



PICTURE: METROPOLITAN POLICE SERVICE

**Frances McClenaghan** examines the impact of the High Court decision in *R (Williams) v Police Appeals Tribunal* [2016] EWHC 2708 (QB) on the approach now to be taken to mitigation in misconduct hearings.

# The value of an exemplary record?



**Frances McClenaghan** is a barrister at Serjeants' Inn Chambers specialising in a range of police law matters. Following secondments at two large police forces, she has an in-depth understanding of police forces' operational concerns.

In 2011 the High Court decided in the case of *R (Chief Constable of Dorset) v Police Appeals Tribunal* [2011] EWHC 3366 (Admin) ("Salter") that it would be unusual for personal mitigation, however strong, to displace the presumption that officers found by a misconduct panel to have been dishonest in relation to operational matters would be dismissed. Since that time panels have taken rather different views on whether the impact of personal mitigation was similarly restricted following findings of breaches of the other standards of professional behaviour.

In the case of Darren Williams the High Court has now spoken and, for those whose behaviour is found by a panel to reach the threshold of gross misconduct, the news is not good.

## The facts in Williams

Darren Williams was a senior officer in the Metropolitan Police Service and by the time of his dismissal had attained the rank of detective chief superintendent and had been appointed borough commander of Merton.

He had almost 30 years' service. He was described as displaying a rare combination of ability and effectiveness, both in the police skills of detecting crime and in the softer skills of fostering good relationships between the police service and the community.

However, in April 2015, his service came to an end when he admitted five incidents of misconduct, described as "highly inappropriate behaviour" towards women, which were found to be gross misconduct. Despite extensive, very positive evidence given at the mitigation stage, the disciplinary panel concluded that the appropriate sanction was that he be dismissed without notice.

Det Chief Supt Williams' appeal to the Police Appeals Tribunal (PAT) against sanction was dismissed. Thereafter he sought to challenge the sanction by way of judicial review.

Det Chief Supt Williams' principal argument was that the PAT should not have applied the Salter principle in the context of misconduct, which did not involve dishonesty.

In what was the central issue in the case, Mr Justice Holroyde was asked to consider whether 'the Salter principle' applies to all breaches of professional standards, rather than just honesty and integrity.

## The decision

In *Bolton v The Law Society* [1994] 1 WLR 512 the Court of Appeal had set out how the Administrative Court should approach an appeal against a penalty imposed by the solicitors' professional disciplinary body.

The Court of Appeal made it very clear in *Bolton* that, most fundamentally, the purpose of sanctions imposed on

defaulting solicitors is to maintain public confidence in the solicitors' profession and its reputation. Because the reason for imposing sanctions is not primarily punitive, personal mitigation is likely to be of less effect.

In *Salter*, Burnett J held that the strict approach identified in *Bolton* should apply with equal force to police officers. The Court of Appeal agreed with this approach. One judge observed that police officers, "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".

Unlike in *Salter*, in Det Chief Supt Williams' case there were no findings of dishonesty. However, Holroyde J concluded that the *Salter* principle should not be confined to instances of dishonesty or lack of integrity.

He came to this conclusion for three key reasons. First, he found that none of the authorities cited contained any statement expressly requiring the application of the *Salter* principle to be limited in that way. In fact, he considered that the terms in which the principle had been expressed, tended to support the view that it applies to all forms of gross misconduct (paragraph 63).

Secondly, the two reasons why personal mitigation can carry only limited weight in matters involving dishonesty or lack of integrity do not apply only to those sorts of cases:

- The purpose of the sanction is not punishment. Rather they are intended to maintain public confidence in and

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respect for the police service or the profession concerned. Public confidence in or respect for the police service may be seriously harmed by many forms of misconduct, not all of which involve dishonesty or lack of integrity. That point is demonstrated by the instant case where Det Chief Supt Williams was found to have breached standards relating to "discreditable conduct"; and

- A defaulting police officer or professional person will usually be able to adduce evidence of good character and to point to very severe consequences if dismissed or excluded from his or her profession (paragraph 64).

Finally, Holroyde J considered that limiting the *Salter* principle would lead to surprising and unsatisfactory results (paragraph 65).

The judge gave the hypothetical example of two police officers investigating sexual abuse. One officer has been rude, bullying and dismissive and has caused great distress to the complainants. The other has dealt sensitively and efficiently with the complainants, but has falsified records to make a dishonest claim for overtime payment. If the *Salter* principle were limited to cases of dishonesty or lack of integrity, the disciplinary panel would be required to give full weight to the personal mitigation in the first case but only limited weight in the second.

Holroyde J emphasised the importance of maintaining public confidence in, and respect for, the police service.

This was said to be a "constant" factor. What will vary is the extent to which the particular gross misconduct threatens the preservation of such confidence and respect.

Personal mitigation must always be taken into account. However, where the gross misconduct threatens the maintenance of public confidence and respect in the police, the weight which can be given to such mitigation will be less than would be the case if there were no such threat (paragraphs 66 and 67).

Dismissal is, therefore, not a foregone conclusion where gross misconduct is proved. However, dismissal will almost always be necessary where the panel has made a dishonesty finding, and will often be necessary where the proven misconduct involves 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.

The inevitable consequence is that, where a disciplinary panel has found an officer to have committed gross misconduct, personal mitigation however impressive, will not carry the same weight as it might do in a different context. (paragraph 67).

## Conclusion

This decision has significant ramifications for professional standards departments, the police officer representative bodies and, most importantly, the individual officer facing a misconduct investigation or allegations of gross misconduct at a disciplinary hearing:

- Dismissal following a finding of gross misconduct is still not automatic, although for all cases where an officer's actions have (or are likely to have) undermined public confidence in the police, the decision clearly weakens further the weight that will be attached to personal mitigation; and
- Although there is no formal 'hierarchy' of breaches of the standards of professional behaviour, there remain allegations where, following a finding of gross misconduct, personal mitigation will still carry weight. For example, depending on all the circumstances, it may still be that a finding of gross misconduct due to a failure to be diligent in the discharge of one's duties, by an officer with a long and unblemished career, at a time of significant personal stress or hardship, might not lead to dismissal.

It is clear from this case that, in determining what weight to give to mitigation, a disciplinary panel is now obliged to consider as a central feature, the extent to which the gross misconduct has threatened public confidence in, and respect for, the police service. Those representing officers must identify and assess the seriousness of this threat, and prepare their case on mitigation accordingly.

With hindsight, the direction of successive court decisions over the past 20 years has been to reduce gradually the benefit of an exemplary record to an officer facing disciplinary proceedings. This is expressly acknowledged in the various judgments. However, an unintended consequence of the position now reached may be that officers become less willing to make admissions in relation to allegations of gross misconduct, as the credit they might previously have anticipated being given for a 'guilty plea' will carry less weight.