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**Re: Michael Squire v R (on the application of the Chief Constable of Thames Valley Police), the Police Appeals Tribunal [2016] EWCA Civ 1315**

**Summary**

A police disciplinary panel (Panel) had been entitled to find a detective inspector guilty of gross misconduct in relation to his behaviour towards a junior colleague. The introduction of hearsay evidence at the Panel hearing did not involve procedural unfairness.

**Background**

A detective inspector appealed against a decision that the Police Appeals Tribunal (Tribunal) had been wrong to reverse a finding of the Panel that he had been guilty of gross misconduct.

A police staff member (E) complained that the appellant, who was her line manager, had conducted himself towards her in an inappropriate and sexually motivated way. The central allegation was that he had bullied or harassed her. The Panel admitted hearsay statements of a detective constable (P), a witness to be called. In those statements, P claimed that three other officers had made comments to her indicating that the appellant had behaved inappropriately. Those individuals were to be called. In their statements, none of the three repeated or supported the comments attributed to them. The Panel found the appellant guilty of gross misconduct. It accepted E's account, describing it as "cogent, credible and consistent throughout".

As to the hearsay evidence, the Panel noted that none of the three officers had confirmed, when giving oral evidence, the comments attributed to them by P. The Panel stated that it had placed no reliance on the hearsay evidence. The appellant detective inspector appealed to the Tribunal, which allowed his appeal. The Tribunal concluded that the Panel's acceptance of E's evidence was unreasonable,

that it ought not to have admitted P's hearsay statements and that there was a real possibility that it had been biased. The chief constable sought judicial review of the Tribunal's decision. The judge held that the Tribunal's findings were unsustainable and that the appellant's conduct so obviously amounted to gross misconduct that it would be perverse to find otherwise.

**Held:** Appeal dismissed, cross-appeal dismissed.

(1) It was common ground that the Panel was entitled to admit hearsay evidence. That said, P's evidence should not have been admitted at least until the evidence of the other witnesses had been heard. While the order of witnesses was a case-management decision for the Panel, with which any appellate tribunal would be slow to interfere, it would have been prudent to adopt a different approach, hearing the other witnesses first. However, that case-management decision had not had any effect on the Panel's decision. The Panel explicitly disavowed reliance on P's hearsay evidence. The Tribunal could not go behind that disavowal absent a clear evidential basis to show that it was wrong. The introduction of the hearsay evidence did not involve procedural unfairness. The Panel was alive to and addressed the danger, and explained that it put the hearsay evidence out of its mind.

It was very hard to understand why the Tribunal concluded that the Panel had been biased. The Panel's route to a conclusion simply provided no basis for a fair minded independent observer to conclude that there was a danger or risk of bias. As to E's evidence, the judge below had been correct to state that the Tribunal's reasoning and conclusions did not begin to undermine the clearly stated and well-reasoned conclusion of the Panel that in her core account about the most serious of the allegations E had told the truth. Moreover, the Panel had been entitled to conclude that the misconduct on the appellant's part was gross (see paras 20-23, 28, 32 of judgment).

(2) The chief constable had cross-appealed against the decision of the judge below to remit to the tribunal the issue of sanction. The chief constable's case was that dismissal was the inevitable sanction. That was not so. While dismissal might well be a very likely, perhaps the most likely, outcome, it was not necessarily the inevitable outcome. In any event, the decision was for the Tribunal, which had yet to address the issue (para 35).

### **Salient points**

- A tribunal may hear hearsay evidence. Where the tribunal explicitly disavows reliance on hearsay evidence, an appellate jurisdiction cannot go behind that disavowal absent a clear evidential basis to show it was wrong.

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