

NORTH YORKSHIRE POLICE

PROFESSIONAL STANDARDS DEPARTMENT

NOTICE OF OUTCOME OF ACCELERATED MISCONDUCT HEARING



**NOTICE OF OUTCOME OF ACCELERATED MISCONDUCT HEARING
REGULATION 63 POLICE (CONDUCT) REGULATIONS 2020**

Name:	James Spencer	Rank & Number:	PC 1593
Name of complainant (if applicable):	Miss A		
Case reference number:	CM/107/23		

You are hereby given notification of the outcome of the Accelerated Misconduct Proceedings which relate to your alleged breach of the Standards of Professional Behaviour. Details are as follows:

Date(s) of misconduct proceedings:	1 August 2024
Location:	North Yorkshire Police HQ, Alverton Court, Northallerton
Persons conducting Accelerated Misconduct Hearing:	Chief Constable Tim Forber


Allegation(s)	<p><i>On 10 September 2023 whilst off duty you sent an unsolicited offensive image of yourself, namely an image of your penis, to Miss A.</i></p> <p><i>The above conduct is alleged to breach the Standards of Professional Behaviour relating to Discreditable Conduct and Authority, Respect and Courtesy and is alleged to amount to Gross Misconduct.</i></p>
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Determination of the person or persons chairing or conducting the accelerated misconduct hearing

- Gross Misconduct
- Case returned to Appropriate Authority to be dealt with under Part 4 of the Conduct Regulations
- Case Dismissed

Outcome (if found to be misconduct or gross misconduct)

- Dismissal without notice
- Reduction in rank
- Final written warning

Signature of person chairing hearing:		Date:	1/8/24
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Details of reasons for the determination and outcome are stated below.

Determination and Outcome of Accelerated Misconduct Hearing

Findings of the hearing:

Allegations admitted at the level of Gross Misconduct

Officer dismissed without notice

Reasons for findings:

Preliminary matters

1. The accelerated misconduct hearing for Police Constable 1593 James Spencer was held in public on 1 August 2024. Sarah Tomlinson attended as the Appropriate Authority, and the officer, who was in attendance for the hearing, was represented by Rob Bowles from the Police Federation.

Allegations

2. On 11 July 2024 the officer was served with a notice of accelerated misconduct hearing proceedings outlining one allegation, which if proven, was assessed as amounting to gross misconduct. That allegation was:

On 10 September 2023 whilst off duty you sent an unsolicited offensive image of yourself, namely an image of your penis, to Miss A.

The above conduct is alleged to breach the Standards of Professional Behaviour relating to Discreditable Conduct and Authority, Respect and Courtesy and is alleged to amount to Gross Misconduct.

and admitted that those breaches amounted to gross misconduct. Accordingly the only question for me to determine was the outcome.

Determination of outcome

4. It being admitted that this allegation constituted gross misconduct, I invited representations from the Appropriate Authority and the officer on the appropriate outcome in this matter.
5. Submissions were made by the Appropriate Authority that the appropriate outcome in this case would be dismissal. In brief, they submitted that:
 - (a) This is a serious matter of significant national concern, namely sexual impropriety by police officers, which would have a significant impact on public confidence in policing;
 - (b) There is clear guidance in strong terms from several different policing bodies that sexual impropriety of this nature is unacceptable in policing;
 - (c) Personal mitigation should be given limited weight.
6. The officer, through his representative, reiterated his apology for his actions, and put forward mitigation that his actions had been contributed to by his diabetes, alcohol, and other personal circumstances.
7. Any action I take today has been to balance the officer's rights proportionately with the requirement to maintain public confidence, and the public interest that may be served by retaining an officer.
8. It having been admitted at stage one of proceedings that the conduct constitutes Gross Misconduct, the outcomes available to me are:
 - (a) To issue a final written warning;
 - (b) A reduction in rank; (not relevant for PCs)
 - (c) Dismissal without notice.
9. I considered these potential outcomes in order from the lowest sanction (final written

warning) through to dismissal and assessed them as to how they may meet the need to fulfil the purpose of the misconduct proceedings, and the purpose of imposing sanctions.

Seriousness

10. I have considered the seriousness of the misconduct that gave rise to the officer's appearance at the hearing today, in accordance with the College of Policing's Guidance on Outcomes, and set out my conclusions and the reasons for them below.

Culpability

11. I have considered the officer's culpability in this case and make the following observations:
- (a) The officer's conduct was deliberate. He was not made to send the image, nor could he have been in any doubt that it was unwanted given Miss A's rejection of his offer to send it. He sent it with "view once" enabled which demonstrates his intention to avoid being detected;
 - (b) I agree with the Appropriate Authority that this is a case of sexual harassment which falls within the guidance at paragraphs 4.40-4.43, and that this falls within the definition of violence against women and girls at paragraph 4.60;
 - (c) I endorse the comments made by Sir Andy Marsh referred to by the Appropriate Authority, there is no place in policing for officers who commit misconduct of this nature;
 - (d) I do not consider that the officer being off duty reduces his culpability at all. Such behaviour is unacceptable whether an officer is on or off duty;
 - (e) I therefore assess this officer's culpability as high.

Harm

12. I have considered the harm caused by the officer's actions in this case and make the following observations:
- (a) Harm has been caused to Miss A who has been made to feel very uncomfortable, and

this misconduct has undoubtedly caused her distress;

- (b) North Yorkshire Police treats violence against women and girls and sexual impropriety by police officers with the utmost seriousness. We are determined to tackle these issues, and the actions of PC Spencer significantly undermine our ability to do so, and public trust and confidence in policing generally. It is completely contrary to the standards that I expect from officers in this force;
- (c) I find therefore that the harm in this case was high.

Aggravating Factors

- 13. I have carefully considered the aggravating factors listed within the guidance and any other issues outside of those which may have been said to have aggravated the actions he took.
 - (a) The officer's misconduct can only have been for his sexual gratification;
 - (b) The officer continued with his misconduct when he should have known better;
 - (c) The officer's intoxication is not a mitigating factor but an aggravating one;
 - (d) Sexual misconduct by police officers is an issue about which there is rightly significant national concern.

Mitigation

- 14. The purpose of mitigation is to reduce the seriousness of the conduct. I have found that the following apply here:
 - (a) This was a single episode of misconduct;
 - (b) The officer made early, open admissions;
 - (c) The officer apologised to Miss A, taking early actions to reduce harm;
 - (d) I accept that the officer is genuinely remorseful;
 - (e) The officer was clearly experiencing some personal difficulties.

15. While the officer's open admissions, apology and remorse are to his credit, I do not consider that any of these matters significantly reduces the officer's culpability, given the wholly unacceptable nature of this misconduct.

Determination

16. I find that the appropriate outcome in this case is dismissal without notice:
- (a) For the reasons set out above this is a very serious matter, with limited mitigation.
 - (b) A final written warning would not be adequate to uphold public confidence in policing and maintain the high standards that I expect of officers of North Yorkshire Police. If it was open to me to do so, a reduction in rank would likewise have been inadequate.
 - (c) I am concerned to ensure that it is plain that such behaviour will not be tolerated by officers of North Yorkshire Police, and to deter future misconduct by other officers. I am determined that North Yorkshire Police should be an inclusive workplace where everyone feels safe and comfortable, and where everyone is free of discrimination, harassment or improper conduct. I consider that dismissal would help to achieve this aim and prevent future misconduct.
 - (d) I have also considered the need to prevent this officer from committing future misconduct. This can only be achieved by his dismissal without notice, and placing him on the barred list.
17. As a consequence of the above I indicate that the officer's details should be included within the Police Barred List (Regulation 3(2) of the Police Barred List and Police Advisory List Regulations 2017).
18. I am aware of the officer's right to appeal in accordance with the Police Appeals Tribunal Rules 2020. The officer should provide notice of his intention to appeal to the Appropriate Authority within 10 working days of receipt of this written determination.

Chief Constable Forber

1 August 2024

Service of Notice

I acknowledge that I have received a copy of this notice and my attention has been drawn to the accompanying notes.


Signature of Officer concerned:		Date:	1/8/2024
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I authorise a copy of this notice to be forwarded to my Staff Association.

Yes

No

If the notice is not given to the officer by the person investigating please append the name and signature of the person giving the notice below:

Name:	R BOWLES C1236	Signature:		Date:	01/08/24
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EXPLANATORY NOTES

1. This notice has been issued to inform you as soon as practicable, and in any case within 5 working days of the conclusion of the misconduct proceedings, of the findings of the person or persons conducting the misconduct proceedings and any disciplinary action imposed. This written notice shall also set out a summary of the reasons for the finding(s) and outcome in this case (in accordance with Regulation 63 of the Police (Conduct) Regulations 2020).
2. The proceedings at a misconduct hearing shall be recorded verbatim.
3. You may appeal the determination of an accelerated misconduct hearing to a police appeals tribunal. This appeal shall be given in writing to the relevant Police force before the end of 10 working days, beginning the day after the receipt of this notice.
4. As part of the notice of appeal, you may request a transcript of the misconduct proceedings or part thereof.
5. Misconduct hearing appeals shall be determined by a police appeals tribunal. Notice of appeal may be given within a reasonable time after the 10 day period and it shall be for the chair of the police appeals tribunal to determine whether or not it was reasonable for notice to be given within the 10 day period and grant leave to appeal or dismiss the appeal application.
6. If you admitted at the misconduct proceedings that your conduct amounted to gross misconduct then you may only appeal against the disciplinary action imposed. If you denied the gross misconduct then you may appeal both the finding and the disciplinary action. The grounds for appeal are that the finding / disciplinary action imposed was unreasonable; that there is evidence that could not reasonably have been considered at the original hearing which could have materially affected the finding or decision on

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disciplinary action; that there was a breach of the procedures or other unfairness which could have materially affected the finding or decision on disciplinary action.

7. Any disciplinary action (outcome) shall have effect from the date on which you receive a copy of this Regulation 63 notice.
8. If the outcome of these proceedings was a final written warning then a record of this Regulation 63 notice shall be placed on your personal file until such time as the warning is expunged. A final written warning shall remain live for a period of 2 years or for any such period as the person determining the sanction may determine, up to a maximum of 5 years.
9. You should be aware that if you have a 'live' final written warning and are subject to further misconduct proceedings then those proceedings shall be a misconduct hearing and you will be at risk of dismissal from the service.
10. Subject to a final written warning being expunged, in cases of proceedings where the outcome is a final written warning, revelation of this information to the CPS may be required under Chapter 18 of the Disclosure Manual. Advice as to the question of revelation can be obtained from the Professional Standards Department. The Professional Standards Department will give you advice in relation to when the warning or final warning should be revealed
11. Revelation must, if applicable, be made by submission of a completed MG6B with each relevant witness statement provided.
12. You need to be aware of the potential impact of a failure to comply with the requirements of Chapter 18 of the Disclosure Manual. Where this is the case the result may be unfairness to the accused but also convictions that are vulnerable to appeal. Where a police officer fails to fulfil their obligations this may result in misconduct proceedings being taken against them.