IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020

IN THE MATTER OF

PC LINGE

PC SZMYDYNSKI

PC WRAY

There are reporting restrictions in respect of this case.

PANEL'S STAGE 1 FINDINGS

Introduction

1. This is a case which concerns uniformed Police Officers attending a school and whilst there making a series of decisions which ended with a child, a 15-year-old girl, on her period, being subject to a strip search.
2. That is to say, she was told to take all the clothes from the top half off, and then, after redressing, all the clothes from the bottom half of her body in an attempt to locate a small amount of cannabis.
3. Not only was the search itself improper, but it was conducted without authorisation. It was conducted in the absence of an appropriate adult- a role set out in key guidance. Key records were not completed. Important safeguards and rights were not respected.

Structure

4. We will give our primary findings of fact for each officer, followed by the secondary findings of fact, before addressing our findings on the alleged breaches of professional standards and severity.

General Approach

5. The Panel have considered the evidence in the bundles that we have:

   Bundle A Notices – pages 1-194.

   Bundle B Material Relied Upon – pages 1-1509.

   Bundle C Policy and Training Index – pages 1-2153.

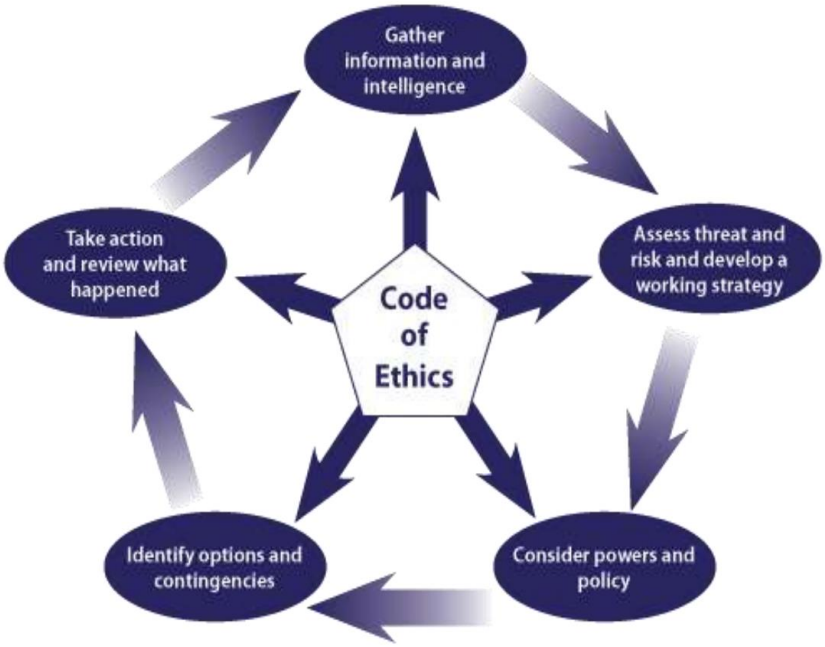
   Character Evidence – pages 1-98

6. Further, the Panel has had two opening documents from the Director General ('DG') and closing submissions from each party.
7. The Panel has been conscious of the passage of time's effect on the memories of the witnesses, combined with the heightened emotions of this case.
8. The Panel have kept in mind that all three of the Officers who are subject to these proceedings are of good character. We have considered their credibility and the likelihood of their committing misconduct, taking this into account.
9. There are some key definitions that we set out at the beginning of this report.

- AA – Appropriate Adult (set out in the Police and Criminal Evidence Act – Code C Detention, treatment and questioning of persons by police officers)

- The role of the appropriate adult is to safeguard the rights, entitlements and welfare of juveniles and vulnerable persons to whom the provisions of this, and any other Code of Practice apply.
- For this reason, the appropriate adult is expected, amongst other things, to:
- support, advise and assist them when, in accordance with this Code or any other Code of Practice, they are given or asked to provide information or participate in any procedure;
- observe whether the police are acting properly and fairly to respect their rights and entitlements, and inform an officer of the rank of inspector or above if they consider that they are not; assist them to communicate with the police whilst respecting their right to say nothing unless they want to as set out in the terms of the caution;
- help them to understand their rights and ensure that those rights are protected and respected

- NDM – (Police) National Decision Model



- GOWISELY – within the College of Policing Authorised Professional Practice Stop and search (also within Metropolitan Police Service (MPS) Policy Stop and Search) – this is information that police officers should provide to individuals during a stop and search
- G A clear explanation of the officer's grounds for suspicion – for example, information, intelligence or specific behaviour of a person.
- O A clear explanation of the object and purpose of the search in terms of the article being searched for.
- W Warrant card, if not in uniform or if requested.
- I Identity of the officer(s): name and number or, in cases involving terrorism or where there is a specific risk to the officer, just warrant or collar number.
- S Station to which the officer is attached.
- E Entitlement to a copy of the search record within three months.

- L Legal power used.
- Y You are detained for the purposes of a search.

- Merlin – Used to report safeguarding concerns for children and vulnerable adults

- 5090 form – Record of a Stop and Search encounter

MPS 5 levels of search

Level	Extent of search	Who can search	Where	Auth. required
1	Standard up to JOG search: removal of Jacket, Outer coat and Gloves	Any officer	Public place	None
2	More thorough search: removal of headgear and footwear	Any officer	Out of public view	None
3	More thorough search: removal of religious headgear	Same sex officer where practicable	Out of public view	None
4	More thorough search: removal of upper and lower clothing e.g. shirt / trousers	Same sex officer	Out of public view	None
5	MTIP search: More Thorough with Intimate Parts Exposed e.g. removal of underwear exposing genitals, buttocks and female breasts	Two same sex officers. BWV off. Look, don't touch. Bend, don't squat!	Out of public view – for e.g. police station (not police van)	Supervisor's authority **must** be obtained prior to the search

10. We have received legal advice from the Legally Qualified Person. We confirm that we have followed the advice attached to this report as an annexe.

Summary of key witness evidence

Child Q

11. At the heart of this case is a young person. Child Q did not attend the hearing. The Chair had determined that her attendance was necessary. Medical evidence was provided, and the Chair determined that she was unable to attend but that her evidence should nevertheless be admitted. The Panel have a witness

statement from her dated 21 October 2022 at B181. Her evidence is that she was taken to the medical room by the Deputy Safeguarding Lead (DSL) and Wellbeing Manager (WBM), but no one explained why. She hadn't been told the police had been called. She walked into the medical room. She said she was 'completely blindsided' when she saw a male and female police officer. The door was closed, and neither teacher entered.

12. She believed the two officers introduced themselves, and she said the male officer did most of the talking and was acting very friendly. She said the male officer told her they had been called because of the smell of cannabis, and they would have to make a report to Social Services.

13. The male officer said to her he could not really smell it, but they would have to search because of what the teachers had said; he did not mention strip search. She said the male officer told her she would be arrested if she resisted. She thinks the male officer mentioned Appropriate Adult (AA) but did not explain what it meant, and she thinks he mentioned the DSL being the AA. She said she told the male officer that teachers had not allowed her to call her mother and that the officers had not asked for her mother's number.

14. She said the door opened, the male officer went out, and another female officer came in. She said the first female officer explained how they would remove her clothes and that this was the first time she realised it was a strip search. The officer told her that she would remove the top half of her clothing first, they would be searched, and then she could put them back on. She would then have to remove the bottom half. When the officer talked about her bottom half, she

told them she was on her period. The first female officer said, 'We are all women here.'

15. She removed her clothes and was told to turn around, bend over, spread her cheeks and cough. She said she was then told to cough harder and do it from the stomach, not the throat. She said one of the officers said, 'Is there anything up there?'. She was then asked to take her hair down, and her hair was searched.
16. The officers left the room, and she put on the bottom half of her clothes. The male officer and the DSL then entered the room. She said she was then returned to the safeguarding room and she told the school that she wanted to go home. The school called her a cab, and she went home, where she told her mother what had happened.
17. She said that she has felt drained, empty and tired since the incident. She said that she had struggled with sleep, and her GCSE grades suffered.

The PE Teacher

18. The Panel heard from the PE Teacher. She had noted a strong smell of cannabis in the morning when the children were putting bags into the PE changing rooms before an exam. Her statement is at B243. Her account to the Safeguarding Investigation Meeting is at B877. Her evidence is that she took Child Q to the first aid room. She was asked by the DSL to wait outside the room while the two officers who arrived first, described as Male 1 and Female 1 but it is accepted that they were PC Szmydynski and PC Linge, went into the room with Child Q. She was present outside the room throughout the interaction of police officers with Child Q. She could hear bits of their conversation. She did not recall any discussion of AAs. She said there was definitely no comment from PC Szmydynski

about a strip search; in fact, she did not hear a search mentioned at all. She would have intervened had she thought a strip search was taking place. She assumed that when Child Q was in a room with two female police officers and the door shut that either a 'pat down' search was taking place or Child Q was giving a statement to the officers. She said that prior to that, she heard the male officer, who was Polish, speaking to Child Q in a friendly manner, like a youth worker, trying to put her at her ease.

The Headteacher.

19. We also heard evidence from the Headteacher. She spoke with the police officers and the DSL when the officers first arrived. Her statement was dated 24th June 2021. In her statement, she says that she spoke with the Officer and the DSL in her office. PC Szmydynski said that she did not need to contact Child Q's parents. He said that they would do an assessment. In her statement, she said that the officers didn't say anything about a search, "it wasn't mentioned" [B241]. At B984, there is an email from the Headteacher, sent on 31 December 2020. When taken to that email by Mr Coxhill, she accepted that what had been said was that the officers would do an assessment, "and possibly a search". Her evidence was that there was no conversation about the type of search. In her statement, she speaks about having seen same sex police officers search students with a 'pat-down' in her presence. That is the type of search that she said would have made sense on this occasion. She recalled PC Szmydynski making a request over the radio for another female officer to come to the school. She asked whether she needed to be present, and PC Szmydynski replied that she did not. She did not accompany

the police officers and the DSL to the first aid room. In her statement, she says that the medical office is next to her room.

The Deputy Safeguarding Lead (DSL)

20. The DSL's first account is timed at 13:27, 4th December 2020 [B867]. Her statement is at B226 and is dated 28th June 2021. She told us about an incident that had occurred in November 2020 when staff suspected Child Q of having cannabis. On 3rd December 2020, she said that she thought Child Q was slightly stoned and that there was a strong smell of cannabis. That led her to believe that she had cannabis on her. The school searched but found nothing. She thought there might be cannabis stuffed down Child Q's shirt or somewhere. She did not give much thought to where it might be. In cross-examination, she said it might have been in Child Q's bra or underwear. She had a high degree of suspicion that Child Q had cannabis; she did not accept that she was insistent or that she was adamant. The Headteacher suggested she speak to the Schools Officer, PC Sivaji. She did so; she said that she had not told PC Sivaji that she wanted a search. He did not say that he would not carry out a strip search. Her evidence was that the phrase "strip search" was not used, nor was the term "more thorough search." He advised her to contact 101, and she did. She did not accept that the transcript of the 101 call was accurate. She said that if she did say a more thorough search, she meant a pat-down search.

21. When the first officers arrived at the school, she took them to the Headteacher's Office. PC Szmydynski said not to contact parents until after the police had done an assessment. She describes taking the officers to the medical room and Child Q being brought to see them. She says that the officers spoke to Child Q in the

medical room and that they did not come out to discuss whether a search would take place or what type of search would be conducted. Two more police officers arrived, and both females went into the medical room while the first male came out. In her statement, it was at this point that she asked if Child Q wanted her (the DSL) to be in the room and was told that she did not by PC Szmydynski. In her evidence to us, she put that conversation earlier in the sequence of events. She thought that the police were conducting an assessment and that the school staff would be informed of the outcome prior to any search.

22. The DSL did not mention a radio transmission. She did not recall any conversation about AAs.

23. When the two female officers came out of the room, they said that they had not found anything. At that point, the DSL knew that some kind of search had taken place, but did not know the type of search that had occurred. She told us that the second pair of officers (PC Rahman and PC Wray) then searched the Safeguarding Room, where Child Q had been before moving to the medical room. It was not the DSL's suggestion that they do so.

24. The DSL's evidence also included a conversation the next day with Child Q's mother and aunt, as well as a telephone call with Dr Sinclair on 16 December 2020, during which she stated there was no mention of strip searching. She did recall that Child Q's aunt mentioned that Child Q had been on her period. Upon reviewing the logs, the first record of the police officers' attendance at the school was made at 13:27 on December 4th. That account includes an account of the mother and aunt attending, and therefore, the first recording of the police attendance was made after a complaint was intimated.

Wellbeing Manager (WBM)

25. The WBM had been involved in the initial search on 3rd December. She had no conversation with the police officers but did observe an interaction between Child Q and a male officer when Child Q was laughing and joking, and it seemed to be a pleasant conversation which caused her no concern. When she spoke to Child Q's mother on the 3rd December, she did not know that there had been a search by police officers.
26. She recalled the mother and aunt attending the next day, but did not recall the conversation including strip searches or Child Q being on her period.
27. She was also present for a telephone conversation between the DSL and Dr Sinclair in which she did not recall strip search being mentioned.

Dr Emma Sinclair

28. Dr Sinclair's statement is at B992. There were relevant notes B1024 dated the 16th December 2020. There is a note of the conversation from the DSL's perspective at B1457. Dr Sinclair says that the DSL said that she had known that a strip search was going to take place before it had happened. Dr Sinclair also said that strip search was referred to throughout the conversation.

Sergeant Atkin

29. Sgt Atkin had a conversation with PC Linge on the night of 17-18th December 2020. The record of this is an email chain at B1183 to B1185. In that email, he says that he asked PC Linge lots of questions about what had happened. PC Linge's account is recorded. She accepted that a full strip search, including removal of underwear, had taken place and that Child Q had been on her period.

The email says that PC Linge said that neither she nor PC Wray had done a 5090 and that she had forgotten to do so. PC Linge is also recorded as saying that she had queried the search of a 15-year-old without a "suitable" adult present, but had been told by PC Szmydynski that it was ok. He was asked whether he told her to complete a 5090 (as he'd been asked to do) and said that he could not remember whether he had or not.

PC Rahman

30. PC Rahman gave evidence to us. He attended the school with PC Wray. He had a strong assumption that there was to be a strip search and that was why a second female officer was required, and had heard a conversation with a supervisor, which we take to mean he knew someone who could have authorised such a search was involved. He waited outside the room. He spoke to the DSL. He said the DSL was adamant that Child Q was concealing something. There was mention of a search at the time, but he did not recall the phrase "strip search" being used.
31. When informed the search was negative, no one said that a more thorough search should be conducted to see if cannabis was, for example, hidden in underwear.
32. He thought all present understood that a more thorough search had been conducted.
33. He also gave evidence to us about his training and understanding of the policy around search.

PC Sivaji (Safer Schools Officer)

34. PC Sivaji did not attend the hearing. The Chair had determined that his attendance was necessary. PC Sivaji provided some medical evidence. The Panel accepts that he did not attend due to concerns about his health. The medical evidence did not allow a confident determination that he was unable to attend. No party asked us to exclude his evidence.

35. The Panel have a witness statement from him at B248. The statement is not in a standard format. The first part is written in prose, but it is presented in the third person. The remainder is questions and answers. His evidence is that he was contacted by the DSL as a pupil smelled strongly of cannabis and they thought it must be on her. There were concerns for her and the other pupils' welfare. During that first call, the DSL stated that the school had conducted a thorough search of outer clothing. She said, "They felt that this child was hiding or was in possession of drugs on her and therefore would like a strip search to be completed."

36. His evidence was that he had said that he could not attend, but in any event, that he thought a strip search was disproportionate and that the school should deal with the matter by contacting the parents. After that call, he spoke to his supervisor and told them that the school had contacted him and asked him to attend and had asked him to perform a search. The supervisor (Sergeant Cotton) said, "We will not be conducting a search and advise them to call 101." There are emails in the bundle (B1475/B82) that assist in understanding the interaction between the Safer Schools Team and Operations Room. He says that he rang the DSL back and provided that advice.

37. The Panel have found it difficult to determine from the answer to questions what he says was dealt with in the first call and what was in the second. His evidence is that at some stage, the DSL asked if the attending officers would carry out a strip search of the child.

Inspector Holliday

38. Inspector Holliday gave evidence to the Panel. He is the MPS Tactical Policy Advisor on Stop and Search. He explained that there is no specific guidance on menstruation, but there is general guidance on how to treat people.

39. He said that officers are encouraged to have a conversation with a person to gather information, build rapport and get cooperation where possible. He said that each officer involved in a search must be able to articulate the grounds for a search and form genuine suspicion in their own mind. He said that once grounds had been established, then it needed to be considered what type of search is necessary and proportionate.

40. He explained that the 5 levels of search at B629 existed in 2020. He had heard 'further search' and 'strip search' both used to describe an MTIP (More Thorough with Intimate Parts Exposed) search. He said there is no requirement for an AA to ask questions of a child.

41. He explained that there is no ongoing training for MTIP once through recruit training and no continuous professional development for stop and search, except for 'pockets' of input during Officer Safety Training.

42. He said that PLAN (Proportionality, Legality, Accountability, Necessity) was taught at training school in relation to exercising key police powers.

43. He said that menstruation could be considered as new information for the purposes of the National Decision Model (NDM).

PC Linge

44. PC Linge gave evidence to us. She was 41 years old at the date of the search. She had finished her probation as a police officer in August 2020, having joined the Metropolitan Police Service (MPS) in 2018. She speaks English as an additional (in fact, third) language. She took no written notes on the day in question.

45. She was the driver of the police car on the 3rd December. After they were assigned to this CAD (Computer-Aided Dispatch), PC Szmydynski read the CAD to her as they drove to the school. She assumed that the search by the teachers would be equivalent to a police JOG (Removal of Jacket, Outer Coat, Gloves) search, but did not know that for a fact. This was her first time visiting a school as a police officer.

46. When they arrived, they met the DSL, who told them that teachers had searched the footwear, blazer and school bag. The DSL was adamant that the child had drugs on her. The Head Teacher also had concerns, and they believed that Child Q was carrying drugs into school, possibly at risk in the community of being exploited by gangs. PC Szmydynski did most of the talking with the teachers. He told the teachers that they would have to speak to Child Q for her account before deciding whether to perform a search. They went to the medical room. PC Linge was wearing a face mask. Child Q was brought to the medical room by the DSL.

PC Linge could smell cannabis, but it was not a particularly strong smell. She did not note signs that Child Q was under the influence of cannabis. Child Q was engaging with them, but when they asked about drugs, she shut down on them. She was not as relaxed and engaging as she had been before.

47. PC Linge was satisfied that the grounds for a s23 Misuse of Drugs Act search were made out on the basis of the smell, the information from the teachers and Child Q's demeanour. Child Q was wearing leggings and a polo shirt. PC Linge suspected that the drugs were concealed in her bra or underwear, and a police JOG search would not find them. She did not think a level 2 search (more thorough search involving the removal of footwear and headgear) would find drugs there. She was not aware of the level 4 search (removal of upper and lower clothing, e.g. shirt and trousers, but not underwear).

48. PC Linge's account is that after the conversation with Child Q, PC Szmydynski said "Well, she has to be strip-searched," which she agreed with. She told us that her memory was clear that the phrase "strip search" was used. She understood that to mean a Level 5/MTIP search. She would not have made a decision to perform such a search without discussion with PC Szmydynski, as it was the first time she had carried out a level 5 search.

49. PC Linge's evidence was that it was at this point, after the initial conversation with Child Q, that PC Szmydynski used his radio to request a second female officer. She asked Child Q for her mother's details, phone number and name and Child Q declined to give those, saying that she did not want her mother present or informed. PC Szmydynski then asked the teachers to see whether one of them

was willing to act as an AA. PC Szmydynski told her that the DSL would act as the AA. She said that Q did not want the DSL in the room during the search.

50. With hindsight, PC Linge accepted that she did not discuss the question of AAs with Child Q properly and that the DSL could not be an AA in those circumstances. PC Linge told us that she did not know that she needed the authority of a supervisor to perform this search and that there was no conversation with PC Szmydynski about that. She accepted that this was a very significant error.

51. She told us that she had covered all the aspects of GOWISELY with Child Q, with the exception that she had not provided the slip. She had a 5090 book with her that day, but did not take it out, which she accepted was a further significant error. Child Q asked what "detained" meant and was told by her (PC Linge) that the officers might arrest Child Q if they considered it necessary on suspicion of concealing drugs.

52. PC Wray then arrived with PC Rahman. PC Linge told us that she remembered there being a huddle of police officers and teachers outside the medical room, and remembers saying that there would be a strip search and explaining why.

53. PC Linge then went back into the medical room, now accompanied by PC Wray, and conducted a search. In summary:

    i. She did not perform a JOG search first on the basis of an assumption that teachers had already performed a JOG and that such a search was anyway unlikely to find cannabis. She accepts that this, too, was a significant error.

ii. The officers instructed Child Q to remove the clothing on the top half of her body first and then allowed her to redress before continuing to search the lower half

iii. She says that Child Q mentioned that she was on her period at the point in the search where she had taken her leggings off.

iv. She did say, "We are all women here". In saying that, she was referring to gender and trying to make Child Q as comfortable as possible in the circumstances.

v. Once the child's underwear was removed, she asked her to turn around and bend over. She did not ask her to cough and doesn't remember asking "anything up there". In cross-examination, she accepted that she may have asked her to spread her buttocks but could not remember doing so.

vi. She then searched Child Q's hair. She accepted that she should have done that before a strip search.

vii. After the search (and after Child Q had redressed), PC Linge opened the door to the medical room and made everyone in the corridor aware that nothing had been found. PC Linge told us that there was no discussion about the extent of the search at that stage.

viii. The DSL had remained outside during the search, as PC Szmydynski had told PC Linge that it was ok.

54. She also gave evidence about the lack of any proper record of this search. Her evidence was that she had started a Crimint entry at the writing room in the

police station later that shift but had been interrupted by a supervisor and had then forgotten to complete the record.

55. She was asked about a conversation with Sgt Atkin. She recalled having the conversation, saying that she answered all of his questions and that he did not "require" her to complete a 5090. She was called by Sgt McCallister on the 13th January and told that they could not find a 5090 on the system, and she was to complete one there and then, which she did.

PC Szmydynski

56. PC Szmydynski gave evidence to the Panel. He was born in Poland and moved to the UK in 2004. He was 39 years old at the time of the incident. He joined Hampshire Constabulary in 2007 as a Police Community Support Officer, remaining there until 2014 when he joined the MPS as a Police Constable.

57. He was posted to Hackney after training, initially as a Beat Officer, then to the Neighbourhood Tasking Team and then to Response about 3 years into his career. Hackney is a very busy and challenging area, with high call volume that necessitates supervisors 'hounding' officers to go from call to call.

58. He doesn't believe he has been crewed with PC Linge before and is not her tutor or supervisor; they are both PCs with the same rank and responsibilities.

59. At 10.38, he accepted the CAD relating to the school and read out the contents to PC Linge. He checked on the radio whether the teachers had conducted a search. Although he hadn't received training about teacher powers, his understanding was that they could search pupils similar to a police standard JOG search.

60. He was aware at the time of the incident that an MTIP search requires supervisor authority, two same sex officers and is conducted out of public view.

61. He said they were met by the DSL at reception and told by her about a previous incident involving Child Q, where she smelt of cannabis and appeared under the influence of it. On that occasion, her mother came to collect her from school. Today, Child Q smelt strongly of cannabis and had been searched by the teachers with nothing found. He said the DSL still believed Child Q to be in possession of cannabis.

62. They were taken by the DSL to see the Headteacher and told that if Child Q had cannabis on her, she was a danger to herself and others. He said he did most of the talking to the DSL and Headteacher and explained they would need to conduct their own assessment. He believed that the school had checked her pockets, bag and jumper, but he did not know if the teachers could touch a pupil during a search. His impression was that the teachers were insistent on the officers searching Child Q.

63. He asked if there was a room away from view to speak to Child Q, as he was concerned about other people, and they were shown to the medical room. He did not believe that he needed to call Child Q's mother at that stage, and there was not a settled view that Child Q would be searched at all.

64. He called on the radio for another female officer, as by the time they had made an assessment and decided whether to search, the officer might be there. During the call, he used the term 'further search', meaning 'next' or 'another one' following the teacher search. He was not referring to a strip or MTIP search. He used the term 'if need be' as a decision to search hadn't been taken at that stage.

It is best practice if an officer of the same sex attends for a JOG search, and he wanted to reduce Child Q's embarrassment if there was to be a search.

65. They met Child Q in the medical room where he introduced himself, explained why police were there and asked questions to establish if grounds to search existed and to help understand her vulnerability. He noticed a very weak smell of cannabis, and Child Q told him that she had been with someone that morning who smoked cannabis. He formed the view that there were reasonable grounds to search. At some point during the conversation, he asked the DSL to wait outside as Child Q might be more comfortable, and the door was closed.

66. After the conversation with Child Q, he explained to her that they were going to perform a search. He did not say strip search as he had not formed the view that a strip search was necessary or proportionate. His understanding was that a JOG search was going to be performed due to the information they had received and because they were in a school.

67. He left the room, and PC Wray, who had arrived, entered. He said that he informed the school staff outside that they had decided to conduct a search. He told the DSL it would be good for her to be present, not as a formal AA, as he didn't think an AA was necessary. Child Q said that she did not want the DSL present. A strip search was not discussed in front of him or the five people present outside the medical room. He waited outside whilst PCs Linge and Wray conducted the search.

68. PC Linge opened the door and came out and said nothing had been found. He went back in and spoke to Child Q, who didn't appear angry or upset or say she had been strip-searched. He believed a JOG search had taken place. He asked

her if she understood what had happened and if she had questions, and Child Q said no.

69. Upon leaving the school, he said that PC Linge informed him that a strip search had taken place. He told her she needed supervisor authority. He said that they will record everything, with him completing the Merlin report and PC Linge the search record 5090 as the searching officer. He did not make an entry in his notebook, which was subsequently lost during a refurbishment at the police station.

70. They arrived back at the police station about 2pm, and he created the Merlin at 2.29 pm. He recorded within it that there had been a 'further' search of Child Q by two female officers in a separate room. He used 'further search' to describe a strip search. Most of the time in custody, the Custody Sergeant says they have authorised a further search, and he would expect all officers would understand further search as a strip search. He had used the term further search to describe strip searches in previous statements he had completed.

71. In relation to emails from PC Sivaji to him, he does not recall when he read them. The use of the term 'no grief' in one of the emails implied to him that they were nothing important. He wasn't aware that PC Linge hadn't completed a 5090; once he became aware of this, PC Sivaji's emails made a lot of sense. His not replying to the emails was not deliberate and dishonest.

72. Under cross-examination, he accepted that he took the lead in the incident. He accepted that a JOG search was unlikely to find cannabis in a bra or inside underwear. He was not under immediate pressure of time and could take the

time he needed. He made the call asking for a further female officer after coming out of the Headteacher's office and being outside the medical room.

73. He accepted that there was no need for an observing officer or a same sex officer for a JOG search, and that PC Linge as a female officer was already present to conduct a JOG search and he had built up a good rapport with Child Q. He said it was better practice to have another female officer there. He had never asked for an additional female to be present before, but Child Q was 15, and he wanted to reduce her embarrassment. He did not consider where the cannabis might be and did not consider that it might be concealed in Child Q's bra or underwear. He invited the DSL to be present as a female representative of the school rather than as an AA.

74. When speaking to Child Q, he thought she was lethargic and displaying mild symptoms of cannabis use, which potentially increased her vulnerability. When he told Child Q they would conduct a search, he was looking at PC Linge. They had both made the decision to search, when he looked at PC Linge, she did not object, raise questions or look confused. When PC Linge said the search had been negative, he did not ask what had been searched, as he assumed it had been a standard search.

75. He told the school to contact Child Q's mother, but did not check that they had done so or say they would wait for her mother to arrive. Child Q looked big for her age; he did not recall how tall; she did not look mature for her age and looked like a child.

76. When PC Linge informed him after leaving school about conducting a strip search, he was shocked and accepted that there were concerns over her (PC

Linge's) judgment, which may put other children at risk. He did not contact the school to inform her mother and did not inform a Sergeant or the Professional Standards Unit.

PC Wray

77. PC Wray gave evidence to us. She was 25 years old at the time of the incident. She joined the MPS in August 2019 as a Police Constable. She completed her training at Hendon in February 2020 and was posted to Hackney. Her street duties course finished in March that year, and she joined the Neighbourhood Task Force. She had no tutor after street duties and learnt from more experienced officers. By December 2020, she had completed ten shifts on a response team when called upon to cover for staff shortages.

78. At the time, she had never heard the word MTIP. She understood three levels of search: JOG, More Thorough Search (headgear and religious headgear out of public view) and strip search. Her training had taught her to still be thorough when searching children and to explain in a way they understand. Stop and search training at Hendon had not been a large input and consisted of a classroom input and a practical assessment. She was familiar with PLAN (proportionality, legality, accountability, necessity).

79. Her understanding was that for a search that exposed intimate parts, an officer must first have suspicions, conduct an initial search and then, if they still had concerns, could approach a Sergeant who could approve a search exposing intimate parts or not. She understood that any officer can conduct a JOG search alone, a more thorough search can be one officer out of public view, and a search

exposing intimate parts requires two same sex officers. She had received no additional training on menstruation and had not read all of the Approved Professional Practice (APP) or consulted all the legislation.

80. She said she had not attended a school before as a police officer and had not worked with PCs Linge or Szmydynski before. She had worked with PC Rahman, who she was crewed with on 3rd December 2020, on several previous occasions.

81. She had half an ear on the radio and was aware of an incident at the school and heard a discussion between the officer dealing and a Sergeant, but was not aware of the details. She heard a request for an extra female officer and thought a strip search was required, as requests for another female officer to assist with this are heard a lot. She looked at the CAD and saw the address and opening codes and assigned herself to the call.

82. She told us the DSL met her and PC Rahman at reception and informed them that a pupil was suspected of bringing in cannabis, and there were concerns for her. She was shown to a room; PC Szmydynski came out, and she went in. There was no briefing from PC Szmydynski, and PC Linge told Child Q that she was going to be strip-searched and explained the process. She did not ask about authority for the search as she assumed it had been done. PC Linge did not go through GOWISELY, and she (PC Wray) thought that it had been done before in an initial police search before she arrived.

83. There was no AA in the room, but 2-3 teachers outside, and she thought one of the teachers was the AA. She said she did not know they needed to be in the room. She assumed it was the PE teacher as she was sitting so close to the room

and did not leave, but she did not give it much thought. She was wrong to assume and should have checked.

84. Child Q's top half was searched first. Child Q handed the clothes to PC Linge, who handed them to her to be searched on the medical bed in the room. Child Q said she was on her period. She thinks both she and PC Linge interacted with Child Q. This did not raise a concern; she did not know it was a consideration that might stop a search. She had not come across it before, and it hadn't been covered in training. She said to Child Q 'We are all females', and had wanted to make the search as quick as possible. She can't remember if Child Q removed or pulled down her underwear. She can't remember if Child Q was asked to bend over, but that was part of her training. She told us she does not remember Child Q being asked to cough, squat or anyone saying something like 'is there anything up there'.

85. She never intended the search to be humiliating or degrading. It was done the way she was trained, age-appropriate language was used, with two female officers in a private room with no CCTV or Body Worn Video, and it was done in two halves, with Child Q being allowed to put her top clothing back on before moving on to her lower clothing.

86. She accepts that the search shouldn't have taken place. She followed the lead of others in a fast-paced interaction and was not there long. The search lasted about 5 minutes, and then they left the room and told those outside that the search had been negative. No one asked what had been searched, no concerns were raised about Child Q concealing the cannabis on her person and the DSL, when

showing her and PC Rahman out, asked them to search a room that Child Q had been in previously, which they did with a negative result.

87. She did not make any notes as she did not know they were needed as the assisting officer.

88. Under cross-examination, she accepted that she had two jobs after leaving university, prior to joining the MPS, and had real-life experience. She was unaware of PC Linge and PC Szmydynski 's policing experience or working style. She had completed Every Child Matters training, Human Rights Training, including PLAN, and stop and search training. The National Decision Model was a basic foundational thing, and a number of questions should be asked at each stage of the cycle. She had been trained to use the NDM when exercising police powers, and all the training was relatively fresh in her mind 12 months after Hendon.

89. Her only experience of a strip search is in custody. This was her first strip search outside custody, her first of a minor, the first time she had exercised powers in a school and on reflection, she should have asked more questions. She relied on others, and she shouldn't have.

90. The background conversation on the radio about powers, the request for an additional female officer, and her understanding that a strip search is the only search requiring two officers of the same sex were the reasons she assumed, prior to attending, that this would be a strip search. Nine times out of ten, a request for a female officer is in relation to a strip search.

91. She did not know Child Q's exact age, just that she was under 18. She did not think Child Q appeared under the influence of cannabis, and she spoke to her in

a friendly, age-appropriate way. They did not ask Child Q to hand over any cannabis before the search. There were no alarm bells for her as she thought a Sergeant had authorised the search.

92. She cannot recall asking Child Q to spread her buttocks. She vaguely remembers Child Q's hair being searched by PC Linge and thought she had been doing searches wrong previously in custody, as she had never searched hair. She accepts now that the search was not necessary or proportionate and would accept that it was grossly disproportionate. She said she would have done exactly the same for a white child.

DISPUTES OF FACT

93. Much of the basic factual evidence in this case is agreed. However, there remain some significant disputes of fact between the parties. We have to make findings on those factual issues. The key incidents in this case took place over four and a half years ago. Many of the witnesses have been asked to provide multiple accounts. Their accounts have not always remained the same. We have looked for solid facts that we feel able to rely upon before turning to the contentious witness evidence.

94. In doing so, we have reminded ourselves that a decision to exercise police powers is taken by police officers. It is no answer to an allegation of misuse of such powers to suggest that others influenced that decision. That may be important context, but it is for the officers concerned to justify their own use of powers.

95. A second context point that we have kept in mind is that there were risks in a decision *not* to search.

96. Firstly, there is the 101 call made by the DSL on the day in question. There is a transcript of that 101 call in the bundle. When the DSL was taken to the transcript by Mr Ponte in cross-examination, the DSL did not accept that it was accurate. We have listened to the recording of that call, and we are satisfied that it is an accurate transcript of that call.

97. The transcript demonstrates that the DSL was keen to stress the strength of her belief that Child Q was in possession of cannabis. She makes repeated statements about that. When the operator is ending the call without committing to police attendance, the DSL wanted it noted that "we absolutely think she has it on her". We can well understand why it was put to the DSL that she was "insistent" and "adamant".

98. Whether the DSL 'wanted' Child Q searched was an emotive topic. It is clear that the DSL was calling after speaking to the Safer Schools Officer (SSO), PC Sivaji. She says that "we (the school staff) can only do so much… so we wondered if she could have a more thorough search."

99. Further, the DSL said, "We know she can't be searched on site". In that respect, we note that the DSL accepted that at a previous school, the police had attended and carried out a pat-down search.

100. There is a dispute between the DSL and PC Sivaji about whether she requested a strip search in her phone call to him. PC Sivaji says that "School had requested my attendance to conduct a strip search on a pupil." [B290- 9th April 2021] [B252- 6th July 2022].

101. Despite not hearing from him in person, the Panel accept PC Sivaji's evidence that the DSL requested a strip search in her phone call to him, as it accords with the 101 call.

102. Secondly, there is the recording of the Airwaves communications. Although this is not a strictly agreed transcript, and PC Szmydynski has indicated that he disagrees with one aspect of it, we regard it as helpful contemporaneous evidence.

103. That shows that:

    a. PC Szmydynski queries whether staff have already searched, indicating that he is aware of the existence of a search power (we note that the power is an entirely hands-off search, whereas police officers seem to have regarded it as equivalent to a JOG search).

    b. A comment is made about skippers monitoring the channel.

    c. The transcript records a male voice, accepted to be PC Szmydynski, saying, "Can you make some enquiries because [inaudible] another unit with female officers that can come to ACA and assist us with further searching if need be? I'd be happy if [inaudible]." PC Szmydynski in his Regulation 31 notice says that having listened to the recording he thinks he can be heard to say "In reference to our CAD assigned, can you make some enquiries if there is another unit with a female officer that can attend [the School] and assist us with further search if need to be?" (R31 para 9 (6)).

    d. Forty seconds later a female voice volunteers to assist. We accept that was PC Wray.

104. Thirdly, the CAD itself [551] which is a contemporaneous source of information. It recorded a student was believed to have drugs on her, there was a strong smell of weed, she had been searched today but nothing found, she may be carrying drugs for someone and putting herself in danger in school and out in the community.

Has the Director General (DG) proven that PC Szmydynski decided or agreed with PC Linge that she should perform an MTIP (or 'strip search') of Child Q

105. During the incident, PC Szmydynski assumed a leading role in all material respects. It was he who engaged directly with the DSL, the Headteacher, and with Child Q herself. He informed Child Q that she would be searched. In light of his central role, it is implausible to suggest that he had no involvement in determining the nature or extent of the search that followed.
106. While in the police vehicle, PC Szmydynski queried the control room as to whether the teaching staff had already conducted a search of the child (R31 and B572). He tells us that he expressed doubts as to whether any police search would meaningfully differ from that which had purportedly been carried out by the teachers (R31 paragraph 4). That was not said on the radio. It would be a commonsense observation and is consistent with what the recording does show him saying "I am aware that teachers have the power to search the pupils. Has that been attempted. Is it done?"
107. Since Child Q was wearing a polo shirt and leggings, in those circumstances, a JOG search would have been unlikely to detect any concealed cannabis, thereby further undermining the claim that only a JOG search was contemplated.

108. Notwithstanding this, he proceeded to request the attendance of a second female officer at the scene. There is a conflict of evidence between PC Szmydynski and PC Linge about where the request for an additional female officer fitted into the sequence of events. PC Linge's evidence is that it was after they had decided to search. PC Smydynski says it was just before they got to the medical room for the first time. We note the evidence of the Headteacher that after the initial conversation with officers "that was pretty much it" and she "stayed in her office" [B240] to the extent that she did not realise other police officers had attended. However, when she gave her statement in June 2021, she was able to say that PC Szmydynski had made a radio call asking for a second female officer to attend (also B240). That suggests the call was made at or straight after the conversation with the Headteacher.

109. In his evidence, PC Szmydynski stated that Hackney was a busy borough with a high volume of calls. In the Panel's view, his request for a second female officer would remove both that officer, her crewmate and their vehicle from operational availability. He asserted that the request was made to minimise embarrassment to Child Q and because the presence of a second female officer represented "best practice." There is no legal or policy requirement for a second female officer to be present during a JOG search. The relevant policy provision (C1462) refers only to the requirement that, where practicable, a search of a person should be *conducted* by an officer of the same sex. PC Linge was able to perform that role.

110. Indeed, under current provisions, a male officer is permitted to conduct such a search on a female, and in this instance, PC Linge, a female officer already at the scene, was available to conduct a JOG search herself. The requirement for two

same-sex officers arises solely in the context of an MTIP search (B629). The suggestion that PC Szmydynski sought to ask for a second female officer to *witness* a JOG search he had not yet decided to perform is implausible.

111. PC Szmydynski employed the phrase "assist us with further search if need be" during this transmission. The same term was used by him in the Merlin record, only three or so hours later. His evidence is that he used the term to refer specifically to a strip search within the Merlin report. Moreover, in written statements he had provided in three earlier incidents (two in 2017 and one in 2018), PC Szmydynski had used the expression “further search” as a synonym for strip search. In his oral evidence, he confirmed that it was his understanding that police officers would take the term "further search" in the Merlin record to mean a strip search. The use of this term in the radio transmission strongly suggests that, at the material time, PC Szmydynski anticipated or intended that such a search would occur.

112. In early accounts, PC Szmydynski claimed that he sought the presence of an AA for the search. However, he altered his position, stating instead that he had asked for the DSL to be present simply as a female representative of the school. In any event, there is no requirement for an AA to be present during a JOG search, further highlighting the disproportionate and irregular nature of his requests if that was what was intended.

113. PC Szmydynski’s evidence is therefore that he sought to have three females present (two officers and a staff member) for what he maintains was a standard JOG search, when in fact such a search may lawfully be conducted by a single

male officer. This again raises questions about whether the search that was anticipated or permitted was more invasive than he has claimed.

114. When PC Linge subsequently informed those outside the room that nothing had been found, PC Szmydynski made no inquiry as to the scope or nature of the search that had just taken place. This omission is particularly troubling given the risks articulated by school staff had not, on any reasonable view, been mitigated by a JOG search alone. If PC Szmydynski thought that a JOG search had been performed, then we would expect there to have been at least a conversation about whether to go further. Nonetheless, PC Szmydynski treated the matter as concluded and departed the school with PC Linge.

115. On his own account, when he was informed by PC Linge after leaving the school that she had carried out a strip search without authorisation, he failed to take any steps to inform the school or to ensure that PC Linge did so. Nor did he escalate the matter to a supervisory officer or record the unauthorised search through the appropriate channels.

116. We note the evidence of Dr Sinclair (B992), and in particular that captured in her contemporaneous note of a telephone conversation with the DSL on 16th December 2020 (B1024). It is clear that Dr Sinclair was well aware of the difference between a pat-down search and a strip search (B1023). Dr Sinclair's account of the conversation is that the DSL said that she was aware that a strip search was to take place prior to it occurring. The DSL could only have received this information from either PC Szmydynski or PC Linge. We cannot conceive of any sensible scenario in which PC Linge could have told the DSL without PC Szmydynski being at least aware. We also note that Dr Sinclair was aware of the

existence of a further type of search, an intimate search (1024) and that this was discussed, and the DSL clarified that this had not taken place. We have considered that the conversation was conducted with the school on speaker phone and that neither the WBM nor the DSL accept that they were aware of the type of search or that this was discussed in the call. We accept Dr Sinclair's evidence. She struck us as a careful, intelligent professional who was alert to the importance of what had happened and the different types of searches. Further, she took a full and careful note of what was said. We do not think that there is a meaningful possibility of misunderstanding during the call.

117. The school investigation suggests that Dr Sinclair was the first to raise concerns. (B850) We note that the My Concern record (B1457) of that conversation does not include the term strip or intimate search (despite B850)

118. In that respect, we also note the evidence of Child Q's mother about a conversation that took place at school on the 4th December. In her witness statement, which starts at B190, she says on B193 that the conversation involved Child Q's aunt saying that Child Q was on her period. That detail is also picked up in the documentation regarding the school's complaint and investigation. It is clear to us that this conversation was about a strip search, not a pat down/JOG search.

119. As we have set out above, we have concerns about whether the DSL is a reliable historian based on the significant discrepancies between her evidence and the 101 call transcript and recording. We find that she was aware of the type of search on the day, and more likely than not before it happened.

120. Also in the balance must be the evidence of the PE teacher who says that she was unaware of the type of search. We note that her role was to wait outside the medical room.

121. In the final analysis, whilst we have considered the points raised by Mr Coxhill in his written and oral submissions, we take the view that on the balance of probabilities, PC Szmydynski was centrally involved in the decision-making to perform a strip search. It is clear to us that he prepared for the possibility of a search that needed two female officers, and he made some (albeit inadequate as we will discuss later) attempts to ensure a third female adult was present in the medical room. We find as a fact that the DSL knew of the type of search before the conversation with Dr Sinclair. The DSL has not suggested that she found out from some other source. We accept PC Linge's evidence that the staff were informed. In our judgment, PC Szmydynski's evidence that there was an almost entirely non-verbal exchange between himself and PC Linge is also unlikely to be correct. We find there was a conversation, and both agreed on what was to happen next.

122. After first announcing our decision, the Panel have discussed this aspect of the evidence further. In his first written account of the incident on 25th April 2021 (B492), an email responding to questions from the Professional Standards Unit, he stated that he was not aware that PC Linge and PC Wray were carrying out a strip search.

123. In his next account on 8th December 2021 (B981) he reiterated that he did not discuss in advance or know that a strip search was taking place. He added that

PC Linge told him she had conducted a strip search when they walked out of the building

124. The Panel have found that PC Szmydynski was not honest in his written accounts, his interview or his evidence to the Panel.

Primary Findings of Fact

PC Linge

125. Paragraphs 1 to 7 of the Regulation 30 notice are admitted. We do not regard the difference between information that Child Q was thought to be under the influence of cannabis at or around 8.30 am and whether staff were asserting she still was when the police arrived as significant. There was clearly a prospect that she was, and the Officers needed to act accordingly. Paragraph 8, the threat to arrest, is admitted.

126. PC Linge denies the allegation made at paragraph 9, which states "During this, or in any event before you performed the search, you did not inform Child Q of the grounds for and object of the search."

127. Her case is that she gave Child Q the Grounds and Object of the Search. At B371 PC Linge says that "I explained Ms A (Child Q) the procedure, gave her GOWISELY, expanding on grounds and she seemed to be alright with the decision made based upon the fact collected by us." In her account at B392, "We (she and PC Szmydynski) had a conversation with Child Q explaining that a decision had been made to strip search her. I had explained to her that we would conduct a further search that was called a strip search, and I provided her the grounds. This was done more like a conversation rather than going through each point of

GOWISELY as you would with someone detained on the street, as we had already been in conversation with her. I had already introduced myself when we first spoke to Child Q. I summarised what we were concerned about and why we had decided to strip search her."

128. The Panel note that Child Q's witness statement says that she was told what officers were to search for and that they suspected that she was in possession of cannabis because of information from the teachers. Child Q says PC Szmydynski said that. She also attributes the threat of arrest to PC Szmydynski when PC Linge accepts that it was a comment made by her.

129. In the circumstances, the Panel, while critical of the failure to provide Child Q with a record of the search and to follow GOWISELY in an organised and systematic fashion, accepts that Child Q was informed of both the grounds and object of the search. It follows that paragraph 9 is not proven.

130. In relation to paragraph 10, on the evidence that we have heard, Child Q was reported as having attended school smelling strongly of cannabis. Further, some staff formed the view that she was (potentially at least) acting "stoned". There was an obvious risk that Child Q was under the influence, which is admitted. PC Linge adds a caveat, which is that she did not think Child Q was when they spoke. We accept that was PC Linge's view.

131. PC Linge admits paragraph 11, save that she does not recall whether consideration was given to taking Child Q to her home so that her mother could be the AA. We will deal with that in the context of paragraph 13, below.

132. It is admitted that the Officer proceeded on the basis that the DSL could act as AA (Paragraph 12).

133. Paragraph 13 alleges that "You did not adequately consider taking Child Q to a different location, such as a police station or her home, to facilitate the attendance of a suitable appropriate adult."

134. The Panel are of the view that the consideration of an AA was entirely unsatisfactory. The provision of a suitable AA is a key safeguard of a child's rights. The location of the search is a secondary issue in the context of the serious failings in this case, and we do not take this issue further.

135. The Officer admits that she did not speak to a supervisor or police sergeant to discuss the search, or seek authorisation to perform it, as alleged at paragraph 14.

136. There appears to be a disagreement as to whether Paragraph 15 was admitted in cross-examination. PC Linge's position is that it is partially admitted. In cross-examination, a similar list of matters that should have been considered when deciding whether to search was put to her. She agreed that each of them was a relevant consideration. She was then asked:

Q: Given that you accept the decision to strip search Child Q was disproportionate, will you accept that you failed to give sufficient consideration to those factors that I have just gone through.

A. Yes, I have.

137. The Officer then denied failing to recognise that Child Q was a child or treating her as older than she was. It does not follow from the sequence of questions and answers that each subparagraph of paragraph 15 was admitted.

138. It is admitted that the amount of cannabis suspected was not adequately considered. We find that Child Q's position as a potentially vulnerable and exploited child was not sufficiently considered, and neither was the risk of alienation from the police, particularly important in combination. The potential effect of such a search on a 15-year-old girl going through puberty was not adequately considered. We accept PC Linge's evidence that she was well aware of Child Q's age and treated her accordingly. It is admitted that alternative means of dealing with the situation were not adequately considered. It is admitted that the proportionality of the case was not adequately considered. PC Linge agreed that she did not consider unconscious bias. The Panel do not accept that she, in the course of this decision-making process, adequately considered the risks to Child Q from others learning of her search and/or arrest. Subparagraph (15 ix) is admitted. The search was disproportionate, and this should have been clear to PC Linge at the time.

139. Paragraph 16 is admitted; "In all the circumstances, you decided to conduct a search and then conducted it when it was unnecessary, inappropriate and disproportionate." In the Panel's view, the officers should have undergone a three-stage assessment. The first was whether there were reasonable grounds to suspect that Child Q was in possession of cannabis. The Panel accept that there were. The second stage should have been whether there were reasonable grounds to think that something might be hidden in a place that might require more than a JOG search. Again, the Panel accept that there were. The third stage was to decide whether it was proportionate to conduct that search on a 15-year-old, at her school, for what could only have been a small amount of cannabis.

Our view is that the Officers simply did not undertake that third-stage exercise. They proceeded on the basis that, because the reasonable grounds test was met, they would perform a search; they selected the type of search without adequately considering the likely effect or the possible alternatives, including not searching at all.

140. Paragraph 17 alleges that PC Linge asked PC Szmydynski to request a second female officer. The DG has not proved that aspect of the allegation. PC Szmydynski made the request. PC Linge did not dispute that intention, but there is no reliable evidence that she asked him to do so. It is accepted that PC Wray attended and that a search was performed.

141. In respect of paragraph 18, the Panel do not accept that the DG has proved it was more likely than not that PC Linge did not adequately consider how to perform the search. There was no discussion with PC Wray as to how the search was to be performed, but it was clear to both officers what their respective roles were. The issue here, the Panel find, is the decision to perform a strip search at all, and in the absence of authorisation and without an appropriate adult, rather than a lack of planning as to how to carry that out.

142. Paragraph 19 is admitted.

143. In respect of Paragraph 20, the Panel find that there was, overall, an inadequate consideration of proportionality. The information from Child Q that she was menstruating was new and ought to have been fed into a new assessment using the NDM. The search was already disproportionate. This was an opportunity for reflection and to correct the original mistake. There was no discussion with PC Wray and PC Szmydynski about this. There may be circumstances in which it

would be justified, necessary and proportionate to continue to search a female who was on her period. It was not justified here.

144. Paragraph 21 concerns the absence of Child Q's mother or any other AA and is admitted.

145. Paragraph 22 is admitted in part. The Panel have considered the allegations and has had to balance Child Q's evidence [B187], which we have not been able to test, against the evidence of the two searching officers. The disputed matters are whether Child Q was asked to cough and whether either PC Linge or PC Wray said, "Is there anything up there?" Both PC Wray and PC Linge deny this. Through no fault of her own Child Q has not been able to attend this hearing. That has meant that we have not heard her in person, and that the Officers have not been able to ask her questions or challenge her evidence directly. In those circumstances, we prefer the tested evidence of the Officers, who have made significant admissions in this case. We do not find those aspects of that allegation proven. Paragraph 22 (iv) is denied. It is not clear on what basis. It seems to us common ground that PC Linge searched Child Q's hair (B385). The Panel accept that PC Linge searched Child Q's hair and that this took place after the MTIP search. We find a search of hair to be less intrusive than the MTIP search. We find, therefore, that it should have been done first. For the avoidance of doubt, if what is alleged is that Child Q's hair was searched before she was allowed to dress (B187) we do not find this proved. Further, Child Q's evidence is that she was asked to untie her hair, not to unbraid it.

146. We find PC Linge did say "We are all women here" (paragraph 23). We find that this was an attempt to reassure Child Q. It is the type of thing that adults say to

teenagers when discussing matters linked to growing up. The clear meaning is that they have periods too. It is over literal, in our view, to regard that as evidence of adultification. This is a search of a child, in uniform, in her school. We regard that comment as an acknowledgement of Child Q's embarrassment. We are significantly critical of the decision to conduct the search. We regard this as a missed opportunity to identify that mistake and avoid a further search of the lower body, which would have been particularly humiliating. That is different from suggesting the search could have proceeded, but in a different manner (as alleged at 23 (iv)).

147. We will return to paragraph 24 having made our primary findings of fact for all Officers.

148. Paragraph 25 (i) about not making an immediate record of the search is admitted. Paragraph 25 (ii) concerns a conversation with Sgt Atkin on 18th December. There is no direct evidence that Sgt Atkin instructed PC Linge to complete a search record on the 18th December. Sgt Atkin's evidence is that he could not remember whether he had said so. We have been invited to infer that he did from emails to him prior to the conversation. We do not agree. When given a clear instruction to do so on the 13th January 2021 PC Linge did create a search record. Having admitted to PS Atkin (B1185) what happened during the search, we think it probable that PC Linge would have completed a record if instructed to do so. On that basis, paragraph 25 (iii), whilst admitted, loses much of its force.

149. We have not been referred to any evidence that suggests that PC Linge was aware of the complaint (Paragraph 25 (iv)).

150. Paragraph 25 (v) (that a search record was completed on 13th January 2021) is admitted.

151. Paragraph 26 (i) was withdrawn, on the basis that the search record does refer to the type of search (B1198), It is admitted that the search record did not refer to the lack of authorisation; PC Linge gives herself as the authorising officer. There is no reference whatsoever to an AA.

152. Paragraphs 27- 38 concern training and MPS policy, APP, Police and Criminal Evidence Act (PACE) Codes A and C. They are all admitted, albeit a point is made about the degree to which the training was clear in PC Linge's memory.

PC Szmydynski- primary facts

153. Paragraphs 2- 7 of PC Szmydynski's Regulation 30 notice are proved on the Officer's admission. The Officer says that he does not specifically recall paragraph 5 (vi) (being told that Child Q had been associating with students expelled for involvement in drugs). We find as a fact that Officers were told that, noting the combination of the school's concern about that and PC Linge's answers, e.g. on B358. We find that he did know that at the relevant time.

154. Paragraph 8, that Child Q was told she would be arrested if she did not agree to be searched is denied. We find that PC Linge did say that. We have considered whether this might have happened after PC Szmydynski left the room. We note that PC Linge is clear that he was there (B392). Child Q in fact has PC Szmydynski saying this (B183). We prefer PC Linge's version of events. This is proved.

Paragraph 8 (2) is the consent obtained in those circumstances. We also find this proven.

155. Paragraph 9 relates to speaking to Child Q, the Officer factually admits the paragraph and we find the facts proved.

156. In relation to paragraph 10 (i), the Officer's Regulation 31 account is that he assumed that the school had contacted Child Q's mother. We note the Headteacher's evidence that PC Szmydynski told her she was not needed in the room and the conversation with the DSL about her own presence. All of these factors demonstrate that the Officer did not suitably prioritise the presence of an AA. We find it more likely than not that PC Szmydynski did say that there was no need to contact Child Q's mother for an assessment. She was clearly a strong choice to be an AA. Equally, a member of staff who had not previously been involved in the incident, and who had had the role explained to them could have taken part.

157. Paragraph 10 (ii) is denied, but, on our view, as an allegation of fact, it appears to us to be common ground that no record was made of Child Q's views. Paragraph 10 (iii) alleges inadequate consideration of taking Child Q home. Paragraph 10 (iv) alleges that inadequate steps were taken to ensure that a suitable AA was present. In our view, 10 (iv) is proven. The steps taken were entirely inadequate and failed to prioritise an important safeguard. We do not think it was incumbent on Officers to take Child Q home in order to allow her mother to act as an AA. 10 (iii) is not proven.

158. In relation to paragraph 11, PC Szmydynski does not accept that he proceeded on the basis that the DSL could act as AA. We note Child Q's account is that she

recalls PC Szmydynski mentioning the words appropriate adult and that he suggested the DSL. The DSL says that she asked PC Szmydynski if she should go into the room with Child Q, and he said no. In his account dated 25th April 2021, PC Szmydynski confirmed that he is aware of the requirement for an AA to be present if a child is to be subject to a 'strip search.' In his account dated the 4th August 2021, he says that there was a discussion between officers, staff members and Child Q as to one of the staff members being present in the room to act as an AA, but Child Q did not want "a staff member to be present in the room". In his evidence to us, PC Szmydynski said that he did not make enquiries to see if the DSL might be an AA at the stage that Child Q was to be searched. Even allowing for potential linguistic difficulty, it is clear to us that PC Szmydynski initially agreed that he had approached the DSL to be the AA. There is no suggestion that anyone other than the DSL was put forward to Child Q as a potential AA. We find Pc Szmydynski proceeded on the basis that the DSL could be the AA. There is no suggestion that he explained the role to her or ensured that she understood. Whilst we would hope that a professional with a role in safeguarding would be able to fulfil the role of AA, the DSL was too involved in the case to be suitable. Further, when Child Q said that she did not want the DSL to be present, he did not take steps to identify another person to act as AA, whether that was Child Q's mother or another suitable adult. It is accepted that no record was made, and therefore, the DSL could not have been asked to sign such a record.

159. As to paragraph 12, we do not accept that it was incumbent on officers to consider a change of location if an AA had been available.

160. Paragraph 13 is proven. There is no suggestion that PC Szmydynski contacted a supervisor for advice, and no suggestion that he sought authorisation. We have considered the Officer's assertion that he was well aware of the requirements for authorisation (see e.g. his response at B492). When we compare that to his actions on the day, as we find them to be, we come to the view that his evidence that he was aware of such a requirement is unlikely to be true.

161. Paragraph 14 is proven in the sense that there was not an adequate consideration of the list of factors. In circumstances where PC Szmydynski has denied being involved in the decision making it is not possible to go through the list of factors set out individually.

162. Paragraphs 15 and 16 are proved for the reasons set out above. It is right that the Officer's account was that he first learned of the strip search after leaving school (paragraph 17).

163. We will return to Paragraph 18 in due course.

164. Paragraph 19 is concerned with the Officer's entry on Merlin and is accepted.

165. Paragraph 20 is not proven. The entry on Merlin did, in the Panel's view, refer to the fact that the search was a strip search. The entry reads "The safeguarding lead beliveed it might be hidden on the subject, so police was called and conducted further search in separated room - two female officers- nothing found." The combination of the term "further search", which Inspector Holiday told us was used as a shorthand for a custody strip search, and the reference to female officers and a separate room led the Panel to conclude that there was adequate reference to the type of search. Whilst we accept that there is no reference in that document to the absence of authorisation and an AA, we would not expect to

see that in a MERLIN record dealing with concerns about drug use. The Officer was not recording a safeguarding concern about the search itself.

166. It is accepted that the emails set out in Paragraph 21 were sent by PC Sivaji. It is accepted that the Officer did not reply to those emails (Paragraph 22).

167. PC Szmydynski has not specifically responded to the paragraphs (23 – 34) with regard to training and policy. We note that the records of his training do not record formal training in stop and search, but PC Szmydynski has not suggested that his knowledge of his powers or policy was inadequate. Paragraph 23 concerns MPS policy and is proven. PC Szmydynski did take Equality and Diversity training on 9th December 2014, C21. The evidence of DC Watson at C2136 is that all MPS officers sat the training, which we have seen in the bundle. We therefore find paragraph 24 proven

168. Paragraph 25 is proved on the basis of DC Watson's statement. Paragraph 26 accurately sets out the MPS stop and search policy. Paragraphs 27 to 34 concern questions of the APP and Codes of Practice. They are proven.

PC Wray- primary facts

169. PC Wray admits the significant majority of the factual allegations against her in the Regulation 30 notice. She admits paragraph 5, but we will deal with the particular observations made on her behalf. We accept that she understood the request for a second female officer to attend as a request for assistance with a strip search (paragraph 5 (i)).

170. As to 5 (v), we accept from the CAD that there was a period of around three minutes between offering assistance and arriving at the school.

171. Paragraph 6 is admitted in relation to what was recorded on the CAD.

172. At 7 (ii), PC Wray says it was PC Linge who told her and Child Q that there was to be a strip search for drugs. We accept that.

173. Paragraph 8 is admitted. We accept that PC Wray attempted to reassure Child Q (sources- B459 and her evidence at the hearing).

174. We accept that PC Wray did not provide the grounds and object of the search and did not ask Child Q whether she had been provided with them. We accept that PC Wray believed that there had already been a police JOG search and that Q had been given the required information at that stage (paragraph 9).

175. Paragraph 10 is admitted in relation to the AA. In her Regulation 31 response, it is stated that PC Wray assumed that arrangements had been made. We point out that this was a particularly dangerous assumption, as it would be the expectation that an AA would be in the room for the search. We also accept that this situation was not one with which PC Wray was familiar. In response to paragraph 10 (iv), PC Wray states that she assumed that the safeguarding teachers were familiar with the role of AA; this is a separate assumption that represents poor practice. There is no reason to assume that teachers or school staff would be familiar with the requirements of that important role.

176. Paragraph 11 is admitted, on the basis of assumption.

177. In response to Paragraph 12, PC Wray says that she believed that authorisation would have been granted before the request was made for a second female officer. There is logic to that belief. She also, we accept, had heard a conversation about supervisors in relation to this incident earlier.

178. Paragraph 13 has been withdrawn.

179. In relation to Paragraph 14, the Panel find that there was no meaningful conversation between PC Wray and PC Linge (or PC Szmydynski for that matter). The paragraph alleges that PC Wray "did not consider or discuss" a number of matters. The Officer admits failing to properly consider a number of relevant factors. We accept that she considered the aim and purpose of the search. We accept that PC Wray was concerned about Child Q's situation, albeit we regard that as a worrying feature of her case. We accept that PC Wray was aware of the need to treat Child Q as a child. We accept that she did not discuss unconscious bias or stop to consider the potential impact. Further, we accept that she did not perform her own analysis of whether a search was proportionate; we also accept that she believed that had been done and that a search had been authorised.

180. Paragraph 15 (i) was withdrawn. Paragraph 15 (ii) that the search was unnecessary, inappropriate and disproportionate is admitted on a hindsight basis, which the Panel accepts.

181. Paragraph 16 (i) is admitted. PC Wray accepts that there was no conversation about how the search could be performed in a way that better maintained Child Q's dignity and minimise her embarrassment. The DG has not suggested an alternative method of conducting an MTIP search. However, the Panel regard the lack of briefing or consultation, which might have included a conversation about the method of searching, as a lost opportunity to firstly, reflect on the search generally, and secondly, for PC Wray to understand the lack of an earlier police search, authorisation and the AA.

182. Paragraph 17 is admitted. PC Wray says to us that she used the words 'we are all females here' rather than women. In evidence, she at one stage said that she used

the word ‘girls’ but withdrew that. We accept that whatever she said, it was intended as a reassurance and does not establish that she was thinking of Child Q as an adult.

183. Paragraph 18 is admitted. We accept that the issue of menstruation was not addressed in training.

184. Paragraph 19 is admitted.

185. As to Paragraph 20 (i), we find that Child Q’s underwear and sanitary pad were searched by PC Wray. We have not been taken to any evidence that they were held up in the way paragraph 20 alleges. Child Q’s witness statement says that they were either searched or shaken (B186).

186. In circumstances where we must balance Child Q’s untested evidence against the Officers' as to the words used during the search, we find it more likely than not that the officers are correct and Child Q was not told to cough. This was an improper search, but that is due to the decision to conduct it, not the way it was then performed. In our view, there is force in PC Wray’s evidence that, unlike each other step in performing the search, officers are not trained to ask people to cough. Child Q is (entirely understandably) wrong about points of detail such as what was said earlier by PC Linge and what was said by PC Szmydynski. We note the substantial admissions made by both PC Linge and PC Wray. For the same reasons, we do not find paragraph 20 (iii) proven, that the Officers asked if there was “anything up there”.

187. We should add that we have interpreted Mr Morris’ helpful response document as responding to 20 (iv) not 20 (iii). We do find that PC Linge searched Child Q’s hair. We do not accept that this was done before Q was allowed to dress. We do

regard this as a further warning sign (albeit too late) to PC Wray that her assumption of an earlier search was wrong.

188. We work on the basis that paragraph 21 (i) suggests that Child Q was treated as an adult rather than a child. Mr Morris has responded to the allegation in that way. We do not accept that PC Wray treated Child Q as an adult. This was the search of a pupil in a school. There should never have been an MTIP/strip search in these particular circumstances. That is the serious aspect of this case. We do not find paragraph 21 proved.

189. PC Wray admits paragraphs 23-33 with the caveat that, from her point of view, the training about MTIP/strip searches was cursory and insufficient.

Further Primary Facts

190. The DG alleges that Child Q's race was an effective cause of, or a more than trivial influence on, the decision-making and actions of the officers. The DG invited the Panel to make primary findings of fact and then draw inferences as to unconscious racial discrimination and subconscious racial bias from the totality of the evidence. This included the following reports:

a) HMICFRS Report 'Disproportionate use of police powers. A spotlight on stop and search and the use of force' 2021 [C1970]-[C2016) which states that in 2019-20, black people were nine times more likely to be stopped and searched than white people, drug searches contributed substantially to racial disparities, and the disproportionate use of powers leads to more black people being drawn into the criminal justice system.

b) The NSPCC report- 'Safeguarding children who come from Black, Asian and minoritised ethnic communities' [C2017] which states that adultification is a form of bias where particularly black children are perceived as more grown up, less innocent and less vulnerable than other children [C2020], and black children are sometimes adultified and held to a higher standard of behaviour than their peers [C2021].

191. The Panel took these reports into account when reaching our determination. The Panel have considered the NSPCC report and remained aware of the risks of adultification and double standards.

192. The Panel have also considered the HMICFRS report. We note the issues highlighted but on these facts have not found it of assistance. Unlike many cases where stop and search is used, here the subject of the search was identified to police officers by other professionals, rather than being observed by police officers in the street.

193. In considering the statistical evidence relating to the Officers' stop and search history, the Panel noted that:

    1. The methodology used, comparing the ethnicity of people stopped and searched to the proportion of individuals within census data, did not appear to us to be a reliable or satisfactory method of suggesting racial disparity in the officers' use of stop and search. Census data is too blunt an instrument. We note the complications once the find rate is considered.

2. The data sets for the stop and searches that the officers had conducted were extremely small. For PC Linge, 21 people in a twenty-four-month period. For PC Szmydynski, 11 people in a twenty-four-month period

3. The data lacked any operational context whatsoever.

4. The search of Child Q followed a call from the school requesting police attendance in relation to a pupil suspected of being in possession of cannabis. These are very different circumstances to the majority of stop-and-searches in the street.

194. Given these limitations, the Panel gave no weight to the statistical evidence, considering that no meaningful insight into the Officers' decisions in this case could be drawn from it.

195. The particular concerns identified by the DG that Officers believed Child Q was more likely to be involved with gang crime and the supply of drugs and might supply drugs to her fellow pupils and thus put them at risk, were concerns that came from the school staff. We note that Child Q's mother reports that the school explained their decision to call the police in the first place, partly on the basis of concerns about gang involvement (B193). At B222, the DSL says that she was concerned that Child Q could be bringing drugs onto the site, her community safety and the safeguarding risks this poses to other students. She continues that she called 101 and told them she was very concerned about Child Q's safety in the community and that her bringing drugs into school could present a safeguarding risk to peers. That seems to us to accord with the call (B567). At

B970, there is a reply during the appeal hearing where the Headteacher makes clear the school's concerns about gangs and Child Q being vulnerable to grooming in the community.

196. Concerns about involvement with gangs and supply of drugs, and the risk to others did not originate with the Officers; these were the concerns passed to them by the school. Whilst it was open to the Officers to reject them, that seems to us to be unrealistic. The Officers were entitled to work on the basis that the school knew the child better than they could hope to.

197. We see no basis to think that PC Linge regarded Child Q as more mature than she was, or less innocent. We would expect police officers faced with this information to take proportionate action to get to the bottom of what was going on.

198. There is positive evidence that PC Szmydynski spoke to Child Q in a child-appropriate way. We further note that the comment relied on by the DG, that Child Q appeared large *for her age group* (162 (iv) DG Opening Note), necessarily implies an awareness of her peers. As we have said, this took place in a school, surrounded by pupils in uniform. We see no evidence that the Officers treated Child Q as older than she was.

199. Further, much was made of PC Szmydynski's comments about Child Q's involvement in drama and other activities. In our view, the contrast he drew was with the picture that had been painted of Child Q by others, not with his own views as to teenagers from any particular group or area. Further, we are not persuaded that a discussion about where Child Q lived is suggestive of race

playing a part in decision-making. Child Q being at risk out of school was part of the information given to Officers.

200. We accept the need to examine such a disastrous and negative interaction between a black child and police officers with great care. We are conscious, however, that not every such interaction will have race as a factor. Having assessed the primary evidence, including the evidence set out above, we do not draw an inference that race was an effective cause of this incident. In our view, this was a situation in which the officers adopted an inappropriately simplistic approach and allowed themselves to be drawn into a search. They did not follow the training they had been given and did not seek advice. We do not infer that they would have recalled that training, or thought to take advice, if the circumstances involved a white child about whom a school had told them the same things.

PC Linge- inferences

201. The Panel have approached paragraph 40 of the Regulation 30 notice on the basis that what is alleged is an MTIP or strip-search, not an intimate search.

202. We do not draw an inference that race was an effective cause or had any influence on PC Linge considering Child Q was more likely to be involved in gang crime and the supply of drugs. That was based on information passed by the school to the officers. We have not been given any evidence to lead us to the view that the officers even *knew* Child Q's race at the time when the discussions with the Headteacher were taking place. For the reasons set out above, we find that a decision had been taken that a strip search was very likely to happen before they

had met Child Q. We are significantly critical of that decision, but that does not mean that it was influenced by race.

203. Further, we do not accept as a factual assertion that Child Q was treated as older than her age.

PC Szmydynski- inferences

204. At paragraph 18 of his Regulation 30 notice, we are asked to draw the same inferences in respect to PC Szmydynski. We have reminded ourselves that this is a separate question for each officer.

205. We have separately considered PC Szmydynski's stop and search record, but do not find it to be persuasive.

206. Race was not an effective cause of the concerns about gang crime, the supply of drugs, and the increased risk to other children for PC Szmydynski. It was simply what the officers were told.

207. We do not accept that Child Q was regarded as more mature, adult-like, older than her age, less innocent, less vulnerable and less in need of protection as alleged. Race played no part in how mature Child Q was thought to be.

208. Race played no part in the decision to search Child Q, which we find to have been effectively taken before officers had met her.

PC Wray- inferences

209. We do not accept that PC Wray's stop and search record assists us, for the reasons set out above. We do not seek to repeat our findings about the other primary facts the DG asks us to consider.

210. We do not accept that PC Wray regarded Child Q as more mature than her age.

211. Further, we do not find that race was a cause of less favourable treatment when PC Wray considered Child Q to be nervous. She would have regarded a white comparator in the same way.

212. PC Wray's failing is that she did not form her own view of whether a search was necessary or proportionate. Therefore, race was not an effective cause of any such decision. We have considered whether the DG has proved that PC Wray would have intervened had the subject of the search been a white child in otherwise identical circumstances. We do not draw that inference.

PC Linge- breaches

213. Paragraph 39 is proven as a breach of the standard of duties and responsibilities (D&R) and the standard of authority, respect and courtesy (ARC). PC Linge failed to properly analyse and balance the factors, including Child Q's age, suspected role and the small amount of cannabis she was suspected of being in possession of, against the likely impact of the search. That represents a lack of respect for

Child Q's rights, as well as a lack of diligence. The ARC standard provides "Police officers do not abuse their powers or authority and respect the rights of all individuals."

214. The Panel find that allegation 40 (i) is proved as both a breach of ARC as well as D&R. An AA is a key right for a child in these circumstances. That right was not respected.

215. A diligent police officer would have ensured that a proper record of a child saying that she did not want an AA present during the search was created and signed by the Adult. This is a specific requirement of a search, but recording such matters ought to have been basic good practice. We do not see that as the denial of a right, and therefore this is a D&R breach only. (paragraph 40 (ii)

216. We do not regard paragraph 40 (iii) as a breach of standards. The fundamental point is the provision of an AA, not the location where that might be secured.

217. We regard the failure to provide Child Q with a copy of the search record as a breach of both D&R and ARC. This is a key right and should be second nature to a police officer. (Paragraph 40 (iv).

218. Paragraph 40 (v); the Panel find that Child Q did ostensibly consent but did so after being told that she might be arrested if she did not, and without being informed of key protections like an AA and a record of the search. This is a compelled search; consent is in our view irrelevant, but that does not detract from our concerns about a lack of key information being given to a subject, particularly a child on her own. Lack of consent alone is not a breach of standards.

219. Paragraph 40 (vi) concerns the Officers speaking to Child Q without an AA present. We do not accept that it was incumbent on the Officers to have an AA

present for any conversation with Child Q, even when there was some basis to think she might have smoked some cannabis before school. This is not proven

220. Paragraph 40 (vii) is the failure to obtain authorisation. That is a significant safeguard to any member of the public when officers might consider an MTIP search. Child Q, a child on her own, was denied that safeguard. This is a breach of both standards, D&R and ARC.

221. In relation to paragraph 41(i), the Panel has no doubt that the search had the effect of humiliating Child Q and making her feel degraded. The Panel accept that the search was unnecessary, inappropriate and disproportionate. The Panel finds that, having made significant errors in choosing to conduct an MTIP search during the initial phase, the officers did nothing to exacerbate the process beyond what it was inevitably going to be.

222. In respect of paragraph 41 (ii), the Panel finds that this was a significant missed opportunity to reconsider the earlier flawed decision-making when PC Linge was told about Child Q menstruating. The Panel find paragraph 41 proven as a breach of both standards, D&R and ARC. Not pausing to reflect on the new information represents a failure to treat Child Q with respect, in the Panel's view.

223. The Panel find Regulation 42 (i) is not proven. The search record did state that the search was a strip search.

224. The Panel do not find paragraph 42 (ii) proved as a breach. We do not accept that PC Linge was required to record Child Q's wishes and feelings in a search record. The Officer admits a breach of D&R in not recording the absence of a suitable AA, and the lack of authorisation for the search.

225. Our factual findings mean that we do not find paragraph 43 proven, the allegation that Child Q was treated less favourably because of race. We do not find that PC Linge's decision-making was influenced by race, even as a trivial influence.

226. In respect of Paragraph 44, the case has been put by the DG primarily on the basis of less favourable treatment (see paragraph 54 of the DG Closing Submissions). Paragraph 44 of the R30 raises points regarding age and sex. We do not accept that Child Q was treated less favourably than an adult. An adult female would certainly have been searched in similar circumstances. Furthermore, a 15-year-old male would also have been searched. We consider the effect on Child Q herself as a central part of this case. We feel that many people, regardless of sex or age, would find a strip search deeply distressing.

227. We have been asked to clarify this point by Mr Gold on behalf of the DG. That is the Panel's understanding of the closing submission made by the DG. The written opening refers to less favourable treatment on the grounds of age and sex, but the fuller text is "by failing to have regard to those factors, including her experiencing menstruation, and treating her in a way which caused disproportionate and unjustified disadvantage due to those factors." We also note that the spoken opening refers to indirect discrimination at one point and that there was cross-examination about treating everyone according to their needs. The Panel have considered Paragraph 44, and its equivalent for PC Szmydynski and Wray, further.

228. The Panel do not find a breach of the standard of Equality and Diversity in these circumstances. We do not find it to be appropriate to find a breach of that standard in the context of a proportionality exercise. That would risk a practice of giving undue

weight e.g. to age when there is a risk of young people being exploited to carry drugs by gangs. Indirect discrimination is usually thought of in terms of policy and large-scale justification for good reason. Dealt with in the context of an individual interaction risks distortion of the assessment that should have been performed. At the heart of this case is the fact that what was being looked for, at least by the stage police officers were in attendance, could only have been a small amount of cannabis. We find the factors of age and sex best dealt with under other standards and have fully considered them as factors.

229. Paragraph 45 is an overarching allegation of breaches of orders and instructions and is proved in line with our findings above.

230. Paragraph 46 (Honesty and Integrity). We do not accept that the Officer's failure to make a record of the search on the day was dishonest. We have seen the evidence of her inadequate understanding of procedure demonstrated in her initial accounts offered to the investigation. We note her account to Sgt Atkin on the phone where she confirmed that a strip search had taken place. Whilst we regard her failure to make a proper record of the search as a significant failing, we do not find that it was a deliberate decision made to disguise what had happened. It was not dishonest.

231. We do accept that the standard of discreditable conduct ("Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty. ") has been breached. A right-thinking member of the public, aware of all the relevant facts, would regard PC Linge's conduct as significantly undermining their trust and confidence in policing.

232. PC Szmydynski has denied deciding to subject Child Q to an MTIP search. We have found that not to be the case. In our view, it is not possible to determine which of these factors were or were not in PC Szmydynski's mind, but it follows from our finding that he did not adequately consider the factual background. We therefore find this allegation proved on that basis in respect of both standards, D&R and ARC (at paragraph 35).

233. As to paragraph 36, the Panel find as follows in respect of the subparagraphs:

(i) is a breach of the standards of both ARC and D&R. As we have set out above, the provision of an AA is a key safeguard. In failing to make sure that was in place, PC Szmydynski did not respect Child Q's rights. Further, he has said that he was aware of this entitlement.

(ii) He did not record Child Q's reasons for not wanting the DSL present and did not ask the DSL to sign. We regard that as a D&R breach in that a diligent officer would have done so. It is secondary to the ARC breach of not providing an AA in the first place, but the Panel do not regard it as a freestanding breach of ARC.

(iii) not proven

(iv) not proven

(v) not proven. We do not accept that there was an obligation on the Officers to have an AA present during any conversation with Child Q.

(vi) is proven, PC Szmydynski did fail to obtain authorisation for the search

234. Paragraph 37 is not proved. The record of the search (if the MERLIN record can properly be called a record of search) did communicate that the search had been a further search which had had to be carried out in the presence of two female officers in a separate room. We have not been taken to any evidence to establish that it was incumbent on the Officer to record Child Q's wishes and feelings about the search itself (and we have dealt with the separate question of wishes about the AA above). We would not expect a MERLIN record to record the matters set out at 37 (iii) and (iv,) the absence of an AA and authorisation for the search.

235. Paragraph 38 is proven. We do accept that the search was humiliating and degrading for Child Q (see below); it was also unnecessary, disproportionate and inappropriate.

236. Paragraph 39 is not proved. Having considered the evidence in the round we do not accept that race was an effective cause of the decisions taken by the Officers on that day.

237. Paragraph 40 is not proved. We do not accept that PC Szmydynski failed to treat Child Q as a child.

238. Paragraph 41 is proved as an overarching breach of orders and instructions.

239. Paragraph 42, relating to honesty and integrity, is not proved. We do not accept that the Merlin record was misleading. Further, we do not accept that there was dishonesty in failing to reply to PC Sivaji's emails. In our view, PC Szmydynski was unaware of the serious failings at the time the emails were sent. He did not appreciate the gravity of the situation. He made no false statements. The emails themselves do not communicate urgency or gravity. Further, there is no obvious link between the two emails. They have different titles and the second makes no

reference to the first. It may be sloppy not to reply to emails, but it is all too common.

240. This is a clear case of discreditable conduct, as alleged at paragraph 43.

PC Wray breaches

241. PC Wray admits to a violation of D&R but denies a breach of ARC in respect of paragraph 34. She admits a breach of ARC in respect of paragraph 35 (i) and (v), although she makes a submission about severity, which we will deal with at the appropriate stage.

242. The Panel notes that she accepts that the search was disproportionate. In our view, a disproportionate search must also be unnecessary. We have set out above our findings as to the conduct of the search once the flawed decision had been taken to perform it. We note the careful submissions of Mr Morris about whether the search was humiliating or degrading but do not accept them. The search was, and was foreseeably, humiliating. We interpret degrading as meaning 'causing someone to lose self-respect.' We accept that the search had a considerable effect on Child Q's feeling of self-respect and was degrading. That was also foreseeable. Had the officers, including PC Wray, met their professional obligations Child Q would not have been subject to a humiliating and degrading experience.

243. We do accept for these purposes that where a police officer is involved in activity that is a serious infringement into someone's rights, and here we are dealing with

a child, that there is an obligation on each officer to ensure that the required formalities and requirements are met. This is not a case of failing to challenge or report improper behaviour because we accept that PC Wray did not believe it to be improper. It is, however, a failure to respect Child Q's rights. Even a junior police officer should raise concerns, for example, by asking whether PC Linge needed help with the search record, or to start her own pocketbook entry and ask who had authorised the search so that her own note was complete.

244. In the Panel's view it was incumbent upon her to take some action to ensure that Child Q's rights were respected. Failing to do that was a breach of ARC as well as D&R. We regard that as the same failure covering 34 to 35 (iv) and 36. We have set out above that in our view 35 (v) represents a missed opportunity to correct earlier mistakes.

245. We do not find paragraph 37 proven. Race was not an effective cause of PC Wray's failings for the reasons set out above. Paragraph 38 is also not proven, for the reasons set out above. We do not regard PC Wray's failure to challenge as a breach of the standard of Equality and Diversity.

246. PC Wray admits the breach of Orders and Instructions in her Regulation 31 Response.

247. The breach of the standard of discreditable conduct at paragraph 40 is denied in the Regulation 31 notice. We do not find it proved. A right-thinking member of the public, aware of all the facts, would see that PC Wray was put into a situation where the decisions had already been taken. They would see a junior officer who placed faith in others to have acted properly. They would be critical of her, but

we do not accept that would extend to undermining their trust and confidence in the profession or the force.

Gross Misconduct, Misconduct or Neither

248. The Panel at this stage are concerned with a broad assessment of the type of conduct. We have not performed a mini-outcome exercise by reviewing the College of Policing Guidance on Outcomes in detail.

PC Linge

249. Our findings with respect to PC Linge relate to deciding to strip search a 15-year-old child in relation to a small amount of cannabis and without authorisation, and in failing to protect important rights to an appropriate adult and a record of the search. Those are significant failures. At this stage our task is to determine whether they would justify dismissal for gross misconduct, or a written warning. We do accept that PC Linge's conduct represents a serious failure to respect the rights of a potentially vulnerable 15-year-old, a failure to follow procedure and to make any proper record at the time. Whilst we accept this was a situation that PC Linge, and the other Officers had not been in before, that in our view increased the need to think the situation through. This was a situation that cried out for advice and input from supervisors. There was no immediate time pressure. In our view, these failures were serious and represent Gross Misconduct.
250. The decision to search was disproportionate and was taken without authorisation. That would represent Gross Misconduct. We also regard

conducting such a search without complying with the procedures about AAs as serious enough to merit Gross Misconduct.

PC Szmydynski

251. PC Szmydynski took the lead throughout the interaction with school staff and Child Q, and on our findings the decision-making process. Although he was not in the room, he is centrally responsible for the lack of an AA. This is a clear case of Gross Misconduct.

PC Wray

252. We take the view that PC Wray is in a fundamentally different position. She took no positive decisions as to the search. We accept that she relied on others to have obtained authorisation and make sure that the question of an AA was addressed properly.

253. We do find, contrary to Mr Morris' submissions, that her conduct crosses the threshold into misconduct. We do not accept, however, that her conduct in failing to take the initiative in this situation to question and/or challenge more senior colleagues satisfies the definition of gross misconduct. Our finding in respect of PC Wray is therefore misconduct.

Outcome

254. We have considered the Officers' records of service. We had read their character evidence as part of our stage 1 decision and considered it here as well.

255. The Panel have followed the approach in *Fuglers* and the College of Policing Guidance on Outcome ('CoP'). We have considered the Officers' cases separately.

256. We have therefore done the following:

- assessed the seriousness of the misconduct,

- kept in mind the threefold purpose for imposing outcomes in police misconduct proceedings, and

- chosen the outcome which most appropriately fulfils that purpose, given the seriousness of the conduct in question, preferring a less serious outcome where possible.

257. The Panel have reminded ourselves that the Guidance / structure is a tool to help us reach a fair decision, not a tick box exercise.

Seriousness

258. The Panel have assessed seriousness by considering culpability and harm.

Culpability

259. The Panel take the view that this is a case in which PC Linge and PC Szmydynski were both significantly culpable.

PC Linge

260. We deal with PC Linge first, because that is the order that the case was conducted. We have borne in mind throughout that she was junior to PC

Szmydynski in service, and that he took the lead through the early part of the attendance at the school.

261. PC Linge made substantial admissions in this case, to parts of Allegation 40 (i) and 40 (vii), Allegation 41 (i), 45 and 46. We found other matters proved as set out above. Cumulatively, PC Linge accepts that the admitted breaches of the Standards of Professional Behaviour amount to misconduct.

262. PC Linge made serious errors of basic judgment in relation to fundamental aspects of policing. She was four months out of her probation. The errors which we are concerned with are not questions of fine detail or ones where specialised training is an issue. They relate to basic practice as a police officer. MPS officers who apply their foundational knowledge to the best of their ability would not make these errors.

263. Firstly, PC Linge didn't even consider proportionality in the use of an extremely intrusive power against a 15-year-old child at school. This is not a case where the Panel are being asked to criticise the fine detail of the balance struck. This is about a failure to perform the exercise at all. The need to consider proportionality is a basic principle.

264. Secondly, PC Linge didn't obtain an appropriate adult to safeguard the child's rights. This case represents the failure to follow the basic principles of policing that all officers should understand.

265. Thirdly, there was also an error in not using the NDM when told that Child Q was on her period. All of these are in the context of a search where there was no systematic GOWISELY given (again a basic requirement) and no search record made at the time or provided to Child Q.

266. Significantly, she didn't seek advice from a supervisor. If she had recognised the difficulties of the situation, which we find to have been readily apparent, that should have led to advice. That basic policing step may have avoided any mistake around seeking approval for an MTIP search.

267. These are mistakes (albeit serious ones) rather than deliberate failures, but they were mistakes in a particular context. That context is relevant to 4.11 of the CoP Guidance on Outcome: "Where harm is unintentional, culpability will be greater if the officer could reasonably have foreseen the risk of harm." There was obvious foreseeable harm in strip searching a school child in these circumstances. This is a high-culpability case.

Harm

268. We now turn to the harm that has in fact occurred. At 4.74 "Where gross misconduct has been found and the behaviour has caused – or could have caused – serious harm to individuals, the community and/or public confidence in the police service, dismissal is likely to follow. A factor of the greatest importance is the impact of the misconduct on the standing and reputation of the profession as a whole."

269. Each of these types of harm applies. There has been enormous harm to Child Q. There has been significant harm to the community, and to trust in the police by the breaches of professional standards that we have found. Whilst the Panel accept that some of the damage to public confidence has been caused by allegations which we have not found proven (e.g. that race was a factor in the decision making and actions of the officers) great harm was caused by the Officers' failures.

270. Overall, the Panel find that enormous harm was caused by the breaches of the Standards of Professional Behaviour that we have found.

Aggravating and Mitigating Features

271. We have considered aggravating and mitigating features, taking care not to double count.

272. The Panel's view is that the following aggravating features applied:

- serious psychological impact on the victim
- vulnerability of the victim
- significant deviation from instructions, whether an order, force policy or national guidance: (the failure to consider the proportionality and necessity for such an intrusive search for a small quantity of cannabis; the failure to obtain authority for the search, the failure to secure an AA to safeguard Child Q's rights, the failure to provide Child Q with all of the GOWISELY information, and the failure to make a record of the search until ordered to do so by a Sergeant some forty-one days later).
- failure to raise concerns or seek advice from a colleague or senior officer: (PC Szmydynski spoke to Sgt McAllister on the radio (B572) on the way to the school in the presence of PC Linge. This was a short conversation in which PC Szmydynski queried whether the school had conducted their own search. Sgt McAllister confirmed that they had searched but still had concerns. PC Szmydynski ends the conversation with "we will assess it when we get there". The relevance of this conversation is that a supervisor was already engaged with the incident. There was support available for the officers to seek advice but they

chose not to use it and did not speak to Sgt McAllister again. PC Sivaji, the SSO was also on duty. PC Sivaji is named on the CAD (B542) as the SSO involved. It would have been very easy to seek advice from someone familiar with policing in a school environment.

- multiple proven allegations and/or breaches of the Standards of Professional Behaviour, (albeit that all relate to this one incident).

273. The Panel's view was that the following mitigating features applied:

- misconduct confined to a single episode or brief duration
- acting pursuant to a legitimate policing purpose or in good faith (i.e., a genuine belief that there was a legitimate purpose but getting things wrong): The Panel have considered this factor but believe it to be limited and heavily outweighed by the multiple failures in basic policing principles highlighted above.
- whether the officer was required to act outside their level of experience and/or without appropriate training or supervision – The Panel accepted that there was little in the way of Stop and Search training following recruit training, other than sporadic inputs during Officer Safety Training, and no additional training on MTIP training once through recruit training. However, the Panel did not consider this to be at the heart of the multiple failures in this case. Those failures described above are in relation to basic policing principles of proportionality and decision making. They are also matters of common sense. It should have been obvious that in the circumstances the Officers found themselves in, it could never be right to conduct the most intrusive level of search that Officers are able to do themselves, for a small quantity of cannabis, on a 15-year-old schoolgirl on

school premises who was on her period and who they had been told was vulnerable and potentially being exploited. Their job was to safeguard Child Q, and they utterly failed in that. As the Panel have noted above, there was supervisory and specialist support available which the Officers chose not to avail themselves of.

- open admissions at an early stage (PC Linge and PC Wray).
- evidence of genuine remorse, insight and/or accepting responsibility for one's actions (PC Linge and PC Wray).

Personal Mitigation

274. We have considered personal mitigation and the impressive testimonials and given it what weight we can, in light of the caselaw reflected in the Guidance. We also have given credit for admissions, remorse and insight.

275. We also accept that these proceedings will have had a considerable effect on PC Linge.

PC Szmydynski

276. Many of the same considerations apply to PC Szmydynski. Whilst he is not, on our findings, culpable for the search continuing when Child Q informed Officers that she was menstruating, the Panel found that PC Szmydynski played a leading role in the decision making on the day. He is highly culpable for not following his basic policing training. In the Panel's view, while recognising that there is always pressure to be time-efficient, this was not a case of an emergency where there might not have been time to seek advice, discuss, or properly consider matters.

277. We take the same view about the harm caused as a result of his actions.

278. The same aggravating features apply in PC Szmydynski's case. He does not have the benefit of being able to rely on admissions.

279. He can also rely on impressive character evidence. We accept that these proceedings have had a considerable impact on him.

Purposes of Misconduct Proceedings

280. There is a threefold purpose to these proceedings:

1. to maintain public confidence in, and the reputation of, the police service
2. to uphold high standards in policing and to deter misconduct
3. to protect the public

Available outcomes

281. The available outcomes are a final written warning or dismissal without notice.

Outcome for PC Linge and PC Szmydynski

282. Whilst we have considered their cases separately, we have reached the same conclusion for both Officers. In the Panel's view, the extremely serious findings we have made are not consistent with a final written warning. This is a case in which basic policing practice was ignored in a context which cried out for taking great care. The only appropriate outcome is dismissal without notice.

PC Wray

283. PC Wray is in a fundamentally different position, although the Panel are critical of her conduct. We have decided to impose a final written warning for two years.

284. Her culpability in this incident lies in a failure to conduct her own assessment and question what was happening. In the context of how junior she was that is, in the Panel's view, low culpability. We would stress to her and others that it is important that police officers assess matters like proportionality for themselves. That provides an important safeguard for members of the public, and back up to police colleagues.

285. This was not a failure of training. PC Wray accepted that she had been trained, e.g. in Ms White's cross examination of her.

> Q. So do you accept that at each stage of the NDM you had been trained to ask yourself a series of questions about what information you had and what information you needed to have before exercising any of your powers?
>
> A. Yeah. Obviously, you get trained, and you see all these questions; I wouldn't say these questions are -- these set of questions are somewhere, everywhere, readily available, but, yes, you're trained to follow the NDM, and ask yourself certain stuff, and make sure of stuff as you go through certain decisions.
>
> Q. That was a running theme throughout the training on police powers, was it not? Necessity and proportionality.
>
> A. Yes.

286. In terms of harm, PC Wray remains responsible to some degree for the harm to Child Q, harm to the community and harm to trust and confidence in policing.

287. In terms of aggravating and mitigating features the Panel have already taken into account PC Wray's comparatively limited role. We also acknowledge the admissions that she has made.

288. The Panel considered whether a written warning would be sufficient to deal with PC Wray's case but took the view that it was not commensurate with the seriousness of this incident. The Panel took the view that a final written warning was appropriate. The Panel impose a final written warning for two years under Regulation 42(9) (b) PCR.

Chair – Commander Jason Prins

Independent Panel Member – Mark Dent

Independent Panel Member – Pradeep Agrawal

Date: 2nd July 2025

IN THE MATTER OF THE POLICE (CONDUCT) REGULATIONS 2020

IN THE MATTER OF

OPERATION GIMONE

DRAFT ADVICE FOR THE PANEL

Task of the panel

1. The task of panel is set out in the Police (Conduct) Regulations 2020 and is to be approached in four stages:
    i. First, determining the facts based upon what is admitted by the officers or proven by the Director General on the balance of probabilities;
    ii. Second, determining whether, on the basis of those facts, the officer has breached the Standards of Professional Behaviour alleged;
    iii. Third, deciding whether any breaches found amount to either gross misconduct or misconduct;
    iv. The fourth, (dependent on the findings under (b) and (c) above), deciding what the outcome should be.
2. The panel is concerned with the first three stages.
3. The stages should not be conflated, and separate conclusions and reasons will be required for each.

The LQA

4. My function is to provide advice to you. You are not bound to accept that advice. You may wish to state clearly if you do decide to depart from the advice that I give you so that the legal approach you have adopted is clear.
5. The LQA is not part of the panel. I can be present in the retiring room if you wish, but my purpose for being with the Panel in its private room is to assist the Panel in fully articulating the reasons the Panel has for the decisions it has reached. I will play no part in the decision-making process. If anything in this advice is taken as expressing a view as to the evidence, then that is inadvertent and you should, in any event, disregard it.
6. I can also assist you with my note of the evidence.
7. If the Panel requires further legal advice, then the Panel will return from its private room to the hearing room and indicate that it has found it necessary to seek further legal advice. The parties' advocates, the LQP, and the Panel can then all discuss those matters together.

Separate consideration

8. The panel must consider the cases of each officer individually.

Burden and Standard of Proof

9. The burden of proof is on the Director General. No question of a 'reverse' burden of proof arises.

10. The standard of proof applied in these proceedings is the civil standard, "on the balance of probabilities". This means that before finding a factual allegation proved, the Panel must be satisfied that an event is more likely to have happened than not. If satisfied it is more likely than not that the facts occurred, the panel must find the allegation proved.

11. The 2020 HOG paragraphs 9.10 and 9.11 set out the following:

"Conduct will be proved on the balance of probabilities if the person(s) conducting the meeting/hearing is/are satisfied by the evidence that it is more likely than not that the conduct occurred."

"The balance of probabilities is a single unvarying standard (i.e. there is no sliding scale)"

"The seriousness of the allegation of misconduct and/or the seriousness of the consequences for the officer do not require a different standard of proof, merely careful consideration by the panel before it is satisfied of the matter which has to be established. The inherent probability or improbability of the conduct occurring is itself a matter to be taken into account when deciding whether, on the balance of probabilities, the conduct occurred."

12. "Common sense, not law, requires that … regard should be had, to whatever extent appropriate, to inherent probabilities" *(In Re B* [2008] UKHL 35 at paragraph 15, per Lord Hoffmann);

13. Fact finding "takes account of any inherent probability or improbability of an event having occurred as part of the natural process of reasoning" (*Re BR (Proof of Facts)* [2015] EWFC 41 at [7], per Peter Jackson J)
14. Lord Hoffman said in *SSHD v Rehman* [2003] 1 AC 153 'It would need more cogent evidence to satisfy one that the creature seen walking in Regent's Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability that it was an Alsatian.' One is simply more probable than the other.

Fact Finding

15. Findings must be based on evidence, including inferences properly drawn from evidence. You should survey the "wide canvas" of the evidence. You should not evaluate evidence in separate compartments but consider each piece of evidence in the context of all the other evidence. You should analyse the evidence and then correlate the main elements with each other before coming to your conclusions.
16. The Panel are entitled to draw inferences where the matter inferred is a logical and reasonable conclusion from reliable (e.g. admitted or proven) facts, but should not engage in guesswork or speculation about matters which have not been proved by any evidence.
17. It is for you to consider the witness and documentary evidence. You must decide the case on the evidence heard. If there are holes or gaps, then that is a matter to bear in mind when considering whether the DG have proved her case.

18. You should seek to find whether the fact to be proved happened or not; you are "not allowed to sit on the fence." "Sometimes the burden of proof will come to his rescue: the party with the burden of showing that something took place will not have satisfied him that it did. But generally speaking a judge is able to make up his mind where the truth lies without needing to rely upon the burden of proof." (*Re B* per Lady Hale at paragraph 32). If a fact is not proved, then the panel will work on the basis that it did not happen; the process is a binary one.
19. You are entitled to use findings or provisional findings affecting the credibility of a witness on one issue in respect of another issue but must not regard that as determinative.
20. You are entitled to consider the demeanour of a witness but must not rely solely on that to assess their evidence and must put it fairly in context.
21. You bring your experience of life to analysing the evidence that you have heard, but you should guard against introducing anything from outside the case as evidence. It would be unfair to do so because the parties have not had the chance to hear, consider, call evidence or make submissions about such matters. Where, for example, a knowledge of a policing matter may be relevant, the way to approach that is to ask about that openly in the hearing so that the parties have the chance to respond. You are not asked to turn off the professional experience that is valuable to the process.

Fact-finding in discrimination cases

22. Discrimination cases pose well-recognised challenges for those charged with finding facts. They involve considerations not only of the state of mind of an

individual (see e.g. the importance of circumstances in cases of dishonesty) but may also require consideration of *unconscious* processes. They are also deeply emotive.

23. Discrimination cases often involve fact finders considering drawing inferences from 'primary facts.' Primary facts include the acts which form the subject matter of the allegation, but also other facts alleged to constitute evidence pointing to a prohibited ground for the alleged discriminatory act or decision. Once the panel has reached its findings about those matters, then you should consider whether to draw inferences or deductions from those facts. It has been observed that this is often more difficult than deciding a conflict of direct oral evidence.

24. In *Chapman v Simon* [1994] IRLR 124, Peter Gibson said at 129, "It is of the greatest importance that the primary facts from which such inference is drawn are set out with clarity by the tribunal in its fact-finding role, so that the validity of the inference can be examined. Either the facts justifying such inference exist or they do not, but only the tribunal can say what those facts are. A mere intuitive hunch, for example, that there has been unlawful discrimination is insufficient without facts being found to support that conclusion" In *Qureshi v Victoria University of Manchester and Another* [2001] ICR 863 (albeit decided in 1996) at 875G Mummery J stated that it was the *totality* of those primary facts that mattered; a fragmented approach was to be avoided. The process of inference "is itself a matter of applying common sense and judgment to the facts, and assessing the probabilities on the issue whether racial grounds were an effective cause of the acts complained of or were not. The assessment of the parties and

their witnesses when they give evidence also forms an important part of the process of inference." *Qureshi* 876A.

25. That process might lead to an inference being drawn, or "The tribunal may find the force of the primary facts is insufficient to justify an inference of racial grounds. It may find that any inference that it might have made is negated by a satisfactory explanation from the respondent of non-racial grounds of action or decision." *Qureshi* 876A.

26. Considering the adequacy of the explanation is not an application of a reverse burden; it is a "common sense" examination of the most likely explanation for conduct. *Qureshi* 872H

Absent Witnesses

27. In police misconduct proceedings, the test for whether a witness should attend to give evidence in person is whether their attendance is necessary in the interests of justice. Often this is because the witness's evidence needs to be tested in cross-examination.

28. Witnesses whose attendance was not necessary should be evaluated in the same way as other witnesses. The fact that their attendance was not required does not mean their evidence is "agreed."

29. Where a witness whose attendance was found to be necessary has not attended, it follows that there has been no opportunity to test the evidence by way of cross-examination. In determining what weight should be given to such evidence, the panel will need to keep in mind that the fact that Officers have not had the

opportunity to ask questions of the witness. This will affect the individual officers in different ways.

30. In particular, this applies to the evidence of Child Q and PC Sivaji. The panel will need to place their evidence in the context of the case as a whole and consider points made that might go to the strength of their evidence with care. Of course, you must evaluate the weight you can place on the evidence as you would for any other witness with these additional factors in mind.

Good Character

31. Each of the Officers has provided evidence of their good character in the form of testimonial statements about their personal qualities. It is agreed that each has no previous conduct matters recorded against them.

32. Good character is not a defence to an allegation, but it is relevant in two ways:

    i. Firstly, good character supports credibility and so is something you should take into account when deciding whether you believe the evidence the Officer has given.

    ii. Secondly, it may make it less likely that they would have acted as alleged.

33. You should take this evidence into account. It is for you to decide what weight to attach to it.

Memory

34. Human memory:

    i. is not a simple mental record of a witnessed event that is fixed at the time of the experience and fades over time, but

ii. is a fluid and malleable state of perception concerning an individual's past experiences, and therefore

iii. is vulnerable to being altered by a range of influences, such that the individual may or may not be conscious of the alteration.

35. Memory is a notoriously imperfect and fallible recording device. Greater confidence displayed by a witness may not necessarily correlate with a correspondingly more accurate recollection.

36. You may take some assistance in considering memory from commercial cases. However, you should not apply these as rules of law and remind yourselves that they concern business negotiations where written accounts will often be the first port of call. They are judicial observations that emphasise the fallibility of human memory and the need to assess witness evidence in its proper place alongside other types of evidence.

37. In the commercial case of *Blue v Ashley* [2017] EWHC 1928 (Comm) Leggat J (as he then was) said:

> 19. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's

lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.

20. Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been 'refreshed' by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events.

69. ... First, numerous experiments have shown that, when new information is encoded which is related to the self, subsequent memory for that information is improved compared with the encoding of other information.

Second, there is a powerful tendency for people to remember past events concerning themselves in a self-enhancing light.

38. Contemporaneous material is important in assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can then be checked against it. It can also be significant if material is absent. For instance, if the Panel is satisfied that particular material is likely to have once existed were the oral evidence correct, the Panel may be able to draw inferences from its absence.
39. The Panel should always test the veracity of a witness by reference to the objective facts proved independently of their testimony, in particular by reference to the contemporaneous material in the case.

Standards of Professional Behaviour

40. The DG alleges that the Officers have breached the following standards of Professional Behaviour.

Authority, Respect and Courtesy

Duties and Responsibilities

Equality and Diversity

Honesty and Integrity

Authority, Respect and Courtesy

Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

Police officers do not abuse their powers or authority and respect the rights of all

individuals.

Duties and Responsibilities

Police officers are diligent in the exercise of their duties and responsibilities.

(…)

Equality and Diversity

Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

Honesty and Integrity

Police officers are honest, act with integrity and do not compromise or abuse their position.

Equality and Diversity

41. The standard of Equality and Diversity is expressly framed to import the concepts of the Equality Act. The DG's case in opening is set out at page 39 and summarised at paragraph 160 on page 46 and at paragraph 171. The DG alleges discrimination on the grounds of race, sex and age.
42. S13 of the Equality Act 2010 provides that "A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

43. Race, sex, and age are protected characteristics.
44. There is a distinction between less favourable treatment and unfavourable treatment. A pay rise given to ethnic minority employees is not unfavourable treatment, but if it is smaller than that given to others, it would be less favourable treatment.
45. The comparison can by with a hypothetical person. There must be no material difference between the comparator and B.
46. Less favourable treatment is a low threshold. You can expect the defence teams to set out any argument that a search in these circumstances would not qualify. The dispute between the parties is whether the unfavourable treatment was *because of* a protected characteristic.
47. The question for the panel is "what consciously or unconsciously was the [alleged discriminator's] reason…. [T]hat is a subjective question" *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830 at 833 paragraph 29.
48. In considering the reason for a decision, the protected characteristic need not be the sole reason, but it must be a significant reason. Significant here means more than trivial (*Igen v Wong* [2005] IRLR 258 at paragraph 37.
49. Whilst it is undoubtedly right to observe that there is a need to protect as much from unconscious as conscious discrimination (opening note paragraph 147 (iv) it may be submitted that there is a difference in seriousness based on culpability. Therefore, a finding of fact, if possible, may assist the panel.

Dishonesty

50. The panel should approach the question of dishonesty by making findings about:

    i. What the Officer concerned's actual state of knowledge or belief as to the facts was at the relevant time.

    ii. Measuring their conduct in the light of that knowledge or belief against the standards of ordinary decent people.

Gross Misconduct, Misconduct or neither.

51. Regulation 2 (1) of the Police Conduct Regulations defines misconduct as a breach of the Standards of Professional Behaviour so serious as to justify disciplinary action. Disciplinary Action is defined as a written warning or more severe outcome. Gross misconduct is defined as a breach of the Standards so serious as to justify dismissal.

52. At this stage your task is to consider the broad type of conduct found and consider whether that would *justify* dismissal. It is not to go through an outcome exercise. That risks predetermining questions before you have heard the parties submissions. You may find it helpful to consider what is arguable in terms of culpability and harm as that should assist in determining what is or is not justified.