



GREATER MANCHESTER POLICE

WRITTEN DECISION OF MISCONDUCT HEARING

(Regulation 43 Police (Conduct) Regulations 2020 amended 2024)

OFFICER DETAILS

Name	Leigh Carnally
Pin	06386
Warrant No	A171932
File Ref	CO/508/21

Panel decision- Former Police Constable Carnally

The task of the panel on disputed matters of fact is not, as such, to determine the truth. It is to identify what needs to be proved, by whom, in this case the Appropriate Authority, upon the basis of a correct identification and analysis of the legal rules governing the case. It must then form a judgment (doing so rationally, reasonably and impartially), for each such proposition of fact, as to whether the evidence presented at the hearing made what the party bearing the burden of proof says occurred appear – more probably than not – to be what occurred.

The law in respect of factual determinations

The burden of proving the facts pleaded rests with the appropriate authority.

The standard to which the Appropriate Authority must satisfy the panel is the simple balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. Within this context, there is no room for a finding by the panel that something might have happened. The panel may decide that it did or that it did not: **Re B [2008] UKHL 35.**

Findings of fact must be based on evidence and not on speculation. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence.

In determining whether the Appropriate Authority has discharged the burden upon it, the panel looks at what has been described as ‘the broad canvas ’of the evidence before it. The role of the panel is to consider the evidence in its totality and to make findings on the balance of probabilities accordingly. Within this context, the panel must



consider each piece of evidence in the context of all of the other evidence: **Re T [2004] 2 FLR 838.**

The panel must always bear in mind that a witness may tell lies in the course of an investigation. The panel must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear or distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything: **R v Lucas [1982] QB 720.**

The panel also need to consider their purpose within the misconduct regime which is:

1. to maintain public confidence and the reputation of the police service
2. to uphold high standards in policing and deter misconduct
3. to protect the public.

The Panel has heard and received all the evidence in the case. The Panel must now decide the case solely based on the evidence it has heard in the hearing room and read in the bundle the parties have agreed.

Credit/Good Character

There were no previous findings against the officer. Testimonials were considered.

Role of the panel

The role of the panel has four steps, usually approached in two stages:

Stage 1

- (a) first, determining the facts, based upon what is admitted by the officer or proven on the balance of probabilities;
- (b) second, determining whether on the basis of those facts the officer has breached the Standards of Professional Behaviour alleged;
- (c) third, deciding whether the breaches found amount to gross misconduct or not;

Stage 2

- (d) deciding what the outcome should be.

The four steps should not be conflated. Each requires discrete findings with sufficient reasons.



The AA brings the allegations, and it is for the AA to prove them. The standard of proof is the balance of probabilities, that is to say whether they are more likely than not to be true. The balance of probabilities is a single unvarying standard. (see the [Home Office Guidance](#) paragraph 9.10).

Legal advice

The panel received and had regard to the advice of the independent legal advisor.

The alleged breaches of the Standards of professional behaviour as set out in the Regulation 30 Notice are as follows:

Alleged Facts

- a .On 20 March 2021 you were on duty in Mount Street as the driver of a Tactical Aid Unit van engaged in Operation Harrington, an operation to police various local demonstrations*
- b. At approximately 18.30 you were in the driver's seat as a group of people, including an 18 year old male, Sam Brooks, approached on foot.*
- c. As the group drew near Mr Brooks looked at you and shook his head.*
- d. You subsequently claimed that he had also put his middle finger up at you.*
- e. You exited the van and challenged Mr Brooks for shaking his head at you.*
- f. You took hold of Mr Brooks and held him up against the side of the van with your left hand around his throat.*
- g. You turned him around and placed him in an arm-lock before a colleague applied handcuffs in the rear stack position.*
- h. At some point prior to the application of handcuffs you had arrested Mr Brooks for breach of the peace.*
- i. You participated in a search of Mr Brooks before he was placed into a nearby police van and driven away from the scene before being de-arrested and released from such custody.*



Allegations 1.

Dishonesty

a. You were dishonest in claiming that Mr Brooks had put up his middle finger when he had not done so.

b. You were dishonest in relying on that purported fact as part of your grounds for arresting Mr. Brooks.

Such conduct is in breach of the Standard of Professional Behaviour in relation to Honesty & Integrity and amounts to Gross Misconduct as it is so serious as to justify your dismissal.

2. Unlawful arrest

Such an arrest was an abuse of your powers or authority and showed a lack of respect for Mr Brooks' rights in breach of the Standard of Professional Behaviour in relation to Authority, Respect and Courtesy. The actions of Mr Brooks as described at paragraphs c) and d) above did not, taken either individually or together, amount to a breach of the peace or a threatened breach of the peace.

The arrest of Mr. Brooks was therefore unlawful in that:

a. You knew or ought to have known that you had no reasonable grounds to suspect him of having committed a breach of the peace, and/or;

b. You knew or ought to have known that you had no reasonable grounds to suspect that Mr Brooks was committing a breach of the peace; and/or;

c. You knew or ought to have known that you had no reasonable grounds to suspect Mr Brooks of being about to commit a breach of the peace.

d. Furthermore you knew or ought to have known that it was not necessary to arrest Mr Brooks for any of the reasons set out at s24(5) Police and Criminal Evidence Act 1984.

Such an arrest showed a lack of diligence in the exercise of your duties and responsibilities in breach of the Standard of Professional Behaviour in relation to Duties and Responsibilities. Effecting such an unlawful arrest would, and did,



discredit the police service or undermine public confidence in it, in breach of the Standard of Professional Behaviour in relation to Discreditable Conduct.

3. Assault

Irrespective of whether the arrest was lawful you used unnecessary, disproportionate and unreasonable force against Mr Brooks in:

- i. taking hold of Mr Brooks as you exited the van; and/or*
- ii. holding him up against the side of the van; and/or*
- iii. placing your left hand around his throat; and/or*
- iv. turning him around and placing him in an arm-lock before a colleague applied handcuffs in the rear stack position.*

In doing so you acted in breach of the Standard of Professional Behaviour in relation to Use of Force. Such unlawful use of force was an abuse of your powers or authority and showed a lack of respect for Mr Brooks' rights in breach of the Standard of Professional Behaviour in relation to Authority, Respect and Courtesy. Such unlawful use of force showed a lack of diligence in the exercise of your duties and responsibilities in breach of the Standard of Professional Behaviour in relation to Duties and Responsibilities. Using such force unlawfully would, and did, discredit the police service or undermine public confidence in it, in breach of the Standard of Professional Behaviour in relation to Discreditable Conduct.

4. Unlawful search

Given that the arrest was unlawful you subsequently participated in what you knew or ought to have known was an illegal search of Mr Brook before he was placed into a police van.

Such an unlawful search was an abuse of your powers or authority and showed a lack of respect for Mr Brooks' rights in breach of the Standard of Professional Behaviour in relation to Authority, Respect and Courtesy.

Such an unlawful search showed a lack of diligence in the exercise of your duties and responsibilities in breach of the Standard of Professional Behaviour in relation to Duties and Responsibilities.



Effecting such an unlawful search would discredit the police service or undermine public confidence in it, in breach of the Standard of Professional Behaviour in relation to Discreditable Conduct.

The findings of fact

The panel used the same numbering below as the Regulation 30 notice.

The panel considered all of the evidence it has read, seen and heard, the submissions by counsel and the testimonials provided by the officer when making its findings.

All facts set out in the preamble except d) and f) were accepted by the former officer.

The panel took account of the fact that as the complainants had chosen not to attend the hearing their evidence was unable to be tested. The panel therefor was cautious in assessing such evidence. Some elements of this untested evidence criticising the officer was incompatible with other elements.

Allegation 1 - Dishonesty

1a)

The panel find Mr Carnally a convincing witness.

Mr Carnally is the only witness we have heard from regarding the use of the middle finger of Mr Brooks and we accept the evidence he gave around this.

We note that he made a contemporaneous record of this in his pocket notebook, his statement, and that the incident was recorded in the daybook within the bundle. The daybook also recorded the first report of Mr Brooks.

The panel find it hard to believe that the officer would alight from his vehicle to admonish somebody who simply shook their head at him as they passed. This is an experienced officer who has dealt with numerous public order situations and the panel note that he has an unblemished record.

In determining dishonesty, the tribunal must use the accepted test for dishonesty, also known as the Ivey test which arises from a change in the law made by the Supreme Court in 2017.

Subsequent to the Supreme Court judgement, the High Court confirmed that the Ivey test is good law in professional conduct tribunals, such as this, in the cases of GMC V Krishnan and Uwen V GMC.



The test the tribunal needs to apply is as follows:

Firstly, the Tribunal must ascertain (subjectively) the actual state of the officer's knowledge or belief as to the facts. The reasonableness or otherwise of his belief may evidence whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held.

Secondly, once that has been established the Tribunal must determine whether his conduct was dishonest by applying the (objective) standards of ordinary decent people. It is not necessary for the individual to appreciate that what he has done is, by those standards, is dishonest.

Of relevance is the statement by Lord Hughes in the judgement:

"...(dishonesty is intended) to characterise what the defendant did, but in characterising it one must first ascertain his actual state of mind as to the acts in which he did it. It was not correct to postulate that the conventional objective test of dishonesty involves judging only the actions and not the state of knowledge or belief as to the facts in which they were performed. What is objectively judged is the standard of behaviour, given any known actual state of mind of the actor as to the facts."

We applied the relevant test to the dishonesty allegations:

Applying the subjective test, we were assisted by the contemporaneous evidence within the pocket notebook and the oral evidence of the officer. We are also conscious of the fact that the evidence of the complainants could not be tested by way of cross examination.

We do find that the former officer's genuinely held belief, based upon the evidence that we have, was that he was not dishonest in saying that Mr Brooks held up his middle finger towards the former officer, and we accept the former officer's evidence on this matter.

Applying the objective standards of ordinary decent people, it is our finding that such people would not believe that what the officer reported was dishonest. This is because an ordinary decent person knowing the facts and the actual state of mind of the officer would find his actions to be honest, by objective standards.

Therefore, the former officer has not breached the standards of professional behaviour in relation to Honesty and integrity.

The panel therefore find on the balance of probabilities that Mr Brooks did put his middle finger up towards the officer.



1b) The panel do not find on the balance of probabilities that the officer was dishonest in using this fact as a ground for arrest given our findings above and applying the subjective and objective tests.

Allegation 2)- Unlawful arrest

It is clear from the officer's account that his intention when he alighted from the police vehicle was to simply speak to Samuel Brooks to advise him of his behaviour.

The panel have found that Mr Brooks did raise his middle finger to the officer as set out above and also accept the former officer's evidence that Mr Brooks shook his head at the former officer.

The panel turned their minds to the officer restraining Mr Brooks in order to as he said, to give advice as to the behaviour.

The panel find that the actions of Mr Brooks would on the balance of probabilities amount to grounds for detaining him under section 5 of the Public Order Act. This is because the panel finds that the behaviour was abusive, occurred in a public place, that Mr Brooks should have been aware that the conduct may be abusive and was within the hearing or sight of a person or persons likely to be caused harassment alarm or distress.

The panel also finds that the actions of Mr Brooks on the balance of probabilities, could constitute a breach of the peace.

Given the fact that Brooks refused to stop and speak to FPC Carnally and indeed moved away at an accelerated pace, he began swearing and was clearly non-compliant as is evidenced by other officers at the scene, and the body worn video. The panel believe that it is entirely reasonable that the officer believed that a breach of the peace or a public order offence was likely to occur in these circumstances or had occurred. We therefore find that the former officer did have grounds to arrest Mr Brooks, and the arrest of Brooks was lawful in the circumstances.

It is disappointing that all of this could have been avoided had Brooks not simply stopped and spoken to the officer about his actions.



Allegation 3 - Assault

The panel accept the former officer's version of events as to what happened when he exited the police vehicle. We accept that he shouted to SB asking him to stop, we accept that SB didn't stop and in fact quickened his pace.

The former officer accepts that he took hold of Mr Brooks when exiting the van, that he held Mr Brooks against the side of the van and placed him in an arm lock before handcuffing Mr Brooks.

In relation to placing his hand around the throat of Mr Brooks, the AA clarified that this was said to be in the initial interaction that was not covered by the video footage.

In addition, we find that the witness statements from the complainants on this point are not consistent, for example Mr Brooks is recorded in the daybook as being grabbed by the arm and pushed against the van and does not mention being grabbed by the throat.

The former officer's evidence is clear on this point, that he did not grab the throat of Mr Brooks, and we accept his evidence about this.

The panel applied the relevant test on use of force in relation to the proven/agreed facts; the test is in two stages:

The panel needs to apply the relevant test as follows:

- (i) First, did the officer honestly believe that force was necessary. This is a subjective question based on what was in the officer's mind at the time. However, if the officer forms a mistaken view about the need to use force, that view should be objectively assessed to understand if it was reasonably held.

Of importance is the view of the officer in relation to the risk posed by the person/persons they were dealing with.

The panel should then ensure they understand the specifics of the force used by the officer.

The panel at find that given the actions of Mr Brooks as evidenced on video, in the statements of other officers and the oral evidence given by Mr Carnally, that the former officer had an honest belief that force was necessary.



- (ii) Second, the reasonableness and proportionality of the level of force used should be objectively assessed by reference to the information subjectively known to the officer at the time. However, again, if the officer forms a mistaken view, that view should be objectively assessed to understand if it was reasonably held.

The panel also finds the reasonableness and proportionality of the level of force used when objectively assessed by reference to the information subjectively known to the officer at the time was at an acceptable level. This finding is based on the same evidence as referenced above.

Therefore, it is the panel's finding that the use of force was necessary, proportionate and reasonable in the circumstances.

Allegation 4 - Unlawful search

Given that we have found that the arrest was lawful, we find that the subsequent search was lawful.

Level of misconduct

The panel have found that none of the contested facts are proved and that the facts that are agreed and accepted by the former officer do not amount to breaches of the relevant standards of professional behaviour and there is therefore no misconduct in this matter.

The panel noted the approach and language used by the former officer and although this did not amount to a breach of any of the relevant standards, this is something that he may wish to reflect upon moving forwards.

It is clear that your intention that evening was to simply speak to Samuel Brooks and address his behaviour. Unfortunately the situation escalated very quickly into something that was entirely unnecessary but it was not a consequence of your actions.



Policing is complex even in the most straightforward circumstances. In the context of policing a protest that included elements of anti police sentiment, you challenged a young male who had directed an abusive gesture towards you. It was entirely appropriate for you to do so.

The public rightly expect police officers to be robust, fair and proportionate in carrying out their duties. They also expect officers not to ignore abusive or confrontational behaviour when it is appropriate to challenge it.

I am genuinely sorry that it has taken 5 years and 3 months to reach today's outcome.

I want to thank you for your service and the panel wish you every success and the very best of luck in your future endeavours.

That brings the hearing to a close. Thank you.

Chair: ACC Stephanie Parker
Independent Panel Member 1: Margaret Fulham
Independent Panel Member 2: Robert Boyd
Legally Qualified Advisor : Stephen Gowland
Date: 06.07.26