



In The Supreme Court of Bermuda

CIVIL JURISDICTION

Consolidated Actions

2020 No: 402

2020 No. 390

BETWEEN:

THE COMMISSIONER OF POLICE

Applicant

-v-

THE PUBLIC SERVICE COMMISSION

Respondent

OSWIN PEREIRA

Interested Party

And

OSWIN PEREIRA

Applicant

-v-

THE COMMISSIONER OF POLICE

Respondent

JUDGMENT

Application for Judicial Review against Decision of the Public Service Commission not to dismiss a police officer found guilty of gross misconduct – Application for Judicial Review against Police Commissioner for dismissing police officer for gross misconduct prior to appeal to the Public Service Commission - Police (Conduct) Orders 2016 – Public Service Commission Regulations 2001- Guideline Legal Principles on sanctioning a police officer for gross misconduct involving operational dishonesty

Dates of Hearing: 05 February 2021

Date of Judgment: 15 February 2021

Counsel for the
Commissioner of Police: Mr. Kevin Taylor (Walkers (Bermuda) Limited)

Counsel for the
Public Service Commission: Mr. Richard Horseman (Wakefield Quin Limited)

Counsel for
Oswin Perreira: Ms. Victoria Greening (Resolution Chambers)

JUDGMENT of Shade Subair Williams J

Introduction:

1. The decision following the disciplinary proceedings before the Public Service Commission (intermittently abbreviated to its acronym “the PSC”) on the gross misconduct of Police Constable 2360 Oswin Pereira (“PC Pereira”) is the subject of this application for judicial review by the Commissioner of Police, Mr. Stephen Corbishley (“the Police Commissioner”) (Case No. 402 of 2020). This Court is also presently concerned with the application of PC Pereira for judicial review of the Police Commissioner’s decision to dismiss PC Pereira prior to the final determination of the decision of the PSC (Case No. 390 of 2020). By agreement between all parties, these applications were consolidated for the purpose of these proceedings.
2. On 5 February 2021 Counsel for the Police Commissioner, the PSC and PC Pereira appeared before me and made oral submissions on their respective applications. The Court also had before it the written submissions of each party and the affidavit evidence of the Police Commissioner and PC Pereira.

3. At the close of the hearing, I reserved judgment which I now provide with the reasons below.

Summary of the Background Facts and Disciplinary Proceedings:

4. On 13 May 2017 PC Pereira and PC 2445 Joshua Boden (“PC Boden”) were on duty on their police motorcycles and had cause to pursue an assailant, Mr. Talundae Azariah Grant who attempted to flee riding a stolen motorcycle. Mr. Grant was eventually apprehended by PCs Pereira and Boden who proceeded to effect his arrest and detention. During the course of that encounter, PC Pereira willfully and dishonestly turned off his body camera equipment¹ (“body cam”). Mr. Grant, now the Complainant for the purpose of the police disciplinary proceedings, made a complaint to the Police Complaints Authority, prior to his passing caused in an unrelated road traffic accident.
5. Allegations of gross misconduct against PC Pereira and PC Boden were initially referred to the Acting Deputy Commissioner of Police, Mr. Antoine E. Daniels (“A/Dep. Com. Daniels”) for investigation. At the close of the investigation, A/Dep. Com. Daniels confirmed his opinion that there was a case to answer for gross misconduct in respect of both PC Pereira and PC Boden.

The Misconduct Hearing and Decision

6. The Police Commissioner thus referred the case for a misconduct hearing before a panel chaired by Mr. Alan W. Dunch, JP (a senior member of the Bermuda Bar Association). The other two members of the panel were Mr. Douglas Soares and Acting Assistant Commissioner Mr. Sean Field-Lament (“the Panel”). Citing from a summary provided in a statutory Notice dated 27 December 2018, the Panel described the following narrative as the salient portion of the facts against PC Pereira:

“The conduct that is the subject matter of the case and how it is alleged to amount to gross misconduct is as follows:

- (i) *On or about 1200 hours on Saturday 13th May 2017 you were on duty in uniform riding a police motorcycle in pursuit of 17-year old Mr. Grant who failed to stop for police. It is alleged that after subsequently pursuing him on foot into an area of dense vegetation, you used your police-issued Taser on two occasions to neutralize a perceived threat from Mr. Grant. While Mr. Grant was on the ground, Police Constable 2445 Joshua Boden attempted to control the movements of Mr. Grant by placing hand-cuffs on his wrists. According to footage captured from your police-issued body*

¹ This body cam is also referred to as “Body Worn Camera System/Vest” and is abbreviated to “BWCV” in the written decision of the Panel sitting on the Misconduct Hearing.

- camera, PC Boden continued to control the complainant by holding his arms behind his back while you used your left hand to hold the right side of Mr. Grant's head against a large stone. The camera images then appear to show you use your right hand to strike Mr. Grants [sic] head twice in rapid succession while gripping your police-issued ASP baton in your clenched right fist. Immediately prior to striking Mr. Grant you are heard to say: "camera's [sic] off" before you are then shown to deactivate the body camera.*
- (ii) *You were subsequently prosecuted in Hamilton Magistrates Court for the offence of unlawfully wounding Mr. Grant contrary to section 306(b) of the Criminal Code Act 1907, and at the conclusion of the trial on 20th July you were found not guilty of that charge.*
 - (iii) *Having reviewed your audio/video interview, written statement and your testimony to Magistrate Archibald Warner your account of the incident appears to be wholly inconsistent with the body camera footage.*
 - (iv) *Your account of the incident is that striking Mr. Grant with you ASP baton was purely accidental. You stated that you ASP only extended because: "as I braced for my fall, the movement caused my police issued baton to extend forward. Mr. Grant was in the direct trajectory of my fall and therefore I am aware and accept that my baton extended and struck Mr. Grant in the area of his head and or face" (interview 23.11.17 page 5 lines 35-38).*
 - (v) *You also stated that "I did not strike Mr. Grant on multiple occasions again as he alleges" (interview 23.11.17 page 6 line 8). The body camera footage at 4:53 – 4:54 minutes shows you striking Mr. Grant twice and it is only on the second blow that your ASP button extended. Your account appears to be at odds with the evidence and the force used against Mr. Grant appears to be excessive.*
 - (vi) *You also stated that "I then said to PC Boden 'Your camera is off as I wanted PC Boden to record the rest from a different vantage point" (interview 23.11.17 page 5 lines 24-26). However you own body camera footage shows you holding down Mr. Grant with your left hand while you used your right hand to deactivate your camera while saying "camera's off". Your actions in this regard occurred immediately before the assault on Mr. Grant – in fact at 4:52 minutes- just one second before you delivered the first of two strikes.*
 - (vii) *As a result of these allegations you may have fallen below the acceptable Standards of Professional Behaviour, which is expected of members of the Bermuda Police Service.*

7. As part of the record of the misconduct hearing proceedings, the Panel received a witness statement from the Complainant Mr. Grant. However, there was no opportunity for live evidence to be received from the Complainant prior to his fatal 2019 road traffic accident. The Panel therefore limited the admission of the Complainant's written evidence to contextual and background facts rather than for facts in dispute.
8. In defence of the allegations, the Panel received the records of the police interviews for both PC Pereira and PC Boden and their *viva voce* evidence.
9. The Panel's record also contained the witness statements of PC Brian James MacNab (expert witness on (i) safety training input on the use and deployment of the ASP baton and (ii) the body cam and its method of activation) and Police Sergeant Kenton Trott. Supplemental *vive voce* evidence was then given by Officers McNab and Trott.
10. The Panel also had, *inter alia*, evidence of the video footage taken from PC Pereira's body cam on the date in question. This footage was able to be viewed at a regular and slow speed pace and with the use of a frame-by-frame feature. In describing the footage the Panel stated in its written decision [paras 13-14]:

“... ”

13. ...*The footage shows a long motorcycle chase culminating in the arrest of Mr. Talundae Grant by PC Pereira with the assistance of PC Boden. The video is approximately 4:56 in duration and at the heart of the matter is the last 5 seconds. The Panel viewed this portion of the video numerous times; at normal speed, half speed and frame by frame to form an opinion – based on all factors present – as to what probably occurred.*

14. *A synopsis of the Panel's interpretation of the events captured by the BWCV is as follows:*

(a) *PC Pereira observes a motorcycle with two riders on South Shore Road – he notes the motorcycle has no key in the ignition and forms a suspicion that it may be removed/stolen (as suspicion which is later proved correct). A lengthy motorcycle chase ensues which commenced near Barnes Corner, Southampton and concluded near the junction of East Dale Lane and South Shore Road Southampton. PC Pereira as a matter of his operational “habit” turned on his BWC as soon as he commenced the pursuit. Nothing untoward occurred during the chase during which speeds in excess of 100kph were reached in the lawful pursuit of a noncompliant motorcycle- the Panel did observe and comment on the skill, courage and tenacity of PC Pereira's driving. Near Eastdale Lane the motorcycle driven by Mr. Grant is “dropped” and both rider (Mr. Grant) and passenger make off on foot. PC Pereira alights from his motorcycle and commences a foot chase after Mr. Grant*

which resulted in both of them entering into [a] densely foliated area to the immediate south of that aforementioned junction.

It should be noted here that the Panel visited the site and did a first-hand assessment...

- (b) At approximately 4:19 in the BWCV PC Pereira is seen to engage Mr. Grant and issue verbal warnings before deploying his TASER twice. Pc Pereira provided his rationale for deploying this less than lethal option as follows: Mr. Grant turned and squared up and appeared to reach towards his waist area on two occasions, Pc Pereira was concerned about his safety and the possibility that Mr. Grant may [be] armed, Pc Pereira stated “I was in fear of my life” (The Panel noted that Mr. Grant was eventually found in possession of a bladed article with the result that Pc Pereira’s concern and reaction was proportionate to the threat, harm and risk he was exposed to), Pc Pereira then deployed his TASER twice...The Panel is satisfied that Pc Pereira’s use of his TASER was completely justified, proportionate and necessary.*

Up to this point of the BWCV the Panel had no issues with Pc Pereira’s conduct. However, the subsequent actions that transpired presented significant concern to the Panel.

- (c) At this stage of the incident Pc Boden arrives at the scene. Pc Boden was responding to a radio message seeking police backup support. He left his vehicle on South Road and enter the dense foliage following the sounds of the chase and screams of both Pc Pereira and Mr. Grant. Upon arrival he sees Mr. Grant incapacitated on the ground and confirms Pc Pereira’s deployment of his TASER. Pc Boden then goes to handcuff Mr. Grant. Mr. Grant is instructed to roll over and the rigid hand bar handcuff is successfully deployed to Mr. Grant’s right wrist and he is manoeuvred to be face down with his head facing towards Pc Pereira. Pc Boden states that he was experiencing great difficulty with getting the handcuff onto Mr. Grant’s left wrist. This is clearly evident in the BWCV and indeed the Panel is not convinced that the successful completion of this task was captured in the BWCV....*

...

- (d) ...*

The Panel carefully dissected the video evidence in relation to Pc Pereira’s actions during the last 5 seconds of the BWCV before its termination. It was noted that on full speed the matter is over quickly. However, at half speed the chain of events become clearer and the frame by frame review reveals several concerning images from which the Panel has drawn conclusions as to what is the most likely interpretation of Pc Pereira’s actions. The Panel also took into account Pc Pereira’s testimony during which several inconsistencies and challenges arose and which case significant doubt on the veracity and reliability of Pc Pereira’s account and recollection of the events.

At 4:42 of the BWCV Pc Pereira is seen to be holding the Taser in his left hand. His right hand comes across to his left shoulder. Pc Pereira's evidence was that he had his radio mike, his keys and the Body Worn Camera on the left upper side of his police vest and that he was checking on them. He stated that his ASP was also on the left side with a downward facing deployment tab. He further states that his officer safety equipment was scattered on the ground including his ASP, pocket note book and radio. Pc Pereira confirms that PC Boden was having difficulty handcuffing Mr. Grant and that he picked up his ASP off the ground. He lost his footing and fell forward and he tried to break the fall by putting both hands forward. There does not appear to be supporting evidence from the BWCV of a falling forward action. In addition, Pc Pereira's hand positioning in the Panel's opinion was not consistent with a natural falling forward reaction i.e. the left palm was not facing forward (away) but facing towards Pc Pereira. The Panel opined that the natural reaction to falling forward would be to extend the hand forward with palms facing the ground. This was not evident in the BWCV.

(e) [This lettering is missing from the Panel's written decision.]

(f) *At 4:49 Pc Pereira's right hand is seen to come up from the bottom of the image. In his right hand is clearly seen his ASP in "closed mode". The Panel did not see any action that would support Pc Pereira's assertion that he picked up the ASP off the ground. Rather the Panel felt this action is consistent with drawing the ASP from its downward facing holster.*

(g) *At 4:52 on the BWCV Pc Pereira is heard to say "Cameras Off". Pc Pereira admits saying this and offered an explanation that he was asking Pc Boden if his Camera was off. He stated that he noted that PC Boden's camera was not on and that he was asking him if it was off so that he would turn it on. The Panel struggled with this explanation: with all the actions going on, a struggling subject, difficult terrain affecting footing, screams and shouting and a very fluid dynamic incident is it plausible that Pc Pereira's attention was drawn to Pc Boden's BWC and he noted it was not on? Pc Pereira stated he wanted Pc Boden to turn on his BWC so as to record the incident. If that was the case one is left to wonder why did he not simply state words to the effect of turn your camera on.*

The Panel noted that at the same time as saying "camera's off" Pc Pereira's right hand is seen to come up and across the BWC, momentarily blocking the view. Pc Pereira's explanation is that he was checking his radio key and equipment, at the same time as observing Pc Boden's camera was off. The Panel struggled to accept this account. The Panel formed the opinion that the more probable explanation was that Pc Pereira's right hand came up to his BWC and turned it off. This is supported by the movement of the right hand, and the time lapse that occurred after this action when the BWC recording ceased

at 4:56, some 3 to 4 seconds later, which is consistent with the lag reported by Pc MacNab as standard for BWCs, coupled with coinciding with Pc Pereira's statement of "camera's off": The Panel rejects Pc Pereira's explanation and concludes that Pc Pereira deliberately turned off his BWC at this moment.

- (h) Pc Pereira is then seen to administer two rapid blows to the head region of Mr. Grant, one with the ASP in closed mode followed with one with the ASP extended in open mode. The first blow can clearly be seen to show the bottom of Pc Pereira's right hand come into contact with the top of Mr. Grant's head. Pc Pereira's left hand is seen palm facing towards hi and has the appearance of cupping or holding the back side of Mr. Grant's head. Pc Pereira's explanation of these actions was that he was falling forward over Mr. Grant. The Panel did not believe this account was credible and that it was more probable that Pc Pereira reached out with his left, controlled Mr. Grant's head and administered two blows to the upper region of Mr. Grant. Further examination of the video frame by frame revealed a distinctive shadow underneath Mr. Grant immediately prior to the second blow that was consistent with Pc Pereira's right hand and arm coming back, so as to deliver an ASP strike. This would also offer a more plausible explanation as to why the ASP was in extended mode on the second delivery.*
- (i) At 4:56 the BWCV stops recording. The timing of this once again coincides with the 3 to 4 second lag time after the BWC being turned off. The Panel believes that it is probable that Pc Pereira was unaware of or failed to take into account this lag time and as such his actions were unwittingly captured despite his efforts to avoid this."*

11. In a written decision forwarded to the Police Commissioner on 23 January 2020 the Panel found that PC Pereira should be dismissed from the BPS without notice. This conclusion was based on the following findings [para 15]:

"FINDINGS

15. On the basis of the totality of what has been presented to it, and having regard to the burden of proof mandated by PCO Section 32(14)(a), the Panel, after careful deliberation and taking into account all of the Counsels' [sic] artful submissions, has concluded and accordingly finds as follows:

- (i) The Panel dismisses Pc Pereira's overall account as implausible*
- (ii) The Panels' [sic] determination is that after a pursuit of Mr Grant, Pc Pereira lawfully deployed his TASER which eventually momentarily incapacitated Mr. Grant, allowing Pc Boden to commence further restraint (handcuffing).*

- (iii) *During the hand cuffing of Mr. Grant, Pc Pereira wilfully and intentionally turned off his BWC and then unnecessarily struck Mr. Grant twice in the head area using his ASP. The turning off of the BWC indicates a level of premeditation in regards to “covering up” (not recording) an unjustifiable assault on a prisoner being restrained.*
- (iv) *This action constitutes gross misconduct.*
- (v) *The Panel was left with the impression that Pc Boden’s account was forthright and truthful. He reported what he saw, heard and did in an honest manner.*
- (vi) *The definition of concentration is the full focus of mind and body to a particular endeavor to the complete exclusion of everything not relevant to that endeavor. The fact that he did not clearly see Pc Pereira’s action in his periphery is consistent with him full focusing and concentrating on the difficult and stressful task of handcuffing a struggling subject.*
- (vii) *Pc Boden cannot be expected to report on actions he did not see or hear.*
- (viii) *The Panel finds no wrong doing by Pc Boden.”*

12. Having made these findings, the Panel determined that the case against Pc Boden was to be dismissed but that PC Pereira’s conduct amounted to gross misconduct as his behavior fell “*well below the accepted standards of conduct and professional behavior that have been promulgated for the BPS.*” The Panel then considered the submissions of both sides in respect of the appropriate penalty to be imposed against PC Pereira. PC Pereira’s Counsel highlighted [para 19]:

“... ”

- (i) *his previous long standing unblemished record*
- (ii) *the fact that in context this was not an everyday situation for police officers involving (as it did) a dangerous situation where a high speed chase had ensued and a weapon was in Mr. Grant’s possession*
- (iii) *there is no suggestion that Pc Perreira was “trying to create evidence”*
- (iv) *the fact that the case amounted to an exercise in poor judgment and was on the “lower rung” of misconduct, and*

(v) *the consequences that would be to impose something less than the “nuclear option”.*

13. Against that position it was contended that the BPS had lost all trust and confidence in PC Pereira and pursued his dismissal without notice. The Panel concluded [paras 20-21]:

“20. The Panel is of the view that the facts giving rise to the conclusion that the case of gross misconduct is made out are such as to justify the position of the Appropriate Authority. Looked upon on any objective basis, Pc. Pereira’s conduct was a discredit to the Bermuda Police Service and as well must have completely undermined any continuing trust and confidence in the Bermuda Police Service would be seriously undermined if gross misconduct of this sort was not dealt with appropriately. In such circumstances, the only realistic and proper disciplinary action is dismissal.

21. Accordingly, it is the finding of the Panel that Pc. Pereira should be dismissed without notice.”

The Appeal Proceedings and Decision of the Public Service Commission

14. PC Pereira appealed to the Public Service Commission advancing eleven grounds of appeal against the decision of the Panel. The Panel’s disposition of the final ground of appeal is of relevance to these proceedings. Under that ground PC Pereira complained that the Panel acted unreasonably in finding that his behavior constituted gross misconduct.
15. In its written decision dated 17 August 2020 and signed by the Chairman of the PSC, Mr. Gregory Swan, the PSC reversed the Panel’s factual finding that PC Pereira unjustifiably assaulted Mr. Grant by striking him twice in the head [para 47]. However, the PSC did not disturb the Panel’s factual findings that PC Pereira wilfully turned off his body cam. It further found that the dishonest account given by PC Pereira of how the camera came to be turned off was another act of gross misconduct [para 52]:

“The MPP did not accept the Appellant’s explanation and described his account as implausible. The MPP, by finding the Appellant had wilfully turned his camera off, inferred that the Appellant was being untruthful in giving his side of the story. The MPP did not accept that the Appellant was instructing PC Boden to turn his camera on and the PSC is unable to say that this finding of fact was unreasonable. Giving an inaccurate or implausible account in order to shield himself from criticism and potential misconduct charges was in the PSC’s opinion gross misconduct.”

16. The PSC, in its final determination on the disciplinary action to be taken, set aside the Panel's decision to dismiss PC Pereira without notice. The PSC concluded that the Panel's decision in that regard was unreasonable. This decision is the core of the dispute in this case. The material portions of the decision on sanction are set out below [paras 54 – 63]:

“54. In considering whether the disciplinary action handed down by the MPP was unreasonable, the PSC reminds itself that the purpose of the police misconduct regime is to:-

- (i) Maintain public confidence in, and the reputation of, the police service*
- (ii) Uphold high standards in policing and deter misconduct*
- (iii) Protect the public*

55. In determining the appropriate sanction, the PSC must assess the seriousness of the conduct while keeping in mind the purpose of imposing sanctions as outlined above in paragraph 54 and then choose the sanction which most appropriately fulfils that purpose.

56. The Bermuda Police Service Guidance Misconduct Guidance Notes provide:- See page 31:-

“In considering the question of outcome the person(s) conducting the meeting/hearing will need to take into account any previous written warning imposed under the Police (Conduct) Orders that were live at the time of the initial assessment of the conduct in question, any aggravating or mitigating factors and have regard to the police officer's record of service”

57. In assessing the misconduct, the Appellant was clearly culpable in denying he had requested PC Boden to turn his camera off with an explanation that was found by the MPP to be inaccurate. Honesty and integrity are fundamental requirements for a police officer and it is imperative that the public have confidence in the Bermuda Police Service. However, it seems that at the time, there was no operational requirement or policy in place requiring the Appellant to even have his camera on. There were of course mitigating circumstances in respect of PC Boden as he was involved in a fluid chase, however by the same token, it would seem that had the Appellant not turned his camera on, he wouldn't have suffered any criticism in connection with the body camera.

58. The real aggravating factor in this case was, as described by the MPP, the Appellant's implausible account of what transpired when he stated that he asked PC Boden to turn his camera on and denied that he willfully turned off his own camera off [sic].

59. In terms of the harm caused, there was no physical harm found to be suffered by Mr. Grant at the hands of the Appellant by reference to any unjustifiable assault. There was no evidence of any physical injury attributable to the alleged assault. The only harm that could said to be

caused was harm to the reputation of the Bermuda Police Service and the undermining of the public confidence in policing. Giving an untruthful explanation in order to protect himself from criticism does undermine the reputation of the Bermuda Police Service.

60. Against those factors, Order 34(10) required the MPP to have regard to the record of service of the Appellant as shown by his personal record. Submissions were made by the Appellant's counsel which appear not to have been taken into consideration by the MPP. It is not clear what weight the MPP gave to the Appellant's previous clean service record of nearly a decade with the Bermuda Police Service. The Appellant's career summary was exhibited at Tab 3 of the Appeal Record and the Appeal Panel notes:-

"PC Pereira had numerous assessments made on his appraisals and each was similar in content that he is well rounded officer who is self-driven and motivated and an asset to the BPS. His Performance Report in April 2017 from Sergeant 849 D. Astwood reflect[s] that he "displays a high level of respect for his colleagues and the public in general. Within his 9 years of Service PC Pereira had established himself well within the organization as an officer with a positive attitude and aspirations to further himself in the service".

61. The MPP commented in its decision and praised the Appellant for his "skill, courage and tenacity" in his driving which resulted in the apprehension of Mr. Grant who showed scant regard to the public users of the road and placed members of the public at serious risk of injury or worse. The Appellant, in carrying out his duties, placed himself at great personal risk during the pursuit of Mr. Grant who was, subsequently found to be in possession of a knife at the time, something that the Appellant had a reasonable belief to be the case. As PC McNab testified, this was a real life high stress situation which training scenarios cannot fully prepare an officer for.

62. Having considered all the factors in this case, and in light of finding no evidence to support the MPP['s] finding that the Appellant unlawfully assaulted Mr. Grant, the PSC finds that dismissing the Appellant without notice was unreasonable. The Career Summary prepared by Sgt. Mello which referred to the Appellant's last performance report confirms that the Appellant has previously displayed a high level of respect for the public and was previously a well-rounded motivated police officer who had previously carried out his duties in an acceptable manner and was an asset to the Bermuda Police Service. He had no previous warnings on his personal record.

63. The PSC does, however, consider the Appellant's conduct was serious. However, taking into account his past record of service with the Bermuda Police Service and having found the penalty of dismissal without notice unreasonable, it has decided to vary the disciplinary action of dismissal without notice and in its place impose a final writing warning. The Appeal is

therefore allowed to the extent the PSC varies the disciplinary penalty imposed by the MPP to a final written warning.”

The Pleadings:

17. On 21 October 2020, Ms. Greening for PC Pereira filed a Form 86A under RSC Order 53/3 for leave to apply for judicial review against the Police Commissioner. The application was supported by an affidavit sworn by PC Pereira on 19 October 2020. The pleaded grounds for the application were as follows:

“ ...

1. *On 20th January 2020, a finding of guilt was made, and the Misconduct Panel recommended that the Applicant be dismissed from the Bermuda Public Service.*
2. *The Respondent is the authority that orders the dismissal. However, the Applicant is entitled to due process under the Police (Conduct) Orders 2016, which includes his right of appeal.*
3. *The Applicant was dismissed before his right of appeal was exhausted.*
4. *The Applicant did in fact appeal to the Public Service Commission.*
5. *His appeal was successful to the extent that they held that the recommendation made by the Misconduct Panel to dismiss the Applicant was unreasonable and that it be varied to that of a final warning and de facto reinstatement.*
6. *The Applicant is entitled to continue to receive his salary and benefits under the Conditions of Service Orders.”*

18. Having been granted leave, PC Pereira’s Counsel filed a Notice of Originating Motion seeking relief in the following terms lifted from the Form 86A:

“ ...

1. *An Order that the Applicant shall be reinstated;*
2. *An Order that the Applicant’s conditions of service, namely benefits and salary, be reinstated;*

3. *An Order for a declaration that the decision by the Respondent to dismiss the Applicant was premature and thus unlawful;*
4. *An Order for damages;*
5. *Any further or other relief.”*

19. Nearly two weeks after the filing of PC Pereira’s Form 86A, on 2 November 2020 the Police Commissioner filed a separate application for leave to apply for judicial review of the decision of the PSC to overturn the decision of the MPP on the following grounds:

“...

1. *Having upheld and not interfered with the findings of the MPP that: -*

(i) PC Pereira wilfully turned off his body camera;

(ii) PC Pereira was being untruthful and gave an inaccurate or implausible account in order to shield himself from criticism and potential misconduct charges; and

(iii) In doing so PC Pereira was guilty of gross misconduct

*the PSC failed to have sufficient or any regard to the principles espoused in the English Court of Appeal decision of *Salter v Chief Constable of Dorset* [2012] EWCA Civ 1047 which held, in effect, that the default sanction for operational dishonesty is dismissal save for a “very small residual category” into which the present cases do not fall;*

2. *The PSC failed to have any regard to the insuperable difficulties that will now attach to any deployment of PC Pereira in the evidential chain given the need for him to disclose the disciplinary findings of dishonesty; and*

3. *The PSC placed excessive weight on PC Pereira’s personal mitigation, ignoring the line of case law that crystallized in *Salter* to the effect that personal mitigation is of “limited value” (reaffirmed in *R (Williams) v Police Appeals Tribunal* [2016] EWHC (Admin)).”*

20. On 9 November 2020, by Order of the Hon. Chief Justice, Mr. Narinder Hargun, PC Pereira’s leave application was granted. On 8 January 2021, at an *ex parte* hearing with notice to both the PSC and Mr. Pereira, I granted the application for leave by the Police Commissioner.

21. On 13 January 2021 a Notice of Originating Motion was filed for PC Pereira relying on the grounds and relief prayed in the Form 86A. On behalf of the Police Commissioner, Mr. Taylor filed a Notice of Originating Motion on 18 January 2021 seeking, *inter alia*, “an order of certiorari quashing the decision of the Public Service Commission to the extent necessary and

reinstating the disciplinary penalty of dismissal without notice imposed by the Misconduct Proceedings Panel.” At a subsequent hearing on 21 January 2021 I directed for the two Notices of Originating Motion to be heard in the form of a consolidated action.

The Relevant Law

Powers of the Governor under Section 32(1) of the Police Act 1974 (“the PA 1974”)

22. Section 32(1) of the PA 1974 empowers the Governor to provide Orders for the better carrying out of the PA 1974 and for the discipline of the Bermuda Police Service (“the BPS”). Section 32(1)(h) enables such orders to relate to the definition of disciplinary offences, the investigation and hearing of disciplinary charges against members of the BPS and the manner of dealing with those members where such charges are found to be proved. Section 32(1)(h) expressly recognizes its subordination to the Bermuda Constitution Order 1968.

“Gross Misconduct” under the Police (Conduct) Orders 2016 (“the 2016 Orders”)

23. In exercise of the powers conferred on the Governor under section 32(1) of the PA 1974, on 29 November 2016 the Acting Governor provided the 2016 Orders. The general application of these Orders is stated under Order 5:

“Application

5 (1) *These Orders apply where an allegation comes to the attention of an appropriate authority which indicates that the conduct of a police officer may amount to misconduct or gross misconduct.*

(2) Where an appropriate authority is considering more than one allegation in relation to the same police officer, the allegations may be taken together and treated as a single allegation for the purposes of any provision of these Orders which requires a person to make an assessment, finding, determination or decision in connection with conduct which is the subject matter of an allegation.”

24. The Governor, the Police Commissioner and the Deputy Police Commissioner are each listed in the statutory definition of “appropriate authority” under the Interpretation and Delegation section of the 2016 Orders. For the purpose of outlining the relevant statutory regimes, I will specifically refer to the Police Commissioner where any particular Order more broadly refers to the ‘appropriate authority’.
25. Order 11 requires the Police Commissioner to assess whether the conduct alleged against any police officer amounts to misconduct or gross misconduct, if proven. Where the Police Commissioner determines that such conduct would amount to gross misconduct, the matter

must be investigated, as mandated by Order 11(4). In cases where an investigation is required, the Police Commissioner is required under Order 12 to appoint a person to investigate the matter. (Although the Panel described A/Dep. Com. Daniels as the appropriate authority, in this case it appears that he was appointed as the investigator and carried out that specific role.) Order 10 permits the Police Commissioner to suspend a police officer from his office and from membership of the BPS with pay subject to the satisfaction of various conditions outlined under Order 10(4).

26. Under Order 17, an investigator must, upon completion of the investigation, provide a report of the investigation to the Police Commissioner. That report must indicate the investigator's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer. It will then be for the Police Commissioner to determine whether or not the impugned police officer has a case to answer in respect of misconduct or gross misconduct. Under Order 18(4) the Police Commissioner must refer the case to a misconduct hearing (as opposed to a misconduct meeting) where he determines that there is a case to answer in respect of gross misconduct.
27. Part 4 of the 2016 Orders applies to the process of misconduct proceedings (i.e. misconduct meetings and misconduct hearings collectively). A misconduct hearing will proceed before a panel and chairperson ("the panel")² before whom witnesses may be called with leave of the chairperson. Misconduct proceedings under the 2016 Orders are not to be confused with the procedural scheme enacted for the investigation and resolution of complaints against the police under the Police Complaints Authority Act 1998 ("the PCA 1998"). However, where misconduct proceedings arise from a complaint about the conduct of an officer that was submitted by or on behalf of a member of the public, the Police Complaints Authority (established under section 4 of the PCA 1998) may make representations before the panel in the misconduct hearing. (Notwithstanding Mr. Grant's complaint to the PCA, it does not appear that the PCA sought to be heard or were heard before the Panel in this case.)
28. Pursuant to Order 32(14)(a) the panel must not make a finding of gross misconduct unless it is satisfied to do so on the balance of probabilities. Such a finding may be based on a unanimous or majority decision (without an indication as to which basis the decision was formed). The panel is then required under Order 32(16) to report to the Police Commissioner setting out its findings and reasons and its recommendation as to disciplinary action in the case of a finding of gross misconduct.
29. In considering the question of disciplinary action, the panel must have regard to the factors listed under Order 34(10). This includes the officer's previous record of service, evidence from

² The term "the panel" is used in its generic sense. The term "the Panel" is used to refer to the Panel convened in this case.

any witness where such evidence would assist with the question of disciplinary action and any oral or written representations by or on behalf of the officer to be disciplined.

30. Under Order 34(1)(a) as read with 34(3)(b)(iii) the panel may at the outcome of the hearing impose on the impugned officer a dismissal without notice. Sub-paragraph (4) provides:

“The disciplinary action referred to in paragraph (3) must have effect from the date on which it is notified to the police officer concerned.”

31. Order 38(2) as read with Order 38(4)(b) permits a police officer whose case was decided at a misconduct hearing to appeal to the Public Service Commission only on the following grounds:

2 *The only grounds of appeal under this order are that –*

(a) the finding or disciplinary action imposed was unreasonable;

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

(c) there was a serious breach of the procedures set out in these Orders or other unfairness which could have materially affected the finding or decision on disciplinary action.

The Public Service Commission Regulations 2001 (“the PSC Regulations”)

32. Part VI of the PSC Regulations applies to disciplinary procedures and appeals. Section 28 of the PSC Regulations provides:

“Appeal to the Commission

28 (1) *Where—*

(a) the disciplinary powers vested in the Governor by section 82 of the Constitution have been delegated to an empowered person under the Public Service (Delegation of Powers) Regulations 2001;

(b) a disciplinary award of a gross misconduct penalty has been made by the empowered person;

(c) in the case of a member of the Bermuda Police Service who has received a disciplinary outcome of dismissal or reduction in rank following a stage 3 meeting under the Police (Performance) Orders 2016 or any disciplinary outcome following a misconduct hearing under the Police (Conduct) Orders 2016, the member may appeal to the Commission;

(d) the grounds of appeal for a member of the Bermuda Police Service are that—

- (i) the finding or disciplinary action imposed was unreasonable; or*
- (ii) there is evidence that could not reasonably have been considered at the original hearing, which could have materially affected the finding or decision on disciplinary action; or*
- (iii) there was a breach of the procedures set out in the Police (Conduct) Orders 2016 or the Police (Performance) Orders 2016 or other unfairness, which could have materially affected the finding or decision on disciplinary action,*

any officer who is aggrieved by the disciplinary award may, within fourteen days of receiving notice of the disciplinary award, appeal to the Commission by giving notice in writing to the Commission and to the person who made the disciplinary award.

(2) The officer may include with the notice referred to in paragraph (1) any representations he wishes to bring to the attention of the Commission but, unless the Commission otherwise orders, neither the officer nor the empowered person who made the disciplinary award shall be entitled to appear before the Commission.

(3) The Commission may call for a report from the empowered person who made the disciplinary award and shall at a meeting determine the appeal.

(4) The Commission may—

- (a) affirm, reverse or vary any disciplinary penalty imposed by the disciplinary award; or
- (b) remit the matter for determination on rehearing by the empowered person with or without any observations the Commission thinks fit to make.

(5) *The decision of the Commission on an appeal shall be final.*”

[Regulation 28 paragraph (1) amended by 2016: 44 s. 6 effective 2 December 2016]

The Constitutional Role of the Public Service Commission

- 33. The Public Service Commission is a constitutional body. Chapter VI of the Bermuda Constitution is reserved for “The Public Service”. This broadly covers the appointment of the Public Service Commission under section 81 and the performance of its functions under section 84. Sections 86-90 apply to the appointments of other particular offices such as the Attorney General; the Commissioner and Deputy Commissioner of Police; the Auditor General; Magistrates and other legally qualified staff of the Courts (such as the Registrar) and the Secretary to Cabinet. The remainder portion of Chapter VI applies to the subject of pension.
- 34. Section 81 of the Bermuda Constitution establishes the Public Service Commission and the process for the Governor’s appointment of its members, after consultation with the Premier who shall first have consulted the Opposition Leader. The periods of appointment for its Chairman and other 4 members must be between 3 and 5 years in duration. No person shall qualify as a member of the PSC if he is a member of either House of Assembly or the Senate. The independence of the PSC is further reinforced by a prohibition on any member of the PSC from appointment to any public office within a 5 year period from that member’s last day of service as a member of the PSC.
- 35. Section 84(4) of the Constitution expressly entitles the Police Commissioner to attend and to be heard before the PSC on any occasion where the PSC convenes to consider the removal or disciplinary control over any officer of the BPS:

84 (4) When the Public Service Commission is meeting to consider the appointment of any person to an office in the Police Force (other than the office of Commissioner of Police or Deputy Commissioner of Police) or the removal of, or the exercise of disciplinary control over, any person holding or acting in such an office, the Commissioner of Police shall be entitled to attend and express his views on the matter to the Commission.
- 36. Section 84(5) of the Constitution empowers the Governor, after consultation with the Premier and the PSC to make regulations for the purpose of regulating and facilitating the performance

of its functions under the Constitution. Subsection (6) entitles the PSC to regulate its own procedure.

37. Further to the provisions ensuring the independence of the members appointed to the PSC, section 84(7) of the Constitution solidifies the PSC independence and freedom from control or direction by any other person or authority:

“Subject to the provisions of subsection (5) of this section and of any regulations made thereunder, in the performance of its functions under this Constitution the Public Service Commission shall not be subject to the direction or control of any other person or authority.”

38. The independence of the Public Service Commission is akin to the independence of the Ombudsman. Section 93B(2) provides: *“In the exercise of his [or her] functions and jurisdiction, the Ombudsman shall not be subject to the direction or control of any other person or authority”*. (See also section 53(8) where such protections are equally afforded to preserve the independence of the Constituency Boundaries Commission).

39. In *Police Constable GA v The DPP et al* [2021] SC (Bda) 1 Civ (5 January 2021), per Hargun CJ, the Court was concerned with the constitutional role of the Director of Public Prosecutions under section 71A. By virtue of section 71A(b) references to the Attorney General under section 71(2)-(6), *inter alia*, are to be construed as references to the DPP. Subsections (2) – (5) provide outline the constitutional functions of the DPP:

(2) The Attorney-General shall have power, in any case in which he considers it desirable so to do—

- (a) to institute and undertake criminal proceedings against any person before any civil court of Bermuda in respect of any offence against any law in force in Bermuda;*
- (b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and*
- (c) to discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.*

(3) The powers of the Attorney-General under subsection (2) of this section may be exercised by him in person or by officers subordinate to him acting under and in accordance with his general or special instructions.

(4) The powers conferred upon the Attorney-General by paragraphs (b) and (c) of subsection (2) of this section shall be vested in him to the exclusion of any other person:

Provided that, where any other person or authority has instituted criminal proceedings which have not been taken over and continued by the Attorney-General under the said paragraph (b), nothing in this subsection shall, save when the Attorney-General has exercised his powers

under the said paragraph (b), prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(5) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court or to Her Majesty in Council shall be deemed to be part of those proceedings.

40. The DPP's exercise of the powers outlined under sections 71(2)-(6) are protected by the same language used to protect the constitutional independence of the Public Service Commission, the Ombudsman and the Constituency Boundaries Commission:

"In the exercise of the powers conferred on him by this section, the Attorney-General shall not be subject to the direction or control of any other person or authority."

41. In *Police Constable GA v The DPP* the Court was exercising its jurisdiction under judicial review proceedings. The decision of the DPP not to approve the bringing of criminal charges in a particular case was the subject of the review proceedings [paras 16-18]:

“... ”

*16. It is now established that the courts retain jurisdiction to review the decisions made by the DPP as to whether or not to institute and undertake criminal proceedings against any person in respect of any offence against any law in force in Bermuda (See: *Jeewan Mohit v The Director of a Public Prosecutions of Mauritius, Privy Council Appeal No. 31 of 2005* at [17] and [18]). However, the cases also make it clear that the power to intervene would be “sparingly exercised” (*R v DPP ex parte C* [1995] 1 Cr App R 136); “very rare indeed” (*R (Pepushi) v Crown Prosecution Service* [2004] Imm AR 549 [49]); “highly exceptional remedy” (*Sharma v Browne-Antoine* [2007] 1 WLR 780 [14(5)]); and “only in very rare cases” (*S v Crown Prosecution Service* [2015] EWHC 2868 (Admin)).*

*17. The rationale that underpins the reluctance of the courts to intervene in prosecutorial decision-making is primarily due to the facts that (i) under section 71(A) of the Constitution the sole authority to decide whether to institute and undertake criminal proceedings against any person in respect of any offence against any law in force in Bermuda lies with the DPP and, in the exercise of that power, the DPP is not to be subject to the direction or control of any other person or authority; (ii) the decision involves an exercise of an informed judgment as to the likely outcome of the criminal trial before a jury, which necessarily involves an assessment of the strength of the evidence against the defendant and the likely defences; and (iii) “...the great width of the DPP's discretion and the polycentric character of the official decision-making in such matters including policy and public interest considerations which are not susceptible of judicial review because it is within neither the constitutional function nor the practical competence of the courts to assess their merits” (*Matalulu v DPP* [2003] 4 LRC*

712, a decision of the Supreme Court of Fiji, and the above passage was approved by the Privy Council in *Jeewan Mohit v The Director of Public Prosecutions Mauritius* [Privy Council Appeal No. 31 of 2005]).

18. This Court has no jurisdiction to intervene simply because it disagrees with the decision of the DPP in the sense that if the Court itself was exercising the discretion, it would have made a different decision. In order for the Court to intervene, leaving aside cases of obvious errors of law, the decision has to be categorized as perverse in the sense that no prosecutor would have made the decision that is sought to be impugned in the judicial review proceedings.”

Legal Principles Applicable to Gross Misconduct by a Police Officer

42. In *R (on the application of the Chief Constable of Dorset) v Police Appeals Tribunal v Mr. Neil Salter* [2011] EWHC 3366 (Admin) Mr. Justice Burnett, sitting in the Queen’s Bench Division of the English High Court, was concerned with an application by the Chief Constable for judicial review of the decision of the Police Appeals Tribunal (“the Tribunal”).

43. The statutory scheme with which the English High Court was concerned is a three-tier appeal system under which the first instance proceedings are in the form of a hearing before a disciplinary panel. Similar to the trial-like proceedings before the Panel under the 2016 Orders, witnesses may also be called before the misconduct panel pursuant to the Police (Conduct) Regulations 2004. An appeal from the decision of the misconduct panel then lies to the Chief Constable himself who is endorsed with powers of review to the extent that the Chief Constable may confirm or overturn the misconduct panel’s decision or impose a different sanction, so long as a greater sanction is not substituted. Where the police officer in question seeks to further appeal from the decision of the Chief Constable in respect of a determination for dismissal or demotion, that police officer has a final right of appeal to the Police Appeals Tribunal. Unlike Order 38(2) of the 2016 Orders and the relevant provisions of the PSC Regulations which restrict the PSC from granting an appeal against a disciplinary action unless the sanction imposed by a panel is shown to have been ‘unreasonable’, section 85(2) of the UK 1996 Act more broadly empowers the Police Appeals Tribunal to substitute or vary the sanction imposed on the police officer “if it considers that it is appropriate to do so”.

44. The facts relevant in the *Salter* case are summarized by Burnett J as follows [paras 7-8]:

“... ”

7. In the early hours of Sunday 26 October 2008 PC Ian Morton was killed in a road traffic accident. No other vehicle was involved. Mr. Salter was appointed as the Deputy Senior Investigating Officer under Inspector Wilcox. PC Mesher was appointed as family liaison officer. It soon became apparent that PC Morton had a long-term partner but was also

involved with a member of another force with whom he had spent the night before his death. His partner was unaware of the relationship. Two mobile telephones were recovered from the crashed vehicle. It became known to Mr. Salter that one of those telephones contained stored text messages which evidenced the relationship. On 27 October Mr. Salter met PC Mesher. He instructed him to go to the vehicle recovery centre, find the telephone and destroy it. The death was the subject of a coroner's investigation. PC Mesher was not prepared to destroy evidence and raised the matter with senior colleagues. Other officers attended the recovery centre and seized the two telephones that had been in the car at the time of the crash. The matter was reported to the Professional Standards Department of the Dorset Police. Mr. Salter was arrested and questioned under caution. He admitted using the words 'destroy the phone' to PC Mesher. He said that he was thinking out loud. His intention was to protect PC Morton's family from discovering the other relationship. He was aware that the Coroner would require all of the evidence to be produced. He said that he had been in touch with the officer with whom PC Morton had spent the night before his death and that he had spoken to her before meeting PC Mesher.

8. The Misconduct Hearing took place on 27 August 2009. Mr. Salter admitted an allegation in these terms:

"Allegation 1

That your conduct on 27th October 2008 did not meet the appropriate standard as set out in Regulation 3(1), Schedule 1, Paragraph 1 of the Police (Conduct) Regulations 2004 in that as a police sergeant with Dorset Police you did not behave with honesty or integrity in relation to the investigation into the death of Detective Constable Ian MORTON.

Particulars

On 27th October 2008, you were the Deputy Senior Investigating Officer, in relation to the death of Detective Constable MORTON. You instructed the appointed Family Liaison Officer...to attend the Ibsley Recovery Centre and to locate and destroy the mobile telephone belonging to the deceased officer, even though you knew it would be required as evidence at the inquest into the officer's death."

45. In considering the sanction to be imposed against Mr. Salter, the misconduct panel recognized the officer's 22 years of service and significant experience in the investigation of road traffic collisions. The same panel accepted that Mr. Salter's attempt to have the deceased's second mobile phone destroyed was not for personal gain but motivated by his concern for the feelings of the deceased officer's family. In identifying the aggravating factors the misconduct panel honed in on Mr. Salter's decision to instruct a subordinate officer to compromise his own

integrity by destroying evidence required for the Coroner. An extract from the decision of the misconduct panel in *Salter* is quoted by Burnett J as follows [para 11]:

“... We acknowledge that the mitigation presented to the panel highlights the fact that you have been a hardworking and competent police officer throughout your service. However, it is our judgment that your behavior has seriously breached the values of the Force. The public expect the very highest standards of honesty and integrity from police officers. In this case your standard of behavior has fallen well short and therefore I am requiring you to resign from the Force forthwith.”

46. Mr. Salter sought for the misconduct panel’s decision to be reviewed by the Chief Constable who thereafter conducted an oral hearing on 11 November 2009. Burnett J commended the Chief Constable for having correctly apprehended that that his function was one of review and that he was not entitled to simply substitute his own decision for that of the Panel [para 10]. The Chief Constable concluded [paras 31-33]:

“31. During my Review I have identified no clear errors or inconsistencies in process or determination at the misconduct hearing. Neither was I able to conclude that the sanction imposed by the panel was so plainly excessive that it could be properly characterised as unfair. I conclude that the panel took very careful account of all of the issues in this case before deciding that Mr. Salter should be required to resign. In my view the fact that Mr. Salter has been allowed the dignity of resignation rather than being dismissed from the service demonstrates how fully the mitigation, his previous good character and the character evidence has been taken into account. Conversely, any lesser sanction, such as a reduction in rank or a financial penalty would, in my view, be wholly inadequate to mark the seriousness of Mr. Salter’s misconduct. The misconduct admitted is not an issue solely in relation to rank but also to Mr. Salter’s honesty and integrity as a police officer, which as a result of his own actions has been irreparably damaged.

32. Furthermore, I do not believe that Mr. Salter could ever again become a good and efficient police officer due to the entire question of an ongoing lack of trust. For example, the nature of Mr. Salter’s misconduct would mean that he would be able to undertake only a very limited range of police duties because he simply could not be put forward to the Crown prosecution Service or the courts as a witness of truth.

33. I therefore conclude that the sanction imposed...was both justified and appropriate in the circumstances.”

47. Mr. Salter appealed to the Tribunal which was chaired by Mr. Dorian Lovell-Pank QC and constituted by a retired Chief Constable, a retired police constable and a member of the Police Authority. The Tribunal was guided by the approach outlined by Collins J in *R v Police Appeals Tribunal ex parte the Chief Constable of Avon and Somerset* [2004] EWHC 220 (Admin) para 24:

“... it seems to me that when Parliament confers a right of appeal to a specialist tribunal such as the Police Appeals Tribunal, it is inherent in that...the powers of the tribunal are to consider all matters before it, in the form of fresh evidence or fresh submissions or whatever, and to reach its own conclusions upon the matter. Of course, it will have regard to the decision of the body from whom the appeal is brought. It will have regard to the views of the Chief Constable, and will no doubt be slow to differ from those views unless it is persuaded that they were, in its view, wrong, but if it is so persuaded then it has an obligation to apply what it believes to be the correct result.”

48. The Tribunal acknowledged that Mr. Salter’s actions put his junior colleague in an intolerable position and that Mr. Salter had shown himself to be unfit for a supervisory role. Burnett J recited from the Tribunal’s written decision [para 13]:

“... ”

6.3 ... If the public was fully informed as to the circumstances of this particular case, would it expect or wish the officer to lose his job after 22 years or have him taught a lesson instead? The Chief Constable rejects the argument that the public would take a more lenient view than the panel. We are not so sure.

6.4 In the experience of this tribunal, the character evidence, taken together with the appellant’s unblemished career in the force is exceptional. We consider the letter of 19th June 2009 from Mr. M.C. Johnson, the Coroner for the Western District of Dorset, to be a particularly powerful piece of mitigation. The letter speaks for itself, but of not are his comments that

‘...I believe that he is a man of integrity and great loyalty...I also suspect that if this had occurred 20 years ago, the whole incident would be viewed in a different light and he might even add (sic) been congratulated for his actions. I perfectly understand that what he did was wrong and that nowadays there is a need for total transparency... ...’

6.5 The behavior of this experienced and mature police officer has to be taken very much in its own context. It is clear that the appellant acted not for any personal gain but to avoid further grief to DC Morton’s family. That cannot be a defence nor an excuse, but it is a reason for his thought process which cannot be simply brushed aside. Whilst keeping firmly in mind the question of honesty and integrity, we ask ourselves whether the appellant would be biased in favour of others in the future and whether he can be trusted in the future.

6.6 This takes us directly to the appellant’s future deployment within the evidential chain if he were to remain in the force...

6.7 ...*The case of T v Edwards and the position of disclosure of officers' disciplinary record is never far from the surface. The appellant's finding would always need to be disclosed in (criminal) proceedings. Our experience, however, is that it is the facts and circumstances behind a finding which are of importance and not merely their "title". The fact that the appellant admitted the charge would count in his favour. We feel, therefore, that the Chief Constable is overly pessimistic in his assessment of the appellant's likely, future deployment.*

6.8 ...

6.9 *This was a one-off aberration in an otherwise unblemished career. An officer who has striven for and achieved a measure of excellence should be entitled to feel that he can meaningfully call upon his record in times of trouble. This is the situation here.*

..."

49. Having completed its deliberations, the Tribunal allowed Mr. Salter's appeal and directed for him to be reinstated in the demoted rank of police constable. The Chief Constable thereafter filed his application for judicial review to the English High Court.

50. Counsel for Mr. Salter submitted that the Tribunal's decision was beyond reproach by the High Court because the Courts have consistently recognized the inappropriateness of interfering with a decision or sanction decided by a specialist body. Both Mr. Michael Ford for Mr. Salter and Mr. John Beggs QC for the Chief Constable agreed that the approach to determining disciplinary findings and sanctions involving operational dishonesty is analogous between disciplinary proceedings against members of the legal profession and those of the police force. Accepting this similarity of approach, Burnett J cited with approval the principles settled in *Bolton v Law Society* [1994] 1 WLR 512. In *Bolton* Sir Thomas Bingham MR observed [518A-519E]:

"Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such case the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Rolls of Solicitors...."

... But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed one of other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. ... The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain its reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. ...

Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal case. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. ... The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price”

51. In the *Salter* High Court decision, Burnett J recognized that the Master of the Rolls in the *Bolton* case was following the approach of his predecessor, Lord Donaldson, who in *Re a Solicitor No. 5 of 1990* (Unreported) said; “Both branches of the profession are totally dependent for their acceptance by the public upon having an unassailable reputation for honest, not as individuals but by virtue of being members of the profession.”

52. In his own words, Burnett J added [para 22]:

“...The reasons which underpin the strict approach applied to solicitors and barristers apply with equal force to police officers. Honesty and integrity in the conduct of police officers in any investigation are fundamental to the proper workings of the criminal justice system. They are no less important for the purposes of other investigations carried out by police forces

including those on behalf of coroners. The public should be able unquestioningly to accept the honesty and integrity of a police officer. The damage done by a lack of integrity in connection with the investigation of an alleged offence may be enormous. The guilty may go free. The innocent may be convicted. Large sums of public money may be wasted. Public confidence in the integrity of the criminal justice system may be undermined. The conduct of a few may have a corrosive effect upon the reputation of the police service in general.”

53. The English Court of Appeal in *Salsbury v Law Society* [2009] 1 WLR 1286 reviewed the decision in *Bolton* and qualified Bingham MR’s statements to highlight that “*a very strong case*” is required to justify the Court’s interference with any sentence imposed by the Solicitors Disciplinary Tribunal. Jackson LJ clarified the point as follows [para 30]:

“...The correct analysis is that the Solicitors Disciplinary Tribunal comprises an expert and informed tribunal, which is particularly well placed in any case to assess what measures are required to deal with defaulting solicitors and to protect the public interest. Absent any error of law, the High Court must pay considerable respect to the sentencing decisions of the tribunal. Nevertheless if the High Court, despite paying such respect, is satisfied that the sentencing decision was clearly inappropriate, then the court will interfere. It should also be noted that an appeal from the Solicitors Disciplinary Tribunal to the High Court normally proceeds by way of review: see CRP r52.II(I)”

54. On the heels of his reference to this qualification from Jackson LJ, Burnett J added:

“The reference to the respect which the High Court should accord to the decision of the Solicitors Disciplinary Tribunal arose in a statutory environment which affords a solicitor a right of appeal to the High Court against the findings of such a tribunal. Proceedings in the Administrative Court seeking to challenge the decision of a Police Appeals Tribunal do not arise by way of appeal, but by way of a claim for judicial review. In those circumstances, a claimant in judicial review proceedings must establish a public law error before the decision of that tribunal could be quashed.”

55. In this same vein Burnett J said [para 25]:

“25. At each level in the disciplinary process, the decision maker or decision making body is expert in nature. It knows and understands how the police service works. It knows and understands the importance of maintaining integrity amongst police officers. It knows and understands the impact that serious misconduct can have on the force concerned and the police service in general. Parliament has provided that the Tribunal is the appellate body for these purposes. There is no further appeal to the High Court. The Tribunal is subject to supervisory jurisdiction of this court. I have already observed that the approach of this court in judicial

review is different from the approach adopted when sitting in an appellate capacity from the Solicitors Disciplinary Tribunal. Absent another error of law on the part of the Police Appeals Tribunal its decision on sanction could be interfered with only on classic Wednesbury grounds, in short that on the material before it no reasonable Tribunal could have reached the conclusion that it did.”

56. Having accepted the principles outlined in the Bolton case together with the superseding contributions of the English Court of Appeal in *Salsbury*, Burnett J condensed these principles into a list of factors for consideration by an person or body charged with the quasi-judicial task of determining a sanction for police misconduct [para 24]:

“24. It follows that when considering question of sanction, the Panel, the Chief Constable on review and the Tribunal should have regard to the following factors:

- i) The imposition of sanctions following a finding of misconduct by a police officer may have three elements:
 - a) There may be a punitive element designed to punish the police officer concerned and to deter others, particularly if he has not been prosecuted and convicted. But the imposition of sanctions is not primarily punitive, and may not be punitive at all.*
 - b) The sanctions imposed may be designed to ensure that the police officer does not have the opportunity to repeat his misconduct.*
 - c) However, the most important purpose of these sanctions, particularly in cases involving dishonesty or impropriety in connection with an investigation, is to maintain public confidence in the police service and to maintain its collective reputation.**
- ii) One consequence of the fact that sanctions imposed in the disciplinary process are not primarily punitive is that personal mitigation is likely to have a limited impact on the outcome.*
- iii) Cases of proven dishonesty and lack of integrity in an operational environment, of which the destruction, suppression or fabrication of evidence, or attempts to do so, would be clear examples, are the most serious breaches of the Code of Conduct. In such cases, the sanction of dismissal or requirement to resign would, to use the language of Sir Thomas Bingham in Bolton, “almost invariably” be appropriate but there exists “a very small residual category” where a lesser sanction may be available, as Jackson LJ put in Salsbury.”*

57. With the above list of factors in mind, Burnett J summarised the correct approach as follows [para 30]:

“...the correct approach for a decision maker is to recognise that a sanction which results in the officer concerned leaving the force would be the almost inevitable outcome in cases involving operational dishonestly [sic]. That terminology itself recognises that there may be exceptions. In concluding that the case is exceptional, the decision maker must identify the features of the circumstances of the misconduct which support a different conclusion, recognizing that the number of such cases would be very small. The decision maker would take account of personal mitigation, but must recognize its limited impact in this area. It would not overlook any article 8 arguments in play.”

58. Having addressed his mind to all of these legal principles and the approach formulated from the same principles, Burnett J quashed the Tribunal’s decision not to dismiss Mr. Salter [paras 32 and 38]:

“32. The language of the Tribunal suggests that it did not approach its decision making on the basis that a finding of operational dishonesty normally called for dismissal or a requirement to resign from the force. Furthermore, it is clear from the way in which it discussed the question of mitigation that it gave very great weight to personal mitigation in circumstances where it was not appropriate to do so, for the reasons given by Sir Thomas Bingham in Bolton. The strength of the personal mitigation available to Mr Salter was regarded by the Tribunal as of great significance... It follows that in my judgment the Tribunal misdirected itself in law in both these respects.

...

38. There is no doubt that the Tribunal’s approach to the question of personal mitigation resulted in its attaching more weight to it than justified. Having accorded more weight to that mitigation than the proper legal approach justified, the Tribunal concluded in its epilogue that the appeal before it was ‘a finely balanced case’. It follows as a result of irresistible logic that it would have dismissed the appeal had it followed the correct legal approach, both as to mitigation and the starting point being dismissal or requirement to resign for operational dishonesty. When taking account of those factors this was not a finely balanced case. The misconduct was very serious, for the reasons given by the Panel and Chief Constable. Those reasons were accepted by the Tribunal. It is true that the mitigation advanced by Mr. Salter concerning the misconduct itself shows that the destruction of evidence can arise in circumstances that are worse. But his personal mitigation could not, in my judgment, tip the scales against a sanction that resulted in his leaving the Police Force.”

59. Burnett J also addressed the point initially raised by the Chief Constable in *Salter* that future deployment of Mr. Salter would be difficult as he would pose a danger to any prosecution with which he is evidentially involved given the likelihood that he would be bound to disclose his disciplinary records to the defence. Burnett J concluded [para 36]:

“...In my judgment, it is a factor in cases involving dishonesty which must be considered for the purposes of sanction. It engages a facet of public confidence in the police service. The need for what may appear to be harsh sanctions in cases of this nature arises from the requirement to maintain public confidence in the police service. That is why almost invariably an officer found to have behaved dishonestly in the conduct of an investigation will be dismissed or required to resign. Whilst, exceptionally, an officer may be retained, public confidence is likely to be adversely affected if such an officer were disqualified by his own misconduct from performing a substantial part of his ordinary duties and, if it were the case, be given a non-job or provided with a role which otherwise might be available to an officer injured on duty or otherwise disabled in some way.

60. Mr. Salter was granted leave to appeal to the English Court of Appeal which proceeded before the Vice President, Lord Justice Maurice Kay, Burnton LJ and Gross LJ. The grounds of appeal were bottom-lined to three main complaints against the decision of Burnett J:

- i) The outlined decision-maker’s approach to determining a disciplinary sanction was too prescriptive;
- ii) Burnett J erred in ‘reading-across’ from the authorities on solicitor’s disciplinary proceedings and
- iii) The Tribunal’s decision not ‘clearly inappropriate’ nor ‘irrational’.

61. In the leading judgment delivered by the Vice President, the Court of Appeal in *Neil Salter v The Chief Constable of Dorset* [2012] EWCA Civ 1047 found no principled justification for complaint against the High Court for having developed a set of principles under which the Tribunal should consistently make its determination in accordance with the UK Regulations, notwithstanding any statutory silence on the approach to be used. From that stance, the Court of Appeal expressly described the approach outlined by Burnett J as “*not only appropriate but incontrovertibly correct*” [para 19]:

“It [para 30 of the judgment of Burnett J] identified as the correct approach one that seems to me to be not only appropriate but incontrovertibly correct. It recognised, correctly, that a sanction resulting in the officer concerned having to leave the force will be the usual

consequence of operational dishonesty but it admitted of the possibility of exceptional cases. It is inherent in the requirement of judicial and quasi-judicial reasoning that where a decision-maker has to choose between the usual and the exceptional course, it is incumbent upon him, if he chooses the exceptional course, to explain why he has done so. The question for a reviewing court is whether or not the decision-maker has complied with that obligation rather than whether there is, on the face of his decision, a formal and express self-direction about it. In the event, it seems to me that, read as a whole, the decision of the PAT [the Tribunal], including its Epilogue, discloses an awareness of the usual outcome in cases involving operational dishonesty and of the exceptionality of the course it was taking.”

62. While the Court of Appeal was not persuaded that the Tribunal failed to approach its decision-making on the basis that a finding of operational dishonesty normally called for a dismissal or requirement to resign, Lord Justice Kay VP approved of Burnett J’s conclusion that the Tribunal did not properly proceed on the basis that personal mitigation carries less weight in cases of operational dishonesty.

63. Disposing of the second ground of appeal, Lord Justice Kay VP concluded [para 21]:

“21. I turn to the criticism of the judge for “reading across” from the solicitors’ disciplinary cases. I reject this criticism. Whilst there are differences between the positions of police officers and solicitors, the judge was not and could not have been ignorant of them. It seems to me that he was simply drawing on the authorities in relation to solicitors by way of analogy. Although police officers do not have a fiduciary client relationship with individual members of the public or the public at large, they do carry out vital public functions in which it is imperative that the public have confidence in them. It is also obvious that the operational dishonesty or impropriety of a single officer tarnishes the reputation of his Force and undermines public confidence in it. In these respects, the similarities between solicitors and police officers justify the analogy provided that, ultimately, the decision-maker, be it PAT [the Tribunal] or a judge of the Administrative Court, appreciates at all times that the index case falls to be assessed in the context of policing. I am entirely satisfied that Burnett J committed no error in this regard.”

64. In answer to the third ground of appeal in *Salter* the Court of Appeal held [para 22]:

“...It is a primary duty of police officers to gather and to preserve evidence. It is what they do. It is what the public rely upon them to do. To destroy or procure the destruction of evidence is, in the words of Mr. Beggs QC, inimical to the office of constable. Of course, I accept that there are features in this case which differentiate it from one characterized by self-interest or corruption. The impropriety was not sophisticated or the subject of careful planning. It was conceived within a short space of time. The Coroner was already aware of PC Morton’s illicit

relationship. Mr. Salter's motives were unselfish and well-intentioned, even if misguidedly so. Nevertheless, he did what police officers must not do and must not seek to cause their junior colleagues to do. Notwithstanding the factors which mitigate the offence (as opposed to factors of personal mitigation), it remained a very serious offence. There are more heinous examples of impropriety in the course of investigation but in relation to many of those the likely consequence would include prosecution and conviction in the criminal courts, not just a requirement to resign from the Force, which is in itself a slightly lesser sanction than dismissal."

65. This Court was also referred to the English High Court decision in *The Queen on the application of Darren Williams v Police Appeals Tribunal of Police of the Metropolis* [2016] EWHC 2708 (Admin), where Mr. Justice Holroyde said [paras 66-67]:

"In my judgment, the importance of maintaining public confidence in and respect for the police service is constant regardless of the nature of the gross misconduct under consideration. What may vary will be the extent to which the particular gross misconduct threatens the preservation of such confidence and respect. The more it does so, the less weight can be given to personal mitigation. Gross misconduct involving dishonesty or lack of integrity will by its very nature be a serious threat: save perhaps in wholly exceptional circumstances, the public could have no confidence in a police force which allowed a convicted fraudster to continue in service. Gross misconduct involving a lack of integrity will often be a serious threat. But other forms of gross misconduct may also pose a serious threat, and breach of any of the Standards may be capable of causing great harm to the public's confidence in and respect for the police.

66. *This does not mean, of course, that personal mitigation is to be ignored. Nothing in the Salter principle suggests it must be ignored. On the contrary, it must always be taken into account. I therefore reject the submission that the effect of the Salter principle is that dismissal will invariably be the sanction whenever gross misconduct is proved. But where the gross misconduct threatens the maintenance of public confidence and respect in the police- as gross misconduct often will- the weight which can be given to personal mitigation will be less than would be the case if there were no such threat, and if the disciplinary body were a court imposing a punishment. Whether the circumstances are such that the sanction of dismissal is necessary will be a fact-specific decision: where the facts show dishonesty, case law establishes that dismissal will almost always be necessary, and dismissal will often also be necessary where the misconduct involves a lack of integrity; where the facts show that one of the other Standards has been breached, the appropriate outcome will depend on an assessment of all the circumstances, with proper emphasis being given to the strong public interest in the maintenance of respect and confidence in the police and consequentially less weight being given to personal mitigation."*

Analysis and Decision

67. In deciding the Police Commissioner's application for judicial review of the PSC's decision, I must proceed with a clear and express appreciation for the differences of approach between the Court's role in exercising its appellate jurisdiction in contrast to its role in matters for judicial review. In the case of civil appeals, Parliament has enacted the Court's appellate powers and duties. In other words, it is statutorily contemplated that the Courts will partake in the final course of the full plate litigation of any civil dispute governed by RSC Order 55 or the Civil Appeals Act 1971 (See my previous judgment in *A Qamar v Bermuda Medical Council* [2021] SC (Bda) 9). However, in public law cases where the Court is not intended to be the final rung on the appeal ladder, the Court's jurisdiction will be exercised only by way of judicial review which requires the applicant to establish that the public body concerned either materially erred in law or exercised its discretion in such a way that the decision is subject to reversal on what is known as 'classic *Wednesbury*³ grounds' i.e. no reasonable Tribunal could have reached the conclusion that it did based on the evidence and material before it.
68. The PSC is a constitutional body which is neither regulated nor controlled by any other authority in the performance of its constitutional functions. This was keenly pointed out by Ms. Greening. The PSC has the final say in the appeal process, which means that this Court's interference with the PSC's hierarchical appellate status must be sparingly and narrowly exercised to correct only a serious and obvious error in its decision-making.
69. The subject of the Police Commissioner's application for judicial review squarely lands on the sanction decided by the PSC. This Court must thus be mindful that an appeal from the Panel to the PSC in respect of a sanction can only properly succeed if the Panel finds that the disciplinary action imposed was unreasonable. The 'unreasonable' test, mandated under Order 38(2) as read with Order 38(4)(b) under the 2016 Orders, must be supported by the facts of the case. It is not sufficient for the Panel to simply state that the disciplinary action decided by the Panel is unreasonable; the facts of the case must demonstrate the unreasonableness of the decision.
70. Similarly, it matters not whether the PSC expressly cited the case-law embodying the correct legal principles and approach to be applied to police disciplinary matters. What matters is that the reasoning shown by the Panel, particularly where it departs from the normal course of action, is consistent with the correct legal approach. This brings me to the issue of 'honesty and integrity' and the *Salter* principles.

³*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1KB 223

71. The facts of this case involve gross misconduct of a dishonest nature. Unlike the facts of the *Salter* case, PC Pereira's dishonesty was not only self-serving but continual. The PSC did not disturb the Panel's findings that PC Pereira was not only dishonest in willfully turning off his body camera on Saturday 13 May 2017 but also dishonest over two years later on or around 8 February 2019 when he provided an implausible account to the Panel of how his body cam was turned off. I reject Ms. Greening's submission that this case is not an example of operational dishonesty. On 13 May 2017, PC Pereira was acting in the call of duty as a police officer. In doing so, he acted dishonestly. That in my judgment is plainly operational dishonesty. The dishonesty shown by PC Pereira in February 2019 was presented in the form of sworn evidence at a misconduct hearing. Dishonest evidence from a police officer trailing behind a related dishonest act of two years prior, on any reasonable assessment of the facts, screams for dismissal as a starting point.
72. The English High Court in the *Salter* case outlined the correct approach to the determination of disciplinary sanctions. Applying that reasoning which was expressly approved by the English Court of Appeal, the Panel ought to have proceeded on the basis that a dismissal without notice was inevitable, barring exceptional circumstances relating to the misconduct itself. In the *Salter* case, it was expressly recognized that the most important purpose of a sanction in cases involving dishonesty or impropriety in connection with an investigation, is to maintain public confidence in the police service and to maintain its collective reputation. Burnett J observed with the approval of the English Court of Appeal that such cases, particularly where there is, *inter alia*, suppression of evidence, are to be considered the most serious of breaches of professional conduct and will "almost invariably" result in a dismissal or a requirement to resign, subject only to "a very small residual category". Because the purpose of sanctions in such cases is not primarily punitive, personal mitigation is likely to have a limited impact on the outcome.
73. In the *Salter* case, a dismissal was inevitable notwithstanding that the dishonest act lacked premeditation and was confined to the passionate moment during which the instruction was given for the cell phone to be destroyed. At all stages of the disciplinary proceedings in *Salter*, it was recognized that the dishonest act was not self-serving but was instead a misguided attempt to spare the family members of the deceased from further emotional pain. Additionally, Mr. Salter immediately admitted and accepted responsibility for his actions. Those were the relevant factors which related to the act of the misconduct in the *Salter* case. The personal mitigation in *Salter* was also very strong as Mr. Salter had served 22 years with the Dorset Police Force without any blemish on his record and he adduced character evidence which undeniably impressed the Tribunal. I find that these factors were by no means less exceptional than the factors arising from the present case which involve self-serving dishonesty and dishonest evidence which collectively occurred over an extended period of time.

74. I accept Mr. Taylor's submission that the language used by the PSC in their written decision does not convey that the PSC understood the correct approach to be applied to determining the appropriate sanction in a case of this type. This is particularly evident where the PSC remarked [paras 59 -60]; "59. ...*The only harm that could said to be caused was harm to the reputation of the Bermuda Police Service and the undermining of the public confidence in policing. Giving an untruthful explanation in order to protect himself from criticism does undermine the reputation of the Bermuda Police Service.* 60. *Against those factors, Order 34(10) required the MPP to have regard to the record of service of the Appellant as shown by his personal record...*" In my judgment, the PSC wrongly conducted the balancing exercise by leveraging PC Pereira's personal mitigation in equal or similar measure against the operational dishonesty. In doing so, the PSC gave excessive weight to the relevance of PC Pereira's previous clean record.
75. Had the PSC applied the correct legal approach, it would have acknowledged that the starting point in this case was a dismissal or requirement for PC Pereira to resign. This was particularly warranted because of the PSC's recognition that PC Pereira had caused harm to the reputation of the BPS and had undermined public confidence in policing. The next step would have been for the PSC to further examine the acts of gross misconduct to identify any features of those acts which might be exceptional and qualify for inclusion in the "*very small residual category*" of such cases which do not result in dismissal or resignation. Only after the completion of that exercise should regard be given to personal mitigating factors. In the absence of exceptional circumstances directly related to the act(s) of operational dishonesty, strong personal mitigation will unlikely be sufficient to spare the offending officer from immediate termination of employment. Conversely, where there are weighable exceptional features which soften the gravity of the operational dishonesty, additional cogent evidence of previous good character may be capable of saving the officer from the loss of his employment.
76. In this case, no such exceptional circumstances related to the acts of misconduct arise on the facts. The fact that PC Boden was acquitted by the Panel from the misconduct hearing does not alter the facts of the case against PC Pereira. In any event, PC Boden was not found to have acted dishonestly and he was further found by the Panel to have given truthful evidence. Nothing held by the PSC disturbed that assessment of PC Boden's evidence before the Panel. I also reject Ms. Greening's contention that PC Pereira's acquittal from the criminal assault charges was an exceptional feature which lessened the severity of PC Pereira's dishonest acts. It is true that the PSC reversed the Panel's factual findings that PC Perreira unnecessarily struck Mr. Grant twice. However, the PSC's acceptance that PC Perreira wilfully and dishonestly turned off his body cam was implicit that they accepted that he did so to prevent access to any evidence of video footage of the events which transpired after he turned off the body cam.

Such conduct is the very antithesis of what is expected of a police officer performing his duties honestly and with integrity. This conduct falls within the upper category of serious breaches.

77. In my judgment, the PSC misdirected itself in law by failing to follow the correct approach as outlined in the *Salter* case. It is clear on the facts of this case that PC Pereira could not have avoided the consequence of an immediate dismissal had they done so. Further, had the PSC properly been guided by the statutory “unreasonable” test in reviewing the Panel’s decision on sanction, it could not have overturned the Panel’s decision to dismiss PC Pereira on grounds of unreasonableness. The facts of this case do not support a reasonable finding by the PSC that the Panel’s decision to dismiss PC Pereira was “unreasonable”.

Conclusion

78. For all these reasons, I find that the Police Commissioner’s judicial review application for an order of *certiorari* to quash the PSC’s decision not to dismiss PC Pereira must succeed. It thus follows, that PC Pereira’s judicial review application against the Police Commissioner’s decision to dismiss PC Pereira must fail. As a result, the Panel’s decision on the appropriate sanction is restored and the Police Commissioner’s decision to dismiss PC Pereira stands.

79. Unless either party files a Form 31D to be heard on the issue of costs within 14 days of the date of this judgment, I make no order as to costs.

Monday 15 February 2021

**HON. MRS. JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT**

