

**Re Chief Superintendent Marc Budden, Chief Superintendent Mark Warrender
and Chief Inspector Paul Staniforth**

Determination under the Police (Conduct) Regulations 2012 regulation 31(6)

Introduction

1. Chief Superintendent Marc Budden (“MB”), Chief Superintendent Mark Warrender (“MW”) and Chief Inspector Paul Staniforth (“PS”) are due to appear at a misconduct hearing that is due to commence on the 7th April 2022. Due to the date on which matters came to the attention of the Appropriate Authority (“AA”), the hearing will be conducted under the provisions of the Police (Conduct) Regulations 2012 (“the Regulations”). Each faces an allegation of gross misconduct as set out in his respective Regulation 21 Notice. As is apparent from the respective Regulation 22 Responses, each denies the allegation in its entirety.
2. Hereafter:
 - Whenever it is practicable to refer to MB, MW and PS collectively, they are referred to as “the Officers”; and
 - Save where expressly stated otherwise, a reference to a regulation is a reference to a regulation within the Regulations.
3. The allegations arise from matters that are said to have taken place on the 28th June 2019 when all three attended “post-function drinks” on the occasion of the retirement of the former Chief Constable of Gwent Police. In general terms, the allegations concern conduct said to have occurred on that date and matters that arose as a consequence thereof.
4. The AA and the Officers have “jointly” applied for the misconduct hearing to be held in private.

The statutory framework

5. What may be described as the “default position” regarding whether a misconduct hearing is held in public or in private is set out in regulation 31(1) *viz* “a misconduct hearing shall be in public”.
6. However, this provision is expressed to be subject to regulation 31(6). In summary, that provision provides the Chair with the power:
 - To exclude any person from the whole or part of the proceedings (regulation 31(6)(a)); and
 - To impose conditions upon anyone attending the proceedings in order to facilitate the proper conduct of the proceedings (regulation 31(6)(b)).Regulation 31(6)(a) is the “mechanism” by which the Chair may determine that the hearing be conducted in private. This is “achieved” by excluding all members of the public from the hearing.
7. Regulation 27A(3) gives those referred to in regulation 27A(4) the right to make written representations to the Chair on whether he/she should “invoke” the powers provided to him/her under regulation 31(6)(a) and/or (b). Those referred to in regulation 27A(4) include “the officer concerned”, “the appropriate authority” and

“any witness”. It is pertinent to note that, unlike in the Police (Conduct) Regulations 2020 which came into force on the 1st February 2020, the Regulations make no provision for the “media” to make representations to the Chair in relation to regulation 31(6)(a) and/or (b). (I shall return to this below.)

8. As has been indicated above, the application under consideration arises as a consequence of the AA and the Officers making written representations that members of the public, including the media, should be excluded from the hearing. **[Redacted]**
9. It is common ground that this case is one that has attracted media interest. It has been reported in the press that the Officers were under investigation and that MB and MW had been suspended. The media interest is in large part due to: the “event” that was taking place on the 28th June 2019; the fact that the allegations of misconduct include one of sexual assault; and the fact that the allegations involved officers of senior rank – indeed, on the 28th June 2019, MB’s rank was that of Temporary Assistant Chief Constable and PS’ rank was that of Temporary Superintendent. More recent events involving the police service, including the tragic murder of Sarah Everard, have only served to potentially increase the media interest in the case.
10. In these circumstances, consideration was given to how and when, in the absence of an express “right” in the Regulations to do so, written representations might be received from the media on whether the hearing should be in public or private. It was common ground amongst the parties that, once Notice of the Hearing has been published on the AA’s website in accordance with regulation 27A(1), the media would be entitled to make such representations, at least at the outset of the hearing itself – a practice that has been adopted by a number of Chairs in misconduct proceedings.
11. In the event, I concluded that the absence of an express “right” of the media to make representations in relation to regulation 31(6) did not preclude a Chair from inviting such written representations in advance of the determination being made. Conversely, the absence of an express provision preventing a Chair from inviting such representations, permitted him/her to do so under regulation 33(1). That provision provides:

“Subject to these Regulations, the person conducting or chairing the misconduct proceedings shall determine the procedure at those proceedings.”
12. Inviting such representations from the media in advance of making the determination under regulation 31(6) also provided a “pragmatic solution” in as much as:
 - It provided “advance notice” to the media that the AA and the Officers had applied for the hearing to be heard in private and gave the media a reasonable opportunity to make representations that, as all parties agreed, it would ultimately be entitled to make;
 - A determination under regulation 31(6) is susceptible to an application for judicial review (see: **Newsquest Media Group v The Legally Qualified [Chair of the Police Misconduct Tribunal [2022] EWHC 299 (Admin)]**); and
 - Potentially, and bearing in mind the “event” that gave rise to the allegations occurred approximately 2 years 9 months ago, it avoided the

commencement of the substantive hearing being further delayed – something to be avoided in the light of regulation 9(1).

13. Therefore, I directed that the following notice be published on the AA's website on the 25th February 2022:

An application has been made under Regulation 31 of the Police (Conduct) Regulations 2012 for the misconduct hearing in relation to Chief Superintendent Marc Budden, Chief Superintendent Mark Warrender and Chief Inspector Paul Staniforth to be held in private.

The application has been made by the Appropriate Authority and each of the three officers concerned. It has been submitted that a private hearing is necessary:

- i. by reason of the law relating to anonymity of complainants following allegations of a sexual offence,*
- ii. in furtherance of the public interest in encouraging reporting of alleged wrongdoing.*
- iii. to protect the Article 8 rights of witnesses at the hearing and their families, including those of the officers concerned.*

A private hearing would not prevent a notice being published pursuant to Regulation 27A which could identify (a) the officers subject to hearing; (b) the professional standards alleged to have been breached; and (c) that it is alleged that the breaches are said to be so serious as to amount to gross misconduct.

Upon conclusion of the hearing the panel will be invited to make an order for publication of an outcome in accordance with Reg 36(6) and (9). Any such notice could include the officers' names, whether any standards were breached, whether any finding of misconduct or gross misconduct was reached and the final outcome imposed. Furthermore, if any officer were to be dismissed he will, by force of law, go on to the public Barred List held by the College of Policing pursuant to Part 4A of the Police Act 1996.

If any member of the media or public wishes to make written representations in relation to why the hearing should be in public and or why they should be entitled to attend then they are to provide them to the Gwent Police Hearings Unit by 16.00 on Friday 4 March 2022 by email Helen.Smith@gwent.police.uk so these can be considered by the Legally Qualified Chair, Mr John Bassett.

14. I recognise that there may be an argument that the "power" provided to the Chair only "takes effect" from the day on which the hearing commences. If that is correct, the hearing commenced on the 28th February 2022 and, therefore, I am to be taken to have issued the direction referred to in the preceding paragraph on that date.
15. Following the publication of the notice, I received written submissions dated the 4th March 2022 prepared by Counsel on behalf of Wales Online and Reach plc ("the

Reach representations”). Without in any way seeking to detract from the substance and detail of those submissions, suffice it to say at this stage that the application made jointly by the AA and the Officers was opposed. The Reach representations submitted that there was no proper basis for departing from the “default position” and the hearing should be held in public.

16. It is also right that I state that, shortly before 14.00 on the 11th March 2022, I was forwarded an email from Mr Richard Gurner, editor and publisher of the Caerphilly Observer, containing representations on the application to hold the hearing in private. Despite the fact that these representations were received almost a week after the “deadline” I had set, I have considered them in order that I am fully apprised of the media’s position. Meaning no disrespect to Mr Gurner, his representations “mirrored” the Reach representations.

The relevant law and principles

17. As a police misconduct hearing is a “creature of statute”, any determination under regulation 31(6) must be in accordance with the relevant regulations. These have already been referred to. The Regulations themselves were issued by the Home Secretary pursuant to the Police Act 1996 sections 50, 51 and 84.

18. In addition, due consideration has to be given to the relevant provisions of the Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures (June 2018 edition) (“HOG”). The HOG was issued by the Home Secretary under the Police Act 1996 section 87(1) and, as such, has statutory “authority”. Paragraph (b) of the Introduction to the HOG contains the following:

“Those who are responsible for administering the procedures described in this guidance are reminded that they are required to take its provisions fully into account when discharging their functions. Whilst it is not necessary to follow its terms exactly in all cases, the guidance should not be departed from without good reason”.

19. The relevant provisions in the HOG are to be found in paragraphs 2.219 to 2.239 inclusive. Of particular note are the following:

- Paragraphs 2.220, the final sentence in paragraph of 2.222 and 2.224 reiterate the “default position”.
- Paragraph 2.221 sets out 10 factors “listed” from (a) to (j) that may be taken into account by the Chair in determining whether to exclude any person from the hearing or any part of it, but makes it clear that the “list” of factors is not intended to be exhaustive.
- Paragraph 2.223, while specifically dealing with the situation where a witness is unwilling to give evidence in public, is illustrative of the principle that measures short of exclusion of the public should be considered before reaching a determination that the public should be excluded.
- Paragraph 2.222 summarises the principle to be applied by a Chair is that he/she *“should consider whether the particular circumstances of the case outweigh the public interest in holding the hearing in public”*.

- The footnote to paragraph 2.221(b) which refers to the “*wider public interest in the proceedings*” states that “*Public interest means the wider public interest in, for example, seeing justice done, understanding the police disciplinary system, upholding the integrity of the police etc rather than the interest of the public in the case*”.
20. I do not understand there to be any dispute between the parties to the proceedings and the media as “represented” by Wales Online/Reach plc and Mr Gurner as to the rationale for the “default position” being that misconduct hearing should be conducted in public. I have no hesitation in adopting paragraphs 8 to 19 of the Reach representations as a clear, concise and accurate summary of the rationale.
 21. The rationale is a matter of common law as exemplified in the decision of the House of Lords in **Scott v Scott [1913] AC 417** and in the decision of the Court of Appeal in **R v Legal Aid Board ex parte Kaim Todner [1999] 1 QB 966**.
 22. The rationale may also be said to be “enshrined” into legislation by the Human Rights Act 1998 which, by virtue of section 1 and Schedule 1 thereto, incorporated Articles 6 and 10 of the European Convention on Human Rights (“ECHR”) into the law of England and Wales.
 23. However, as the judgment of Lord Haldane in **Scott v Scott (supra) at pages 437 to 439** and ECHR Article 10(2) demonstrate, the principle of “open justice” is not absolute in either the common law or under the ECHR.
 24. Case law establishes that, where there is an application to depart from the principle of open justice, the Court or Tribunal (which, for these purposes includes the Chair of a police misconduct hearing) must have regard to the following:
 - Each case is fact specific.
 - The burden of establishing that the principle of open justice should be departed from lies on the party/parties seeking the departure.
 - The grounds upon which the party/parties seeking the departure from the principle of open justice must be evidence based, rather than based on a “mere” assertion or assertions.
 - The grounds upon which the party/parties seeking the departure from the principle of open justice must have some reasonably objective foundation. This does not mean that the party/parties seeking the departure have to “prove” that foundation to a particular standard, but if the party/parties is/are unable to provide any such foundation, the application is likely to fail (see: **Miller v General Medical Council [2013] EWHC 1934 (Admin)**).
 - Where there is a “conflict” between the rights under the ECHR, no right takes precedence – what is required is “*an intense focus on the comparative importance of the rights being claimed in the individual case*” (see: **PJS v News Group Newspapers Ltd [2016] AC 1081**).
 - The justification for interfering with or restricting the pertinent ECHR rights must be properly considered and taken into account.
 - If there is a departure from the principle of open justice, it must be reasonable and proportionate in the circumstances of the particular case.

The grounds relied upon by the AA and the Officers

25. At the outset, it has to be acknowledged that the notice published on the AA's website inviting written representations from the media and the public was "limited" regarding the information provided as to the grounds on which departure from the open justice principle is sought by the AA and the Officers. Nor have the media and the public been provided with the written representations made by the AA and the Officers.
26. This approach was necessary as the provision of any additional information, whether in the notice or by disclosure of the written representations made by the AA and the Officers would have potentially "undermined" the bases upon which the application is made, in particular that relating to ECHR Article 8.
27. However, in determining how to exercise in these circumstances the "power" provided to me by regulation 33(1), I was satisfied that the notice contained sufficient information to permit the media in particular to make meaningful representations given its existing "knowledge" of the background to the case. This has effectively been confirmed by the fact that the Reach representations contain no assertion that Wales Online and/or Reach plc have been "handicapped" in making their representations by the limited information provided.
28. It is necessary at this stage to refer in some more detail to the grounds advanced in support of the application for the hearing to be conducted in private.
 - i. *Anonymity of complainants following allegations of sexual offences*
 As a consequence of his alleged conduct on the 28th June 2019, MW was accused of sexually assaulting Ms X contrary to the Sexual Offences Act 2003 section 3.
 By virtue of the Sexual Offences Amendment Act 1992 ("the 1992 Act") sections 1(2) and 2(da), none of the matters referred to in section 1(3A) may be included in any publication during Ms X's lifetime if it would be likely to lead members of the public to identify her. Those matters include her name, address, her place of work and any still or moving picture of her. "Publication" is widely defined in section 6.
 - ii. *The public interest in encouraging reporting of alleged wrongdoing*
 This needs no further detail at this stage.
 - iii. *The protection of the Article 8 rights of witnesses at the hearing and their families, including those of the Officers*
 Within this ground, a number of discrete matters fall to be considered including the potential effect of a public hearing upon the private lives, welfare and health of Ms X, the Officers and members of their respective families. As a consequence, it also involves consideration of the willingness of Ms X to give evidence were the hearing to be conducted in public.
29. The submissions in response to the grounds advanced by the AA and the Officers are comprehensively set out in paragraphs 20 to 32 of the Reach representations and in Mr Gurner's email.

Determination

30. In making my determination, I have fully considered the representations made by the AA, the Officers, Wales Online/Reach plc and Mr Gurner. I have had proper regard to the relevant provisions in the Regulations and the HOG, together with the relevant principles to be derived from case law and the application of the relevant Articles in the ECHR.
31. It is also appropriate that I record that I have been provided with and have read what, subject to some possible alterations that are not material to my determination, is the “hearing bundle” in the case. This has allowed me to inform myself of the issues in the case and the evidence to be adduced. In turn, this has allowed me to consider the representations in the context of those issues and the evidence. (It has also allowed me to identify certain factual inaccuracies in the Reach representations – for example, what is stated in paragraph 6(vii) of those representations is incorrect. However, these factual inaccuracies do not impact upon my determination.)
32. At the outset it is important to emphasise that:
- There is no application before me that the Officers should be anonymised. All parties are agreed that an appropriate Notice of the Hearing will be published in accordance with regulation 27A and the names of the Officers will be given in that Notice. The Notice will also contain information concerning the allegations faced by the Officers.
 - In addition, although it is a determination that cannot be properly made until the conclusion of the hearing, it is common ground that it is inevitable that a notice setting out the “result” of the misconduct hearing will be published in accordance with regulation 36(6).
 - In reaching my determination, in accordance with paragraph 2.224 of the HOG, the potential reputational harm to Gwent Police and/or the police service were the misconduct hearing to be held in public has not been a consideration.
 - Similarly, the almost inevitable personal embarrassment and concern of any officer arising simply from the fact of having to appear before a misconduct hearing has not been a consideration.
33. While, in setting out the reasons for my determination, I have endeavoured to do so under the “headings” of the grounds relied upon by the AA and the Officers, it must be recognised that there is a significant “overlap” in these grounds – for example, Ms X’s “position” is relevant to all three grounds. My determination may be regarded as the conclusions I have reached upon the “cumulative consideration” of all relevant matters.

Anonymity of complainants following allegations of sexual offences

34. The Reach representations describe this ground as “*risible*”. In support of this assertion, it is contended that the “*media is well placed to properly tailor its reporting to ensure that they do not report any details which might directly or through jigsaw identification lead to the victim being identified*”.
35. I readily acknowledge that media organisations such as those operated by Reach plc and the Caerphilly Observer are aware of the provisions of the 1992 Act and “tailor”

their reporting accordingly. However, Wales Online/Reach plc's submission and Mr Gurner's like representation fail to recognise that attendees at a misconduct hearing held in public are not only representatives of the media. Subject only to compliance with "administrative conditions" of the sort envisaged by paragraphs 2.226 to 2.230 of the HOG, a public hearing may be attended by any member of the public. "Ordinary" members of the public and, possibly, what may be (probably inaccurately) described as "fringe" members of the media, such as bloggers, are less likely to be aware of the provisions of the 1992 Act.

36. It is apparent from the hearing bundle and the Officers' Regulation 22 Responses that, in the course of the hearing, details will emerge of the "working relationship" that has existed between one or more of the Officers and Ms X. Such details will result in Ms X being readily identifiable within the wider organisation of Gwent Police and amongst those who know of her.
37. Upon its becoming known that MW had been accused of sexual assault at the "event" on the 28th June 2019, there was speculation and rumour within Gwent Police as to the identity of the "victim". As is apparent from the hearing bundle, some members of Gwent Police already know Ms X's identity, but that can never be a reason for allowing Ms X's identity to be "confirmed" to those who believe they know the identity of the "victim". Still less is it a reason for allowing her identity to be revealed to those who have no idea of the "victim's" identity, whether or not they are members of Gwent Police.
38. As I have already stated, "publication" is widely defined in the 1992 Act and includes "**speech, writing or other communication in whatever form**, which is addressed to the public at large or **any section of the public**" (emphasis added). I am satisfied, in these circumstances, that there is a real risk that, were the hearing to be held in public, there will be a contravention of section 1(2) of the 1992 Act.
39. I have considered whether this risk can be "mitigated", as is suggested by Mr Gurner, by the imposition of a specific condition of attendance in terms similar to the section 1(2) of the 1992 Act. In my view it cannot, for the following reasons:
 - Even assuming the person who has breached the specific condition can be identified, the Regulations provide no effective, if any, means of "sanctioning" that person. This is in stark contrast to the ability of, for example, a Crown Court judge to summarily deal with a like matter by contempt proceedings.
 - Accordingly, the only "sanction" would be to institute criminal proceedings against the person who has breached the specific condition. That would be little, if any, "remedy" for Ms X whose identity would have been disclosed.
40. [Redacted].
41. [Redacted] this is a case where paragraph 2.221(c) of the HOG is highly relevant and "applicable". (It would appear from the representations made by the AA that paragraph 2.221(d) is also relied upon. While it is in similar terms to paragraph 2.221(c), strictly speaking I do not consider it is applicable in this case as the investigation did not commence as a result of a complaint, within the meaning of the Police Reform Act 2002, made by Ms X.)

The public interest in encouraging reporting of alleged wrongdoing

42. The submissions of the AA on the one hand and those of the media, as represented by Wales Online/Reach plc and Mr Gurner, on the other are “diametrically opposed”. The AA submits that a public hearing will deter “victims” of wrongdoing coming forward to report what has occurred. The Reach representations and Mr Gurner submit the opposite is the case – a public hearing will encourage such “victims” to come forward as they will be reassured that their allegations will be taken seriously and the “perpetrators” will have to “answer” for their conduct before an appropriate tribunal.
43. In so far as it is possible or appropriate to refer to a generally accepted position, I am prepared to accept that the Reach representations and Mr Gurner’s representations state that position. Indeed, this position may be said to be “supported” by *dicta* in decided cases such as **R v Legal Aid Board ex parte Kaim Todner (supra)**.
44. However, as this application concerns a police misconduct hearing, it is my view that the AA’s submission has to be considered in the context of, for want of a better expression, the “experience of every day policing”.
45. In this regard, I consider I am permitted to call upon the “knowledge” I have gained in almost 20 years of “practice” in the area of police misconduct. This has resulted in my being only too aware of the “reluctance” of those within the police service to challenge and report misconduct by others within the service. This is notwithstanding:
- The “introduction” in 2008 of the specific Standard of Professional Behaviour concerning “Challenging and Reporting Improper Conduct”;
 - The “introduction” in 2014 of the Code of Ethics; and
 - The specific provision contained in regulation 3(9).
46. There is a particular “reluctance” to report allegations of misconduct by those in a supervisory position and/or of senior rank. It is unnecessary for me to state the reasons for such “reluctance”, they are frankly obvious.
47. **[Redacted]**
48. In the circumstances, while, on its own, it cannot be the “decisive factor” in the determination of the present application, I consider there is some merit in the AA’s submission that the likelihood of a resulting misconduct hearing being held in public may deter those within the police service from reporting misconduct by others within it. The failure by a member of the police service to report such misconduct out of concern that he/she will be identified in any subsequent proceedings with the consequence that no proceedings are brought, is just as, if not more, likely to result in the undermining of public confidence in the police service, rather than the holding of a hearing in private where such misconduct has been reported by a member of the police service in anticipation that any resulting hearing will be conducted in private. This is part of the reason why police forces, including Gwent Police, provide the means by which allegations of misconduct can be reported to their Professional Standards Departments confidentially and anonymously.
49. “Borrowing”, from cases such as **In re Medicaments and Related Classes of Goods (No 2) [2001] 1 WLR 700** and **Porter v Magill [2002] 2 AC 357**, the concept of “*the fair-minded and informed observer*”, I do not accept that the confidence in the police service of such an observer, as a “representative” of the public, would be undermined by the holding of this hearing in private. Nor, therefore, do I accept, as

is implicit in the Reach representations, that holding the hearing in private would be contrary to or call into question the commitment expressed by DCC Amanda Blakeman referred to in paragraph 30 of the Reach representations.

The protection of the Article 8 rights of witnesses at the hearing and their families, including those of the Officers

50. Potentially, three Article Rights under the ECHR are engaged in this application, namely
- The Officers' Article 6 Rights which include the right "to a fair and public hearing";
 - The Article 8 Rights to respect for their private and family lives of Ms X, the Officers and certain members of their families referred to in their respective representations; and
 - The media's Article 10 Rights which include the right to "*impart information without interference by public authority*".
51. By making this application, the Officers have effectively "waived" their Article 6 Rights to a public hearing. Accordingly, my determination of this ground primarily involves the "competing" Article 8 and Article 10 Rights.
52. By reference to the Regulations and the HOG:
- The Article 8 Rights are encompassed within the HOG paragraphs 2.221(c), (e) and (f); and
 - The Article 10 Rights are encompassed in those regulations and provisions of the HOG already referred to as setting out the "default position" that misconduct hearings are conducted in public.
53. As already stated, the rights under Article 8 and Article 10 are not absolute. So:
- A person's Article 8 Right might be subject to interference "*for the prevention of disorder or crime or for the protection of the rights and freedoms of others*";
 - A person's Article 10 Rights might be subject to interference "*for the protection of health or morals [and] for the protection of the reputation or rights of others*".
54. [Redacted].
55. [Redacted].
56. [Redacted].
57. Following the decision of the Supreme Court in **PJS v News Group Newspapers Ltd** (*supra*), I have concluded there is no public interest in the legal sense in the publication of the detail of the evidence [Redacted]
58. Conversely, the publication of such detail would be an infringement of the Article 8 Rights of Ms X, MB and MW. [Redacted]
59. [Redacted].
60. Members of Ms X's and the Officers' families have separate Article 8 Rights. This is implicitly recognised in paragraph 26(i) of the Reach representations and, therefore, it is convenient if I immediately deal with the submission contained in that subparagraph.
61. In my view, the submission is completely misconceived. It is tantamount to saying that, because the Article 8 Rights of family members were infringed following the

publication of the fact that MW and MB had been suspended and were under investigation, their Article 8 Rights can thereafter be continued to be infringed with impunity. In the specific cases of the children of Ms X and MB, the submission is completely contrary to the established case law recognising that, while not decisive in any particular case, the Article 8 Rights of children are of the paramount importance.

62. On the evidence that has been placed before me, I am satisfied that publication of the detail of the evidence [Redacted] would be an unwarranted infringement of the Article 8 Rights of MB's children and Ms X's child. [Redacted]

63. I am also satisfied that publication of the detail of the evidence [Redacted] would be an unwarranted infringement of the Article 8 Right of MB's wife. [Redacted]

64. [Redacted].

65. [Redacted]

Conclusion

66. For the reasons I have set out in paragraphs 30 to 64 above, I am satisfied that the AA and the Officers have, by the clear and cogent evidence presented to me, discharged the burden of establishing that in this particular case:

- The common law principle of open justice should be departed from;
- The media's Article 10 Rights must "give way" to the Article 8 Rights of Ms X, the Officers, the son of Ms X, the sons of MB and the wife of MB.

67. Accordingly, I am satisfied that, having regard to the relevant regulatory provisions, this is a case where it is right and appropriate to depart from the "default position" that police misconduct hearings should be held in public. I am satisfied that doing so in this case outweighs the public interest in the hearing being held in public.

68. Recognising that any departure from the "default position" must be proportionate and the minimum reasonably possible, I have considered whether it would be practicable to hold only part of the hearing in private.

69. I have concluded that to do so it would not be practicable or workable. In this respect, I accept and adopt the submissions of the AA [Redacted]. In addition, I consider that holding part of the hearing in public and part in private would be unduly disruptive to the proper management of the hearing, giving rise to the risk that the hearing will not be fair to all parties.

70. My determination is that all members of the public including, for the avoidance of doubt, representatives of the media will be excluded from the whole of the misconduct hearing. This determination is made under regulation 31(6)(a) and has the effect that the hearing will be held in private.

71. Copies of this determination will be provided in full to the AA and the Officers.

72. However, by virtue of the reasons for my determination, only a redacted copy may be provided to Wales Online/Reach plc and Mr Gurner. For the same reasons, Wales Online/Reach plc and Mr Gurner may not be provided with copies of the material, including the written representations of the AA and the Officers, upon which my determination is based. Nor may they be provided with the hearing bundle, the Regulation 21 Notices and the Regulation 22 Responses in this case.

73. In the event of an application being made to the High Court for my determination to be reviewed, a full copy of this determination and copies of the material upon which it is based will be provided to the High Court. It will be for the High Court to determine whether there should be wider dissemination of the full determination and the material on which it is based.



**John Bassett
(Chair)**

12th March 2022

Addendum

1. At just after 17.00 on the 16th March 2022, I received *via* DC Smith, my point of contact with the AA, written representations from the BBC. It is apparent that, although sent by email on the 4th March 2022, they appeared in DC Smith's "spam folder" some time after the 7th March 2022. In the circumstances, I have, of course, given full consideration to these representations and reviewed the determination I drafted on the 12th March 2022.
2. It is submitted on behalf of the BBC that the application made by the AA and the Officers should be rejected and the hearing should be held in public. (There are obvious typing errors in the second and third sentences of paragraph 1 of the written submissions. The submissions also mistakenly refer to provisions in the Police (Conduct) Regulations 2020 and the 2020 HOG, but nothing turns on this.)
3. Once again meaning no disrespect to Counsel who prepared them, the BBC's submissions are substantially the same as the Reach representations. Particular reliance is placed upon the need for transparency in order that public confidence in the police service may be maintained by the public being reassured, in the light of recent tragic events and reports of serious police misconduct, that the Officers in this case, who are all of senior rank, are the subject of a process that properly holds them to account.
4. As such, I have concluded that the BBC's representations do not cause me to depart from the determination set out in detail above.

A handwritten signature in blue ink, appearing to be 'JB', with a long horizontal flourish extending to the right.

**John Bassett
(Chair)**

17th March 2022