

# Public Document Pack



## Cheshire Police and Crime Panel Agenda

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**Date:** Friday, 15th March, 2019  
**Time:** 10.00 am  
**Venue:** Council Chamber, Wyvern House, The Drumber, Winsford  
CW7 1AH

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The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

1. **Exclusion of the Public and Press**

To consider passing a resolution under Section 100(A)(4) of the Local Government Act 1972 to exclude the public and press from the meeting for the following item(s) of business on the grounds that they involve the likely disclosure of exempt information in accordance with paragraphs 1 and 2, pursuant to part 1 of Schedule 12 (A) of the Act.

**PART 2 - MATTERS TO BE CONSIDERED WITHOUT THE PRESS AND PUBLIC PRESENT**

2. **Review and Scrutiny of the Police and Crime Commissioner's decisions and actions in relation to the disciplinary action taken against the former Chief Constable, Simon Byrne**

The Panel Members will question the Commissioner in private.

**PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT**

**These items will not be taken before 11.00am**

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3. **Apologies**

Members are reminded that, in accordance with governance procedure rule 2.7, Panel Members, or their constituent authority, may nominate substitute members of the Panel in the event that the appointed representative(s) is/are unable to attend the meeting. Advance notice of substitution should be given to the host authority wherever possible. Members are encouraged wherever possible to secure the attendance of a substitute if they are unable to be present.

4. **Code of Conduct - Declaration of Interests. Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012**

Members are reminded of their responsibility to declare any disclosable pecuniary or non-pecuniary interest which they have in any item of business on the agenda no later than when the item is reached.

5. **Public Participation**

To receive questions from members of the public in accordance with governance procedure rule 14. A total period of 15 minutes will be allocated for members of the public to speak at Panel meetings. Each member of the public shall be limited to a period of up to 5 minutes speaking.

Members of the public may speak on any matter relating to the work of the Panel. During public speaking time, members of the public may ask questions of the Panel and the Chairman, in responding to the question, may answer the question, may decline to do so, may agree to reply at a later date or may refer the question to an appropriate person or body.

Questions will be asked and answered without discussion. In order for officers to undertake any background research, members of the public who wish to ask a question at a Panel meeting should submit the question at least a day before the meeting.

Members of the public are able to put questions direct to Cheshire's Police and Crime Panel via social media platform Twitter.

The Cheshire Police and Crime Panels' Twitter account @CheshirePCP

6. **Minutes of Meetings Held on 8 February 2019 (Pages 5 - 14)**

To approve the minutes of meetings held on 8 February 2019:

Regular meeting of the Panel  
Confirmation Hearing

7. **Review and Scrutiny of the Police and Crime Commissioner's decisions and actions in relation to the disciplinary action taken against the former Chief Constable Simon Byrne (Pages 15 - 58)**

To consider the above report.

8. **Constabulary Recruitment Process**

To receive an oral update.

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**CHESHIRE EAST COUNCIL****Minutes of a meeting of the Cheshire Police and Crime Panel**  
held on Friday 8 February 2019 at Wyvern House, Winsford**PRESENT**

Councillors:

Cheshire East	Councillors J Paul Findlow, Mick Warren and Steve Edgar
Cheshire West & Chester	Councillors Martyn Delaney, Andrew Dawson and Robert Bissett
Halton	Councillors Dave Thompson and Norman Plumpton Walsh
Warrington	Councillors Jan Davidson and Brian Maher
Independent Co-optees	Mr Bob Fousert, Mr Evan Morris and Mrs Sally Hardwick
Officers:	Mr Daniel Dickinson and Mr Martin Smith (Secretariat, Cheshire East Council)

**1. APOLOGIES**

No apologies were received.

**2. CODE OF CONDUCT - DECLARATION OF INTERESTS. RELEVANT AUTHORITIES (DISCLOSABLE PECUNIARY INTERESTS) REGULATIONS 2012**

There were no declarations of interest.

**3. PUBLIC PARTICIPATION**

No members of the public who wished to speak were in attendance.

**4. MINUTES OF PREVIOUS MEETING**

The minutes of the previous meeting were reviewed.

**RESOLVED**

That the minutes of the meeting held on 14<sup>th</sup> December 2018 be approved as a correct record.

**5. LOCATION, DATE AND TIMINGS OF PANEL MEETING**

The Panel discussed the programme and timings of meetings for the coming year, taking the view that Panel meetings should continue to be held across Cheshire, with the February meeting, where the Police and Crime Commissioner's Precept was discussed, being held at Wyvern House where live webcasting was available. Times of meetings should be varied, so as to make attendance easier for Panel members who worked.

**RESOLVED**

The Secretariat was asked to circulate a draft programme of meeting locations and times, with some meetings being held at times other than 10.00am on a Friday.

**6. POLICE AND CRIME COMMISSIONER'S PROPOSED PRECEPT FOR 2019/20**

The Chairman welcomed the Commissioner to the meeting.

The Commissioner outlined the background to the setting of his proposed precept, noting that in his view a decade of national austerity had had a profound impact on public services, including policing. He wished to put on record his gratitude to all Police Officers and civilian staff members at Cheshire Constabulary for the work that they undertook.

The Commissioner outlined that the recent announcement by Government on Police funding had been predicated on Commissioners across the country increasing precepts by the maximum amount possible. He was of the view that the true effect of the announcement was a decrease in funding available to the Police nationally.

Starting in January 2019 the Commissioner had undertaken a public consultation exercise. Responses had been positive, with two thirds of those responding supporting the proposed increase in the precept. However, the Commissioner recognised that many people would have difficulties in affording higher levels of Council Tax.

Mrs Sally Hardwick asked the Commissioner for clarification over whether the cost of the former Chief Constable's disciplinary hearing was being recovered in the proposed budget for 2019/20. The Commissioner responded, saying that the costs of the disciplinary process had been published and that savings he had delivered in his office costs had more than covered the costs of the

disciplinary process. He indicated that disciplinary processes were common to all Police areas and the costs were met from Police budgets.

Mr Bob Fousert asked the Commissioner how he would maximise income from proceeds of crime legislation. The Commissioner indicated that it was important that money was recovered from criminals, sending a clear message that crime did not pay. He had sought, on a number of occasions, the assurance from the Acting Chief Constable that in all relevant cases recovery of money was considered. He noted that his draft budget included stable funding for the Constabulary's Economic Crime Unit.

Councillor Andrew Dawson sought clarification over the overall budget available to the Police, noting that income came from a number of sources. He indicated that in the period 2016 – 2020 the Police budget would have increased by over 11 percent, inflation over the same period would have been 8 percent. The Commissioner challenged these figures, noting that when the increased pension liability was included, Police inflation was greater than 8 percent.

Councillor Dawson welcomed the proposed increase in Police Officers and Police Community Support Officers (PCSO); but noted that these increases simply restored cuts imposed by the Commissioner in earlier years. The Commissioner noted that the staffing levels under his proposed precept would be the highest since 2011.

Councillor Dawson sought clarification over capital receipts and the disposal of redundant property assets. The Commissioner clarified that capital receipts were normally reinvested and noted that he was overseeing an ongoing estates review, which in a number of cases was seeing accommodation being shared with the Fire and Rescue Service.

Mr Evan Morris questioned the consultation process that had been undertaken with the public over the proposed budget. The Commissioner outlined the process that had been followed, but recognised that overall responses levels had been relatively low. He asked Panel members for any advice they may have on the process which could be applied in future years. He noted that one option was to hold a referendum on a proposed increase in the precept, but was concerned that in Cheshire this would cost in excess of £1m.

Mr Morris informed the Panel that the Fire and Rescue Service were only proposing a precept increase of approximately 3 percent; significantly lower than that being proposed by the Commissioner. The Commissioner noted that the Government had set a 3 percent cap on the increase in Fire and Rescue Services precepts.

Clarification was sought by the Chairman, Mr Robert Fousert over opportunities for income generation. The Commissioner indicated that the Police Service only had limited powers to generate income and that a recent national court ruling relating to charging third parties for policing outdoor events had reduced opportunities for income generation.

Councillor Robert Bisset indicated his support for the proposed precept, highlighting the level of cuts imposed on the Police Service over recent years

by national Government. Councillor Dave Thompson noted the frustrations of both the previous and current Commissioner with national Government over Police funding. By way of example he highlighted the impact that the closure of courts on Police workload and productivity.

Councillor Norman Plumpton Walsh highlighted the pressure put on the Police by the need to respond to those suffering from mental illness. Councillor Jan Davison noted the impact of homelessness on the work of the Police service in Cheshire.

The Chairman thanked Clare Hodgson, the Commissioner's Chief Finance Officer for producing a well written and accessible budget report.

### **RESOLVED**

That the Panel support the precept without qualification or comment.

## **7. OVERVIEW AND SCRUTINY OF THE POLICE AND CRIME COMMISSIONER - QUESTIONS TO THE POLICE AND CRIME**

Mrs Sally Hardwick challenged the Commissioner over the way in which data on Police complaints and satisfaction were managed. She recognised that the system was being reviewed and asked for clarification over the timetable for this. The Commissioner responded by indicating that changes nationally had been delayed due to a shortage of Parliamentary time. Mrs Hardwick thanked the Commissioner for the support that his Office was providing to her over this issue. The Commissioner welcomed her input in what he saw as an important area of activity .

Councillor Andrew Dawson referred to increases in published crime statistics in relation to public order and criminal damage / arson. He asked the Commissioner if he had raised these increases with the Police and if he had, what was being done about it. The Commissioner indicated that he was aware of the increases and had raised this, both formally at Scrutiny meetings and at his regular meetings with the Acting Chief Constable. An element of the increase was due to changes in recording procedures required by Her Majesties Inspectorate of Constabulary. Warm weather and outdoor sporting events, such as the World Cup in the summer of 2018 were also likely to have contributed. Councillor Dawson specifically referred to a range of statistics relating to antisocial behaviour. The Commissioner responded by saying that he did not recognise the specific figures quoted by Councillor Dawson, but would be happy to look into the issue further if Councillor Dawson could give him more information.

Mr Evan Morris asked for the Commissioner's views on the "tri service" officer approach that had been adopted by Devon and Cornwall Police. The concept had originated some years ago in Cheshire. The Commissioner indicated that he was following this work very closely and it was possible that elements of it could be successful in Cheshire. He invited Mr Morris to attend a meeting with the Fire and Rescue Service, Mr Morris suggested that a meeting with Devon

and Cornwall would be a useful way of taking things further; this approach was welcomed by the Commissioner.

Councillor Mick Warren asked for the Commissioner's views on the policy of single crewing, where Police Officers operated on their own. The Commissioner indicated that he had spoken to the both the previous and current Acting Chief Constables about this issue. He had requested that a review be undertaken, the outcome of which was awaited.

The Chairman, Mr Robert Fousert, questioned the Commissioner over the amount of detail contained in the diary section of his website. The Commissioner noted that all public events were included in his published diary, but agreed to review the amount of information that was published. The Chairman also asked if the way in which links on the Commissioner's website were highlighted could be reviewed. The Commissioner indicated that the website had recently been reviewed; but that the Chairman's comments would be considered next time the layout of the website was revised.

### **8. WORK PROGRAMME**

A revised work programme would be circulated with the draft programme of future Panel meetings. The Panel indicated that it wished to continue the current pattern of informal meetings with the Commissioner.

### **9. REVIEW AND SCRUTINY OF THE POLICE AND CRIME COMMISSIONER'S DECISIONS AND ACTIONS IN REACTION TO THE DISCIPLINARY ACTION TAKEN AGAINST THE FORMER CHIEF CONSTABLE SIMON BYRNE**

The Chairman read statement outlining how this important issue would be taken forward. A copy of the statement is attached to these minutes.

### **10. DATE OF NEXT MEETING**

The date of the next meeting was confirmed as being on 15<sup>th</sup> March 2019.

**Statement made by the Chairman of the Cheshire Police and Crime Panel**

**Friday 8<sup>th</sup> February 2018**

Ladies and gentlemen, at the last Cheshire Police and Crime Panel meeting held on 14<sup>th</sup> December 2018 the Panel advised the Commissioner that as only three days had passed since his release of the findings of the Hearing into the allegations of Gross Misconduct against the former Chief Constable, Mr Simon Byrne, the Panel would need time to fully consider this report and its implications. As a result, it was decided to scrutinise this matter at its next meeting to be held on the 8<sup>th</sup> February 2019.

This was also confirmed in writing to the Commissioner on 20<sup>th</sup> December 2018, together with a request for details in relation to:

- Legal advice received,
- HR advice received,
- Detailed breakdown of all costs in relation to this matter including but not limited to:
  - Costs of the investigation
  - Cost of advise to yourself
  - Cost of the disciplinary process/hearings
  - Employment related costs during the period the Chief Constable was suspended.
- A written chronology of this matter from receipt of complaint, including dates of advice taken, investigation details, disciplinary hearing and decisions made by the Commissioner.

To date the Panel have received information regarding the costs involved and the chronology of events, but has yet to be notified of information regarding HR advice, nor any Legal advice received, which it has been advised, will only be provided subject to Panel members signing a confidentiality agreement.

As the Agenda for today's meeting is very full with consideration having been given to the Police Precept for 2019/20 and the legal requirement to hold a Confirmation hearing into the appointment of a new Chief Constable (required by statute to be carried out within three weeks of the appointment being announced) the Panel advised the Commissioner that the scrutiny of his handling of the gross misconduct proceedings would require a further meeting and that this should take place on 15<sup>th</sup> February 2019. The Panel has since been advised that the Commissioner is unable to attend a meeting on that date, because he has a full diary.

As two months have already passed since the disclosure of the Hearing's final report on 11<sup>th</sup> December 2018, the Panel is of the opinion that it is not in the public interest for this matter to continue to drag on. The Panel is also of the opinion that it would not serve the scrutiny process well, to undertake the process

in a piece meal fashion. Therefore, the Panel is requesting that the Commissioner sets aside a whole day on Friday 15 March 2019 in order that the scrutiny process can be carried out and, hopefully, completed. This will also allow time for the Commissioner, if he so wishes, to prepare a statement in relation to questions that have been submitted by the Panel.

As such it is proposed to adjourn this item on today's agenda until Friday 15<sup>th</sup> March 2019.

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**CHESHIRE EAST COUNCIL**

**Minutes of a meeting of the Cheshire Police and Crime Panel**  
held on Friday 8 February 2019 at Wyvern House, Winsford

**PRESENT**

Councillors:

Cheshire East	Councillors Mick Warren and Steve Edgar
Cheshire West & Chester	Councillors Martyn Delaney, Andrew Dawson and Robert Bissett
Halton	Councillors Dave Thompson and Norman Plumpton Walsh
Warrington	Councillors Jan Davidson and Brian Maher
Independent Co-optees	Mr Bob Fousert, Mr Evan Morris and Mrs Sally Hardwick
Officers:	Mr Daniel Dickinson and Mr Martin Smith (Secretariat, Cheshire East Council)

**1. APOLOGIES**

Apologies were received from Councillor J Paul Findlow (Cheshire East Council)

**2. CODE OF CONDUCT - DECLARATION OF INTERESTS. RELEVANT AUTHORITIES (DISCLOSABLE PECUNIARY INTERESTS) REGULATIONS 2012**

There were no declarations of interest.

**3. CONFIRMATION HEARING FOR THE APPOINTMENT OF CHIEF CONSTABLE**

The Panel held a confirmation hearing for the appointment of Chief Constable. Having first been addressed by Gill Lewis, the Independent Recruitment Panel member and Associate of the College of Policing, the Panel questioned Mr Darren Martland over his suitability for the position of Chief Constable.

The Panel resolved to exclude the press and public from the meeting for its private discussion over whether to recommend Mr Martland for appointment.

**RESOLVED**

That it was the Panel's unanimous opinion that Mr Martland should be recommended for appointment.

# Cheshire Police and Crime Panel

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**Date of Meeting: 15 March 2019**

**Report of: Daniel Dickinson on behalf of the Chair of the Panel**

**Subject: : Review and scrutiny of the Police and Crime Commissioner's decisions and actions in relation to the disciplinary action taken against the former Chief Constable Simon Byrne**

## **1. Report Summary**

- 1.1 This report sets out an overview of the facts relating to the actions and decisions taken by the Police and Crime Commissioner in relation to the disciplinary action taken against the former Chief Constable Simon Byrne (referred to as Mr Byrne from this point). That action concluded with the report of the Disciplinary Panel dated 8th November 2018 to the Commissioner (as the Appropriate Authority).
- 1.2 The Cheshire Police and Crime Panel has chosen to review and scrutinise the Commissioner's actions and decisions in that process pursuant to Section 28 of the Police Reform and Social Responsibility Act 2011 (PRSRA). Section 28(6) of PRSRA places the general duty on a PCP to scrutinise the PCC's exercise of his functions in respect of matters not specifically covered in other parts of that section of the Act.

## **2. Recommendation**

- 2.1 To review and scrutinise the decision and actions of the Police and Crime Commissioner in relation to his decisions and actions regarding the disciplinary action.
- 2.2. If considered appropriate by the Panel to make a report or recommendation to the Police and Crime Commissioner

## **3. Background information**

- 3.1 In October 2016 the Commissioner received complaints via Cheshire Police Federation and an IPCC (now IOPC) Intelligence Report in relation to the Conduct of Mr Byrne. As a result of these complaints, the Commissioner appointed the Chief Constable from North Yorkshire Police Constabulary as Investigator to undertake an investigation in relation the complaints.
- 3.2 In March 2017 a Regulation 16 Police (Complaints and Misconduct) Regulation 2012 notice of allegations was served on Mr Byrne setting out allegations of misconduct. Mr Byrne responded to the same, denying the allegations.

- 3.3 In June 2017 the Commissioner received the report from the Investigator. In August 2017 the Commissioner decided that Mr Byrne had a case to answer of gross misconduct. Mr Byrne was suspended in August 2017 pending the conclusion of a disciplinary hearing. In September 2017, a Regulation 21 Notice was served on Mr Byrne setting out the allegations of gross misconduct which Mr Byrne responded to, denying the same, in November 2017.
- 3.4 The misconduct panel was convened in line with the Police (Conduct) Regulations 2012. This was made up of Rachel Crasnow QC as Chair, Her Majesty's Inspector of Constabulary Mr Matt Parr OB and Sir Professor Robert Boyd. Mr Mansoor Shah replaced Professor Boyd following the April hearing due to personal circumstances. The public hearing was held over a number of dates between April and September 2018. The various dates and matters considered are particularised in the chronology attached (Appendix 1).
- 3.5 On the 8<sup>th</sup> November 2018 the Panel issued its report to Mr Byrne and the Commissioner. A copy of which is attached (Appendix 2).
- 3.6 The Commissioner has provided details of the costs which are included below. In addition, following correspondence between the panel and the Commissioner regarding the legal advice the Commissioner received in respect of the disciplinary process, and after agreeing adequate measures to safeguard legal professional privilege and other information contained in that advice, the Commissioner has provided the panel with a copy of advice requested. The Commissioner has agreed to take questions from the Panel which might otherwise compromise privilege and/or other confidential information in a private session of the panel meeting.
- 3.7 The Panel submitted a range of questions to the Commissioner in advance of this meeting; the questions and the Commissioner's answers are attached (Appendix 3). At the meeting further questions may be asked by Panel members of the Commissioner.

#### **4. Financial Implications**

- 4.1 In line with the Police & Crime Commissioner's indication that he would publish costs in relation to the gross misconduct proceedings regarding former Chief Constable Simon Byrne the Commissioner provided the following breakdown of the costs.
- 4.2 The Commissioner has confirmed that the figures below represent the position as of 10<sup>th</sup> January 2019 and that it is not expected that there will be any substantive or significant additions.

<b>Category</b>	<b>Costs (£)</b>
North Yorkshire Police Investigation	Nil
Appropriate Authority Legal Representation	274,749
Independent Panel Costs including travel & expenses	21,614

Public Hearing Premises Hire Related Costs	15,001
Hotel Accommodation (Independent Panel members and counsel)	6,059
Professional Fees (Audit)	2,950
Courier Service	265
<b>Sub Total</b>	<b>320,638</b>
Command Team additional salary costs during period of Mr Byrne's suspension	100,836
<b><u>Total</u></b>	<b><u>421,474</u></b>

**5. Equality implications**

5.1 No equality implications at this time.

**6. Contact information**

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## **Gross misconduct proceedings in relation to former Chief Constable Simon Byrne – Chronology and summary of legal advice**

The chronology serves to outline the key events following the matters being brought to the attention of the Police & Crime Commissioner. It does not seek to detail each and every piece of correspondence or activity.

The Police & Crime Commissioner can confirm that legal advice was received in the matters relating to former Chief Constable Simon Byrne. Within the chronology key legal advice points have been highlighted. However, it is essential to note that the Police & Crime Commissioner, as Appropriate Authority (referred to as PCC from here on) in this matter, sought regular and on-going legal advice throughout the entirety of the process.

Regulations referred to relate to Police (Conduct) Regulations 2012 unless stated otherwise.

<b>Date</b>	<b>Event</b>
21 October 2016	<p>Letter dated 19 October 2016 received from the Secretary of the Cheshire branch of the Police Federation. This included a 9 page statement from Witness C detailing a complaint against Mr Byrne.</p> <p>On the same day (21 October 2016) the PCC received an Intelligence Report from the then Independent Police Complaints Commission (IPCC). This alleged that Mr Byrne had developed a culture of bullying in the force and had personally bullied 8 female members of staff and officers.</p>
9 November 2016	<p>Advice from Queen's Counsel in the form of a telephone conference and briefing note.</p> <p>PCC sought Counsel's advice on the allegations made in terms of their nature, severity and the applicable processes and procedures to be followed.</p> <p>That advice is, of course, covered by Legal Professional</p>

Date	Event
	Privilege which the PCC does not, by referring to it, waive.
21 October 2016 – 15 November 2016	<p>PCC shared the letter only from the Cheshire Police Federation with Her Majesty’s Inspector of Constabulary for whom Cheshire Constabulary was within their remit and sought an initial view.</p> <p>All documents also shared with the then OPCC Chief Executive.</p> <p>PCC received professional and independent guidance, sought Counsel’s advice on the allegations made in terms of their nature, severity and the applicable processes and procedures to be followed.</p> <p>Having considered the allegations, the PCC recorded the allegations as conduct matters within the meaning of the Police Reform Act 2002.</p>
15 November 2016	<p>Telephone conference with IPCC Commissioner.</p> <p>Having recorded the matters, the PCC referred them to the IPCC on a discretionary basis under paragraph 13(2) of Schedule 3 to the Police Reform Act 2002.</p>
15 November 2016 – 28 November 2016	Following correspondence with the IPCC, they confirmed that an investigation into the matters was required under paragraph 14 of Schedule 3 of the Police Reform Act 2002 and that it should be a “local” one conducted under paragraph 16 of Schedule 3 of the Police Reform Act 2002.
15 December 2016	PCC appoints Chief Constable Dave Jones (subsequently retired) as investigator – referred to as investigator from here on.
20 January 2017	<p>Terms of Reference between investigator and PCC finalised.</p> <p>PCC sets out in the Terms of Reference that the investigation must be demonstrably fair to all concerned and compliant with the statutory pathway.</p> <p>In addition, it outlined that the investigator was required to undertake a thorough, proportionate and timely investigation into the allegations, act at all times in accordance with the relevant legislation and as soon as practicable submit a report on the investigation to the PCC in accordance with paragraph 22 of Schedule 3 PRA.</p>

Date	Event
1 March 2017	Investigator serves Regulation 16 Police (Complaints and Misconduct) Regulations 2012 notice of allegations on Mr Byrne.
4 May 2017	Mr Byrne serves his Regulation 18 Police (Complaints and Misconduct) Regulations 2012 response in which he denies allegations of misconduct.
15 June 2017	<p>Investigator's report received accompanied by statement and duty reports in relation to 26 individuals and 62 exhibits.</p> <p>Case to answer for multiple allegations of misconduct identified by the investigator.</p>
31 July 2017	<p>Advice from Queen's Counsel in the form of an 'in person' conference and conference note following receipt of the investigator's report.</p> <p>The legal advice relevant to the case to answer dealt with the legal approach to be taken in case to answer decisions, rather than whether or not Mr Byrne has a case to answer. It set out the test for a case to answer and the process the PCC should follow to reach his own determination.</p> <p>That advice is, of course, covered by Legal Professional Privilege which the PCC does not, by referring to it, waive.</p>
17 August 2017	<p>PCC takes Regulation 19 determination that there is a case to answer for gross misconduct.</p> <p>In making the decision that there was a case to answer for gross misconduct the PCC considered that the investigator had not in fact applied the "case to answer" test properly and had not taken into account the aggregate effect of the allegations.</p>
22 August 2017	<p>PCC takes Regulation 10 determination that the public interest requires that Mr Byrne be suspended pending the conclusion of the hearing.</p> <p>In making the decision the PCC had regard to Mr Byrne's exemplary police record, carefully considered the nature of the allegations ranged against him and considered temporary redeployment.</p>

Date	Event
	<p>Deputy Chief Constable Janette McCormick was immediately put in place as the Acting Chief Constable for Cheshire Constabulary</p> <p>The (former) Chair of the Police &amp; Crime Panel was briefed confidentially.</p>
29 September 2017	Regulation 21 notice (including details of the alleged charge) served by the PCC.
29 September 2017 – 13 October 2017	<p>Independent Panel as required by the Regulations confirmed as:</p> <ul style="list-style-type: none"> <li>▪ Ms Rachel Crasnow QC – Legally Qualified Chair</li> <li>▪ Her Majesty’s Inspector of Constabulary Mr Matt Parr OB</li> <li>▪ Sir Professor Robert Boyd (replaced by Mr Mansoor Shah following the April 2018 hearing due to Professor Sir Robert Boyd’s availability in July 2018)</li> </ul>
3 November 2017	Mr Byrne’s representatives serve Regulation 22 response in which Mr Byrne denies all the allegations.
16 November 2017	<p>Advice from Queen’s Counsel in the form of an ‘in person’ conference and conference note focused on four matters:</p> <ul style="list-style-type: none"> <li>▪ Abuse of process arguments</li> <li>▪ Disclosure</li> <li>▪ Live witnesses</li> <li>▪ Regulation 27A</li> </ul> <p>That advice is, of course, covered by Legal Professional Privilege which the PCC does not, by referring to it, waive.</p>
6 December 2017	Independent Chair of the misconduct panel makes determination under Regulation 23 regarding witnesses required to attend to give live evidence.
15 December 2017	<p>PCC serves:</p> <ul style="list-style-type: none"> <li>▪ Opening note</li> <li>▪ Amended Regulation 21 charge (particularisation)</li> <li>▪ Hearing Bundles</li> </ul>
18 December 2017	A telephone Case Management Hearing was attended by both prosecution and defence representatives, chaired by the independent Chair of the misconduct panel. The Chair ordered that the gross misconduct hearing listed for 3 January 2017 be postponed to 16 April 2018 to enable adequate preparation time

Date	Event
	for the hearing, given the volume of materials. The decision was taken following an application made by Mr Byrne's legal representatives. The application had been opposed by the PCC.
7 February 2018	Regulation 27A notice published on PCC's website including the details of the amended charge.
16 – 24 April 2018	<p>Public Hearing - This was primarily taken up by a legal argument concerning an application on behalf of Mr Byrne to stay the proceedings on the grounds that they were an abuse of process. This application was rejected.</p> <p>Hearing adjourned until 2 July 2018 at which time the substantive hearing would begin.</p>
22 April 2018	<p>Advice from Queen's Counsel in the form of a briefing note prior to, and what might happen on receipt of the Independent Panel's judgement on the application to stay proceedings.</p> <p>That advice is, of course, covered by Legal Professional Privilege which the PCC does not, by referring to it, waive.</p>
30 April 2018	<p>Independent Panel issues report outlining written judgement and reasons regarding the rejection of Mr Byrne's application to stay the proceedings.</p> <p>Report published on the PCC's website.</p>
6 June 2018	<p>Advice from Queen's Counsel in the form of a briefing note providing advice on the procedural implications of the expiry of Mr Byrne's fixed term appointment.</p> <p>That advice is, of course, covered by Legal Professional Privilege which the PCC does not, by referring to it, waive.</p>
2 – 13 July 2018	<p>Public Hearing – 24 witnesses gave evidence for the presenting side, and Mr Byrne gave evidence in his defence.</p> <p>Hearing adjourned to 17 September 2018 for oral closing submissions.</p>
1 September 2018	Written closing submissions provided to the panel by the PCC and Mr Byrne.

<b>Date</b>	<b>Event</b>
17 September 2018	Public Hearing – Oral closing submissions were given to the panel by representatives of the PCC and representatives of Mr Byrne.
8 November 2018	Panel issues a full written report of their findings to the PCC and Mr Byrne.
11 December 2018	Regulation 34 Hearing undertaken in compliance with the Police (Conduct) Regulations 2012. The Police & Crime Commissioner confirmed, in public, that the independent panel found that no allegations of misconduct or gross misconduct were proved against Mr Byrne and that all allegations were dismissed.  Panel's report published on the PCC website.

**Report for the attention of the Appropriate Authority into the Gross Misconduct Hearing concerning the former Chief Constable of Cheshire Constabulary Simon Byrne**

**8 November 2018**

**Introduction**

1. This report is to be submitted to the Appropriate Authority (AA) for Cheshire in compliance with Regulation 33(16)(a)-(d) of the Police (Conduct) Regulations 2012 (the 2012 Regulations). It arises out of a gross misconduct hearing concerning former Chief Constable Simon Byrne. The authors are Panel Chair Rachel Crasnow QC, HMI Matthew Parr CB, and independent member Mansoor Shah.

**Background to Misconduct Hearing**

2. After Mr Byrne was suspended and an investigation commenced North Yorkshire Police, Mr Byrne was served with a Regulation 16 Notice on 1 March 2017 to which he replied on 4 June 2017 denying any breach of the standards of professional behaviour (SPBs). Following North Yorkshire Police's investigation into allegations of misconduct by Mr Byrne, an Investigatory Report dated 14 June 2017 was produced which alleged misconduct only.

3. The AA then brought charges which alleged gross misconduct in its Regulation 21 Notice dated 27 September 2017. It was said there that Mr Byrne had breached the SPBs in relation to Authority, Respect and Courtesy and Discreditable Conduct. In summary those allegations stated Mr Byrne lacked self-control and exhibited volatile, unpredictable and offensive behaviour towards subordinate officers and staff over a number of years. Mr Byrne's defence denying all the allegations was put forward in his Regulation 22 Response of 3 November 2017.

4. The charges were amended prior to the April 2018 hearing commencing and additional evidence was served by the AA. Mr Byrne did not claim to have insufficient time to consider these changes to the case against him prior to the hearing commencing. Mr Byrne in turn produced a witness statement and a large number of character statements.

5. The persons appointed to conduct the proceedings were Rachel Crasnow QC, HMI Matt Parr and Mansoor Shah. Before the substantive hearing which took place in July 2018, we convened in April 2018 to hear evidence and legal argument concerning an abuse of process argument on behalf of Mr Byrne. At the end of this part of the hearing we ultimately we rejected the application to dismiss the proceedings and ordered that the hearing continue. Our decision on Mr Byrne's abuse application should be read as an appendix to this report as we do not intend to repeat factual matters in relation to the investigation into the initial allegations by North Yorkshire Police.

6. For our April 2018 hearing Sir Robert Boyd formed the third member of our panel, but he was unable to sit in July 2018 so Mr Shah kindly agreed to replace him.

7. The July 2018 hearing lasted from 2-13 July. After it ended both parties produced long written closing submissions on 1 September which they supplemented with oral submissions on 17 September 2018. Since we as a panel knew we could not produce this report as soon as we

would have liked, we asked the parties if they would wish to know our determination on the allegations prior to receiving our written report containing reasons. They indicated they would, and were informed of our decision on 20 September 2018. We have endeavoured to produce this report as soon as is practicable.

### Burden and Standard of Proof

8. It is not contentious that the AA bears the burden on the civil standard, of proving:
- a. the facts alleged;
  - b. that the facts alleged amount to a breach or breaches of the Standards of Professional Behaviour ("SPB"); and
  - c. that any such breaches amount to gross misconduct or misconduct.

9. Since finding of gross misconduct would have very serious consequences for Mr Byrne, this brings into play the Home Office Guidance (HOG) at para 2.265 that *"the more serious the allegation of misconduct that is made or the more serious the consequences for the individual which flow from a finding against him or her, the more persuasive (cogent) the evidence will need to be in order to meet that standard. This does not mean that the standard is higher. It means only that the inherent probability or improbability of the conduct occurring is itself a matter to be taken into account when weighing the probability and deciding whether on balance the conduct occurred"*.<sup>1</sup>

10. We have born in mind that the Guidance reminds us at 2.266 to *"exercise reasonable judgement and give appropriate careful consideration to the evidence"*. We believe we have followed that guidance at all times.

### Code of Ethics

11. We have applied the College of Policing's 2014 Code of Ethics (replicated in the Home Office Guidance on Police Misconduct (most recently updated in June 2018)). We note the scope of and statutory basis of the Code set out in its Preamble, and further draw attention to the reference in the Code to Chief Officers, at para 1.4.3 of the Preamble, which makes it clear that such an officer must challenge those around him or her courageously and fairly, with consistency and with courage even where actions may provoke criticism. We have born this in mind when considering if there have been any breaches of these standards.

*"1.4.3 As the head of your force or organisation (chief officers) will:*

- *show by personal example how the principles and standards in this Code apply*
- *promote, support and reinforce ethical behaviour at all times*
- *show moral courage to do the right thing even in the face of criticism*
- *be consistent in what you do and say*
- *promote openness and transparency within policing and to the public*
- *promote fairness and equality in the workplace*
- *create and maintain an environment where you encourage challenge and feedback*

<sup>1</sup> <https://www.gov.uk/government/publications/circular-0172018-updated-home-office-guidance-on-police-misconduct>

- *be flexible and willing to change a course of action if necessary.*"

### The specific Standards of Professional Behaviour

12. We have particularly reminded ourselves of the sections of the Code of Ethics on the two standards alleged to have been breached here: Authority, Respect and Courtesy, and Discreditable Conduct. With respect to the Authority, Respect and Courtesy standard, the College of Policing's 2014 Code of Ethics states:

*"2.1 According to this standard you must:*

- *carry out your role and responsibilities in an efficient, diligent and professional manner*
- *avoid any behaviour that might impair your effectiveness or damage either your own reputation or that of policing*
- *ensure your behaviour and language could not reasonably be perceived to be abusive, oppressive, harassing, bullying, victimising or offensive by the public or your policing colleagues.*

*2.2 The reasons for your actions may not always be understood by others, including the public. You must, therefore, be prepared to explain them as fully as possible. Examples of meeting this standard are when you:*

- *remain composed and respectful, even in the face of provocation*
- *retain proportionate self-restraint in volatile situations*
- *recognise the particular needs of victims and witnesses for policing support*
- *step forward and take control when required by the circumstances*
- *keep an open mind and do not prejudge situations or individuals*
- *use your authority only in ways that are proportionate, lawful, accountable, necessary and ethical."*

13. When looking at examples of Mr Byrne exercising his judgment or behaviour in a way which in hindsight might be open to criticism, we need to understand the context and examine the situation in all its circumstances before deciding on any actual breach that has taken place and then if a breach then amounts to misconduct or gross misconduct. The questions are whether the reason for the action by Mr Byrne (eg a criticism or a reprimand) has been explained and what our view is about that given reason. The responsibilities of leadership involve challenging others' behaviour in ways which those on the receiving end could perceive as negative. We emphasise again the Code at para 1.4.3 above.

14. The Code of Ethics says about the Discreditable Conduct standard:

*"9.1 As a police officer, member of police staff or other person working for the police service, you must keep in mind at all times that the public expect you to maintain the highest standards of behaviour. You must, therefore, always think about how a member of the public may regard your behaviour, whether on or off duty.*

*9.2 You should ask yourself whether a particular decision, action or omission might result in members of the public losing trust and confidence in the policing profession.*

*9.3 It is recognised that the test of whether behaviour has brought discredit on policing is not solely about media coverage and public perception but has regard to all the circumstances."*

Examples of meeting this standard are when you:

- avoid any activities (work-related or otherwise) that may bring the police service into disrepute and damage the relationship of trust and confidence between the police and the public
- comply with the National Crime Recording Standard
- avoid any activities that may compromise your or any colleague's position in policing or compromise a police operation
- start work on time and are punctual while at work
- maintain a high standard of appearance when at work, whether in uniform or plain clothes – unless your role requires otherwise."

15. One area we will address below is a concern about Mr Byrne's late arrival at work. Our perception, having heard the evidence, was that those who worked in the ACPO office may not have appreciated either the range of duties in and out of the office Mr Byrne was involved in, nor the particular domestic responsibilities Mr Byrne took on at specific, finite times. There is no evidence that Mr Byrne kept this information from those he worked with; rather we find that with the passage of time between these events and the 2018 hearing, those who were once familiar with Mr Byrne's diary have grown understandably less familiar.

16. We are aware that the HOG recognises "*a breach of the Code of Ethics will not always involve misconduct or require formal action*" [§1.4 June 2018].

17. The Code of Ethics provides at paragraph 5.1 in relation to the heading "Breaches of the Code":

*"5.1.1 Breaches of the Code of Ethics will not always involve misconduct or require disciplinary proceedings. Breaches will range from relatively minor shortcomings in conduct, performance or attendance through to gross misconduct and corruption. Different procedures exist according to the type of unprofessional behaviour or misconduct alleged.*

*5.1.2 Relatively minor breaches of the Code may be simply and effectively dealt with through peer or team challenge. Others may require local management action – for example, by a line manager. More significant failures may require formal action by the individual's force or organisation – such as, in the case of police officers, the application of the Police (Conduct) Regulations or the Police (Performance) Regulations."*

Thus, even if we find a breach of the SPB, it is not necessarily the case that such a breach amounts to misconduct.

18. Whether the facts amount to a breach of the SPB will depend upon the context and all surrounding circumstances. It is possible for there to be occasions where behaviour was open to criticism, but the conduct was not unprofessional or notable. There might be behaviour where words or conduct were unfortunate, but do not fall sufficiently below the standard to amount to a breach. Not every shortcoming is a breach.

#### **Bullying vs. firm management**

19. We have reminded ourselves of the ACAS publications on workplace bullying including the ACAS Guide for Managers and Employers on bullying and harassment. We are well aware that

what amounts to a bullying is a matter of perception, and different witnesses can perceive the same events very differently.

20. In this case the AA alleged that rather than Mr Byrne simply utilising a firm management style, he went too far; and that his behaviour towards his office staff over long periods breached the SPB and amounted to bullying.

21. When considering this case we have applied these factors when analysing the charges and arriving at our determinations, particularly taking into account the guidance in the Code of Ethics we have referred to above. These factors seem to us to be appropriate behavioural principles for us to apply, bearing in mind the weight of responsibility and leadership upon a Chief Constable:

- A chief officer has the right to demand excellent performance from working under him or her.
- Where staff do not fulfil those expectations, or produce work which is substandard or tardy, the chief officer has a right to follow this up or admonish them constructively, as appropriate to the circumstances of the case.
- How demanding a chief officer should be on any given occasion will depend upon the specific circumstances of the case, including his or her familiarity and relationship with the colleague concerned.
- Lapses of good manners, careless behaviour, thoughtless comments and even sharp retorts are to be avoided and are far from commendable, but will generally not amount to misconduct. Such behaviour is not sufficiently serious or inappropriate to amount to professional misconduct, according to the case-law we have been taken to and which we summarise below. Whether such behaviour amounts to a breach of the SPB is a fact sensitive decision in each and every case.
- Crossness and moodiness does not necessarily denote a breach of the SPB – it depends upon the circumstances and the reasons for the behaviour.
- Not suffering fools gladly and being frustrated at poor and inexcusable performance may occur sometimes when trying to raise standards in a challenging environment. Natural human reactions do not breach the SPB *per se*, although care should always be taken to be professional.

### Misconduct

22. For an appropriate definition of what is meant by “misconduct” in these professional disciplinary proceedings, the parties referred us to the case of *Walker v Bar Standards Board* (unreported, an appeal to the Visitors to the Inns of Court, 19th September 2013).

23. The touchstone referred to in this barrister disciplinary case can be applied across the professional disciplinary regimes. In *Walker v Bar Standards Board*, Sir Anthony May, the former Lord Justice of Appeal, considered the meaning of “professional misconduct”. He concluded that on a literal interpretation, any breach of the Bar Code of Conduct however trivial would constitute professional misconduct. He held that this could not be the correct approach, saying:

“11. ...consistent authorities (including, it appears, other decisions of Bar Standards Board Tribunals) have made clear that the stigma and sanctions attached to the concept of professional misconduct across the professions generally are not to be applied for trivial

*lapses and, on the contrary, only arise if the misconduct is properly regarded as serious ...*

16. *...the concept of professional misconduct carries resounding overtones of seriousness, reprehensible conduct which cannot extend to the trivial."*

24. We were also taken to *Khan v Bar Standards Board* [2018] EWHC 2184 Admin (24th August 2018) per Mr Justice Warby at [§36]:

*"The authorities make plain that a person is not to be regarded as guilty of professional misconduct if they engage in behaviour that is trivial, or inconsequential, or a mere temporary lapse, or something that is otherwise excusable, or forgivable. There is, as Lang J put it, a 'high threshold'. Only serious misbehaviour can qualify ... in Walker Sir Anthony May was ... reaching for a touchstone to help distinguish the trivial or relatively unimportant from that which merits the 'opprobrium' of being labelled as professional misconduct."*

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We agree with this statement made by Counsel for Mr Byrne in written closing submissions and it follows from the cases we have been taken to by both sides:

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*"438. Given the clear stigma that attaches to a finding of misconduct for a professional and the implications such a finding has for the individual concerned, such a finding mandates that any misconduct must properly be regarded as "serious" before it can properly be regarded as misconduct."*

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25. Here there have been different interpretations of what was reasonable behaviour by Mr Byrne in Cheshire Constabulary. What one person considers ill treatment has been considered strong management by another. We have heard evidence from many witnesses, all of whose different perspectives have informed their view of Mr Byrne's behaviour. We have been in a position to weigh up and assess the credibility of those witnesses, having heard their testimony challenged as against (for example) contemporaneous documents and communications, and earlier or later statements whether made in documents or orally.

#### **Appointment of Mr Byrne**

26. Mr Byrne has over 35 years of policing experience: he successfully progressed through the ranks and served in Chief Officer roles in Merseyside Police, Greater Manchester Police and the Metropolitan Police Service. In May 2014 he was seconded to Cheshire Constabulary from the Metropolitan Police Service where he was serving as an Assistant Commissioner, and was appointed Chief Constable following the retirement of Chief Constable Whatton in June 2014.

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27. We heard clear evidence that Mr Byrne was appointed to make a difference and raise standards in Cheshire. The previous PCC (by whom he was appointed) must have been aware of Mr Byrne's reputation as a reformer and a driver of high standards. For Mr Byrne it was (at most) something of a sideways move, explained by his desire to serve closer to his family home.

28. The question of Mr Byrne's reputation was raised by the AA; in particular, it was implied that it stemmed from a 'pattern of behaviour' in previous roles, and also that it showed he was aware of the negative sides of his personality and thus was able to change them. We agreed that Mr Byrne's reputation undoubtedly preceded him. This was noted from the evidence of John

Armstrong and also that of Sonia Peacock. It seemed to us likely that some members of staff may have viewed his appointment with a degree of trepidation.

29. It is probable that this reputation coloured the views of staff against him from the outset. Although, with the arrival of a new Chief Constable, there was an expected change in the way business was conducted, it seemed to us likely that Mr Byrne's reputation created further resistance to that process of change. The staff office was open plan; it was easy for grumbles to be transmitted from person to person.

30. Mr Byrne's leadership and management style certainly differed from his predecessor. He attended very frequent meetings away from his office, and his schedules often changed at short notice. This, we concluded, created extra pressure on the staff office (which may not always have been aware of the reasons for such changes) but was attempting to keep pace with Mr Byrne's new organisational structures and pace of working. This, along with his more energetic and challenging style, inclined his support team from away from giving him their fullest support as he sought to raise the level of professionalism in the office.

31. During Mr Byrne's term of office at Cheshire Constabulary, a vacancy became available for the post of Chief Constable of Greater Manchester Police. Mr Byrne applied, seeing it as an opportunity for him to progress his career, whilst enabling him to remain close to home. He was unsuccessful in his application; but it was used by counsel for the AA to suggest a degree of selfishness and unrestrained ambition on Mr Byrne's part, as well as a lack of loyalty towards Cheshire Constabulary. We found this attack – which was peripheral to the main allegations against Mr Byrne – to be both unfair and unnecessary. In our view Mr Byrne was perfectly entitled to apply. It is right that those selecting for such posts have the widest possible field from which to choose. Mr Byrne had never given the impression that Cheshire was likely to be his last job in policing. And a job as attractive to him as Greater Manchester was likely to become vacant very infrequently.

#### **Cross admissibility and gaps in evidence**

32. We were addressed by the AA about the principle of cross admissibility. It was suggested that, in effect, it would be incredible for so many similar complaints to be made about Mr Byrne, and for them not be both accurate and significant. It would be harder to argue that they had been exaggerated, both in the substance of what happened and the effects on those involved. Whilst we were invited to draw conclusions from the cross admissibility of evidence about Mr Byrne from difference witnesses and involving different occasions, we have not needed to do that: we have been able to determine each allegation on its merits.

33. We did not find the 'tip of the iceberg' the AA suggested existed.

34. It was suggested to us that the inadequate investigation had prejudiced both sides, and meant that we would have to work harder to fill in pieces of the jigsaw that were missing – as North Yorkshire Police had not obtained all the evidence they might. But we have decided the allegations on the evidence before us. We do not think either side has been at a disadvantage because, for example there was no initial interview for Mr Byrne, or because North Yorkshire Police did not interview all those who worked in the ACPO office. It would be wrong to fill in the gaps where we do not have evidence by imagining what unseen witnesses might say. However, we are entitled to make inferences where they are backed up by evidence

**Our findings on the allegations**

35. We looked in detail at all 74 allegations made by the AA. In none did we find misconduct (or gross misconduct) proved. Rather than go through these in numerical order, we have grouped them into categories. A small number of allegations appear in more than one category. We also stress that we have found that in none of the allegations were any breaches of the Standards of Professional Behaviour (as set out in the Code of Ethics and derived from the Police (Conduct) Regulations 2012) proven: we have considered this issue specifically at category 5 below.

Category 1: The incident did not happen

36. In the first category we include those allegations where we have concluded that the incidents described, on the balance of probabilities, **did not happen**. The inclusion of 7 such allegations, we concluded, did little to enhance the credibility of the AA's case. The following allegations fall into this category:

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Allegation 1

The allegation is that Mr Byrne berated and belittled Mr Herndlhofer. We accept that there was a difficult relationship between Mr Byrne and the head of his IT department. We accept that Mr Byrne's insistence on using an iPad created extra work for the department. But no evidence was given that Mr Herndlhofer was berated or belittled.

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Allegation 2

This allegation is that Mr Byrne permitted his children to use his iPad. The basis for this assertion appears to be that Jane Orme found the device to be in airplane mode, and told the IT department that "Mr Byrne's sons may have changed the settings". Whether or not she said this, we heard no evidence to support the allegation that it actually happened.

Allegations 3 & 4

These concern Mr Byrne's alleged failure to attend a meeting to thank an officer for his work, and a subsequent email to Jane Orme asking why the meeting had not been arranged. No diary entry or email was produced to support this allegation. It does not follow that we believe Jane Orme has fabricated this episode. We accept that Mr Byrne was, in some respects, not the most punctilious or well-organised senior officer. It may be that Jane Orme has confused this incident with another hastily rearranged meeting. However, even if Jane Orme's account were accepted as true, Mr Byrne's behaviour could not reasonably be interpreted as misconduct.

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Allegation 9

This accuses Mr Byrne of failing to attend Chief Constables' Council, and of **wasting public funds**. But it is clear that Mr Byrne did attend, and that no public funds were wasted. This allegation does, however, tend to imply a degree of inefficiency amongst those working in Mr Byrne's office: it arose because he was 'double booked', being obliged to attend the Cheshire Show at the same time. This appears to have been highlighted relatively late, forcing Mr Byrne to make a last-minute change of plans.

Allegation 10

This allegation was withdrawn by the AA.

#### Allegation 20

This allegation concerns a meeting at which, according to Witness C, Mr Byrne threatened Jane Orme. In particular he is said to have told her to improve or “be in the office with her PDR”. There was clearly a meeting which discussed Jane Orme’s performance on 1 July 2014 (see Allegation 21); but only Witness C claims these words were used. Jane Orme could not remember them being used; and Mr Byrne denies using them. On the balance of probabilities, we believe Mr Byrne’s account to be the more reliable.

#### Category 2: The incident did not happen as alleged

37. In the second – and largest – category, although we accept that the incidents happened, we have concluded that they have been **described – usually through exaggeration – inaccurately**; a more balanced view of these incidents would fail to find any reasonable fault with Mr Byrne’s behaviour. Again, the volume and nature of these allegations tended to undermine the credibility of the case against Mr Byrne. The following allegations fall into this category:

#### Allegation 8

It is clear that a Chief Constable, in any police force, will occasionally miss appointments or make short-notice changes to his or her diary. In this allegation it is claimed that this happened repeatedly over a 2-month period in 2014. There is little in the way of diary entries or emails to support this assertion. And we concluded that the effect on Jane Orme of changes to appointments had also been exaggerated: it is the PA’s role to make new arrangements, and when necessary explain why changes have been made. There is no convincing evidence that Mr Byrne asked Jane Orme to provide false explanations for any absence.

#### Allegation 11

This resembles Allegation 10; the differences are in the dates, and in the additional allegation that public funds were wasted. On the latter subject, it is clear that Mr Byrne’s approach to public money was entirely appropriate: there are numerous email examples of him seeking to avoid unnecessary expenditure. As to his failure to attend meetings, again we find this to have been exaggerated. Where his plans changed, there was usually a perfectly reasonable explanation.

#### Allegation 14

This concerns a PowerPoint presentation Mr Byrne asked Jane Orme to prepare. The assertion is that Mr Byrne refused to cooperate with Jane Orme, and then criticised her for the standard of what she produced. We do not believe Mr Byrne “set her up to fail”. We believe the evidence for this allegation was inconsistent. On the balance of probabilities we prefer Mr Byrne’s account: that he gave reasonable guidance to Jane Orme, but that she failed to complete the task to a satisfactory standard. He was entitled to be dissatisfied and to express his frustration.

#### Allegations 18 & 22

These accuse Mr Byrne of being vindictive and bullying towards Jane Orme, in particular by telling her to leave if she did not like her job. For the first allegation the evidence came from PS Mace; for the second from Witness C. We accept Mr Byrne spoke to Jane Orme,

but not that the conversation was objectionable – there was no evidence from Jane Orme that it was. Both her evidence and that of Witness C appear exaggerated: our perception of these witnesses is that their evidence here is coloured by their dislike of Mr Byrne. We favour the account of this incident given by Mr Byrne – even without the corroboration given by Nicola Bailey.

#### Allegation 19

This concerns a meeting with Richard Muirhead, at which it is alleged that Mr Byrne's actions were intimidating and caused distress. There is no doubt the meeting occurred, but we do not believe it was as Jane Orme recalled. We believe she was asked to come in to take minutes, and not to be berated about papers. The clearest recollection of the meeting is from Mr Muirhead, who made some critical observations about her manner in the meeting. This accords with our impression of her as a witness as both defensive and prone to exaggeration.

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#### Allegation 21

Here it is alleged that Mr Byrne was aggressive towards Jane Orme and slammed papers on her desk. We find it difficult to accept the testimony of both Jane Orme and Witness C regarding this incident, largely because we observed that where there is some question about the performance of either, their accounts are so obviously prone to exaggeration. This may have been a difficult meeting. But difficult meetings are nothing abnormal in the workplace, and we do not accept Mr Byrne behaved in the way described.

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#### Allegation 24

It seems to us perfectly reasonable for Mr Byrne to have sought potential replacements for Witness C as his Staff Officer. Witness C's account of her conversation with PS Friend seems to us to have been exaggerated beyond credibility, and casts some doubt on Witness C's state of mind and the reliability of her evidence more widely. The account of PS Friend came across as measured and reasonable: it is impossible to find any measure of fault in Mr Byrne's conduct within this allegation.

#### Allegation 27

This allegation, and the two which precede it, relate to Mr Byrne's involvement in an arrest on 21 July 2014. The key charge under allegation 27 is that Mr Byrne's time as a Chief Officer was misapplied where he sought to participate in frontline duties, and that such participation served no policing purpose. Under questioning, Witness C's account of the event was revealed to be incorrect. And regardless, it seems to us impossible to argue that Witness C is a better judge of how a Chief Constable's time should be applied than Mr Byrne.

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#### Allegation 31

This relates to a telephone call made to Mr Byrne when he was at [REDACTED]. We found Mr Byrne's account of this conversation more compelling than that of Witness C. He may have invited the call; but he was entitled to curtail it given the circumstances. The suggestion of "aggressive ranting" seems to us most likely to have been an exaggeration on Witness C's part.

Allegation 32

This contains another allegation of a phone call in which Mr Byrne was said to be abrupt and rude. We accept that he was frustrated with IT problems – but not to the extent that Witness C (from her later statement) described, and not to an extent that could possibly constitute misconduct. A further accusation – that Mr Byrne failed to express any gratitude for Witness C's assistance – shows, we believe, a readiness to find any grounds, however tenuous, on which to criticise Mr Byrne.

Allegation 36

After Mrs Byrne broke her foot, Mr Byrne's diary came under predictable pressure. It does not appear to have been particularly well managed by his office staff. So whereas we accept the meeting with the Women's Network Association was missed, no blame can be attached to Mr Byrne.

Allegation 40

This is an allegation that Mr Byrne, in referring to Witness C, said he could not have someone who wasn't committed. The facts were not proven: Sonia Peacock was the chief witness, but could not say by whom she had been told that such a comment was made. In any event, we found her evidence tended towards exaggeration, and made too much of office gossip. We cannot attach any real weight to this evidence.

Allegation 42

This relates to a 'vision document' for the special constabulary, and an allegation that Mr Byrne's attitude to Witness C's work on it involved him setting an unnecessary and unreasonable deadline. This appears to us to be a disproportionate response (by Witness C) to a perfectly normal request for work from her (see Allegation 44 below). This interpretation was supported by the evidence of Ch Supt Bailey. In this instance, we concluded that its inclusion as an allegation says more about the attitude of Witness C than about the conduct of Mr Byrne.

Allegation 47

This is one of the group of allegations concerning the production of Witness C's PDR. We believe Mr Byrne acted entirely correctly in warning Ch Supt Bailey that the PDR would contain some negative comments. This strikes us as good management practice. That Ch Supt Bailey spoke about them to Witness C cannot be blamed on Mr Byrne and is, in any case, not an unreasonable course of action. It cannot seriously be argued that Mr Byrne intended to cause Witness C worry and distress.

Allegation 50

Again regarding the PDR, here it is alleged that Mr Byrne intended to cause Witness C worry and distress, and to undermine her. We do not accept this. The draft report certainly contains criticisms; it struck us as unlikely that they were not justified. Other witnesses – most notably DCC McCormick – saw the draft of the report, and appear to have viewed it as reasonable. The allegation, in contrast, seems to consider any form of unflattering PDR a breach of acceptable behaviour. But this cannot be: police leaders must have discretion in the views they form of others' performance. The draft report is mixed in tone – it is not wholly negative. It seems likely to us that Witness C was unable to accept any criticism from Mr Byrne by this stage. It is not reasonable for her to conclude that his intention was to cause worry distress or to undermine.

Allegation 53

In this allegation Mr Byrne is said to have shouted over the telephone at Witness A when stuck in traffic. Again, we find the account given by Witness C to be unreliable. The alternative explanation given by Mr Byrne – that he rang Witness C so that his lateness could be communicated to those expecting him – appears to us a more credible description of the incident.

Allegation 54

This alleges that Mr Byrne gave (by email) Witness A unreasonable tasks to perform, and then criticised her work. We believe, again, that this incident has been inaccurately described. Witness A did not complain about the email to her; it is clear that Mr Byrne was thinking ahead and expected someone else to compile the briefing.

Allegation 55

This blames Mr Byrne for asking about the circulation of a magazine around the office. Even were the allegation accepted at face value it seems a remarkably trivial matter to describe as misconduct; but it seems to us more likely that no circulation sheet was produced, and so Mr Byrne's inquiry was fair and reasonable.

Allegation 57

This wide-ranging allegation accuses Mr Byrne of bullying and humiliating behaviour towards Insp Buckingham. The main evidence for this is a statement from him that she "should be watching my back". We agree with Mr Byrne that this remark was taken out of context; it originated in a perfectly reasonable question within an email. That this remark can constitute, or contribute to, bullying and humiliating behaviour seems to us to suggest that Insp Buckingham's sensitivity to any criticism is heightened. She has, therefore, exaggerated both the behaviour of which she complains and its effect.

Allegation 58

This concerns the incident known as "Puddlegate". We were wholly unpersuaded by Insp Buckingham's account of the incident. It is contradicted by Supt Cleworth. It appeared to us an example of Mr Byrne's approach to leadership of his force: demanding high performance, and challenging his staff to produce the best for the public. It is, we believe, wrong to attribute malevolent intent to Mr Byrne's actions during this incident. Again, to do so says more about the attitude and mindset of Insp Buckingham than it does about Mr Byrne.

Allegation 60

This describes a number of incidents in autumn 2015 where, it is alleged, Mr Byrne's exhibited mood swings as a consequence of failing to secure an appointment as the Chief Constable of Greater Manchester Police. Counsel for the AA criticised Mr Byrne for making this application, harshly questioning his motivation and drawing derogatory conclusions about his character. We reject this. Taking each incident in turn:

- a. Here is alleged that Mr Byrne failed to deal with a number of enquiries made by Insp Buckingham. It is unclear which actions are said to have been ignored or omitted by Mr Byrne.
- b. This concerns a missed train to a London conference and is covered by Allegation 11. It is not clear how the behaviour alleged by Insp Buckingham would have

constituted bullying regardless. Clearly it was unfortunate that Mr Byrne missed the train; his decision-making and conduct thereafter was, we believe, satisfactorily explained by his oral testimony.

c. This concerns an email from Mr Byrne to Insp Buckingham. The email concerned was, we concluded, perfectly reasonable.

d. Here Mr Byrne is criticised for sending an email complaining about the lack of office cover at the start of the working day. We believe this email to be both justified and measured.

e. In this allegation Mr Byrne is said to have sent a critical email regarding a telephone call to Sara Thornton. There is nothing in the saga of missed calls with her that can possibly be seen as evidence of unprofessional behaviour by Mr Byrne.

f. Here Mr Byrne is criticised for sending a late email. Out of hours emails – not just from Mr Byrne – were clearly a feature of work in Cheshire Constabulary and especially in the ACPO office. This one is unobjectionable, and can just as easily have benign intent attributed to it. The innocent interpretation is the one we prefer.

g. Here Insp Buckingham complains about an email from Mr Byrne expressing (mild) dissatisfaction with work presented to him. Again, we find it impossible to find fault in Mr Byrne's behaviour: the relevant email is perfectly polite and professional.

h. Again Mr Byrne is criticised for sending an email: this one asked Insp Buckingham why she had not forwarded his biography, when in fact she had. This was explained in Mr Byrne's account as a confusion between "blog" and "biog". We accept his version of events.

i. Again, we believe Mr Byrne explained this incident (where he is accused of blaming Insp Buckingham for various minor shortcomings) and we concluded his evidence was compelling. It is a further example, we believe, of Insp Buckingham's tendency to exaggerate, so that normal everyday events are elevated beyond reasonable interpretation.

j. This is another objection to a critical email from Mr Byrne, in this case relating to incorrect handling of a classified document. We saw this incident as a clear example of Mr Byrne trying to raise standards – relating to a serious matter – in an office that was not functioning as professionally as it should.

k. Here Mr Byrne is said to have emailed Insp Buckingham about a document he could not find. We agree with counsel for Mr Byrne that it is not clear what is being alleged.

#### Allegation 61

This incident was sometimes referred to as "Hotelgate". Our reading of this incident is that it reflects badly on Insp Buckingham's diligence as a staff officer. Mr Byrne was entitled to be irritated. Emma Smithies described Insp Buckingham's conduct in this incident as "unprofessional" and we are inclined to agree. Having noted her tendency to exaggerate, we also reject Insp Buckingham's account of what Mr Byrne said – and how he said it.

#### Allegation 62

The evidence we heard led us to believe that a discussion with Insp Buckingham, in which shortcomings in the ACPO office were highlighted, was justified. Any criticism of her was neither unfounded nor inappropriate. The allegation that the door was slammed was not supported by ACO Gill, who was present. Moreover, we heard testimony from a number of witnesses that Mr Byrne, although capable of being critical and firm with staff, was never

aggressive and never swore or shouted. In this case we did not accept Insp Buckingham's evidence as neutral.

Allegation 65

This allegation concerns a speech prepared for an awards ceremony. It is claimed that Mr Byrne was aggressive, red in the face, spat and waved his arms in the air when berating Witness E. We do not accept this version of events which, again, appears to have been exaggerated by those witnesses whose professional conduct seems open to criticism – and indeed was criticised by other witnesses. Mr Byrne asked for the speech to be prepared in good time; that it was not, is the fault of others. Witness D made this clear in evidence. Mr Byrne regretted having been agitated by the situation, but his response has been heavily exaggerated and cannot reasonably be interpreted as misconduct.

Allegation 68

Here it is alleged that Mr Byrne caused Mary Hough fear and embarrassment. We have concluded that he did not. It is notable that, after the period in which his bullying is said to have occurred, she applied for the job on a permanent basis. It is not disputed that Mr Byrne was at times critical of Mary Hough; but there was strong evidence that her performance in this role, which was in a new and challenging area for her, was below that which might have reasonably been expected.

Allegations 70 & 72

These concern the feedback given to Mary Hough after a job interview and the allegation that it was delivered cruelly and was intended to distress. There is nothing wrong with giving negative feedback after an unsuccessful interview; indeed, to do so is commonplace. We believe Mary Hough was never going to accept reasonable feedback at face value; it is noteworthy that the other unsuccessful candidate, Andrea Beedles, found a similar interview helpful and took it without offence.

Allegation 73

Here Mr Byrne is criticised for causing difficulties for Mary Hough by making short notice diary changes, and for then blaming her for having to make them. The emails presented to us do indeed show changes being made. This cannot be objected to: it is difficult to imagine any chief constable not having to make such adjustments. There is no evidence that Mr Byrne blamed Mary Hough for having to make such changes.

Allegation 74

In this allegation Mr Byrne is said to have shouted at Mary Hough after failing to attend a function in Chester. But defence emails 358 and 388 make it clear that he had told Mary Hough a week ahead that he would be unable to attend the event. He had a right to be frustrated that it had not been dealt with. And we reject any suggestion that he shouted. We give less weight to the evidence of Mary Hough: her credibility is undermined by, for example, her description of Mr Byrne having withdrawn at short notice.

Category 3: The incident did happen but there is no misconduct

38. There are then some allegations where both sides agree that the incident happened largely as described but where, we have concluded, the behaviour of Mr Byrne **cannot possibly be construed as misconduct**. In this category we include the following allegations:

Allegations 6 & 7

These concern Mr Byrne's failure to attend a meeting about knife crime. The defence argued that no such meeting was arranged; the AA that Jane Orme would have no reason to invent such an incident. We make no judgement on who is right; regardless, it cannot be misconduct not to attend a meeting.

Allegation 12 & 13

These allegations (which we return to in the following category) relate to teleconference calls for chief constables in the region. Mr Byrne is under no obligation to participate in calls such as these; asking his deputy to stand in for him is reasonable and unremarkable. We were surprised to see the inclusion of allegations such as this in a hearing for gross misconduct.

Allegation 23

This concerns (then) ACC McCormick's hairclip, and that it was unfair and inappropriate to direct Witness C to intervene. We disagreed. There is nothing serious in this allegation; and anyway, a staff officer should be expected to deal with issues such as this. We can find nothing here to criticise in Mr Byrne's conduct.

Allegations 25 & 26

It is alleged that Mr Byrne wrongfully interfered in the arrest of a suspect; and that there was some form of inappropriate competition among chief officers to 'clock up' arrests. We disagree that the evidence shows such a competition existed: Mr Hindle confirmed that there was no competition. And in the events described, we found nothing objectionable in Mr Byrne's behaviour. It seems to us entirely appropriate – and even laudable – that Mr Byrne sought to increase his visibility among front line officers. And we were told that this had been appreciated by rank and file officers. This is another of those allegations which says more about the state of mind of the person making the allegation than it does about Mr Byrne.

Allegation 29

In this allegation Mr Byrne is criticised for complaining to staff that the office had not been covered during a period at the start of the day. There is no reason why a chief constable should not insist on a certain amount of office cover. There is evidence of Mr Byrne being perfectly ready to accommodate short notice absences when – for example – there were family pressures. Communicating his requirements for office cover cannot possibly constitute misconduct.

Allegation 30

This concerns a telephone call to Witness C, off duty, when Mr Byrne is stuck in traffic. Our interpretation of this allegation is that fault has been found in Mr Byrne's behaviour when he should rightly be given credit for consideration and foresight. We believe his motivation for making the call was to avoid Witness C being inconvenienced. Her subsequent text supports this version of events.

Allegation 33

This allegation, which concerns an IT system failure, was difficult to take seriously. The criticism appears to be that Mr Byrne asked about previous failures. He did nothing to

“escalate” the category of the failure; a chief constable simply cannot be sensibly criticised for being concerned about the performance of a key IT system.

Allegation 34

This relates to Witness C’s PDR. No misconduct is alleged. There is no ground for criticism of Mr Byrne: the meeting to discuss the PDR was simply rearranged, because he was unable to make the original date.

Allegation 35

Here Mr Byrne is criticised for an email in which he remarks that the office has not been performing well. For witnesses to take this as objectionable, and to claim it amounts to misconduct, struck us as remarkable. In our view it reveals a level of sensitivity to any attempts by Mr Byrne to organise his affairs in an efficient manner which, if widely accepted, would have made his task impossible.

Allegation 39

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This refers to an incident where Witness C went home early, and Mr Byrne told her he was disappointed. It is further alleged that his criticism in a meeting on the Monday differed from that he had raised in an email on the Friday. We agree with Mr Byrne’s counsel that the witnesses have misinterpreted events. Regardless, there is nothing in this incident that can be construed as misconduct.

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Allegation 41

The chief criticism of Mr Byrne here appears to be that he did not say “hello” to Witness C. This is described as a single incident, rather than one in a series which would suggest a pattern of behaviour. For a busy senior officer not to respond to a colleague might be mildly regrettable, but it cannot be taken seriously as an allegation of misconduct.

Allegation 43

This is the first of a series (43-48) of allegations concerning Witness C’s work on the special constabulary. It contains no criticism of Mr Byrne and does not appear to us to be an allegation of any sort of misconduct.

Allegation 44

Here Mr Byrne is criticised for making Witness C’s work more difficult by failing to assist her. It is reasonable for Mr Byrne not to want to micro-manage Witness C’s work (which had been allocated to her by Ch Supt Bailey, not – as claimed – directly by Mr Byrne). He gave her, in our view, enough guidance and direction for her to have been expected to complete the work with a rather greater degree of independence than she seems to have managed.

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Allegation 45

The allegation here is that Mr Byrne “arranged a meeting”, which seems to us a strange accusation to include in a hearing for (gross) misconduct. There was clearly some degree of confusion about whether Mr Byrne expected a ‘vision’ or ‘terms of reference’; but even were that a matter of any substance, it is difficult to determine whether the fault lies with Mr Byrne or elsewhere. In any event, we do not find that Mr Byrne’s conduct amounts to misconduct.

## Allegation 46

This describes as oppressive an email of 8 Nov 14, asking for an update on progress with the work. We disagree. It seems to us perfectly reasonable for Mr Byrne to ask for an update, especially since the work was dragging. Again, perhaps there was some confusion over the precise definition of 'vision' vs 'terms of reference', but this cannot be seriously counted as misconduct.

## Allegation 48

This describes a meeting at which Mr Byrne is alleged to have criticised Witness C unfairly. Again it rests on the confusion between 'vision' and 'terms of reference'. We believe this has been inflated by Witness C, through an over-sensitive reaction, to take on a significance it does not merit. Mr Byrne is justified in asking for quicker progress with the work.

## Allegation 49

This brings together the question of the special constabulary project and Witness C's PDR. It was Witness C who brought up the PDR at a meeting on 11 Nov 14; it seems to us reasonable that Mr Byrne did not expect to discuss it, and was not ready to do so. Arguing that his intention was to prolong Witness C's worry and distress does not seem reasonable. And Witness C's account of the meeting is not supported by that of Ch Supt Bailey.

## Allegation 66

This concerns an email sent by Mr Byrne regarding working from home. This email is clearly addressing the question of whether working from home was disrupting office team work. It was clearly not aimed at Lisa Morana, as is claimed. It is entirely reasonable for him to query whether tasks were getting missed because people were not in the office.

## Allegation 67

In this allegation Mr Byrne is said to have upset PS Doleman by referring to a piece of work as "this blessed report". We concluded that the report was not produced to the standard Mr Byrne might reasonably have expected. In the circumstances, his reaction seems to us to be perfectly understandable, and cannot be considered misconduct.

## Category 4: Vague allegations.

There are then 3 allegations where, as written, they are simply **too vague** to justify deeper consideration. These are:

## Allegation 63

This concerns the sending of "nasty" emails on dates before Jan 16. Throughout the hearing, we saw no emails from Mr Byrne which, we believe, were not temperate and measured. Some were critical, certainly, and perhaps a touch blunt for some tastes, but they were not "nasty" and should not reasonably have been expected to cause distress.

## Allegation 64

This accuses Mr Byrne, over a 21-month period, of occasionally avoiding eye contact and behaving childishly. It is too imprecise to be properly considered part of a misconduct hearing.

Allegation 69

Here it is said that Mr Byrne demanded too much of Mary Hough. There is nothing more specific, though the oral evidence quoted in support contains broad criticism of Mr Byrne's character and behaviour. The emails used to support this allegation, moreover, are not unreasonable.

Category 5: Potential learning points

39. Lastly, for 16 of the 74 allegations, we have found – potentially – **an element of fault** with Mr Byrne's conduct. But, it should be emphasised immediately, none of this comes anywhere near the degree of seriousness which should be the preserve of misconduct proceedings. A better description might be that, on reflection, there are occasions where Mr Byrne might conclude that an alternative approach would have worked better. This is the normal business of management and leadership in any organisation. We have also considered whether any of these instances may have constituted a breach of the College of Policing's Standards of Professional Behaviour – accepting that it is possible to breach the standards without straying into misconduct. In our view, a good test for whether the SPB have been broken would be whether, in a deputy or assistant chief constable, such behaviour would have prompted the chief constable to take some form of management (not disciplinary) action. It is our conclusion that none of the instances listed below reach that threshold.

40. This category includes the following allegations:

Allegation 1

This concerns Mr Byrne's insistence, on arrival in Cheshire, that he use an iPad for everyday administration. We have said earlier that we do not believe Mr Byrne berated and belittled staff; but it is clear that his actions challenged the IT department. Whereas there is some merit in driving forward technological change, we felt a little more patience and sensitivity on Mr Byrne's part might have achieved the same (or better) results with a more conciliatory approach.

Allegation 5

This is one of a number of complaints about Mr Byrne's use of his office email system, and criticises him for sending emails intended for one recipient which could be (and were) seen more widely. We accept Mr Byrne's evidence that he assumed people would only read emails directly addressed to them. We also accept that a strict interpretation of the Constabulary's security rules would suggest the same. But we believe Mr Byrne was naïve to expect (for example) emails sent to Witness C not to be read by Witness A. The management of his group email folders would have benefited from rather more discipline – and some of the responsibility for this rested with Mr Byrne.

Allegation 11

We have previously dismissed this allegation: cancelling meetings is perfectly normal, and there is no evidence of a cavalier attitude to public money. But it seems to us fair to observe that Mr Byrne's management of his diary was not as rigorous as it might have been. While nowhere near misconduct, this certainly had repercussions: it put his staff under pressure that might have been avoided with a little more forward planning.

Allegations 12 & 13

This covers similar ground, in that it is essentially a criticism of Mr Byrne's imperfect time management. With a little more forethought, issues such as this (whether he or his deputy would join a regional chief constables' teleconference) might have been avoided altogether.

Allegations 15 & 16

These allegations concern making repeated phone calls and sending "an unreasonable number" of emails to Jane Orme. It is, we believe, impossible to argue that this would constitute a breach of SPB, let alone misconduct. But neither are we convinced this was a demonstrably successful technique for getting the best out of people.

Allegation 17

Here it is alleged that Mr Byrne belittled and intimidated Jane Orme. We do not agree. Mr Byrne's standards and expectations were high – higher than she had been used to, perhaps – and on occasion she failed to meet them. Clearly they were not the most compatible of colleagues. A senior figure of Mr Byrne's experience might, we feel, want to reflect on whether he might have handled his relationship with Jane Orme more productively.

Allegation 28

At worst, Mr Byrne mislaid some papers for a meeting at Widnes and then – although they had already been given to him – asked where they were. Again, this does not paint Mr Byrne's organisational skills in the best light; and it is easy to see how an incident such as this might have been frustrating for his office team. But it does not breach the SPB and does not approach the bar for misconduct.

Allegation 37

Mr Byrne sent Witness C an email on a Friday night, warning her of a difficult conversation to come on Monday morning. She interpreted this as malevolent; his reasoning was that it was better than surprising her on return to work. Both are understandable viewpoints. However, we are inclined to conclude that there was a degree of thoughtlessness in sending the email on Friday rather than before work on the Monday; he might reasonably have wondered whether it would have caused her some worry over the weekend.

Allegation 38

Following on from the events set out in Allegation 37, Mr Byrne then missed the scheduled Monday morning meeting implied in the email. Again, this does not paint his capacity for organisation in the best light; it was also a little thoughtless of him. He knew he would be late that morning: he need not have given the impression to Witness C that a difficult discussion would take place at 0830.

Allegation 51

This concerns a comment allegedly made to Witness A by Mr Byrne to the effect that she could not keep up with his pace. If this was said, we acknowledge that it might have been a clumsy choice of words: but we suspect Mr Byrne meant it kindly (implying it was not her fault if he set a particularly demanding pace). However, at most this was an insensitive comment: it is not the sort of incident we would expect to form part of an allegation at a misconduct hearing.

Allegation 52 & 56

These allegations also rest on Mr Byrne's use of his email account. Again, Mr Byrne may not have known who could see sent emails (before it was pointed out to him by DCC McCormick and others); but even if the force policy was vague, we believe there was an element of carelessness about his use of emails, and their potential impact.

Allegation 59

Here Mr Byrne offered a *mea culpa*: he had not realised an email from Insp Khan covered work he expected from Ch Supt Southcott (who was not at all offended by being asked where the work was). This is the sort of trivial incident that happens in every workplace. A mistake was made by Mr Byrne, but such oversights have no place in misconduct hearings.

Allegation 71

This concerns criticism of Mary Hough made (to Witness D) within her earshot. It was careless of Mr Byrne not to ensure this was not overheard, but no more than this. But again, it cannot possibly be construed as misconduct.

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**Conclusion**

41. We found no misconduct (or gross misconduct) by Mr Byrne in the evidence presented to us.

42. This misconduct panel has been an unfortunate experience for all concerned and our overriding conclusion is that it could – and should – have been avoided. We have reflected at length on the circumstances which led to such a time consuming (and costly) process being used to try and resolve what was essentially a clash of cultures, personalities and attitudes within Cheshire Constabulary following Mr Byrne's arrival. Before May 2014 the ACPO office was clearly a comfortable (and perhaps unchallenging) place to work. With the arrival of Mr Byrne the style of leadership, and the working atmosphere, changed markedly.

43. We do not believe there was any intent on Mr Byrne's part to cause distress among those with whom he worked. He was focussed on improving the Constabulary's performance in every aspect he encountered; indeed, it is likely that he was employed by the previous PCC for precisely that purpose. It seems entirely unsurprising that some staff found this challenging – especially where their performance was (with reasonable justification) criticised. No one has a right not to be challenged by a senior colleague determined to improve standards. No one has a right to like those with whom they work. We agree with Mr Byrne that, on occasions in this case, the "potential for challenge and the pursuit of the highest standards of professionalism can be misconstrued, misinterpreted or unwelcome".

44. It struck us as likely that Mr Byrne's reputation may have played a part in this breakdown of working relationships. We make no comment about whether this reputation was deserved. But there was a certain trepidation in Cheshire Constabulary about his arrival; when he then started to demand higher standards, and challenged staff more vigorously, we believe some staff were inclined to see it as confirming their worst fears. We understand that it was difficult for some staff to adapt, and we have a degree of sympathy towards them. But they attributed malevolence to his behaviour when there was no justification for doing so. This, we believe, explains the preponderance of allegations which were trivial or exaggerated.

45. We have made some limited criticism of Mr Byrne's behaviour. It is important to emphasise again that these do not approach a level at which they would breach the Standards of Professional Behaviour, let alone constitute misconduct. They are judgements which might be made in any workplace. It is tempting to conclude that no chief constable's conduct, if subjected to scrutiny of this intensity, would escape without similar criticisms.

**Recommendation**

46. We make one recommendation – but not to rectify any shortcoming within Cheshire Constabulary or the decisions and conduct of any of those involved in this case. Rather, we sought measures which might, in future, prevent a similar situation leading to an investigation and misconduct hearing of this nature.

47. It struck us as wrong that, almost uniquely, a chief constable has no direct mechanisms for formal feedback on his or her performance. The police and crime commissioner is obliged to hold the chief constable to account for the performance of the force; but the chief's way of working, leadership style and personal development are far less likely to be scrutinised. Guidance and mentoring for chief constables is informal and inconsistent (if not wholly absent). This is in no-one's interest.

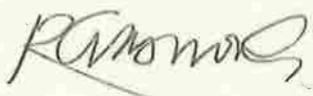
48. The PCC cannot be responsible for guidance and mentoring of this sort; it is incompatible with the PCC's role in re-appointing or dismissing the chief constable. But somebody ought to be. Informal mentoring takes place – on an ad hoc basis – and is to be welcomed. But we would like to see this on a more formal basis. The NPCC, we believe, might wish to investigate whether there would be merit in establishing a more formal – potentially mandatory – system. We cannot help but wonder whether, in this case, some formal mentoring for Mr Byrne – including perhaps an honest appraisal of 360° reporting – might have alerted to him to the potential for a case such as this to arise.



**Mansoor Shah**  
Independent Panel Member



**Matt Parr CB**  
Her Majesty's Inspector of Constabulary



**Rachel Crasnow QC**  
Panel Chair





## Report to Cheshire Police & Crime Panel

### Response of Police & Crime Commissioner David Keane to questions submitted by Cheshire Police & Crime Panel

#### Context

Cheshire Police & Crime Panel (PCP) has submitted a range of written questions in relation to the gross misconduct proceedings regarding former Chief Constable Simon Byrne (referred to as Mr Byrne from here on). The PCP has requested a written statement in response. The report provides a written response to all questions submitted.

Other than being numbered consecutively, the questions set out are unedited and are as provided by the PCP.

Regulations referred to are in relation to the Police (Conduct) Regulations 2012 unless stated otherwise.

#### Questions and Response

#### Questions relating to the decision to commence a disciplinary procedure

##### 1. How would you define 'misconduct'?

The College of Policing Code of Ethics sets out a code of practice for the principles and standards of professional behaviour for the policing profession in England and Wales. It clearly sets out the following standards:

- Honesty and integrity
- Authority, respect and courtesy
- Equality and diversity
- Use of force
- Orders and instructions
- Duties and responsibilities
- Confidentiality
- Fitness for work
- Conduct
- Challenging and reporting improper behaviour

A significant failure or breach of the Code may be misconduct / gross misconduct and may require formal action such as the application of the Police (Conduct) Regulations.

As the Code of Ethics sets out at 5.1.4 'all officers, staff and, particularly, supervisors and managers have a duty to act where a concern is raised about any behaviour, level of performance or conduct which may amount to a breach of the Code.'

2. Did you make any attempt to discuss the content of the complaints with Mr Byrne prior to initiating proceedings against him and if not why not?

On receiving the allegations via the Police Federation and the IPCC (now IOPC) Intelligence report I took appropriate legal advice. Given the nature and seriousness of the allegations and taking into account the advice I received, it was not appropriate to discuss the matters with Mr Byrne in advance of making a decision as to whether the complaints should be recorded as conduct matters, and given that they were, the subsequent outcome of a referral to the IPCC.

This was to maintain the integrity and confidentiality of any subsequent investigation.

3. What was your relationship with Mr Byrne prior to your initiating the misconduct process?

I believe that I had a positive professional working relationship with Mr Byrne within the context of my role in holding him to account for the delivery of efficient and effective policing for Cheshire residents.

4. Who drew up the list of 74 complaints that formed the content of the notice served on Mr Byrne and what understanding did they have of the College of Policing 2014 Code of Ethics or Home Office guidance on Police Misconduct and standards of professional behaviour?

Queen's Counsel (QC) drafted the regulation 21 particulars. The QC instructed is a lead in the field of police misconduct and has an in-depth and expert understanding of the College of Policing 2014 Code of Ethics and the Home Office guidance on Police Misconduct and standards of professional behaviour.

5. Were any questions asked as to why it took so long for the complaints to be submitted considering many of the alleged incidents took place in a period between June and November 2014?

As Appropriate Authority (AA) I did not, and it would not have been appropriate for me to interview the witnesses in this matter. This was the role of the Investigator. It should be noted that allegations related to low ranking officers and staff against a Chief Constable and to come forward with any such allegations would have taken

some consideration. However, I do not plan to suggest or speculate why witnesses did not have the confidence to report their concerns formally in advance of 2016.

6. Were you aware of or did you consider any options other than the ones you took?

Yes. I took full legal advice and considered all options available to me as the AA throughout the matters, including when making a recoding decision, my case to answer and suspension decisions and following the findings of the panel.

7. Who set out the terms of reference for the North Yorkshire Investigation?

The terms of reference were drafted and agreed in consultation between me as the AA and the Investigator, (former) Chief Constable Dave Jones of North Yorkshire Police.

8. Given that on 20<sup>th</sup> January 2017 you set out the Terms of Reference, on what basis did you decide that the investigators had not applied the 'case to answer' test properly?

I took full legal advice on this matter. I considered that the Investigator had not asked the correct question for the purposes of regulation 20 of the Police (Complaints and Misconduct) Regulations 2012 (PMCR), namely where there was a case to answer. The Investigator had instead apparently sought to determine what the outcome of the allegation would be if tested evidentially. The "case to answer" test does not involve a determination of whether the case will in fact be proved. Rather it concerns the question of whether a reasonable panel, properly directing itself on the law, could find a case proven.

I have provided a copy of my regulation 19 determination to the PCP which provides a full written rationale for my decision.

**Decision to proceed on the basis of gross misconduct, rather than misconduct**

9. At what stage was it decided to raise the bar from misconduct to gross misconduct, and what prompted that decision given that the investigating force reported on misconduct only?

I made my "case to answer" regulation 19 Determination on 17 August 2017. I have covered the matter of the incorrect test applied by the Investigator at question 8. I approached my regulation 19 task by carefully reading and considering the following materials:

- a. The Investigator's report, including Mr Byrne's regulation 18 PCMR response;
- b. The statements and duty reports (in relation to 26 individuals)
- c. The exhibits (62 exhibits)

I also had regard to the College of Policing's Code of Ethics dated July 2014.

I concluded that Mr Byrne had a case to answer for breaches of the two following standards of professional behaviour:

- a. Authority, Respect and Courtesy
- b. Discreditable conduct

I did not seek to compartmentalise or separate each and every one of the numerous discrete allegations made by the witnesses. Instead I looked at the overall evidential picture conveyed by the statements and exhibits, as I was permitted to do so under regulation 5(2).

I have provided a copy of my regulation 19 determination to the PCP which provides a full written rationale for my decision.

10. What facts led you to decide to proceed on the basis of gross misconduct?

Much of this covered in my answer to question 9.

As set out in my regulation 19 determination, I carefully examined the assertions in the statements and read the accompanying exhibits. I noted that many of the witnesses spoke, with varying degrees of passion and/or detachment, to Mr Byrne's negative personal behaviour and the duration of this behaviour.

I noted that Mr Byrne's regulation 18 PCMR response outlined a stark difference between his position and evidence, and the evidence concerning his behaviour and the appropriateness of his behaviour. This was something I considered needed to be tested in misconduct proceedings.

I have provided a copy of my regulation 19 determination to the PCP which provides a full written rationale for my decision.

11. What advice did you consider when coming to that decision?

I took full legal advice including consultation with Queen's Counsel on 31 July 2017, to ensure that I was undertaking my duties as AA in relation to regulation 19 in line with the law.

12. Did you relay your decision to the North Yorkshire investigator? If yes what did they say and if not why not? (detective Superintendent Shirley Taylor has stated that the first she knew about the change was when she read it in the newspaper)

Yes, this was completed confidentially by the OPCC lead via telephone on my behalf with the Investigator. I was not involved in the call but I have been informed it

was a short call which detailed a summary of the case to answer decision and rationale.

Detective Superintendent Taylor was the Deputy Investigator working for the Investigator, (former) Chief Constable Jones. My understanding is that DS Taylor provided evidence to the April 2018 hearing that she was on holiday abroad during the relevant period in August 2017 and thus found out the news via the media.

13. The Hearing Panel's report criticised North Yorkshire Police for their failure to carry out a thorough investigation, by not obtaining all the evidence they might from those who worked in the ACPO office nor Mr Byrne. Did anyone review this investigation in order to ensure that it was thorough as the failure to initially interview Mr Byrne would be a clear pointer to there being something amiss?

The investigation by North Yorkshire Police was led by their then Chief Constable and I was entitled to expect that someone in such a senior role could undertake a proper investigation. As the PCP will be aware, representatives from all sides have been clear in their view regarding the sub-optimal nature of the investigation.

As AA it would not have been appropriate for me to interfere with the day to day operation of the investigation. It was the appointed Investigator's responsibility to undertake the investigation and report its findings to me as the AA. That being said and whilst not being an investigator, I did identify and remedy failings where I reasonably could but the reality is that not all could be addressed as we were overtaken by the complex and bureaucratic timetable governing the process.

14. If you read the investigation report you will have been aware that North Yorkshire Police did not interview Mr Byrne. Taking into account the seriousness of the charge of gross misconduct, did you not consider referring the matter back to them or even to the IOPC for further investigation?

As the PCP is aware that I undertook a referral to the IOPC (IPCC as it was then) at the outset. The IOPC decision was to confirm that an investigation into the matters was required under paragraph 14 of Schedule 3 of the Police Reform Act 2002 and that it should be a "local" one conducted under paragraph 16 of Schedule 3 of the Police Reform Act 2002. I was not advised that a re-referral to the IOPC was appropriate at any point.

When reading the Investigator's report it did appear that Mr Byrne had not been interviewed. This took me by surprise and I wrote to the Investigator in a letter dated 17 August 2017 to ascertain written confirmation of this for completeness.

This did not prevent me from making my regulation 19 determination having considered all the information outlined in the report and its supporting materials, having had regard for the rank of Mr Byrne and having considered the evidence.

The PCP will have noted that during the hearing in April 2018 evidence was provided to the Independent Panel by the Investigator and Deputy Investigator that it was North Yorkshire Police practice to request a written response rather than formally interview a subject when investigating a matter of misconduct. With hindsight the Deputy Investigator acknowledged that a request for Mr Byrne to attend a formal interview would have been more appropriate.

Personally, I would have liked Mr Byrne to have been interviewed so that he could hear the allegations and respond to them and so that the investigator could fairly and properly test the allegations in the spontaneity of an interview.

As outlined above, whilst not being an investigator, I did identify and remedy failings where I reasonably could but the reality is that not all could be addressed as we were overtaken by the complex and bureaucratic timetable governing the process

Following service of the regulation 21 notice the matter was referred back to North Yorkshire Police for additional statements to be taken to enable the further particularisation of the charge, which was subsequently served.

15. Given that the final report from the Hearing Panel said that around half or the complaints either did not happen or 'the incidents happened but there was no misconduct', and the fact that Mr Byrne's QC, Gerry Boyle, referred to the process as "persecution not prosecution", how would you respond to a suggestion that the process amounted to being a case of 'constructive dismissal'?

I am not aware of anyone making such a suggestion.

Multiple allegations were made against the former chief constable. When faced with such allegations against the county's Chief Constable, I believed I had no realistic alternative but to place the matter before an independent panel for determination of the facts. The process was undertaken in line with the appropriate regulations and I took full and proper legal advice to ensure I undertook my duties in line with the law.

Any other course would have been against my core values of fairness and openness, and I will not oversee a police service where such allegations aren't taken seriously.

### **Welfare issues and engagement with Mr Byrne**

16. Mr Byrne was suspended from duty in August 2017. Would you tell us what welfare support you put into place for the complainants in this case

Witnesses in this case were updated as frequently as possible regarding progress and with information that was appropriate to share. Witnesses were provided advice that any concerns could be discussed with their staff association or trade union

representative (contacts were provided for Unison or Police Federation), with their line manager or with the OPCC lead. Witnesses were also advised that Cheshire Constabulary also provides an Employee Assistance Program, run by CiC, which is an independent, free and completely confidential advice service. The offer of this service was also extended to those witnesses who had left Cheshire Constabulary.

In advance of public publication of documentation, such as the regulation 21 particulars and their attendance at the hearing, witnesses were advised that they could apply to the Chair of the panel for their name to be anonymised and for special measures, such as screens to be in place when they gave evidence. The OPCC also offered to support witnesses to visit the venue in which the hearing was being held so they could familiarise themselves with the venue.

On the morning of, and in advance of the announcement and notification of the findings of the Independent Panel, witnesses were invited, if they so wished, to attend the OPCC to read a copy of the outcome report in private. Staff association or trade union representatives arranged to be available to provide additional support if required.

### 17. What support was put in place for Mr Byrne?

When I wrote to Mr Byrne at the end of November 2016 to advise him of the allegations, my recording decision and the decision of the IPCC following my referral, I advised him to contact his staff association, the Chief Police Officer Staff Association (CPOSA), for their support. In addition, when making my decision regarding suspension I identified my Chief of Staff as a specific welfare contact should Mr Byrne require it.

As the PCP will be aware, Mr Byrne was allocated a CPOSA 'friend' to provide support throughout and at the hearings. Mr Byrne also engaged full legal support, although clearly this was not put in place by me as AA.

I encouraged a positive and professional relationship between my office and Mr Byrne's representatives so that any issues could be dealt with as quickly and as sensitively as practicable. I believe this was achieved.

### 18. Was Mr Byrne given an opportunity to make representations to you before for decided to escalate the allegation to gross misconduct? If not why not?

Mr Byrne made representations through his regulation 18 PCMR response which was included in the Investigator's report. As detailed in my response to question 9 I fully consider this in my decision making.

19. What did you understand to be Mr Byrne's legal right in relation to knowing the allegations he faced?

Following my regulation 19 "case to answer" determination, Queen's Counsel was instructed to prepare the necessary particulars of the allegations Mr Byrne faced under regulation 21(1)(a)(ii). This was completed and then served on 29 September 2017. Mr Byrne had the opportunity to reply in full in a regulation 22 response, which he did so on 3 November 2017.

20. Policing, by its very nature, has to be and is a disciplined service. As such, did you take into account that this will be reflected within the work environment and therefore, you over-reacted to the situation with which you were faced?

I undertook my role as AA in this matter in a considered and professional way, taking appropriate legal advice. As detailed in the response to previous questions I took into account the Code of Ethics which sets out a code of practice for the principles and standards of professional behaviour for the policing profession in England and Wales.

21. Did you at any time carry out any performance reviews with Mr Byrne and if so, what were the outcomes?

My duty as Police & Crime Commissioner is to hold the Chief Constable of Cheshire Constabulary to account for the delivery of effective and efficient policing on behalf of Cheshire residents. I undertake this through both public and private scrutiny board meetings where the performance of the Constabulary and by extension the Chief Constable is scrutinised and reviewed.

22. Would you explain to the panel in what way you applied the Nolan Principles of, openness and objectivity throughout this process?

**Objectivity**

*Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.*

**Openness**

*Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.*

I have applied and met the principles in the following manner:

- On receipt of the allegations advice was sought from HMIC, the IPCC (as it was at the time, now the IOPC) and from the then Chief Executive of the Office of the Police and Crime Commissioner.

- Legal advice was obtained from leading Queen's Counsel immediately when the allegations were brought to my attention, and throughout each and every stage of the process. I sought Counsel's advice on the allegations made in terms of their nature, severity and the applicable processes and procedures to be followed.
- Having considered the allegations, I recorded the allegations as conduct matters within the meaning of the Police Reform Act 2002.
- Having recorded the matters, I referred them to the IPCC on a discretionary basis under paragraph 13(2) of Schedule 3 to the Police Reform Act 2002.
- The IPCC, confirmed that an investigation into the matters was required under paragraph 14 of Schedule 3 of the Police Reform Act 2002 and that it should be a "local" one conducted under paragraph 16 of Schedule 3 of the Police Reform Act 2002.
- An external police force, North Yorkshire Police, was appointed to conduct this. The necessary conflict of interest and qualification checks were undertaken.
- The terms of reference sets out that the investigation must be demonstrably fair to all concerned and compliant with the statutory pathway. In addition, it outlined that the Investigator was required to undertake a thorough, proportionate and timely investigation into the allegations, act at all times in accordance with the relevant legislation and as soon as practicable submit a report on the investigation to the PCC in accordance with paragraph 22 of Schedule 3 PRA.
- The regulation 19 case to answer determination was undertaken in compliance with the law and considering the Investigator's report and supporting materials.
- The matter was referred to a misconduct hearing to be conducted by a panel properly constituted under regulation 26 in public.
- In advance of the hearing I undertook my obligations to publish a public notice, including the details of the charge and the time, date and venue of the hearing, under regulation 27A, well in advance of the minimum 5 working days as stipulated.
- The outcome reports prepared by the Panel have been published on my public website.

- I chaired a public hearing in line with regulation 34 to announce the outcome and findings of the independent panel.
- As agreed I have provided a breakdown of the costs of the proceedings for the PCP which will be published.
- I have attended PCP meetings on the 14 December 2018 and 8 February 2019 to answer questions from the PCP on the proceedings.

**Actions following the Findings of the Disciplinary Panel**

23. Why did you pick December 11<sup>th</sup>, the scheduled date for the Brexit debate in the House of Commons, to release the findings of the Hearing Panel?

The independent panel delivered their final report on 8 November 2018. I then took steps to arrange a hearing to be held in line with regulation 34. My office wrote to Mr Byrne's representatives on 15 November 2018 confirming a hearing date of 11 December 2018.

This was in advance of the Government's announcement regarding their intention to hold a debate and vote on this date.

As I am sure the PCP will acknowledge the two are unconnected.

24. Do you think that the Panel got it wrong, if so why?

I do not intend to enter into any public debate regarding personal views on the Panel's decision and findings.

25. In light of the findings of the Disciplinary Panel do you think that you got it wrong?

Multiple allegations were made against the former chief constable. When faced with such allegations against the county's Chief Constable, I believed I had no realistic alternative but to place the matter before an independent panel for determination of the facts. The process was undertaken in line with the appropriate regulations and I took full and proper legal advice to ensure I undertook my duties in line with the law.

Any other course would have been against my core values of fairness and openness, and I will not oversee a police service where such allegations aren't taken seriously.

26. With the benefit of hindsight would you now do things differently?

Please see my answer to question 25.

27. Given the outcome of the misconduct hearing, is it your intention to issue any form of apology?

Please see my answer to question 25.

**Financial Implications (may be dependent on what is discussed in relation to the precept)**

28. You have provided a breakdown of the financial costs of and relating to the disciplinary process. Does that represent everything?

As reported to the PCP the costs shared were the position as of 10 January 2019. As far as I am aware they represent everything. There may be some minor additions due to payment periods but there will not be any substantial or significant changes to the best of my knowledge.

29. Do you think that represents good value for the residents of Cheshire?

It is undeniable that this process has been time-consuming and costly due the complexities of the Police (Conduct) Regulations 2012. Value for money in the context of police accountability and transparency is a personal judgement. I am clear, when faced with serious allegations, any other course would have been against my core values of fairness and openness, and I will not oversee a police service where such allegations aren't taken seriously.

30. Have you factored into your costings any contingency funding should the former Chief Constable decide to take any legal action?

No.

**Conclusion**

As Commissioner, I have taken every step to assist the PCP in responding to their questions in the fullest possible manner.

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