

Investigation name:	<b>Operation Argens</b>
IOPC reference:	<b>2021/152130</b>

## > Summary of IOPC conclusions

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A summary of our conclusions and our rationale is set out below.

### > Former PC Joel Borders (MPS)

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#### > Allegations

It is alleged that may have breached the standards of professional behaviour.

1. It is alleged that, between 2 March 2019 and 30 October 2019, Joel Borders sent discriminatory and/or inappropriate messages in a WhatsApp group chat.

#### **Case to answer for gross misconduct**

2. It is further alleged Joel Borders failed to challenge or report discriminatory and inappropriate comments made by other members of the WhatsApp group.

#### **Case to answer for gross misconduct**

#### > Summary of rationale

##### **Allegation 1:**

There is no dispute that Joel Borders was a member of the WhatsApp group this investigation concerns whilst still a serving police officer. The phone number believed to be his was attributed to him and he did not deny sending any of the messages which came from this number. It is therefore accepted he sent the messages this investigation has evidenced.

We have carefully read the messages outlined in the report and are aware the messages contained in the report do not represent all messages sent by this subject. Joel Borders sent a large number of messages and 73 of these have been identified as potentially inappropriate.

We consider a tribunal could find that the messages he sent contained highly offensive and threatening language which could be found to demonstrate a lack of self-control, tolerance and courtesy expected of officers.

Mr Borders stated he had a lack of understanding as to what was offensive when he first joined the MPS, therefore suggesting he did not understand the harm his comments could cause when he made them. However, his training records show he undertook equality and diversity training while employed at the CNC prior to transferring to the MPS. This training included training on protected characteristics. A tribunal may therefore find that the officer had received sufficient training prior to sending these messages such that he could understand the harm they could cause should they be made public.

Furthermore, in our opinion many of the comments made by him do not require specialist training, knowledge or experience and would be widely understood and accepted to be inappropriate, offensive and discriminatory by the public.

We consider the volume of messages sent by the officer over a sustained period of time to indicate a pattern of behaviour. This is further aggravated by allegation two which relates to the officer failing to challenge equally inappropriate and offensive messaging from other members of this WhatsApp Group. These allegations, if proven, would indicate a worrying type of conduct from the former officer; conduct which indicates he considered it acceptable and amusing to make such comments.

This is particularly concerning regarding discriminatory comments which relate to people with protected characteristics. This allegation, if proven, would not only seriously undermine public confidence in policing but also bring ex PC Borders' personal suitability for the role into doubt.

In our opinion, there are no mitigating factors regarding this allegation. Based on this, we consider this allegation, if proven, could warrant dismissal and as such should be dealt with as gross misconduct and proceed to a gross misconduct hearing.

### **Allegation 2:**

There is clear evidence that Joel Borders was an active participant in this WhatsApp group. He participated in many of the conversations in which alleged inappropriate comments were made and can therefore be reasonably assumed to have read those messages.

There is no evidence of Joel Borders ever challenging inappropriate messages sent by other officers and he did not provide an account that he ever made such a challenge or reported behaviour.

All officers have an obligation to challenge and report behaviour of colleagues which is inappropriate or breaches the standards of professional behaviour. As such, if a tribunal finds that the messages sent within this group were inappropriate, discriminatory or otherwise offensive then the same tribunal could find that the failure

to challenge those messages is also a breach of the standards of professional behaviour.

Based on the above it is our opinion, Joel Borders has a case to answer for this allegation.

## > PC Gary Bailey (MPS)

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### > Allegations

It is alleged that may have breached the standards of professional behaviour.

1. It is alleged that, between 2 March 2019 and 30 October 2019, PC Gary Bailey sent discriminatory and/or inappropriate messages in a WhatsApp group chat.

#### **Case to answer for gross misconduct**

2. It is further alleged that PC Gary Bailey failed to challenge or report discriminatory and inappropriate comments made by other members of the WhatsApp group.

#### **Case to answer for gross misconduct**

### > Summary of rationale

#### **Allegation 1:**

Although PC Bailey does not appear to have been one of the most active members of the WhatsApp group and was added to the group later than other officers subject to this investigation, the investigation team have identified two potentially inappropriate messages sent by him. These messages refer to “grooming” young foreign girls with reference to buying them prawn balls. PC Bailey has accepted he sent these messages and the number they were sent from has been attributed to him. As such there is no doubt the messages originated from him.

PC Bailey has however denied that these messages are inappropriate saying on reflection he shouldn't have used the word groom, and should have used a different word such as attract instead. He also denied that the reference to prawn balls was offensive or racist in any way.

The word “groom” has a very specific meaning and is widely known to relate to the targeting and manipulation of children and young adults for sexual gain. The use of this term should also be seen in the wider context of this WhatsApp group where messages of inappropriate content were being shared. This could lead a tribunal to find that the officer intended to use the word groom due to its controversial meaning or

shock value. The subsequent reference to prawn balls, in the context of groom, “foreign girls”, could also be deemed to have racist undertones.

In our opinion, a reasonable tribunal may therefore wish to consider dismissal if allegation one is proven. As such, we consider the allegation should be dealt with as gross misconduct and proceed to a gross misconduct hearing.

### **Allegation 2:**

There is no evidence PC Bailey challenged any comments made in the WhatsApp group and he did not provide any account that he challenged or reported the behaviour of others.

PC Bailey was not one of the most active members of the WhatsApp group and was added later than other members in July 2019. He was therefore not part of the group when messages before this date were sent before this date and as such could not be expected to have challenged those messages. However, he was part of the group when approximately 60 messages highlighted as potentially inappropriate were sent which included messages: using offensive homophobic terms; referencing gender-reassignment in an apparent derogatory manner; using offensive terms relating to those with disabilities; referencing a British Asian colleague in offensive and potentially racially discriminatory way; describing domestic abuse victims as “not listening”; discussing female colleagues in a negative and potentially inappropriate and misogynistic manner.

PC Bailey stated, on reflection he should have challenged some of the comments in the group. However, he sought to explain his failure to challenge and report other matters by stating he did not read all the messages but would open the group to remove the notification from his phone. It is not possible, from the available evidence to corroborate that account, however, in our opinion this account is not plausible as notifications in WhatsApp are easily turned off. It will therefore be for a tribunal to decide whether they accept PC Bailey’s account or not.

Based on the above, we believe a reasonable tribunal could find allegation two proven.

## **> PC Jonathan Cobban (MPS)**

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### **> Allegations**

It is alleged that may have breached the standards of professional behaviour.

1. It is alleged that between 2 March 2019 and 30 October 2019, PC Jonathon Cobban sent discriminatory and/or inappropriate messages in a WhatsApp group chat.

## **Case to answer for gross misconduct**

2. It is further alleged that PC Jonathon Cobban failed to challenge or report discriminatory and inappropriate comments made by other members of the WhatsApp group.

## **Case to answer for gross misconduct**

### **> Summary of rationale**

#### **Allegation 1:**

There is no doubt in the evidence that PC Cobban was part of the WhatsApp group subject to this investigation and that he sent the messages attributed to him.

PC Cobban send a large volume of messages which have been highlighted as potentially inappropriate, approximately 70. I am also aware that the messages outlined in the report do not represent all those sent by the officer. The messages attributed to him contain what in our opinion are highly offensive, derogatory, discriminatory and violent comments.

As with Joel Borders, we consider this matter should be viewed as a pattern of behaviour. That is, his behaviour should be seen in context of the volume of messages sent by him, within a WhatsApp group, where large amounts of inappropriate messages were being sent. PC Cobban was an active member of the group and he actively participated in conversations where inappropriate comments were made. Within this context I consider a reasonable tribunal could find that PC Cobban participated in the sending of inappropriate, discriminatory, and otherwise offensive messages within a WhatsApp group where messaging of this kind was condoned and encouraged and in particular by PC Cobban.

We consider a reasonable tribunal could find PC Cobban to have breached the standards of professional behaviour in regard to the sending of messages in this group and that he therefore has a case to answer for this allegation.

#### **Allegation 2:**

There is clear evidence that PC Cobban was an active participant in this WhatsApp group. He participated in many of the conversations in which alleged inappropriate comments were made and can therefore be reasonably assumed to have read those messages. There is no evidence PC Cobban ever challenged inappropriate messages sent by other officers and he did not provide an account that he ever made such a challenge or reported behaviour.

All officers have an obligation to challenge and report behaviour of colleagues which is inappropriate or breaches the standards of professional behaviour. As such, if a tribunal finds that the messages sent within this group were inappropriate,

discriminatory and otherwise offensive then the same tribunal could find that the failure to challenge or report those messages is also a breach of the standards of professional behaviour.

## > PC William Neville (MPS)

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### > Allegations

It is alleged that may have breached the standards of professional behaviour.

1. It is alleged that, between 2 March 2019 and 30 October 2019, PC William Neville sent discriminatory and/or inappropriate messages in a WhatsApp group chat.

#### **Case to answer for gross misconduct**

2. It is further alleged PC William Neville failed to challenge or report discriminatory and inappropriate comments made by other members of the WhatsApp group.

#### **Case to answer for gross misconduct**

### > Summary of rationale

#### **Allegation 1:**

PC Neville sent approximately 32 messages which have been highlighted as being potentially inappropriate. We are aware that the messages outlined in the report do not represent all those sent by the officer. The messages attributed to him contain what in our opinion are highly offensive, derogatory, discriminatory and comments.

We consider this matter should be viewed as a pattern of behaviour. That is, his behaviour should be seen in context of the volume of messages sent by him, within a WhatsApp group, where large amounts of inappropriate messages were being sent.

As with Joel Borders and PC Cobban, PC Neville was an active member of the group and he actively participated in conversations where inappropriate comments were made. Within this context I consider a reasonable tribunal could find that PC Neville participated in the sending of inappropriate, discriminatory, and otherwise offensive messages within a WhatsApp group where messaging of this kind was condoned and encouraged.

We consider a reasonable tribunal could find PC Neville to have breached the standards of professional behaviour relating to the sending of messages in this group and that he therefore has a case to answer for this allegation.

## **Allegation 2:**

There is clear evidence that PC Neville was an active participant in this WhatsApp group. He participated in conversations where alleged inappropriate comments were made even at times when he himself did not send any inappropriate comments. He can therefore be reasonably assumed to have read those messages. There is no evidence PC Neville ever challenged inappropriate messages sent by other officers and he did not provide an account that he ever made such a challenge or reported the behaviour of the other participants.

All officers have an obligation to challenge and report behaviour of colleagues which is inappropriate or breaches the standards of professional behaviour. As such, if a tribunal finds that the messages sent within this group were inappropriate, discriminatory and otherwise offensive then the same tribunal could find that the failure to challenge or report those messages is also a breach of the standards of professional behaviour.

Based on the above, it is our opinion that a reasonable tribunal could find PC Neville breached the standards of professional behaviour by not challenging or reporting the conduct of others in the WhatsApp group and he therefore has a case to answer for this allegation.

## **> PC Daniel Comfort (Norfolk Constabulary)**

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### **> Allegations**

It is alleged that may have breached the standards of professional behaviour.

1. It is alleged that, between 2 March 2019 and 30 October 2019, PC Daniel Comfort sent discriminatory and/or inappropriate messages in a WhatsApp group chat.

### **Case to answer for gross misconduct**

2. It is further alleged PC Daniel Comfort failed to challenge or report discriminatory and inappropriate comments made by other members of the WhatsApp group.

### **Case to answer for gross misconduct**

### **> Summary of rationale**

#### **Allegation 1:**

There is no doubt in the evidence that PC Comfort was part of the WhatsApp group subject to this investigation. A portion of the messages sent in this group were sent by a number attributed to PC Comfort and the officer has not deny sending any of the messages. Equally, PC Comfort has not sought to defend his actions within the group and has offered an apology stating that some of the comments he made could be considered offensive.

Messages sent by PC Comfort appear to relate to race and ethnicity, women, sexual orientation and disability.

We consider a reasonable tribunal could find that the messages he sent contained offensive and discriminatory language and content which could be found to demonstrate a lack of self-control, tolerance and courtesy expected of officers.

We consider that this matter should be viewed as a pattern of behaviour. Within this context, we consider a reasonable tribunal could find that PC Comfort participated in the sending of inappropriate, discriminatory, and otherwise offensive messages within a WhatsApp group where messaging of this kind was condoned and encouraged amongst some of its members.

### **Allegation 2:**

There is clear evidence that PC Comfort was an active participant in this WhatsApp group. He participated in many of the conversations in which alleged inappropriate comments were made and can therefore be reasonably assumed to have read those messages.

PC Comfort did not provide an account that he ever challenged or reported behaviour. He acknowledged that he didn't report the messages in his response to notice, claiming he did not take the remarks seriously at the time and did not believe others were expressing reportable behaviour.

All officers have an obligation to challenge and report behaviour of colleagues which is inappropriate or breaches the standards of professional behaviour. As such, if a tribunal finds that the messages sent within this group were inappropriate, discriminatory or otherwise offensive then the same tribunal could find that the failure to challenge those messages is also a breach of the standards of professional behaviour.

Based on the above, it is our opinion PC Comfort has a case to answer for allegation 2.

## **> PC Matthew Forster (Civil Nuclear Constabulary)**

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### **> Allegations**

It is alleged that may have breached the standards of professional behaviour.

1. It is alleged that, between 2 March 2019 and 30 October 2019, PC Matthew Forster sent discriminatory and/or inappropriate messages in a WhatsApp group chat.

### **Case to answer for gross misconduct**

2. It is further alleged PC Matthew Forster failed to challenge or report discriminatory and inappropriate comments made by other members of the WhatsApp group.

### **Case to answer for gross misconduct**



## > Summary of rationale

### **Allegation 1:**

The investigation has identified two messages sent by PC Forster which could potentially breach the standards of professional behaviour. PC Forster accepted he sent the messages attributed to him in the WhatsApp group and as such it can be accepted that the act of sending these messages has occurred.

In our opinion, the first message identified in the report, *“They’ve only got to say yes once”*, clearly references rape and/or sexual assault and appears to indicate a view that a person who has consented to sexual contact with someone cannot remove that consent at a later date. PC Forster described the message as a *“bad joke”*. It would be for a tribunal to consider whether they accept this account from the officer. Even if this message is accepted as being intended as a joke, it should be viewed in the context of the serious issue of sexual violence and violence and the important role the police play in investigating such allegations and protecting victims.

The second comment, *“She does look like she’d make a great sandwich”*, in our opinion relates to an expression of a sexist or misogynistic view that women should be confined to domestic duties such as preparing food. This was said in the context of a series of messages about women not being suitable to be police officers. This comment, in our opinion, clearly has misogynistic undertones and expresses an outdated view on the role of women in society. PC Forster has expressed that he regrets sending the messages and described it as a poor attempt at humour. As with the previous comment it is for a tribunal to decide if they accept that account and, if they do, whether the sending of such a message as a joke would still amount to a breach of the standards of professional behaviour.

In our view a reasonable tribunal, could find that the messages sent by PC Forster, whether they were sent as jokes or with serious intent, breached the standards of professional behaviour.

We consider such a tribunal could consider the messages have the potential to bring discredit on the police force and undermine public confidence. Additionally, the second comment could be considered to breach the standards of equality and diversity which requires officers to proactively oppose discrimination and treat people with fairness and respect.

We are of the view that the officer has a case to answer for this allegation.

### **Allegation 2:**

The evidence is clear that PC Forster was part of this WhatsApp group throughout the time period for which we have available evidence and therefore would have been a member when all of the messages were sent. There is no evidence he challenged any of the messages sent or reported the conduct of other officers in the group. Nor did PC Forster say he had taken any such action.

PC Forster accepted that many of the messages sent within the group were completely unacceptable however stated he did not see many of these messages as he did not monitor the group regularly. The evidence supports PC Forster’s account that he was not an active member of the group showing he only contributed 1.2% of the total

number of messages. A tribunal could find that this may add weight to his account that he did not see many of the messages which were sent.

However, it is not possible, from the available evidence, to determine what messages he did and did not read. Additionally, it is clear to us that a tribunal could find this group was being used as a forum to share inappropriate content, as such could consider that even if PC Forster did not read all the messages he would have been aware of the general conduct of the officers within the group. This is supported to some extent by the fact PC Forster engaged in some conversations where inappropriate comments were made.

All officers have an obligation to challenge and report behaviour of colleagues which is inappropriate or breaches the standards of professional behaviour.

As such, if a tribunal finds that the messages sent within this group were inappropriate, discriminatory or otherwise offensive then the same tribunal could find that the failure to challenge those messages is also a breach of the standards of professional behaviour.

## > Misconduct proceedings

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All six officers are accused of breaching police standards of professional behaviour variously between March 2019 and October 2019 by allegedly sending discriminatory and/or inappropriate messages and failing to challenge or report inappropriate comments made by others.

In December 2022, a hearing organised by the MPS, found the cases proven against PC Gary Bailey and Civil Nuclear Constabulary (CNC) PC Matthew Forster; former PC Joel Borders, PC Jonathon Cobban, and PC William Neville; and former Norfolk Constabulary PC Daniel Comfort.

PC Bailey and PC Forster were dismissed without notice and the panel ruled that the four former officers would have been dismissed had they still been serving.

All of them apart from PC Forster, who is subject to different regulations, will be added to the College of Policing barred list preventing them from future employment with the police service.

PC Forster has communicated that he wants to appeal the GM finding which will be a matter for CNC to take forward.

They were all found to have breached police standards of professional behaviour for discreditable conduct; authority, respect and courtesy; challenging and reporting improper conduct; and equality and diversity.

## > Criminal proceedings

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There was an indication police officers may have behaved in a manner that would justify the bringing of disciplinary proceedings or committed a criminal offence.

We referred a file of evidence to the Crown Prosecution Service (CPS), in relation to all messages sent by the officers in the WhatsApp group. The CPS authorised charges against all three officers.

They appeared at Westminster Magistrates Court on 16 March 2022 charged with sending grossly offensive messages on a public communications network contrary to section 127 of the Communications Act 2003.

Following a two-day trial held at Westminster Magistrates Court, Joel Borders was found guilty of five counts and PC Jonathan Cobban, three counts of sending grossly offensive messages on a public communications network contrary to section 127 of the Communications Act 2003.

They were sentenced on Wednesday, 2 November 2022. They were given 12-week custodial sentences in November but bailed pending an appeal.

PC William Neville was cleared of two counts of the same offence.

## > Organisational Learning

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We carefully considered whether there were any learning opportunities arising from the investigation. We make learning recommendations to improve policing and public confidence in the police complaints system and prevent a recurrence of similar incidents.

We identified potential learning for the MPS and CNC regarding the culture in which this WhatsApp group existed but did not deem it necessary to issue any learning recommendations specific to this investigation.

CNC provided an update on a number of actions they have taken in respect of monitoring cultural practices across the CNC.

Our findings informed our wider work on cultural issues within policing and the use of WhatsApp.