the officers had received an operational briefing about the area earlier that day about heightened gang tensions in which specific references had been made to a black/dark Mercedes [B:584] and at [B:612] which the panel accepted had added to A/PS Simpson's decision-making process.
- ii) In her reply to caution dated 27 May 2021 [B:324], A/PS Simpson stated that she believed the vehicle was going to prove to be gang-related and considered the risk to the safety of her and her colleagues to be high. This was on the basis that the vehicle appeared to be attempting to get away from the police; the car took an unjustifiably convoluted route; the vehicle took a sharp left turn at the junction of Elgin Avenue and sped off; and she placed some weight on the make/model of the car, namely a black, A class Mercedes with tinted windows favoured by some gang members.
- iii) There was a delay of approximately 15 seconds before the car was unlocked and A/PS Simpson considered that this was sufficient time for the occupants to either to try hide items, or else arm themselves.



176. Having reminded ourselves of the provisions of the PACE Code A, and having considered A/PS Simpson's actions; and her explanation for acting as she did, the panel found the allegation that A/PS Simpson used unnecessary, disproportion and unreasonable force in the initial detention of Ms Williams, on the balance of probabilities **not proven**.

*Continued detention of Ms Williams*

177. The panel then went on to consider whether the continued detention of Ms Williams was necessary, proportionate and reasonable.

178. In determining this matter, the panel first considered the relevant timings, drawn from the agreed facts at **Annex A**:

- i) 13:27:07: Ms Williams was handcuffed to the front by PC Skultety
- ii) 13:31:07: A/PS Simpson started to search Ms Williams
- iii) 13:31:47: A/PS Simpson finished searching Ms Williams
- iv) 13:31:50: A/PS Simpson said they were requesting for a police dog to attend.
- v) 13:32:03: Ms Williams asked for the handcuffs to be loosened. A/PS Simpson loosened them
- vi) 13:33:20: Ms Williams provided her full name and address.
- vii) 13:32:37: A woman said that Mr dos Santos was her neighbour.
- viii) 13:32:59: PC Casey returned from walking the route and said there was nothing obvious, he thought the windows were closed the whole time but they had lots of time and if it was going to be anywhere, it would be in the car.
- ix) 13:45:16: Ms Williams was released from handcuffs

*Submissions*

179. Against this backdrop, and bearing in mind that Ms Williams continued to be detained in handcuffs after a search for weapons concluded at 13:31:47, the panel asked itself whether it was proportionate for A/PS Simpson to request for a 'drugs dog' which was ultimately her decision as the operational sergeant.

180. It was the Director General's case that A/PS Simpson did not inform herself of the circumstances of the section 23 detention in that she herself had not smelt any cannabis and did not check what tasks the 'general purpose' dog was capable of carrying out.
181. A/PS Simpson contended that she was entitled to make decisions on the strength of the suspicions of other officers and entitled to trust the truth and accuracy of their suspicions. In evidence, A/PS Simpson spoke highly of the other officers and said she had no reason to doubt what they were telling her, and it would not have been for her to question their judgment without a good reason [Transcript 12.10.23 1805-1807].

### *Assessment*

182. Having assessed the material before us, we concluded that it was proportionate for A/PS Simpson to request for a 'drugs dog'. We were persuaded that she was entitled to make decisions on the strength of the suspicions of other officers.
183. Furthermore, we noted that A/PS Simpson was informed that a 'general purpose' dog was en route from Wembley which was not a significant distance away [B:804] and she was aware that a 'general purpose' dog would be able to search the route for discarded items [A: 32].
184. Accordingly, the panel found the allegation that A/PS Simpson used unnecessary, disproportion and unreasonable force by continuing to detain Ms Williams in the circumstances in question, on the balance of probabilities **not proven**.

### Location of search

185. The panel went on to consider whether the officers gave inadequate consideration as to whether Mr dos Santos and Ms Williams could be caused particular embarrassment by remaining detained in handcuffs on the street where they lived.
186. In deciding this matter, the panel first considered that the search must take place at or near the location of the stop (paragraph 1.2, C:901). Apart from the police carrier (which was clearly undesirable), no alternative locations came to mind particularly as Mr dos Santos and Ms Williams' baby was in the car.

187. On that basis, the panel found the allegations concerning the location of the searches, on the balance of probabilities, **not proven**.

#### A/PS Simpson's conversation with Ms Williams

188. As the allegations in respect of A/PS Simpson's conversation with Ms Williams (including allegations 15-19) was evident from the various body worn video footage, there was no dispute that such a conversation took place and the panel found the allegations of fact, on the balance of probabilities, **proven**.

189. We shall address the question of whether the Standard of Professional Behaviour in respect of 'Authority, Respect and Courtesy' was breached by this proven allegation later on in our judgment.

190. Out of completeness, with regards to the allegations that A/PS Simpson spoke to a manner that was patronising, rude, passive aggressive and sexist generally, the panel found, on the balance of probabilities, **not proven**.

#### A/PS Williams' conversation with PC Franks

191. Again, as the allegations in respect of A/PS Simpson's conversation with PC Franks asking him if wanted to "do a bit of a ferret around his groin and his shoes" to satisfy himself that everything had been searched was evident from the various body worn video footage, there was no dispute that such a conversation took place and the panel found the allegations of fact, on the balance of probabilities, **proven**.

192. We shall address the question of whether the Standard of Professional Behaviour in respect of 'Authority, Respect and Courtesy' was breached by this proven allegation later on in our judgment.

#### **In Vehicle Mobile Application (IVMA)**

193. The panel heard evidence regarding an in car computer technology called the In Vehicle Mobile Application (IVMA). Part of the function of this tablet-like device, which was

secured to the front dashboard of the police carrier, is to conduct Police National Computer checks on vehicles and people.

194. The panel accepted that this device would be the normal route of undertaking vehicle checks when engaged in mobile patrol in a police carrier. The officers asserted that the IVMA was not working and had ‘overheated’ on 4 July 2020 and could not be used to conduct a vehicle check on W17 RUN so PC Bond’s personal tablet was used instead.
195. The Director General contended that the IVMA was not faulty and drew the panel’s attention to its use before and after the stop. The Director General referred to the engineering reports which indicated that the device had been working properly and no fault had been reported.
196. In evidence the officers stated that on 4 July 2020, the IVMA had ‘overheated’. In particular, A/PS Simpson provided a detailed explanation that the tablet was fixed in a plastic cover that was drilled to the dashboard. This set up seemed to lead to the device periodically overheating, the screen would freeze, and checks could not be completed. (Transcript 12.10.23 1914-1926). This fault had not been formally reported by officers.
197. The panel preferred A/PS Simpson’s explanation and placed limited weight on the IVMA not being used to complete the vehicle check. It was clear from the evidence that PC Bond conducted a check and that officers used personal issue devices to undertake these duties.

### **Statistical references / Policy reports**

198. The panel carefully considered the statistical references in the IOPC report and the relevant policy reports. As a starting point, the panel reminded itself that such material must always be used with care: *Chief Constable of Greater Manchester v Bailey* [2017] EWCA Civ 425. We also drew assistance from *R (on the application of Roberts) v Commissioner of Police of the Metropolis and another* [2012] EWHC 1977 (Admin) where it was stated that the Court should not rely on ‘*undigested statistics*’.

#### *Statistical references*

199. With regards to the statistical references, the panel noted that:

- i) The data had not been produced by a person of sufficient qualification and experience in analysing statistical material.
- ii) The data sets for stops and searches in which the respective officers had been involved were small – we were persuaded that this was not a reliable indicator pointing towards or away from a differential approach between ethnic groups.
- iii) The data lacked operational context.

*Assessment*

200. Given the limitations set out above, the panel apportioned no or very limited weight to the material before us as we were satisfied that no meaningful conclusions could be drawn.

*Policy reports*

201. Those representing the officers contend that the Director General has failed to explain how items 18,19,21,23 and 24 in the policy bundle, and The Casey Report are said to be relevant to the allegation.

202. The Director General submitted that in determining whether the race of the complainants was a more than trivial influence or an effective cause of the officers' actions, it would be necessary for the surrounding circumstances to be considered to enable the panel to draw any inferential conclusions: *Anya v University of Oxford* [2001] ICR 847.

*Assessment*

203. We have taken due notice of the various policy reports (which are all mainly publicly available) and have taken these into account when we came to make our determination. Where relevant to our determinations in respect of breaches of Standards, we make specific reference to these reports later in this judgment.

**E: ASSESSMENT OF THE EVIDENCE GIVEN BY THE WITNESSES AND  
SPECIFIC FINDINGS OF FACTS**

204. In determining these matters, the panel was greatly assisted by the various body worn video and the police carrier Cleartone footage which were incontrovertible in nature although the inferences to be drawn from the footage were disputed by the parties. The media files and the evidence of the witnesses informed our overall determination of the case, along with the other documentary material placed before us.

*Mr dos Santos*

205. At the outset, the panel wanted to acknowledge what Mr dos Santos told us about his previous experience. In the course of his evidence on 27 September 2023, Mr dos Santos said:

*“Being a young black person who's been stopped by the police on multiple occasions, my experiences of dealing with the police isn't the same as some people. My experiences are very, very traumatic. And for my safety and the safety of my son and my partner is to make it home safely. So I do not accept "some people". I accept what I want to do for the safety of those in my vehicle ”* [Transcript 27.09.23 37 D].

206. When he was asked why he did not take steps to interact positively with police officers, he said: *“...This is, again, based on my experiences with the police in the past. I've had many traumatic experiences, I've had some half decent experiences. But the big ones have been and are very traumatic. And it's why I act in a certain way.”*

[Transcript 27.09.23 68F-G].

207. Mr dos Santos also told us that he was stopped nine times within 4 weeks of buying a BMW although the problem decreased after he changed the number plates [Transcript 27.09.23 70 E].

208. The panel found Mr dos Santos to be a reasonably credible witness and attached some weight to his evidence although he presented as a witness who did not willingly concede to an alternative viewpoint. For instance, when he was asked whether his behaviour influences the way he is treated, Mr dos Santos said: *“I can behave as I like in the face of*

*anybody. If I'm being mistreated, I deem it's appropriate as anybody to act in any way*" [Transcript 27.09.23 60D]

209. The panel assessed the evidence of Mr dos Santos further after he was recalled for cross examination about the capability of his Tesla vehicle. In Mr dos Santos's witness statement of 21 November 2022, he stated that his Tesla vehicle automatically manoeuvred its way around the police vehicle to prevent a collision. A witness statement from PC Curtis was subsequently admitted into evidence. The witness confirmed that Mr dos Santos' Tesla vehicle did not have the capability to change lanes or take a slip road of its own accord. When this was put to him, Mr dos Santos maintained that the Tesla turned of its own volition [Transcript 29.09.2023 47E]. The panel was not persuaded by Mr dos Santos' evidence on this point.

*Ms Bianca Williams*

210. We found Ms Williams to be a credible and thoughtful witness and it was clear to the panel that she had been deeply affected by the incident. Ms Williams presented as a measured witness and was concessionary in some of her responses. For instance, she accepted that by the time they were back on Harrow Road, it was clear to her that the police carrier was interested in their vehicle.  
[Transcript 28.09.23 – 58D].

211. We attached significant weight to her evidence.

*Inspector Cotton*

212. Both Counsel for PC Casey and Counsel for the Director General cross examined Inspector Cotton about his evidence. The panel found Inspector Cotton to be a credible witness who, as a subject matter expert on tactical pursuit, was knowledgeable about driving matters and training and provided balanced responses. We attached significant weight to his evidence.

*PC Casey*

213. Overall, the panel found PC Casey to be a credible witness although there were some inconsistencies in his evidence. For instance, he said in evidence that he saw the Mercedes turn but it didn't register with him how severely it had cut the corner at that time

[Transcript 02/10.23 74-G]. PC Casey maintained his assertion when he was cross examined: “*I didn't recall the severity of the manoeuvre*” [Transcript 02.10.23 139B]. However, the panel noted from PC Casey’s reply to caution dated 27 May 2021 [page 397] that he said “*I did notice that when he took the turn, he did so very abruptly and in fact turned almost into the offside carriage way of Woodfield Road and then as I turned I saw that he accelerated very quickly upon completion of the turn.*”

214. Nonetheless, we attached weight to PC Casey’s evidence.

#### *PC Franks*

215. We did not find PC Franks to be a credible witness and considered that he was untruthful when he said he could smell cannabis. We have set out our assessment above about the issue of cannabis and do not rehearse them here. We found PC Franks’ evidence to be inconsistent and the officer himself admitted that he was incorrect when he first said the smell of cannabis was coming from Mr dos Santos’ vehicle [Transcript 03.10.23 43C]

216. We apportioned limited weight to his evidence.

#### *PC Clapham*

217. Similarly, we did not find PC Clapham to be a credible witness and also considered him to be untruthful when he said he could smell cannabis. Again, we have set out our assessment about the issue of cannabis and do not repeat this here save to say that the panel was not persuaded by PC Clapham’s assertions that “*he could smell cannabis when [he] was stood right next to Mr dos Santos [and] suspected that it was coming from him.*” [Transcript 05.10.23 25E].

218. As stated previously, the panel had fully accepted that Mr dos Santos had never taken drugs, and it was satisfied that any smell of cannabis did not emanate from him or from his vehicle. Consequently, the panel did not find PC Clapham’s account to be credible and we apportioned limited weight to his evidence.

#### *PC Bond*

219. We found PC Bond to be a reasonably credible witness although the panel found his recall to be limited at times. For instance, when he was asked whether he passed the



information from the PNC check to any of his colleagues in the police carrier, PC Bond said he could not recall. [Transcript 10.10.23 1558 D]

220. Nonetheless, we apportioned appropriate weight to his evidence.

*A/PS Simpson*

221. The panel found A/PS Simpson to be a credible witness who gave clear responses overall. This was demonstrated by her clear responses to questions about the In Vehicle Mobile Application (IVMA) [Transcript 12.10.23 1926 A-D]. A/PS Simpson also had a good recall of the two individuals she had stopped and searched in Hackney: [Transcript 12.10.23 2060C]

222. We apportioned appropriate weight to her evidence.

### **Specific factual allegations**

223. Given the detailed analysis of the facts set out above, the factual allegations set out in the Regulation 30 Notices can be dealt with relatively briefly. The panel has followed the numbering of the allegations as they appear in the respective Regulation 30 Notices. Where there were non-culpable allegations/uncontested policy statements, the panel did not make any findings.

### **PC Casey**

224. Set out below are the panel's findings in respect of the allegations against PC Casey:

1. Non-culpable allegation, not requiring the panel to make a finding
2. There is no dispute that PC Casey was a response car (non-pursuit driver at the relevant time) - **proven**
3. Non-culpable allegations, not requiring the panel to make a finding
4. Non-culpable allegations, not requiring the panel to make a finding
5. Non-culpable allegations, not requiring the panel to make a finding

6. The officer did not fail the pursuit element of response car refresher training but the pursuit element of the training could not be held due to the lack of staff – **not proven**
7. The sequence of events described are evident from the police carrier Cleartone footage - **proven**
8. **Not proven** for reasons outlined above
9. **Proven** as it was not disputed that PC Casey did not know the identity of the driver, or intelligence that the driver or car was linked to criminal activity, and no checks had been performed on the car.
10. The sequence of events described in allegation 10 are evident from the police carrier Cleartone footage – **proven**
11. These allegations are dealt with individually:
  - i) **Not proven** for reasons outlined above
  - ii) **Not proven** for reasons outlined above
  - iii) **Not prove** for reasons outlined above
  - iv) **Not proven** – for reasons outlined above
  - v) **Not proven** – for reasons outlined above
12. **Not proven** –for reasons outlined above
13. **Proven** – as per paragraph 26 of Annex A of the agreed facts and as shown on the police carrier Cleartone footage
14. **Not proven** – for reasons outlined above
15. **Not proven** - for reasons outlined above
16. **Proven** – evident from the police carrier Cleartone footage
17. **Not proven** - for reasons outlined above
18. The conversation “wee whiff of something” and “the mannerisms” is evident from the body worn video footage – **proven**
19. **Not proven** – for reasons set out above

### **PC Franks**

225. Set out below are the panel’s findings in respect of the allegations against PC Franks:

1. Non-culpable allegation, not requiring the panel to make a finding

2. There is no dispute that PC Franks is a police constable serving in the Metropolitan Police – **proven**
3. Non-culpable allegations, not requiring the panel to make a finding. The panel noted PC Franks’ observation that the summary does not reflect all the relevant provisions that applied [paragraph 3 of PC Franks’ Regulation 31 Notice]
4. Accepted by PC Franks – **proven**
5. This is shown on the police carrier Cleartone footage – **proven**
6. The sequence of events described are evident from the police carrier Cleartone footage – **proven**
7. These allegations are dealt with individually:
  - i) **Proven** - there was no dispute that someone in the police carrier drew the occupants’ attention to the Mercedes vehicle and developed a collective view that the vehicle was making off
  - ii) **Not proven** for reasons outlined above
  - iii) It was not disputed, PC Bond undertook a check on the car (paragraph 16 of Annex A – agreed facts) - **proven**
8. **Not proven** - for reasons outlined above
9. **Proven** – as per paragraph 26 of Annex A of the agreed facts and as shown on the police carrier Cleartone footage
10. **Proven** – accepted by PC Franks (paragraph 10 of his Regulation 31 notice – A:131) and as shown on the police carrier Cleartone footage.
11. These allegations are dealt with individually:
  - i) **Proven** – as set out in the Incident Data Recorder Briefing Note: [B:299]
  - ii) **Proven** – as accepted by PC Casey in his Regulation 31 Notice [A:47]
  - iii) **Proven** – no dispute that Mr dos Santos had not driven through red traffic lights
  - iv) **Proven** – evident from the police carrier Cleartone footage
  - v) **Proven** – evident from the police carrier Cleartone footage
  - vi) **Proven** – evident from the police carrier Cleartone footage
  - vii) **Proven** – evident from the police carrier Cleartone footage
  - viii) **Proven** – evident from the police carrier Cleartone footage

- ix) **Proven** – there was no evidence that PC Franks knew the identity of the driver
  - x) **Proven** – there was no evidence that PC Franks knew the driver was linked to a gang or criminal activity
12. **Proven** – evident from the police carrier Cleartone footage
- xi) We shall deal with these allegations individually:
  - xii) **Proven** – evident from the various body worn video footage although the panel noted PC Franks’ assertion that he was unaware of the presence of Ms Williams initially as the rear windows were tinted
  - xiii) **Proven** although the panel did not disbelieve PC Franks’ assertion that he did not hear PC Skultety at the time
  - xiv) to xiii) **Proven** – evident from the various body worn video footage
13. i) to iv) – **Not proven** for reasons set out above
14. i) to iv) – **Proven**: evident from the various body worn video footage
15. **Proven** – PC Franks accepted this allegation (A:134)
16. **Proven** for reasons set out above
17. **Proven** – evident from the various body worn video footage
18. **Proven** – evident from the various body worn video footage
19. **Proven** – evident from the various body worn video footage
20. **Not proven** – for reasons set out above
21. **Not proven** - for reasons set out above

### **PC Clapham**

226. Set out below are the panel’s findings in respect of the allegations against PC Clapham:

- 1. Non-culpable allegation, not requiring the panel to make a finding
- 2. There is no dispute that PC Clapham is a police constable serving in the Metropolitan Police – **proven**
- 3. Non-culpable allegations, not requiring the panel to make a finding. The panel noted PC Clapham’s observation that the summary does not reflect all the relevant provisions that applied [paragraph 8 of PC Clapham’s Regulation 31 Notice].
- 4. Accepted by PC Clapham – **proven**

5. This is shown on the police carrier Cleartone footage – **proven**
6. The sequence of events described are evident from the police carrier Cleartone footage – **proven**.

227. These allegations are dealt with individually:

- i) PC Clapham accepted [paragraph 18 of his Regulation 31 Notice] that the manner of the driving of the Mercedes would have attracted comment from one or more of the police officers in the police carrier - **proven**
  - ii) In paragraph 19 of his Regulation 31 Notice, PC Clapham accepted that he became aware that the driver was black from the junction of Elgin Avenue when the police carrier was alongside - **proven**
  - iii) In paragraph 20 of his Regulation 31 Notice, PC Clapham accepted that one or more of the police officers would have initiated checks relating to the vehicle. It was also not disputed that PC Bond undertook a check on the car (paragraph 16 of Annex A – agreed facts) - **proven**
7. **Not proven** for reasons outlined above apart from (iii) which was proven: there was no dispute that someone in the police carrier drew the occupants’ attention to the Mercedes vehicle and the occupants developed a collective view that the vehicle was making off
8. These allegations are dealt with individually:
- i) **Proven**
  - ii) **Proven** – as set out in the Incident Data Recorder Briefing Note: [B:299]
  - iii) **Proven** – as accepted by PC Casey in his Regulation 31 Notice [A:47]
  - iv) **Proven** – no dispute that Mr dos Santos had not driven through red traffic lights
  - v) **Proven** – evident from the police carrier Cleartone footage
  - vi) **Proven** - evident from the police carrier Cleartone footage
  - vii) **Proven** – evident from the police carrier Cleartone footage
  - viii) **Proven** - evident from the police carrier Cleartone footage
  - ix) **Proven** - evident from the police carrier Cleartone footage
  - x) **Proven** - there was no evidence that PC Franks knew the identity of the driver

- xi) **Proven** - there was no evidence that PC Franks knew the driver was linked to a gang or criminal activity
- 9. **Proven** – as per paragraph 26 of Annex A of the agreed facts and as shown on the police carrier Cleartone footage
- 10. **Proven**– accepted by PC Franks (paragraph 10 of his Regulation 31 notice – A:131) and as shown on the police carrier Cleartone footage
- 11. **Proven** – evident from the police carrier Cleartone footage
- 12. **Proven** – evident from the body worn video footage
- 13. i) to iv) – **Not proven** for reasons set out above
- 14. i) to iv) – **Proven**: evident from the various body worn video footage
- 15. **Proven** for reasons set out above
- 16. **Proven** – evident from the various body worn video footage
- 17. **Proven** – evident from the various body worn video footage
- 18. **Proven** – evident from the various body worn video footage
- 19. **Not proven** – for reasons set out above
- 20. **Not proven** – for reasons set out above

### **PC Bond**

228. Set out below are the panel’s findings in respect of the allegations against PC Bond:

- 1. Non-culpable allegation, not requiring the panel to make a finding
- 2. There is no dispute that PC Bond is a police constable serving in the Metropolitan Police – **proven**
- 3. Non-culpable allegations, not requiring the panel to make a finding.
- 4. **Proven** - evident from the police carrier Cleartone footage
- 5. The sequence of events described are evident from the police carrier Cleartone footage – **proven**.
- 6. These allegations are dealt with individually:
  - i) **Proven** for reasons outlined above
  - ii) **Not proven** for reasons outlined above
  - iii) Not disputed, PC Bond also undertook a check on the car (paragraph 16 of Annex A – agreed facts) – **proven**

7. **Not proven** apart from (iii) which was proven – there was no dispute that someone in the police carrier drew the occupants’ attention to the Mercedes vehicle and the occupants developed a collective view that the vehicle was making off
  - i) These allegations are dealt with individually:
  - ii) **Proven** – as set out in the Incident Data Recorder Briefing Note: [B:299]
  - iii) **Proven** - as accepted by PC Casey in his Regulation 31 Notice [A:47]
  - iv) **Proven** - no dispute that Mr dos Santos had not driven through red traffic lights
  - v) **Proven** – evident from the police carrier Cleartone footage
  - vi) **Proven** - evident from the police carrier Cleartone footage
  - vii) **Proven** - evident from the police carrier Cleartone footage
  - viii) **Proven** - evident from the police carrier Cleartone footage
  - ix) **Proven** - evident from the police carrier Cleartone footage
  - x) **Proven** - there was no evidence that PC Bond knew the identity of the driver
  - xi) **Proven** - there was no evidence that PC Bond knew the driver was linked to a gang or criminal activity
8. **Proven** – as per paragraph 26 of Annex A of the agreed facts and as shown on the police carrier Cleartone footage
9. **Proven** - accepted by PC Franks (paragraph 10 of his Regulation 31 notice – A:131) and as shown on the police carrier Cleartone footage
10. **Proven** – evident from the police carrier Cleartone footage
11. **Proven** – evident from the body worn video footage
12. **Not proven** – for reasons set out above
13. i) to iv) – **Proven**: evident from the various body worn video footage
14. These allegations are dealt with individually:
  - i) **Proven** – there was no dispute that no cannabis was found in the car or in Mr dos Santos’ possession
  - ii) **Not proven** for reasons outlined above
  - iii) **Proven** – for reasons outlined above
15. **Proven** – evident from the various body worn video footage
16. **Proven** – evident from the various body worn video footage
17. **Proven** – evident from the various body worn video footage
18. **Not proven** – for reasons set out above

19. **Not proven** – for reasons set out above

**A/PS Simpson**

229. Set out below are the panel’s findings in respect of the allegations against A/PS Simpson:

1. Non-culpable allegation, not requiring the panel to make a finding
2. There is no dispute that A/PS Simpson is a police constable serving in the Metropolitan Police – **proven**
3. Non-culpable allegations, not requiring the panel to make a finding
4. **Proven** - evident from the police carrier Cleartone footage
5. The sequence of events described are evident from the police carrier Cleartone footage – **proven**
6. These allegations are dealt with individually:
  - i) **Proven** for reasons outlined above
  - ii) **Not proven** for reasons outlined above
  - iii) Not disputed, PC Bond also undertook a check on the car (paragraph 16 of Annex A – agreed facts) – **proven**
7. **Not proven** for reasons outlined above
8. These allegations are dealt with individually:
  - i) **Proven** – as set out in the Incident Data Recorder Briefing Note: [B:299]
  - ii) **Proven** - as accepted by PC Casey in his Regulation 31 Notice [A:47]
  - iii) **Proven** - no dispute that Mr dos Santos had not driven through red traffic lights
  - iv) **Proven** – evident from the police carrier Cleartone footage
  - v) **Proven** - evident from the police carrier Cleartone footage
  - vi) **Proven** - evident from the police carrier Cleartone footage
  - vii) **Proven** – evident from the police carrier Cleartone footage
  - viii) **Proven** - evident from the police carrier Cleartone footage
  - ix) **Proven** - there was no evidence that A/PS Simpson knew the identity of the driver
  - x) **Proven** - there was no evidence that A/PS Simpson knew the driver was linked to a gang or criminal activity



- xi) **Proven** – no intelligence that the driver was linked to a gang or criminal activity
9. **Proven** – as per paragraph 26 of Annex A of the agreed facts and as shown on the police carrier Cleartone footage
  10. **Proven** - accepted by PC Franks (paragraph 10 of his Regulation 31 notice – A:131) and as shown on the police carrier Cleartone footage
  11. **Proven** – evident from the police carrier Cleartone footage
  12. These allegations are dealt with individually:
    - i) **Proven** - evident from the various body worn video footage
    - ii) **Proven** - evident from the various body worn video footage
    - iii) **Proven** - evident from the various body worn video footage
    - iv) **Proven** - evident from the various body worn video footage
    - v) **Not proven** – for reasons set out above
    - vi) **Proven** - evident from the various body worn video footage
    - vii) **Proven** – for reasons set out above
    - viii) **Proven** - evident from the various body worn video footage
    - ix) **Proven** - evident from the various body worn video footage
    - x) **Not proven** – as Ms Williams was guided from the vehicle
    - xi) **Proven** - evident from the various body worn video footage
    - xii) **Proven** - evident from the various body worn video footage
  13. (i) to (iv) is correct – as evident from the various body worn video footage.  
However, as the panel has already found that A/PS Simpson did not use force to pull Ms Williams from the car, the panel found allegation 13 **not proven**.
  14. **Not proven** – for reasons set out above
  15. **Proven** – evident from the various body worn video footage
  16. **Proven** - evident from the various body worn video footage
  17. **Proven** - evident from the various body worn video footage
  18. **Proven** - evident from the various body worn video footage
  19. **Proven** - evident from the various body worn video footage
  20. **Proven** - evident from the various body worn video footage
  21. **Partially proven** – there was no dispute that A/PS Williams had not smelt cannabis or that she did not receive intelligence in the terms set out in (ii) and (iii)

of the allegation. However, the panel found allegation (iv) not proven as her enquiries had established that the GP dog was “enroute from Wembley” (B:847)

22. **Proven** – evident from the various body worn video footage
23. **Not proven** – the panel was satisfied that A/PS Simpson had continued to detain Ms Williams under section 1 of PACE 1984
24. **Not proven** – for reasons set out above
25. **Proven** – evident from the various body worn video footage
26. **Proven** – evident from the various body worn video footage
27. **Proven** - evident from the various body worn video footage
28. **Proven** - evident from the various body worn video footage
29. **Partially proven** – whilst this was factually correct, the panel accepted that A/PS Simpson had intended to speak to the dog handler in person to establish the tasks the ‘general purpose’ dog could undertake
30. **Proven** - evident from the various body worn video footage
31. **Proven** - evident from the various body worn video footage
32. **Not proven** – for reasons set out above
33. **Not proven** – for reasons set out above
34. **Proven** – evident from the various body worn video footage
35. **Proven** - evident from the various body worn video footage
36. **Proven** - evident from the various body worn video footage
37. **Proven** - evident from the various body worn video footage
38. **Proven** - evident from the various body worn video footage
39. **Not proven** – for reasons set out above.

## **F: STANDARDS OF PROFESSIONAL BEHAVIOUR**

### PC Franks and PC Clapham

230. Dealing with PC Franks and PC Clapham first - given the panel’s findings of facts, the panel then went on to consider whether, by their conduct, PC Franks and PC Clapham had breached the Standards of Professional Behaviour in respect of ‘Equality and Diversity’ and ‘Honesty and Integrity’.

231. The other alleged breaches of Standards of Professional Behaviour in respect of ‘Use of Force’, ‘Authority, Respect and Courtesy’ and ‘Duties and Responsibilities’ did not fall to be considered given our findings.

### Equality and Diversity

232. The panel reminded itself that the Code of Ethics states that according to the Standard of Equality and Diversity, police officers must uphold the law regarding human rights and equality, treat all people fairly and with respect, and treat people impartially.

233. The panel drew assistance from the guidance from the higher courts on unlawful discrimination, set out in paragraph 144 of the Director General’s closing submission namely:

- (a) The panel should make primary findings of fact regarding the treatment of Mr dos Santos and Ms Williams. Given our findings, we focused our attention on the treatment of Mr dos Santos given that the officers dealt primarily with him.
- (b) Was treatment less favourable than that which would have been afforded a person of a different racial group (or by asking why Mr dos Santos and Ms Williams were treated as they were?)
- (c) If so, the panel should ask whether the officers have provided adequate/satisfactory explanation for that treatment.
- (d) If the officers have not provided an adequate and satisfactory explanation for that treatment, then the panel may draw the inference that the treatment of Mr dos Santos and Ms Williams was on racial grounds

### ***Findings of fact***

234. The panel had already determined that both PC Franks and PC Clapham had been untruthful in stating that they could smell cannabis. The panel found that the officers were motivated by the desire to support PC Bond’s observations without taking any steps to verify the smell for themselves before detaining Mr dos Santos further under section 23 of the Misuse of Drugs Act 1971.

## ***Whether treatment was less favourable?***

### *Section 13 of the Equality Act 2010*

235. Following the framework above, the panel went on to consider whether PC Franks and PC Clapham, because of Mr dos Santos' protected characteristic (race) treated him less favourably than they would have treated others, as set out at section 13 of the Equality Act 2010 (EqA 2010). In this regard, the panel asked itself whether the officers' thought processes (whether conscious or unconscious) were influenced by Mr dos Santos' and Ms Williams' race, as per *Chief Constable of West Yorkshire Police v Khan* [2001] UKHL 48, [2001] ICR 1065 [29].
236. In determining this question, the panel considered the surrounding circumstances including the culture of the organisation; statistical references in the material; and the existence of stereotypes affecting black people.

### *Culture*

237. The subject of the admissibility of authoritative material on MPS culture (including items 18,19,21,23 and 24 in the policy bundle and The Casey Report) was considered at the outset of the hearing. Then, the LQC determined that the relevant reports and statistical references in the IOPC report were admissible. [See **Annex B**].
238. The panel noted paragraphs 155 – 165 of the Director General's closing submission that the authoritative material show significant disparities in rates of stop and search and use of force. For instance, we noted that in 2019/20 black people were nine times more likely to be stopped and searched than white people [HMICFRS Report on Disproportionate Use of Police Powers C:855], black-appearing people in London aged 11 to 61 were over three times more likely to be handcuffed than white people of the same age [The Casey Report (C:323)]; and black people are more likely to be on the receiving end of police use of force and restraint [Ben Bowling and Coretta Long (C:670)].
239. The panel noted the Director General's submission that the authoritative material may make it more likely that the conduct alleged was racially discriminatory because if there are widespread practices operated against a group, then it is reasonable to infer that

members of that group will be treated in the same way by the individual officers, as per *Chief Constable of Greater Manchester Police v Bailey* [2017] EWCA Civ 425.

240. The officers accepted that they were aware there are such disparities in stop and search rates and the use of handcuffs and this would be something they would have in mind when making decisions. In cross examination, PC Franks accepted that there is a percentage of the population more likely to be stopped and searched and that there was a very significant difference in London [Transcript 03.10.23, 64 A]. Likewise, PC Clapham also accepted in cross examination that for black men in particular, the humiliating experience of being repeatedly stopped and searched is a sad fact of life. [Transcript 09.10.23 1263G].

241. The panel will address the question of whether the broader culture identified by the authoritative material including The Casey Report later on in our judgment.

#### Statistical references

242. The panel had already determined that it would apportion no or limited weight to the statistical references in the IOPC report for reasons set out above.

#### Stereotyping

243. In cross examination, the officers accepted that they had heard of the stereotypes of black men (as set out in paragraph 159 of the Director's Closing Submissions). The panel was satisfied that the training the officers received, including Equality and Diversity and 'unconscious bias training', would mitigate potential concerns around stereotyping.

#### Assessment

244. Having carefully considered all of the circumstances of the case, the panel did not find that the officers' treatment of Mr dos Santos and Ms Williams, because of race, was less favourable for the following reasons:

- i) First, whilst the panel had found that PC Franks and PC Clapham had been untruthful in stating that they could smell cannabis, when assessing their words and actions as a whole, we did not consider ourselves to be in a position to conclude, on the balance of probabilities, that this emanated from any racial stereotypes.

- ii) Secondly, we had already determined that we would apportion limited weight to the statistical references in the IOPC report for reasons set out above.
- iii) Thirdly, whilst we took into account the Director General's submission about the need to take into account the broader MPS culture identified by the authoritative material, the panel apportioned limited weight to the material given our discrete findings in respect of PC Franks and PC Clapham.

245. Given our findings that the officers did not treat Mr dos Santos less favourably because of his race, we did not go on to the other stages as set out above.

246. Consequently, we found that PC Franks and PC Clapham by their actions did not breach the Standards of Professional Behaviour in respect of Equality and Diversity.

#### Honesty and Integrity

247. Moving on to the Standards of Professional Behaviour in respect of Honesty and Integrity.

248. The panel reminded itself that the Code of Ethics states that according to the Standard of Honesty and Integrity, police officers must act with honesty and integrity at all times and must not compromise or abuse their position.

249. In determining whether PC Franks and PC Clapham had breached the standard of Honesty and Integrity, we also had regard to the dishonesty test set out in *Ivey v Genting Casinos* [2017] UKSC 67 which in the context of the case is outlined as follows:

- i) What was the actual state of PC Franks and PC Clapham's belief as to the facts?
- ii) Was PC Clapham's and PC Franks' conduct dishonest by reference to the standards of ordinary decent people?

250. We had already found that PC Franks and PC Clapham had been untruthful in stating that they could smell cannabis. Within this context, the panel was satisfied that ordinary decent people would consider PC Franks and PC Clapham's conduct to be dishonest.

251. Accordingly, the panel found that by their actions, PC Franks and PC Clapham breached the Standard of Honesty and Integrity.

#### PC Casey, PC Bond and A/PS Simpson

252. As we did not find the index factual allegations proven, the panel determined that these officers had not breached the Standard of Equality and Diversity. In arriving at this conclusion, the panel was persuaded by Counsel for the officers' submissions that there can be no free-standing discrimination as the underlying conduct was not proven.

253. Moving on to the specific alleged breaches of Standards that the respective officers faced individually:

#### *A/PS Simpson*

254. With regards to the matters found proven including A/PS Simpson's conversation with Ms Williams and her conversation with PC Franks, the panel asked itself whether A/PS Simpson had breached the Standard of Authority, Respect and Courtesy.

255. The panel reminded itself that the Code of Ethics states that that police officers must ensure their behaviour and language could not reasonably be perceived to be abusive, oppressive, harassing, bullying, victimising, or offensive by the public or policing colleagues. Whilst the panel found A/PS Simpson's conversation with Ms Williams did not cross the threshold required to breach this standard, the panel considered that this could be addressed in the terms set out in **Section H** below.

256. Similarly, the panel did not consider that A/PS Simpson's conversation with PC Franks where she said "*ferret around his groin and shoes*", crossed the threshold required to breach this Standard. The panel accepted that 'to ferret' is an ordinary English verb which is used to connote the searching for something.

*PC Casey*

257. Given our findings, the other alleged breaches of Standards of Professional Behaviour in respect of ‘Honesty and Integrity’, ‘Duties and Responsibilities’ and ‘Orders and Instructions’ did not fall to be considered by the panel.

*PC Bond*

258. Again, given our findings, the other alleged breaches of Standards of Professional Behaviour in respect of ‘Honesty and Integrity’, ‘Authority, Respect and Courtesy’, ‘Use of Force’, and ‘Duties and Responsibilities’ did not fall to be considered by the panel.

**G: MISCONDUCT OR GROSS MISCONDUCT**

259. The panel then went on to consider whether PC Franks and PC Clapham’s conduct amounted to Misconduct or Gross Misconduct.

260. The panel reminded itself that Regulation 2(1) of the 2020 Regulations defines Misconduct as being ‘a breach of the standards of professional behaviour that is so serious as to justify disciplinary action’ whilst Gross Misconduct is defined as ‘a breach of the standards of professional behaviour that is so serious as to justify dismissal’.

261. We further reminded ourselves that the purpose of the police misconduct regime is to: maintain public confidence in and the reputation of the police service; uphold high standards in policing and deter misconduct; and to protect the public.

262. Given the breach of the Standard of Honesty and Integrity, within an operational context, arising as it did during the course of an encounter with members of the public in which coercive powers were used, the panel was satisfied that conduct of PC Franks and PC Clapham amounted to **‘Gross Misconduct’** as the breach was so serious as to justify dismissal.



## H: REFLECTIVE PRACTICE REVIEW PROCESS – PC CASEY, PC BOND AND A/PS SIMPSON

263. To conclude, we found the factual index allegations against these officers not proven, and were satisfied that these officers’ conduct did not breach the alleged Standards of Professional Behaviour [thereby amounting to Misconduct].
264. Nonetheless, in view of some of the factual allegations found proven, the panel concluded that it would be appropriate for PC Casey, PC Bond and A/PS Simpson to be referred to be dealt with under the Reflective Practice Review Process pursuant to Regulation 42 (1) (b) and Part 6 of the 2020 Regulations.
265. This is because the panel considered that the conduct of these officers may have fallen short of the expectations of the public and police service (as per paragraph 13.5 of the Home Office Guidance) whilst recognising that the officers’ conduct did not breach the Standards of Professional Behaviour.
266. Furthermore, the MPS, may wish to use this process to consider any organisation learnings and whether there are improvements that are identified or actions that can be taken to improve how the force as a whole interacts with members of the public and the community (as per paragraph 13.13 of the Home Office Guidance).
267. As a starting point, the panel reminded itself of the provisions of the relevant provisions of the 2020 Regulations in respect of the reflective practice review process.

### **Referral to reflective practice review process**

67.—(1) Where a matter is referred to the reflective practice review process, the reviewer must as soon as practicable provide the following to the participating officer—

(a) **details of the matter that has been referred and the circumstances that are being considered**, and

(b) an invitation to provide an account of the matter that has been referred for review.

(2) The participating officer must provide any account under paragraph (1)(b) within 5 working days beginning with the first working day after the day on which the invitation to do so is received, unless a longer period is agreed with the reviewer.

(3) The reflective practice review process consists of a fact-finding stage and a discussion stage, followed by the production of a reflective review development report.

**[Emphasis added]**

....

#### **Discussion stage**

**69.—**(1) The reviewer must, following completion of the fact-finding stage, invite the participating officer to attend a reflective practice review discussion.

(2) Such discussion should take place as soon as reasonably practicable.

(3) The discussion must include, in particular—

(a) a discussion of the practice requiring improvement and related circumstances that have been identified, and

**(b) the identification of key lessons to be learnt by the participating officer, line management or police force concerned, to address the matter and prevent a reoccurrence of the matter.**

**[Emphasis added]**

268. In light of these provisions, the panel concluded that it may be useful to provide a steer to the reviewers about the key areas of concern and the identification of key lessons for the benefit of the officers and the wider organisation.

#### PC Casey

269. Dealing with PC Casey first, the panel suggests that the reflective practice review process should focus on the officer's manner of driving as a trained response driver.

270. The panel had already found that the officer's driving (e.g. as set out at paragraph 10 of the Regulation 30 Notice) had not breached any Standards of Professional Behaviour. We also noted Inspector Cotton's evidence that it was acceptable for the officer to have exceeded the speed limit so long as the officer could justify his actions when using his exemptions.

271. Nonetheless, the panel observed that PC Casey might wish to reflect on his driving on the relevant day with a view to considering whether he might do anything differently in future and whether there might be any learnings from the incident.

## PC Bond

272. Moving now to PC Bond. The panel suggests that the reflective practice review process should focus on the officer's communication with police colleagues. We noted that there were no allegations that PC Bond's failure to pass the information from the VRM check amounted to any breaches of Standards of Professional Behaviour. We also noted Counsel for PC Bond's written closing submissions that PC Bond did share the information with another officer at the scene.

273. Nonetheless, the panel observed that PC Bond might wish to reflect on whether there was anything he could do differently in terms of information handling with a view to considering whether there might be any learnings from the incident.

## A/PS Simpson

274. Moving now to A/PS Simpson, the panel suggests that the reflective practice review process should focus on the officer's communication methods with members of the public and colleagues.

275. Whilst the panel did not find A/PS Simpson's conversation with Ms Williams to have crossed the threshold required to breach the Standard of Authority, Respect and Courtesy, the panel observed that A/PS Simpson might wish to reflect on her tone and some of the terms she used when speaking to Ms Williams e.g. 'pretty ridiculous', 'horrendous', 'antagonised the officers', 'wild', 'crazy', with a view to considering whether she might do anything differently in future and whether there might be any learnings from the incident.

276. Furthermore, whilst the panel did not find that A/PS Simpson's conduct crossed the threshold required to breach the Standard of Duties and Responsibilities, the panel considered that A/PS Simpson could reflect on her overall coordination of the stop and whether in her supervisory role she could have drawn together the identification strands to reduce the duration of the incident.

## I: SANCTIONS

277. Having come to the conclusion that the conduct of PC Franks and PC Clapham amounted to Gross Misconduct, the panel went on to determine the appropriate outcome for these officers.

### Submissions

278. Ms Monaghan KC submitted that as the context of this case is one of operational dishonesty which concerns the fabrication of evidence, it was the Director General's submission that dismissal must invariably follow and personal mitigation will be of limited impact. Ms Monaghan KC reminded the panel of the principles in *Salter* and in particular paragraph 24 of the authority: *"...In such cases, the sanction of dismissal or the requirement to resign would be almost invariably appropriate. That is dismissal or a requirement to resign would almost invariably be appropriate but there exists a very small residual category where a lesser sanction may be available."* Ms Monaghan KC submitted that nothing has been demonstrated so far that would suggest that this is an exceptional case.

279. We also received submissions from the Appropriate Authority representing that *".....in order to maintain confidence in policing, the only reasonable outcome in these circumstances would be dismissal without notice"*.

280. Mr Williamson KC for PC Franks accepted that dismissal is inevitable unless there are exceptional circumstances. Mr Williamson KC indicated that the panel's findings will devastate the officer's life as the police service was and is everything to him.

281. Mr Davies KC for PC Clapham also accepted that unless the panel has identified exceptional reasons, the finding of operational dishonesty ends the purpose of mitigation, and *'[PC Clapham's] background of sustained public service following generations of the same by his family, other members of his family now, and proven personal integrity counts for nothing at this point.'*  
[Transcript 25.10.23 2213 B]

## Principles

282. In determining the appropriate outcome, the panel applied the principles set out in R (*on the application of the Chief Constable of Greater Manchester Police*) v *Police Misconduct Panel* [2018] 11 WL UK 822 and R (*on the application of Chief Constable West Midlands Police*) v *Panel Chair, Police Misconduct Panel v Former officer “A” – Interested Party* [2020] EWHC 1400 (Admin) which emphasise the importance of following the structured approach as set out in the College of Policing Guidance (“CoP Guidance”).

283. In summary, the panel:

- (i) Assessed the seriousness of the conduct and behaviour of officers.
- (ii) Reminded itself of the purpose of imposing sanctions, namely:
  - Maintaining public confidence in and the reputation of the police service;
  - Upholding high standards in policing and deterring misconduct; and
  - Protecting the public.
- (iii) Arrived at an outcome which most appropriately fulfilled the purpose of imposing sanctions in the light of the seriousness of the officer’s conduct.

## Seriousness of the Conduct and Behaviour

284. In assessing the seriousness of the officers’ behaviour in respect of the findings, the panel considered the following factors in line with the guidance in the CoP Guidance on outcomes:

- i) The culpability borne by the officers for their actions.
- ii) The harm caused by the officers for their actions.
- iii) The existence of any aggravating factors.
- iv) The existence of any mitigating factors.

## *Assessment*

285. The panel approached our assessment of seriousness by considering PC Franks and PC Clapham separately although there were some overlapping factors given the common features present.

## ***PC Franks***

### Culpability

286. Dealing with PC Franks, we first assessed PC Franks' culpability arising from his actions found proven.

287. In deciding this, we drew assistance from paragraph 4.14 of the College of Policing Guidance that misconduct involving operational dishonesty should be considered especially serious. We also took into account paragraph 4.26 of the CoP Guidance which states "*Honesty and Integrity are fundamental requirements for any police officer. Treat any evidence that an officer is dishonest or lacks integrity seriously*".

288. Given our findings that PC Franks was untruthful when he said he could smell cannabis, the panel was satisfied that his conduct was intentional.

289. For all those reasons, We concluded that PC Franks' culpability in this case was high.

### Harm

290. The panel went on to consider the harm that PC Franks' actions may have caused against Mr dos Santos, Ms Williams, and the wider community.

### Mr dos Santos and Ms Williams

291. There was no doubt that harm was caused to Mr dos Santos and Ms Williams by PC Franks' actions. As stated previously, the panel fully accepted that Mr dos Santos had never taken drugs, and that any smell of cannabis did not emanate from him or from his vehicle.

292. Therefore, the panel was satisfied that high harm had been caused to Mr dos Santos as a result of PC Franks' false assertion that the smell of cannabis had emanated from Mr dos Santos and/or his car. The panel noted from the transcript of the body worn video footage at [B:766] that Mr dos Santos stated that he would lose all his sponsors and cost him [thousands and thousands of pounds, probably even hundreds] if he was found to be taking drugs.
293. The panel was also satisfied that high harm had also been caused to Ms Williams as she was a rear seat passenger in the vehicle in which PC Franks first said the smell had emanated from, and that she would have been understandably anxious about her small baby who was in her care at the time.

#### Wider Community

294. This case attracted intense media interest throughout the hearing and the panel had no doubt that PC Franks' proven misconduct would be likely to cause reputational harm to the police service and undermine public confidence in policing.
295. We also considered paragraph 4.69 of the CoP Guidance which states that *"how such behaviour would be or has been perceived by the public will be relevant whether or not the behaviour was known about at the time."*
296. The public rightly expect police officers to act honestly and with the utmost integrity. When officers fabricate evidence or allegations in the course of carrying out their operational duties, there is both a risk of injustice in the individual case but also an inevitable erosion in the trust that the police place in police officers generally. When this bond of trust is damaged or diminished, the impact on the police service and its ability to engage effectively with the public it serves can be severe.

#### Assessment

297. Given all the factors outlined above and based on our assessment of harm caused to Mr dos Santos, Ms Williams and the wider community, the panel found that PC Franks had caused high harm.

### Aggravating factors

298. The panel considered the list of potential aggravating factors set out in the CoP Guidance which worsened the seriousness of the misconduct in this case.
299. We found PC Franks continued with his behaviour after he realised, or should have realised that his assertion was improper to be an aggravating factor. The panel noted that PC Franks said he could smell cannabis three times at the scene, and maintained his position in subsequent written statements.

### Mitigating factors

300. The panel took into account that PC Franks was being mentored by PC Clapham during the relevant time. Nonetheless, PC Franks accepted that he was an experienced officer [B:286] and there was no evidence that he was acting without appropriate training or supervision.
301. Consequently, the panel did not consider there were any mitigating factors which reduced the seriousness of the misconduct in this case.

### Character references

302. Having assessed the seriousness of the Gross Misconduct found proven, the panel then went on to consider the character references submitted on behalf of PC Franks.
303. Given the purpose of police misconduct meetings, the panel kept in mind the fact that personal mitigation will carry limited weight and less than it might do in a different context [as explained by Holroyde J as he then was in *The Queen (on the application of Williams) v Police Appeals Tribunal* [2016] EWHC 2708 (QB)]. Nevertheless, the panel did take account the bundle of character references [Bundle E 11-44] submitted on the officer's behalf, which contained many references to his diligence and selfless commitment.



## Outcome

304. The panel then went on to consider the outcome which would most appropriately fulfil the purposes of imposing sanctions in the light of the seriousness of PC Franks' conduct. The panel considered all the available outcomes, starting with the least serious. The panel considered whether a Final Written Warning would be appropriate in this case or whether the seriousness of the case required a sanction of Dismissal Without Notice. This was not a case where reduction in rank was an available option.
305. Based on the assessment of seriousness that had been carried out, the panel came to the view that the appropriate sanction in this case is **Dismissal Without Notice** as any other sanction would fail to satisfy the purpose of these proceedings. Ultimately, the panel considered that a lesser sanction would be insufficient to reflect the importance of upholding high standards in policing, deterring misconduct and preserving public confidence in the police service.

## ***PC Clapham***

### Culpability

306. Moving now to PC Clapham, we first assessed PC Clapham's culpability arising from his actions found proven.
307. Again, in deciding this, we drew assistance from paragraph 4.14 of the College of Policing Guidance that misconduct involving operational dishonesty should be considered especially serious. We also took into account paragraph 4.26 of the CoP Guidance which states "*Honesty and Integrity are fundamental requirements for any police officer. Treat any evidence that an officer is dishonest or lacks integrity seriously*".
308. Given our findings that PC Clapham was untruthful when he said he could smell cannabis, the panel was satisfied that his conduct was intentional.
309. For all those reasons, we concluded that PC Clapham's culpability in this case was high.

## Harm

310. The panel went on to consider the harm that PC Clapham's actions may have caused against Mr dos Santos, Ms Williams, and the wider community.

## Mr dos Santos and Ms Williams

311. There was no doubt that harm was caused to Mr dos Santos and Ms Williams by PC Clapham's actions. As stated previously, the panel fully accepted that Mr dos Santos had never taken drugs, and that any smell of cannabis did not emanate from him or from his vehicle.

312. Therefore, the panel was satisfied that high harm had been caused to Mr dos Santos as a result of PC Clapham's false assertion that he clearly smelt what he believed to be the odour of cannabis on [Mr dos Santos].

313. The panel noted from the transcript of the body worn video footage at [B:766] that Mr dos Santos stated that he would lose all his sponsors and cost him [thousands and thousands of pounds, probably even hundreds] if he was found to be taking drugs.

## Wider Community

314. This case attracted intense media interest throughout the hearing and the panel had no doubt that PC Clapham's proven misconduct would be likely to cause reputational harm to the police service and undermine public confidence in policing.

315. We also considered paragraph 4.69 of the CoP Guidance which states that "*how such behaviour would be or has been perceived by the public will be relevant whether or not the behaviour was known about at the time.*"

316. Again, the public rightly expect police officers to act honestly and with the utmost integrity. When officers fabricate evidence or allegations in the course of carrying out their operational duties, there is both a risk of injustice in the individual case but also an inevitable erosion in the trust that the public place in police officers generally. When this

bond of trust is damaged or diminished, the impact on the police service and its ability to engage effectively with the public it serves can be severe.

### Assessment

317. Given all the factors outlined above and based on our assessment of harm caused to Mr dos Santos, Ms Williams and the wider community, the panel found that PC Clapham had caused high harm.

### Aggravating factors

318. The panel considered the list of potential aggravating factors set out in the CoP Guidance which worsened the seriousness of the misconduct in this case. We found PC Clapham's continued with his behaviour after he realised, or should have realised that his assertion was improper to be an aggravating factor.

319. The panel also found that PC Clapham failed to display any insight. In evidence, PC Clapham said that there was nothing that he would do differently [Transcript 09.10.23 1507F].

### Mitigating factors

320. The panel did not consider there were any mitigating factors which reduced the seriousness of the misconduct in this case.

### Character references

321. Having assessed the seriousness of the Gross Misconduct found proven, the panel then went on to consider the character references submitted on behalf of PC Clapham.

322. Given the purpose of police misconduct meetings, the panel kept in mind the fact that personal mitigation will carry limited weight and less than it might do in a different context [as explained by Holroyde J as he then was in *The Queen (on the application of Williams) v Police Appeals Tribunal* [2016] EWHC 2708 (QB)]. Nevertheless, the panel did take account the bundle of character references submitted on the officer's behalf, which

contained many references [Bundle E: 45 - 138] to his professionalism and strong work ethic.

### Outcome

323. The panel then went on to consider the outcome which would most appropriately fulfil the purposes of imposing sanctions in the light of the seriousness of PC Clapham's conduct. The panel considered all the available outcomes, starting with the least serious. The panel considered whether a Final Written Warning would be appropriate in this case or whether the seriousness of the case required a sanction of Dismissal Without Notice. This was not a case where reduction in rank was an available option.

324. Based on the assessment of seriousness that had been carried out, the panel came to the view that the appropriate sanction in this case is **Dismissal Without Notice**. Ultimately, the panel considered that a lesser sanction would be insufficient to reflect the importance of upholding high standards in policing, deterring misconduct and preserving public confidence in the police service.

### Barred list information

325. The LQC has considered the relevant provision under the Police Barred List and Advisory List Regulations 2017 ("the 2017 Regulations") and is satisfied that a report containing details of this case (in accordance with Regulation 3 of the 2017 Regulations) should be sent to the College of Policing within 5 working days. This is because there is no reason to depart from the general principle.

### Right of Appeal

326. PC Franks and PC Clapham should be notified that they have a right of appeal to the Police Appeals Tribunal. The AA will provide a notice as to the procedure to be followed in that regard.

Publication of this decision

327. There being no representations from either party regarding publication of this decision, the panel directed publication of the Outcome Report pursuant to Regulation 43 of the Police (Conduct) Regulation 2020.

**Chiew Yin Jones – Legally Qualified Chair**

**Vincent Walker – Independent Panel Member**

**Detective Superintendent Mark Broom – Police Panel Member**

**31 October 2023**

**J: APPENDICES**

**ANNEX A – PREPARED BY COUNSEL FOR THE DIRECTOR GENERAL AND THE OFFICERS CONCERNED**

**IN THE POLICE MISCONDUCT HEARING  
POLICE (CONDUCT) REGULATIONS 2020  
B E T W E E N**

**COMMISSIONER OF POLICE OF THE METROPOLIS**

**- and -**

**PC ALLAN CASEY  
PC SAM FRANKS  
PC JONATHAN CLAPHAM  
PC MICHAEL BOND  
APC RACHEL SIMPSON**

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**AGREED FACTS**

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These agreed facts are provided further to the order of the Legally Qualified Chair, dated 14<sup>th</sup> September 2023. Whilst they are intended to assist the panel, nothing here amounts to a limitation as to the ambit of the case, a formal admission or concession, and the contents may be subject to change.

1. In June – July 2020, the TSG had been set the policing objectives of reducing violent offences across the borough, to reduce gang related activity as the population emerged from lockdown, and to reduce robbery and knife crime across the BCU.
2. TSG officers were briefed that gang tensions were high across the borough [B:583]. Specific tensions were identified.
3. On 3<sup>rd</sup> July 2020, TSG supervisors were asked to patrol the Mozart Estate, and other areas including Harrow Road, Ladbroke Grove, Lisson Green and Shepherd’s Bush; and to brief off the daily MetBats for up-to-date intelligence [B:628], [B:565].

4. On 4<sup>th</sup> July 2020, the TSG unit was assigned to patrol BOCU 'AW' to conduct mobile patrols in areas of Ladbroke Grove, Shepherd's Bush, White City, Edgware Road and Lisson Green due to on going gang and youth violence [B:482].
5. Earlier in the day:
  - (i) 10:32: PC Franks performed a PACE s.1 search of an IC3 black male in Sawley Road [B:483], [B:485];
  - (ii) 10:53: PC Franks stopped Toyota Prius being driven by an IC3 black male in Australia Road but performed no search [B:483], [B:485];
  - (iii) 11:15. The unit stopped a Mercedes A180 in which there were two IC1 white males and one IC3 black male. PC Skultety performed a PACE s.1 search of one the IC1 white males [B:483], [B:485]. She recorded on the stop-and-search form *inter alia* "On speaking to the occupant, he repeatedly put his hands towards his waist band, despite being told not to, leading me to suspect a weapon was concealed."
6. On 4<sup>th</sup> July 2020, at around 13.22, PC Casey was driving a Police Support Unit marked carrier vehicle ("police carrier") on Great Western Road, Maida Hill.
7. The officers in the police carrier were PC Franks, PC Clapham, PC Bond, A/PS Simpson, PC Sari, PC Chaudhry, PC Stafford and PC Skultety.
8. Events were recorded on various media. Whilst what is seen and heard is and remains a matter for the Panel, the following is agreed as a 'working' chronology and may be revised.
9. PC Casey stopped the police carrier in front of the junction with Woodfield Road.
10. A silver car turned in front the police carrier onto Woodfield Road.

11. A grey car in the oncoming lane continued forwards and drove past the police carrier.
12. Mr dos Santos was driving a black Mercedes A-class, registration W17 RUN on Great Western Road, in the oncoming lane to PC Casey. Ms Williams and their baby were in the rear of the car.
13. The rear window and rear seat windows of the Mercedes A-class were tinted.
14. Mr dos Santos turned in front of the police carrier onto Woodfield Road.
15. PC Casey turned left into Woodfield Road.
16. PC Bond performed a vehicle registration check on W17 RUN, sometime between 13:23:00 and 13:23:59 [B:273], [B:511].
17. The silver car continued on Woodfield Road as it turned left.
18. Mr dos Santos remained behind the silver car and turned right onto Elmfield Way and, after approximately seventy metres, continued on it as it turned left.
19. PC Casey turned onto Elmfield Way as Mr dos Santos went round the corner and left his view.
20. Mr dos Santos followed the road up to Harrow Road.
21. PC Casey followed the road to Harrow Road, where Mr dos Santos was indicating to turn left.
22. PC Casey accelerated and narrowed the gap between him and Mr dos Santos.
23. Mr dos Santos turned left onto Harrow Road.
24. PC Casey followed Mr dos Santos down Chippenham Road, Goldney Road, Marylands Road and Oakington Road.



25. Mr dos Santos crossed the centre of the road at the junction with Elgin Avenue and indicated to turn right.
26. PC Casey drove to the right of Mr dos Santos, blocking his turn right.
27. PC Casey activated the rear blue police lights, turned them off four seconds later, then one second later activated the front and rear blue lights [B:229].
28. PC Franks started to open the side door of the police carrier, holding a window hammer in his hand.
29. Mr dos Santos turned left onto Elgin Avenue.
30. PC Casey turned left onto Elgin Avenue.
31. PC Casey followed Mr dos Santos down Grittleton Road, and Chippenham Road.
32. Mr dos Santos had parked on Lanhill Road. PC Casey stopped the police carrier in Lanhill Road.
33. At 13.26, PC Stafford used his police radio to create a CAD and requested a vehicle check on W17 RUN. The location was recorded as Lanhill Road [B:496].
34. Two checks on W17 RUN were performed, at 13.27.09 and 13.27.10 [B:514]-[B:515].
35. The result of the search showed the DVLA PNC record. It stated "Mr Victor Ricardo dos Santos Soares" was the keeper of a W17 RUN Mercedes 200 D AMG, had been since 23<sup>rd</sup> January 2018, and that the car was registered to 83 Chippenham Road [B:497].
36. The information was recorded on the CAD 3524 and CAD 3527 at 13:27:14 and 13:27:12 respectively [B:491], [B:497].

### Body Worn videos

37. The incident was captured on the Territorial Support Group (TSG) van video footage, the officers' Body Worn Video (BWV) and on Mr dos Santos and Ms Williams mobile phones. The first minute of the BWVs did not record any audio as was standard with all BWVs.
38. The investigator made multiple requests of the solicitor of Mr dos Santos and Ms Williams for copies of any unedited and/or original mobile phone footage. In the final request, the investigator said that if it was not provided, it would be assumed they did not want to share the material and it would not be included in the final report. The investigator received no reply.

### Initial detention and search of Mr dos Santos

39. PC Franks opened the side door of the police carrier. PC Franks, PC Bond and PC Skultety ran to Mr dos Santos' car.
40. 13:26:19. PC Franks extended his baton.
41. 13:26:14. PC Franks shouted at Mr dos Santos to get out the car, that he was detained under section 1, and PC Franks said his name and station.
42. 13:26:14. PC Franks tried to open the driver's side door to Mr dos Santos' car, which was locked.
43. 13:26:19. PC Skultety said "baby in the car, baby in the car".
44. 13:26:19. PC Bond, stood next to Mr dos Santos' car, removed a window hammer from his utility vest.
45. 13:26:21. PC Bond said "detain him detain him". PC Franks said to the driver that he was detained under section 1 of PACE.
46. 13:26:23. Mr dos Santos lifted his mobile phone to the driver's side window.

47. 13:26:24. PC Clapham told PC Franks to “go through it all”.
48. 13:26:28. Mr dos Santos started to open the car door and exited the car.
49. 13:26:31. PC Franks took hold of Mr dos Santos by the lower right arm.
50. 13:26:32. Mr dos Santos pulled his arm back and out PC Franks’ grip.
51. 13:26:56. PC Franks and PC Bond restrained Mr dos Santos. PC Clapham handcuffed him.
52. 13:27:15. PC Casey left the scene to look for any items discarded along the route.
53. 13:27:50. PC Bond said “smell of weed”.
54. 13:27:51. PC Clapham told PC Franks to detain Mr dos Santos under “23” [section 23, Misuse of Drugs Act 1971] for “smell of weed”.
55. 13:28:59. PC Franks told Mr dos Santos he could smell cannabis coming from the car and detained him under section 23 of the Misuse of Drugs Act.
56. 13:28:55. The officers moved Mr dos Santos from the rear stack to the front stack position.
57. 13:30:39. PC Franks started to search Mr dos Santos.
58. 13.32.38: PC Franks finished searching Mr dos Santos.
59. During the above sequence Mr dos Santos repeatedly swore at officers and shouted over them.

Initial detention and search of Ms Williams

60. 13:26:32. Ms Williams opened the driver’s side, rear passenger door and exited the car.

61. 13:36:34. A/PS Simpson took hold of Ms Williams right wrist, PC Skultety took hold of Ms Williams left arm. A/PS Simpson said Mr dos Santos was being detained for a search under section 1 of PACE.
  62. 13:26:43. Ms Williams retreated back inside the vehicle.
  63. 13:26:48. A/PS Simpson told Ms Williams to get out of the car, that she was going to be detained under section 1 of PACE, and that they had made off from police.
  64. 13:36:59. A/PS Simpson and PC Chaudry pulled Ms Williams out the car.
  65. 13:27:03. A/PS Simpson told Ms Williams that she was being detained under section 1 of PACE for a search for weapons.
  66. 13:27:07. Ms Williams was handcuffed to the front by PC Skultety.
  67. 13:27:17. A/PS Simpson said Ms Williams was being detained for a search because of the circumstances of what just happened with their vehicle making off from the police, in an area that was well known for problems at that moment, and causing them to suspect that there was something in the car that should not be there.
  68. 13:27:40. Ms Williams said, "Go and have a look, go and have a look, this is ridiculous".
  69. 13:30:52. Ms Williams said they were professional athletes.
  70. 13:31:07. A/PS Simpson started to search Ms Williams.
  71. 13:31:47. A/PS Simpson finished searching Ms Williams.
- Continued detention
72. 13:31:50. A/PS Simpson said they were requesting for a police dog to attend.

73. 13:32:03: Ms Bianca Williams asked for the handcuffs to be loosened. A/PS Simpson loosened them.
74. 13:33:20. Ms Williams provided her full name and address.
75. 13:32:37. A woman said that Mr dos Santos was her neighbour.
76. 13:32:59. PC Casey returned from walking the route and said there was nothing obvious, he thought the windows were closed the whole time but they had lots of time and if it was going to be anywhere, it would be in the car.
77. 13:33:22. PC Skultety told PC Casey that a dog had been or was being requested so she had not gone in the vehicle.
78. 13:33:26. PC Casey said to PC Skultety he was getting a “wee whiff of something”. PC Skultety said “Yeah, he’s been detained for 23 as well”.
79. 13:33:32. PC Casey said to PC Skultety there was “certainly a whiff of something”. PC Skultety said “Yeah”.
80. 13:34:09. PC Stafford asked Mr dos Santos for his full name and date of birth:
  - (i) Mr dos Santos replied, “dos Santos. 18.12.94”;
  - (ii) PC Stafford asked, “What was the first name?”;
  - (iii) Mr dos Santos repeated, “dos Santos”;
  - (iv) PC Stafford said, “dos Santos”
  - (v) Mr dos Santos said, “mmm Hmm. dos Santos Soares”;
  - (vi) PC Stafford said, “Soares. Soares is the surname?”;
  - (vii) Mr dos Santos repeated, “dos Santos Soares... Man got both my car, you can run checks on both cars, you lots are wasting time”;

(viii) PC Stafford said, "Soares...";

(ix) Mr dos Santos said, "It's not like the footballer. S o a r e s".

81. 13:34:39. PC Clapham asked Mr dos Santos which car was his. Mr dos Santos said both of them, W17 RUN and W18 RUN.
82. 13:35:01. PC Stafford gave PC Bond Mr dos Santos' details.
83. 13:35:07. PC Bond asked PC Stafford if Mr dos Santos' first name was Victor.
84. 13:35:16. PC Bond asked Mr dos Santos if his first name was Victor. Mr dos Santos said "Victor Ricardo".
85. 13:37:37. PC Bond said the search had not come back with a trace (Mr dos Santos having said he had been arrested and the case had gone to court before).
86. 13:37:49. Mr dos Santos said his name was dos Santos Soares and said each letter of 'Soares'.
87. 13:38:02. PC Bond repeated, "S O R E S".
88. 13:38:35. PC Bond said he could not come up with an exact match so would get the "dabber" out.
89. 13:39:28. A/PS Simpson was told no drugs dog was available. PC Skultety said it was a no for the drug dog but a general purpose dog could. A/PS Simpson said "well the route maybe". PC Skultety asked for a general purpose dog if one was available.
90. 13:41:38. Mr dos Santos asked PC Franks to perform a roadside drug test.
91. 13:43:11. Mr dos Santos' index finger was scanned.

92. 13:43:24. A/PS Simpson told PC Franks and PC Clapham that a general purpose dog would come to do the route and she would see if it could do the car as well.
93. 13:43:29. Mr dos Santos' other index finger was scanned.
94. 13:44:18. Mr dos Santos' and Ms Williams' baby started crying.
95. 13:44:45. A/PS Simpson asked PC Skultety to remove Ms Williams' handcuffs, walked to the rear passenger-side car door and opened it.
96. 13:44:49. A/PS Simpson asked Ms Williams if she wanted to pick him up and said they would take the baby out the car and give him to her. Ms Williams agreed.
97. 13:45:04. A/PS Simpson leaned into the car and unfastened the baby's seatbelt.
98. 13:45:13. Mr dos Santos said to A/PS Simpson not to touch his son. A/PS Simpson said she had spoken to Ms Williams.
99. 13:45:16. PC Skultety removed Ms Williams' handcuffs.
100. 13:45:20. Mr dos Santos repeated for A/PS Simpson not to go near his son, to close the door of the car and not to go near his son.
101. 13:45:28. A/PS Simpson said that she was going to put the baby's seatbelt back on, leaned into the car and refastened it. Mr dos Santos shouted at her not to go near his son, not to fucking touch him, asked her what the fuck she was doing, and shouted for her not to touch his fucking kid.
102. 13:45:50. A/PS Simpson attempted to finish fastening the baby's seatbelt, closed the car door and walked back to Ms Williams, stating that she had not been able to refasten it.
103. 13:47:47. PC Bond said to expedite they needed to get the driving licence out to get the number and he was trying to do it quickly for him.

104. 13:48:02: PC Bond asked Mr dos Santos if his driving licence was in his gym bag. Mr dos Santos replied that it was in a Puma bag. PC Bond said he would go and get it.
105. 13:53:05. PC Bond found Ms dos Santos' wallet, containing his bank cards and driving licence in his jacket which was on the passenger seat.
106. 13:55:20: A/PS Simpson asked indicated to Ms Williams to enter the car and pick up her baby.
107. 13:56:13. A/PS Simpson was informed the general-purpose dog could not search Mr dos Santos' car for drugs.
108. 13:56:50. A/PS Simpson asked PC Sari and PC Chaudhury to search Mr dos Santos' car.
109. 13:58:08: Mr dos Santos asked PC Clapham to remove his handcuffs.
110. 13:59:22: PC Bond confirmed to A/PS Simpson that he had Mr dos Santos' full driving licence, which was a full substantive licence.
111. 14:00:17. A/PS Simpson asked PC Franks if he wanted to jump Mr dos Santos on the bus and do a bit of a ferret round his groin and his shoes unless he was happy with things as they were.
112. 14:01:49. A/PS Simpson asked PC Franks to speak to PC Casey to see how much he witnessed.
113. 14:02:08. PC Franks spoke to PC Casey. PC Casey said they could not process Mr dos Santos for dangerous driving.
114. 14:03:07. PC Bond asked Ms Williams what was an unknown substance found in two bags in the car.



115. 14:03:25. Ms Williams said it was protection stuff belonging to her mother, who she said was very superstitious.
116. 14:03:39. Ms Williams said it belonged to her mother, who was into Hinduism.
117. 14:04:24. PC Clapham showed A/PS Simpson the two bags and said Ms Williams told him that they were part of lucky charms or superstition.
118. 14:04:30. A/PS Simpson looked at the bags and noted that they said "against enemies".
119. 14:04:39. A/PS Simpson asked Ms Williams what was a small cylinder that was with the two bags. Ms Williams said she did not know and her mother was very superstitious.
120. 14:04:50. A/PS Simpson said she was happy with it.
121. 14:05:42. PC Clapham released his hold of Mr dos Santos' handcuffs.
122. 14:16:24. Mr dos Santos' handcuffs were removed.

### **Training**

123. PC Simpson completed the following training:
  - (i) Equality and diversity, 7 June 2013.
  - (ii) Merlin search course and Merlin Basic User, 12 September 2013.
  - (iii) Human Rights, 13 September 2013.
  - (iv) Community resolutions, 2018.
  - (v) Officer Safety Training, 16 April 2019.
124. PC Casey attended the following courses:
  - (i) Equality and diversity, 2010.
  - (ii) CO12-PD001- Public Order Tactical Driver Training (Level 1), 2009.
  - (iii) PSU Personnel carrier course, 13-14 June 2009.

- (iv) DR018 response car non-pursuit refresher training, 4 February 2019, PC Casey (passed) and given RS entitlement
- (v) DX15 Hollow Spiked Tyre Deflation system procedures and operations, February 2019.

125. In consequence of the above, PC Casey maintained his standard response driving skill but was not permitted to perform pursuits.

126. PC Clapham completed the following training:

- (i) Officer Safety Training, 16 April 2019.
- (ii) Community Resolutions course, 2018.
- (iii) MPS equality and diversity training, 9 April 2016.
- (iv) Human Rights training, 15 April 2014.

127. PC Franks completed the following training:

- (i) Equality and diversity training completed, 24 December 2015.
- (ii) Human Rights, 4 January 2016.
- (iii) Community resolutions course, 2017.
- (iv) Officer Safety Training, 7 January 2020.

128. PC Bond completed the following training:

- (i) Human Rights, 2017.
- (ii) Officer Safety Training, 26 November 2019.

## **ANNEX B**

### **IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020 CONCERNING**

#### **PC CASEY, PC FRANKS, PC CLAPHAM, PC BOND and A/PS SIMPSON**

#### **Determination – admissibility of the reports and statistical references in the IOPC report**

##### Introduction

1. My determination concerning the admissibility of the reports (namely items 18,19,21,23 and 24 in the Policy bundle, and The Casey Report); and the statistical references in the IOPC report is set out below.

##### Submissions

2. I have considered the oral and written submissions from the parties (as summarised below) very carefully and am grateful to Counsel for their assistance.

##### The officers' submissions

###### *Reports*

3. It was submitted on behalf of the officers that in relation to the reports, these should be removed from the hearing bundle as the material is irrelevant and inadmissible; it would be unfair to rely upon them; and they amount to a distraction from the real issues of the case. Furthermore, the approach of the Director General in seeking to rely on this material is contrary to the Regulations and the Home Office Guidance, and is unsupported by the IOPC's own discrimination guidance.
4. It was contended by Mr Butt KC that the officers would not have the ability to challenge the reports, and apart from The Casey Report, these reports were not directed at police officers. Mr Butt KC submitted that the Director General has failed to explain how the reports are said to be relevant to the allegation to date. Mr Butt KC drew my attention to

the case of *Chief Constable of Greater Manchester v Bailey* [2017] EWCA Civ 425 where the Court of Appeal observed at [98] that “..such material must always be used with care...”.

5. Mr Butt KC also cautioned against “*the introduction of background material of marginal relevant such that the focus on the foreground is obscured, even eclipsed*” as per *Qureshi v Victoria University of Manchester(EAT)* [2001] ICR.

#### *Statistical references*

6. With regards to the statistical references, it was contended on behalf of the officers concerned that the statistical references in the IOPC report should be redacted as the Director General has not explained how he intends to use the statistical evidence in the case, nor how it can be admitted without an analysis by an expert.
7. Amongst the legal authorities, my attention was drawn to the case of *R (on the application of Roberts) v Commissioner of Police of the Metropolis and another* [2012] EWHC 1977 (Admin) where it was stated that the Court should not rely on “undigested statistics”. This approach was upheld by the Court of Appeal where Lord Justice Maurice Kay said at [32] that “... *I do not think that we should become embroiled in tendentious statistical material.*”
8. Mr Butt KC also submitted that in the event that the Director General were to rely on the statistical material, opinion evidence from a person of sufficient qualification and experience would be required and no such evidence has been served to date.

#### The Director General’s submissions

##### *Reports*

9. Ms Monaghan KC for the Director General submitted that the relevant reports and the statistical references, served as part of the Regulation 30 hearing bundle four months ago, should be admitted.
10. Ms Monaghan KC submitted that it is for the panel to attach such weight to the contents of the reports as they consider appropriate, as per *R v Deputy Industrial Injuries Commissioner*

*ex parte Moore* [1965] 1 QB 456 where the Court observed at [488], *that a person exercising quasi-judicial functions may take into account any material ... if it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue*".

11. Ms Monaghan KC contended that in determining whether the race of the complainants was a more than trivial influence or an effective cause of the officers' actions, it would be necessary for the surrounding circumstances to be considered to enable the panel to draw any inferential conclusions. Ms Monaghan KC drew my attention to various authorities including *King v Great Britain China Centre* [1991] IRLR 513 and *Anya v University of Oxford* [2001] EWCA Civ 405, [2001] ICR 847 in support of her assertion.
12. Ms Monaghan KC also brought to my attention the case of *Nagarajan v London Regional Transport* [2000] 1 AC 501 where the House of Lords opined that "*Direct evidence of a decision to discriminate on racial grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances*".

#### *Statistical references*

13. Ms Monaghan KC submitted that the statistical references in the IOPC report should be admitted as the conclusions to be drawn or inferred from the statistical material is a matter for the panel.
14. Ms Monaghan KC referred to *West Midlands Passenger Transport Executive v. Jaquant Singh* [1988] I.C.R 614 where the Court of Appeal held at [736(F)] that "*Statistics obtained through monitoring are not conclusive in themselves, but if they show racial or ethnic imbalance or disparities, then they may indicate areas of racial discrimination*".
15. Ms Monaghan KC submitted that monitoring the use of stop and search powers is relevant for the purposes of determining if there are any discriminatory patterns or disparities, as per the Codes of practice [915 of the policy bundle] where it was said at paragraph 5.1 that "*...Supervising officers must monitor the use of stop and search powers and should consider in particular whether there is any evidence that they are being exercised on the basis of stereotyped images or inappropriate generalisations.... Supervisors must also examine whether the records reveal any trends or patterns which give cause for concern and, if so, take appropriate action to address this*".

## Statutory Framework

16. As a starting point, I reminded myself that as a Legally Qualified Chair, my role includes:

- (i) “..considering representations from the appropriate authority and those representing the officer concerned on any procedural or preliminary legal arguments and points of law, and making any necessary determinations..” [Home Office Guidance 11.42].
- (ii) “resolving any disputes as to the contents of the bundle (including as to redactions) or disclosure..” [Home Office Guidance 11.54]

17. I also reminded myself of Regulation 29 (1) of the Police (Conduct) Regulations 2020

*29.—(1) The chair of the panel appointed under regulation 28 must take appropriate action to ensure the efficient and effective bringing of the proceedings and that they are conducted in a timely, fair and transparent manner.*

18. I have not had my attention directed to any specific provisions in the Regulations that specifically sets out a power to exclude evidence that a party seeks to rely upon. I therefore proceeded on the basis of wider common law principles and from a starting point of considering evidence or material put forward to be admissible unless it can be shown to have no relevance to the issues that the panel will need to decide upon, or unless it is so inherently unfair or prejudicial that it ought not to be admitted. The question of what weight the panel attaches to any particular item of evidence or material is, of course, an entirely separate matter.

## Analysis

19. Having taken into account the detailed submissions of the parties and having considered this matter carefully, I have concluded that the relevant reports and statistical references in the IOPC report are admissible.

20. In reaching my determination, I have taken into account that:

- (i) The Regulation 30 Notices assert that the officers concerned have breached (amongst other standards), the Standards of Professional Behaviour in relation to Equality and Diversity which provides that “Police officers should act with fairness and impartiality. They do not discriminate unlawfully or unfairly”. Given the way the Director

General puts its case and fact that the Standards of Professional Behaviour in relation to Equality and Diversity is specifically alleged to have been breached, the material would, on the face of it, appear to be potentially relevant.

- (ii) The panel's primary role will be to consider and decide upon the allegations that have been made against these specific officers, albeit the Home Office Guidance permit in some cases the making of recommendations with regards to any organisational learning that may arise from the hearing of the case.
- (iii) If the material is adduced as part of the Director General's case, the panel would be robust in discharging its duty to ensure that the proceedings were conducted in an effective, efficient, timely and focussed manner, and that the hearing did not involve lengthy discourse concerning satellite or peripheral issues.
- (iv) There is nothing on the face of it to suggest that the material has been unfairly obtained or selected (much of which is publicly available), or that its prejudicial effect outweighs its probative value.
- (v) The officers concerned will be able to challenge and comment upon the material during the course of the hearing.
- (vi) Ultimately, it is for the panel to apportion appropriate weight to the material put before them, having heard the overall circumstances of the case, and having regard to the need for the Director General *"to identify with specificity the particular reason why it considers the material in question to have probative value ..."* as per *Chief Constable of Great Manchester Police v Bailey* [2017] EWCA Civ 425.

### Conclusion

21. Given my determination, the redactions to the reports and statistical references in the IOPC report have been removed and provided to the panel.

**Chiew Yin Jones**

**Legally Qualified Chair**

**19 September 2023**

## ANNEX C

### IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020 CONCERNING

**PC CASEY, PC FRANKS, PC CLAPHAM, PC BOND and A/PS SIMPSON**

#### **RULING ON EXPERT EVIDENCE**

##### Introduction

1. Those who represent the officers have made an application for Professor McCall's report dated 8 September 2023 to be admitted into the hearing bundle. Professor McCall is described as being an optical physicist, and it has been submitted that he is qualified to provide expert evidence in this matter. My ruling on this matter is set out below.
2. Although submissions were made in respect of the purported expert reports of Michael Bowen-Long, Jonathan Webb and James Sutherland, Ms Monaghan KC for the Director General has indicated that a ruling regarding the statements of these witnesses is not required at this stage, as there may be a consensus on the way forward.

##### Background

3. In determining this matter, I first considered the background to this application. The chronology of events (as I understand it) is set out below:
  - i. **27 April to 9 May 2023:** Regulation 30 notices and hearing bundles were served on the officers
  - ii. **17 May 2023:** I extended the time period for the service of the Regulation 31 Notices to 16 August 2023
  - iii. **8 August 2023:** Professor McCall was instructed
  - iv. **16 August 2023:** Regulation 31 Notices received



- v. **6 September 2023:** Defence Counsel received Professor McCall's report (in draft form)
- vi. **6 September 2023:** First Pre-Hearing
- vii. **8 September 2023:** Reynolds Dawson Solicitors served Professor McCall's report (in draft form) on the Director General
- viii. **8 September 2023:** The Director General requested further evidence of Professor McCall's experience and qualifications
- ix. **11 September 2023:** Professor McCall emailed his response to Reynolds Dawson Solicitors
- x. **13 September 2023:** Second Pre-Hearing
- xi. **15 September 2023:** Reynolds Dawson emailed the information requested of Professor McCall to the Director General
- xii. **17 September 2023:** The Director General made enquiries with the National Crime Agency about the availability of experts to address matters contained in Professor McCall's report
- xiii. **18 September 2023:** The Director General made further enquiries with another agency about the availability of experts.

#### Submissions

4. I have considered the oral and written submissions carefully and am grateful to Counsel for their assistance.
5. In his report, Professor McCall concluded that *"the occupants in the van could not see the occupants of the Mercedes throughout the entire manoeuvre i.e. the approach and then right turn of the Mercedes in front of the van"*. Defence Counsel submitted that Professor McCall's report is of considerable importance as it would assist the Panel to resolve the conflict between the Director General's case and the ClearTone footage (taken from the police carrier).
6. Defence Counsel considered that any potential prejudice to the Director General by the admission of Professor McCall's report could be remedied by the Director General instructing an expert of his own.
7. Ms Monaghan KC submitted that the admission of Professor McCall's report into the hearing bundle would *"cause significant and irremediable prejudice to the Director General"*. To date, the Director General has been unable to find a suitable expert and it is said that it would

be unlikely that Director General would be in a position to find and instruct such an expert within the 6 weeks allotted for this hearing.

8. Consequently, it was submitted that in the event that Professor McCall's report is admitted, the Director General would be unable to cross examine his evidence properly, and the Director General would therefore have no choice but to seek an adjournment to instruct an expert who can consider and address Professor McCall's evidence.

### Statutory Framework

9. I have reminded myself of the legal framework set out in the Police (Conduct) Regulations 2020 and the Home Office Guidance, key extracts from which are reproduced below:

Regulation 41 of the Police (Conduct) Regulations 2020:

*(11) The person conducting or chairing the misconduct proceedings may allow any document to be considered at those proceedings notwithstanding that a copy of it has not been supplied—*

*(a) by the officer concerned to the appropriate authority or, as the case may be, the originating authority in accordance with regulation 31(3), or*

*(b) to the officer concerned in accordance with regulation 30(1).*

Paragraph 11.111 and 11.112 of the Home Office Guidance:

*“Any document or other material that was not submitted in advance of the hearing by the appropriate authority or the officer concerned may still be considered at the hearing at the discretion of the chair. However, the presumption should be that such documents will not be permitted unless it can be shown that they were not previously available to be submitted in advance. Any such decisions are at the chair's discretion”.*

*“Where any such document or other material is permitted to be considered, a short adjournment may be necessary to enable the panel, the appropriate authority or officer concerned to read or consider the document or other material and consider its implications.”*

### Analysis

10. In determining whether to admit Professor McCall's report into the hearing bundle, I have focused my consideration on the chronology of events (as set out in paragraph 3 above),

the potential significance of the evidence, the potential prejudice caused to the Director General by the admission of this evidence, and how any such prejudice could be remedied.

### Chronology of Events

11. I note that Professor McCall's draft report was served on the Director General on 8 September 2023. I take the view that it would have been appropriate to raise this at the pre-hearing on 6 September 2023, given that Professor McCall had been instructed a month previously, as one of the primary purposes of a misconduct pre-hearing is to address any such case management issues in advance.
12. Although the draft report was served on Director General on 8 September 2023 (a short timeframe given the nature and circumstances of the case), the supplementary information requested with regards to Professor McCall's experience and qualifications was only provided on 15 September 2023. This was the final working day prior to the commencement of the misconduct hearing on 18 September 2023.

### Potential Significance of the Evidence

13. I acknowledge that the matters upon which Professor McCall gives his opinions are potentially significant, going to one of (but not the only) key issues in the case. This is the question of what PC Casey saw, and whether race played any part in the decision to follow and stop Mr dos Santos' vehicle.
14. This evidential aspect of the case therefore needs to be handled carefully, and in a manner that is not only fair to all parties but also promotes public confidence in police misconduct hearings. This involves the carrying out of a delicate balancing exercise which I have done and for which my reasoning is set out below.

### Potential prejudice and whether it could be remedied

15. I am persuaded by Ms Monaghan's submission that the admission of Professor McCall's report into the hearing bundle without an opportunity to seek expert evidence in response would cause significant prejudice to the Director General. This is because of the nature of

Professor McCall's expert opinion that he purports to give in such a direct and unequivocal manner goes to a core issue in the case.

16. Although Ms Monaghan KC would have the opportunity to cross-examine Professor McCall at the hearing, the nature of his evidence appears to be highly technical, and I accept Ms Monaghan KC's submission that she would not be in a position to fully challenge and scrutinise Professor McCall's assertions without having had the opportunity to obtain separate expert evidence.
17. Given the chronology of events set out above, I accept that it would not have been realistic to have expected the Director General to have obtained his own expert evidence in response by this stage. I have therefore considered whether the prejudice caused by the late service of Professor McCall's report could be remedied by the granting of an adjournment. This is a potential course of action envisaged by the Home Office Guidance (see paragraph 8 above).
18. Since the Director General has not as yet even been able to identify a suitable expert to instruct, it would appear evident that a short adjournment would not be sufficient to enable this to occur, and for a separate report to be obtained and served. It appears common ground that this issue of the expert witness needs to be settled before any of the witnesses who are required can be called. In my judgment therefore, it would not be viable to grant an adjournment and to still expect the hearing to be concluded in the current six-week period.
19. I have therefore gone on to consider whether the current hearing should be re-scheduled in its entirety to a new date in the future. Based on the information that I have been provided with previously, it would appear that the earliest date that this matter could be rescheduled would be September 2024.
20. The allegations date back to 4 July 2020 and are therefore very old. Adjourning the matter to the next available date would mean that they would not come to be determined until over 4 years had elapsed, having an even greater impact on the memories of those who were present at the scene. I also recognise that the awaiting of the conclusion of these proceedings will understandably be a cause of anxiety to all those who are concerned, including the complainants and the officers themselves.

21. It is incumbent upon me as the Legally Qualified Chair to ensure the efficient and effective bringing of the proceedings and that they are conducted in a timely, fair and transparent manner as per Regulation 29 (1) of the Police (Conduct) Regulations 2020.
22. I have also taken account of the fact that the officers themselves will be able to give evidence about what exactly they saw from the police carrier whether or not Professor McCall's evidence is admitted, and that the evidence of the officers will be assessed carefully in the usual way by the panel.
23. I recognise that any evidence that a party to misconduct proceedings wishes to adduce is ordinarily admissible unless there is good reason not to allow it, for example if it is irrelevant or unfairly prejudicial.
24. Having taken all relevant factors into account including the need to ensure that the officers receive a fair hearing along with the requirement to ensure that the proceedings are conducted in a manner that maintains and promotes public confidence, I have come to the view that the evidence of Professor McCall shall not be admitted. This is because in my judgment, adducing the evidence of Professor McCall without permitting the Director General to call his own expert in response would be unfairly prejudicial, and that adjourning the matter for a further year to enable this to occur would not be in the public interest.
25. I am satisfied that the officers will still receive a fair hearing and to have their respective cases fully and carefully considered without the inclusion of the lately obtained expert opinion of Professor McCall.

### Conclusion

26. Therefore, I refuse the officers' application for Professor McCall's report to be admitted into the hearing bundle. Given my ruling on admissibility, I have not gone on to address the concerns expressed by Ms Monaghan KC about what are said to be procedural shortcomings with regards to Professor McCall's report.

**Chiew Yin Jones**

**Legally Qualified Chair**

**20 September 2023**

## ANNEX D

### IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020 CONCERNING

**PC CASEY, PC FRANKS, PC CLAPHAM, PC BOND and A/PS SIMPSON**

#### **RULING ON DISCLOSURE**

##### Introduction

1. Those acting on behalf of the officers concerned have applied for disclosure of material arising from two incidents which took place on 18 May 2018 and 22 August 2022, both of which involved Mr dos Santos.
2. I have not been provided with the list of the requested material but I note from paragraph 9 of the Director General's written submissions on disclosure that the material is said to include *"any body worn video, witness statements and original documentation that is capable of demonstrating a pattern of conduct by either Mr dos Santos and/ or Ms Williams towards the police that is capable of undermining their credibility in the immediate circumstances"*.
3. Set out below is my ruling in respect of the relevant test for the disclosure of material in police misconduct proceedings; my assessment of whether any of the material requested is capable of meeting the relevant test for disclosure; and my assessment of the 'harm test' in respect of the relevant material.

##### Submissions

4. I have considered the submissions carefully and am grateful to Counsel for their assistance. Counsel have provided detailed written submissions and I do not rehearse them here fully. Counsel's submissions can be broadly summarised as follows:

### *The officers*

5. In summary, Mr Williamson KC for the officers concerned submitted that the Criminal Procedure and Investigations Act 1996 (‘the CPIA 1996’) applies to police disciplinary proceedings as set out in paragraph 9.19 of the Home Office Guidance; and that furthermore the Director General has not identified any reason to depart from the Guidance.
6. Mr Williamson KC submitted that as the material requested goes toward Mr dos Santos’ reliability and credibility, and his propensity or otherwise to act obstructively or antagonistically towards police officers, the material sought “might reasonably be considered to be capable of undermining or assisting the case”. Although charges that were brought against Mr dos Santos in respect of his behaviour towards police officers in the aforementioned incidents were dismissed, Mr Williamson KC submitted that it was unclear whether the proceedings were withdrawn or no evidence was offered.
7. With regards to the matter on 22 August 2022, Mr Williamson KC submitted that it is unclear how the provision of disclosure about the incident in these proceedings would engage Regulation 6 (d) of the Police (Conduct) Regulations 2020 (see paragraph 11 below) even if future misconduct proceedings were brought.

### *The Director General*

8. Ms Pehar for the Director General submitted that the CPIA 1996 has no application to these proceedings and cannot widen the statutory context in which the test is to be applied. Ms Pehar submitted that the obligation of the Presenting Authority is to provide all relevant documents gathered during the course the investigation pursuant to Regulation 30 (1) (c) (ii) of the Police (Conduct) Regulations 2020 only and does not extend to all documents held by the chief officer.
9. Ms Pehar also submitted that whether Mr dos Santos was provocative in other incidents would not be an issue which would be relevant to the panel’s determination. Furthermore, the incident on 18 May 2018 does not amount to similar fact evidence as there was no suggestion that Mr dos Santos failed to provide his name, date of birth or driving licence in the matter before the panel.

10. In relation to the incident on 22 August 2022, Ms Pehar submitted no material arose which might reasonably be considered capable of undermining the instant case as the incident took place two years later and cannot be relied upon. Furthermore, the incident on 22 August 2022 is currently subject to an appeal to the IOPC and that officers may face misconduct proceedings in respect of it.

### Statutory Framework

11. I have reminded myself of the legal framework set out in the Police (Conduct) Regulations 2020 and the Home Office Guidance, key extracts from which are reproduced below:

Regulation 6 of the Police (Conduct) Regulations 2020:

*6. Information in documents which are stated to be subject to the harm test under these Regulations must not be supplied to the officer concerned in so far as the appropriate authority considers that preventing disclosure to the officer is—*

*(a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;*

*(b) necessary in the interests of national security;*

*(c) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;*

*(d) necessary for the purpose of the prevention or detection of misconduct by other police officers or police staff members or their apprehension for such matters;*

*(e) justified on the grounds that providing the information would involve disproportionate effort in comparison to the seriousness of the allegations against the officer;*

*(f) necessary and proportionate for the protection of the welfare and safety of any informant or witness, or*

*(g) otherwise in the public interest.*

Regulation 30 (1)(c) of the Police (Conduct) Regulations 2020:

*(1) Where a case is referred to misconduct proceedings, the appropriate authority must as soon as practicable give the officer concerned—*

*(c) subject to the harm test, a copy of—*

*(i) the investigator's report or such parts of that report as relate to the officer (together with any document attached to or referred to in that report which relates to the officer), and*



*(ii) any other document which might reasonably be considered capable of undermining or assisting the case*

Paragraph 9.19 of the Home Office Guidance:

*As set out above the appropriate authority must, subject to the harm test, provide the officer concerned with ‘any other document which might reasonably be considered capable of undermining or assisting the case’ (Regulation 30(1)(c)(ii) and Regulation 51(1)(c)(ii) of the Conduct Regulations). Whilst the Criminal Procedure and Investigations Act 1996 (CPLA) does not apply in these proceedings, it adopts the same threshold for disclosure and this test and associated CPLA guidance, should be followed when deciding whether to provide documents under Regulation 30(1)(c)(ii) and Regulation 51(1)(c)(ii) of the Conduct Regulations. “Document” should be interpreted to include any material including exhibits and electronic media. The appropriate authority has the power to require investigators to provide relevant documents, see paragraph 22(8) and 22(9) of Schedule 3 to the 2002 Act. For the sake of clarity, the use of test found in the CPLA, and reference to the CPLA in this document, is for the purpose of reference to that test only and should not be understood to import the rules of evidence in the criminal jurisdiction into misconduct proceedings. The rules of evidence for police misconduct proceedings are found in the Conduct Regulations.*

Paragraph 9.26 of the Home Office Guidance:

*In these circumstances, it will be for the person conducting or chairing proceedings to hear representations to determine accordingly whether the recovery and/or provision of material is considered reasonable and proportionate based on the relevance to the case. The person conducting or chairing may issue directions on such matters which must be followed accordingly.*

### Analysis

12. In determining this matter, I first considered the relevant test for the disclosure of material in police misconduct proceedings, namely whether or not material should be disclosed if it “might reasonably be considered capable of undermining or assisting the case” based on what the officers’ have identified as being relevant to the issues in the case.
13. I have then gone on to consider whether any of the material requested is capable of meeting the relevant test for disclosure.

14. Then finally, I have considered whether – even if there is material that would ordinarily fall to be disclosed applying the relevant test – it should be withheld applying the harm test set out in Regulation 6 of the Police (Conduct) Regulations 2020.

Relevant test for disclosure in police misconduct proceedings

15. As a starting point, I reminded myself that the procedures described in the Home Office Guidance are designed to accord with the principles of natural justice and the basic principles of fairness (paragraph 1.4).

16. Furthermore, the guidance on the individual procedures is designed to further the aims of being fair not only to the officers who are subject to the process but also all the parties involved to provide policing confidence in the system.

17. Ultimately, whether or not as a matter of law the CPIA 1996 is applicable to police misconduct proceedings, both Regulation 30 (1)(c)(ii) and the Home Office Guidance provide that the misconduct proceedings adopt the same threshold for disclosure. It appears clear to me that adoption of the CPIA test and associated guidance is an appropriate and proportionate means of ensuring that relevant documentation is disclosed when this is necessary to guarantee the overall fairness of the proceedings.

18. Accordingly, I take the view that the relevant test for the disclosure of material in police misconduct proceedings are as set out in Regulation 30(1)(c)(ii) and the threshold for disclosure in CPIA 1996, namely whether the material sought might reasonably be considered capable of undermining or assisting the case of the officer.

19. Although it has been asserted that the Appropriate Authority and the chief officer should be treated as separate entities for the purposes of considering what material is available for disclosure, I have not been provided with any specific authorities to support this principle. Given that both the Appropriate Authority and the chief officer are part of the Metropolitan Police Service, and that the material would appear to readily accessible, in my view there is a potential risk of unfairness or injustice if the scope of the material that might potentially fall to be disclosed is restricted to that which has been gathered during the investigation.

Whether the material sought might reasonably be considered capable of undermining or assisting the case

*18 May 2018*

20. On the basis of the disclosure test, I take the view that the Director General should provide the material arising from the incident on 18 May 2018.
21. In arriving at this conclusion, I have taken into account that Mr dos Santos had referred to the incident himself in that:
- (i) He informed PC Clapham that he was arrested in May 2018 [page 767 of Bundle B (evidence)]; and
  - (ii) He informed PC Bond that the incident on 18 May 2018 was similar in nature, [page 754 of Bundle B (evidence)] in which he said [in reply when asked what he was arrested for] “...*same bullshit, DWB driving while black, simple*”.
22. I have also taken into account that, Mr dos Santos admitted failing to give his name and address and to produce insurance, was convicted and sentenced to a three-month conditional discharge (which is now a spent conviction).

*22 August 2022*

23. Again, on the basis of the disclosure test, I have concluded that the Director General should provide the material arising from the incident on 22 August 2022. In arriving at this conclusion, I have taken into account that Mr dos Santos had released video clips of the incident (albeit without audio) on to social media himself.
24. It would appear that, from the way in which the arguments have been framed so far in these proceedings, that each side is suggesting a pattern of behaviour on the part of the other. To that end, in my view, the material from the August 2022 incident, although post-dating the events in 2020 to which these proceedings pertain, would appear to be relevant and potentially have some bearing on the issues that the panel will need to determine.

*‘Harm’ Test*

25. The 'harm' test set out in Regulation 6 of the Police (Conduct) Regulations 2020 does not appear to have any application to the incident from 2018. This matter occurred over 5 years ago, and there are no current or ongoing investigations into what occurred on that occasion.
26. In respect of the 2022 incident, although the Director General states that investigations continue with regards to the consideration of whether future misconduct proceedings should be brought, it has not been explained with any clarity as to how any such investigations or proceedings might be prejudiced by the disclosure of relevant material – redacted if necessary – to the officers in the present case.
27. It is of paramount importance that any misconduct proceedings are conducted fairly. The 'harm' test – which when applied has the potential to impact on the overall fairness of the proceedings – should only be used sparingly and where the potential damage to the wider public interest has been laid out in case specific rather than general terms.

### Conclusion

28. For all the reasons set out above, I direct that the DG provides the officers with such material relating to the incidents on 18 May 2018 and 22 August 2022 that is considered to be relevant.
29. As I have not been provided with the list of the requested material, I have not made any orders in relation to the specific material sought. The purpose of this ruling is to provide a general finding in terms of what are currently two broad categories of material (relating to the May 2018 and August 2022 incidents respectively).
30. I am not making findings or directions in relation to specific documents as these have not been particularised for me. I anticipate that the parties would be able to agree the material to be disclosed without requiring a further ruling from me.

**Chiew Yin Jones**

**Legally Qualified Chair**

**26 September 2023**