



Crime brief

Misconduct which undermines public trust in the police clearly warrants severe punishment, says David Walbank KC

IN BRIEF

- ▶ Double murder of sisters in London park.
- ▶ Officers guarding crime scene took and distributed photographs of victims.
- ▶ Sentencing for misconduct in public office.

It has been a difficult couple of years for the Met. London's police force (assuming it is still acceptable to refer to the capital's constabulary as a 'force' rather than a 'service') has found itself under pressure from all sides. Its policing of public demonstrations against continuing misogynistic violence in society, following the rape and murder of Sarah Everard by a serving police officer, elicited howls of protest. The heinous crimes of the serial rapist, David Carrick, and his sentencing hearing earlier this week, have shocked the nation. Its attempts to keep the metropolis moving, despite the best efforts of Extinction Rebellion and Just Stop Oil to bring gridlock to the streets, were met with weary resignation by angry commuters. Its decision-making in relation to COVID restriction-busting parties in Downing Street was subject to intense and unremitting scrutiny. It could not even count on the support traditionally received from Conservative home secretaries or a Labour mayor, with its widely respected first female commissioner submitting her resignation after losing the confidence of the latter.

Against that bleak backdrop, arguably the darkest days of all were those which followed the murder, in the early hours of 6 June 2020, of two sisters who were brutally stabbed to death in a park in Brent, north-west London.

R v Collins; R v Lewis and another [2022] EWCA Crim 742, [2022] All ER (D) 31 (Jun) involved two conjoined cases raising important issues in relation to sentencing

for misconduct in public office and, in one of the cases, the Court of Appeal (Criminal Division) had to face up to the vile behaviour of two Metropolitan Police officers in the hours immediately following the discovery of the victims.

The sisters, Nicole Smallman and Bibaa Henry, had been at an outdoor party to celebrate Bibaa's birthday. The last of their guests left after midnight, leaving them together in the park, but when their friends became concerned about their whereabouts and went back to check on them, they found their mutilated bodies hidden in a hedgerow. In order to preserve the crime scene for forensic examination before the bodies were removed, a number of police cordons were set up. Jamie Lewis and Deniz Jaffer were on duty that night and they were assigned with other officers to stand guard, preserve the integrity of the scene, and ensure it was not contaminated. They were stationed on the innermost cordon, out of sight of the bodies of the victims but closest to them of all the officers at the scene. They were ordered by the officer in charge to remain at their posts, but what they in fact did was cross the police cordon, enter the hedgerow area, approach the bodies and then proceed to take photographs of the victims and circulate those photographs among fellow police officers and friends.

A man called Danyal Hussein was later convicted of the murders and sentenced to life imprisonment with a minimum term of 35 years. Both Jamie Lewis and Deniz Jaffer were charged with and pleaded guilty to misconduct in public office. They were each sentenced to two years and nine months' imprisonment. Their applications for leave to appeal against sentence were referred by the Registrar of Criminal Appeals to the full court.

The Court of Appeal's ruling

In handing down the judgment of the Court of Appeal (Criminal Division), Dame Victoria Sharp P quoted from the well-known judgment of Leveson LJ in *Attorney General's Reference (No. 30 of 2010)* (Mark Edward Bohannan) [2010] EWCA Crim 226: 'First, punishment and deterrence are always important elements in these cases: not only must police officers be deterred from misconduct, but also the public must see that condign punishment will be visited on police officers who betray the trust reposed in them and do not live up to the high standards of the police service. Secondly, an incentive (usually money but it need not be) inevitably increases the seriousness of the offence. Third, misconduct, which encourages or permits criminals to behave in the belief that they will be kept informed of areas to avoid in connection with their criminal activities, or of those who might be informing on the police also increases its gravity... Fourth, any misconduct that impacts on police operations moves the offence into a different category of gravity.'

Dame Victoria Sharp P then held as follows. Save in exceptional circumstances, the gravity of the offence of misconduct in public office and the high level of public interest in deterrence means that it will attract a sentence of immediate custody. The broad principles set out in the quoted passage are plainly not an exhaustive list of factors relevant to sentencing; there will be other aggravating or mitigating factors in particular cases. However, the *Bohannan* principles are a good starting point for sentencing in misconduct cases. It is essential that the public should be able to trust the police to play their proper part in ensuring that those who commit crimes are brought to justice. Misconduct that undermines public trust in the process of identifying and prosecuting persons who are guilty of serious offences must be punished severely. The harm caused by circulating such images was not limited to their distribution to members of the public not bound by the same duties of confidentiality as police officers. When such images are distributed among police colleagues, this too has a corrosive and pernicious effect, pressuring them to collude in behaviour that demeans the police.

Given the widescale public revulsion at the conduct of the officers in question, it is hardly a surprise that their applications for leave to appeal against sentence were refused.

David Walbank KC is a member of Red Lion Chambers and the founder of www.crimecast.law on which he presents video case reviews of recent judgments.