EMPLOYMENT TRIBUNALS

Claimant: Mr P Bailey

Respondent: The Chief Constable of Greater Manchester Police

Heard at: Manchester **On:** 4 – 8 December 2017 to 23 March 2018

Before: Employment Judge Hughes
Mrs C Beauman
Ms E Cadbury

REPRESENTATION:

Claimant: Mr J Searle, Counsel
Respondent: Mr S Gorton, one of Her Majesty's Counsel

JUDGMENT having been sent to the parties on 23 March 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Background and issues

1. Firstly, we think it is important to set out the history of this case which is one of a number brought by this claimant against this respondent. The representatives had helpfully agreed a summary of the litigation to date. The first claims were brought by the claimant in 2007, 2008 and 2009 in respect of disciplinary proceedings initiated against him. Those claims were settled in 2009 and as part of the settlement agreement the claimant was seconded to a regional body called TITAN. A further claim was brought on the 18 of February 2013 relating to the fact that the secondment had come to an end and the terms on which that occurred. The case was heard by Employment Judge Holmes and members who found for the claimant in part. The decision was appealed and the Court of Appeal decided that the Employment Tribunal should not have found in the claimant's favour in respect of the allegations with the

exception of one claim which was remitted for a rehearing which had not taken place at the time these oral reasons were given. The claimant brought another claim in 2015 which was heard by an Employment Judge Feeney and members who gave a decision last year. They did not find for the claimant. By the time we heard the present case (2405789/15) it concerned allegations related to two separate police operations ("Woodmay" and "Recital" - see below at 3 and 4).

2. The second thing we considered it necessary to summarise was a number of police operations which featured and/or referred to in this case. Firstly, and by way of background there was an operation called Holly which the claimant worked in when on the secondment to TITAN and thereafter continued working on it as disclosure officer serving with the respondent force prior to being removed from that operation. His removal from the operation was (as we understand it) at the heart of the case heard by the Feeney tribunal. Operation Holly gave rise to another operation called Atticus which was an investigation into allegations of corruption by two police officers who had worked on Holly (referred to in the hearing before us as X1 and X2). One was dismissed and the other resigned. There was a criminal trial which (as we understood it) did not lead to conviction of X1 or X2.

3. A further operation called Woodmay arose as a result of alleged leaks to the press in connection with Atticus. Woodmay was an investigation into complaints by X1 and X2 that information about them had been leaked to the Manchester Evening News ("MEN") and that this must have been by a police officer because some of the information had not been in the public domain.

4. Next, there was an operation which was initially called Crimea but was re-named Recital. This operation arose out of a dossier that the claimant had sent to Her Majesty's Inspectorate of Constabulary ("HMIC") and later to the Independent Police Complaints Commission ("IPCC"). HMIC sent the dossier to respondent on 28th August 2014. The respondent sent it to the IPCC who referred it back to the respondent for a fact-find. The respondent's fact-find had a number of strands. The allegation which we had to deal with related to whether the respondent had initiated an investigation in the claimant because of his conduct in respect of the dossier.

5. Finally, an investigation was commenced because of a letter sent by the claimant's solicitor to the respondent in April 2015 which made allegations against the (then) Assistant Chief Constable Dawn Copley ("ACC Copley") and Detective Chief Constable Ian Hopkins ("DCC Hopkins") which was referred to as "Essex". It was sent to Essex Police for investigation and the outcome was that it was held that there was no case for ACC Copley or DCC Hopkins to answer.

6. By the time of the hearing before us there were two allegations put under various heads of legal claim: (1) that the respondent commenced an investigation into the claimant and his dossier on or after the 22nd of October 2014 (the Recital allegation); and (2) that the respondent served a Regulation 16 Gross Misconduct Notice on the claimant in connection with Operation Woodmay.

7. The Claim Form [1-19] put the two allegations in a number of different ways. The respondent served a Response denying the claims and seeking further and better particulars [20-37]. The further and better particulars were served. This led to a Scott

Schedule being drawn up by the parties. The Scott Schedule contained details of alleged protected acts (for the purposes of victimisation claims); alleged disclosures qualifying for protection (for the purposes of public interest disclosure detriment ("PID") claims); and allegations about conduct said to amount to detrimental treatment and/or victimisation and/or discrimination. By the time of the hearing before us, an agreed list of issues had been derived from the Scott Schedule.

8. There was a Preliminary Hearing before Judge Holmes [70-88] relating to this and another case. It is not necessary for us to provide details about the other case. Judge Holmes had to decide whether deposits should be made in respect of some of the allegations in this case. He ordered deposits in respect of allegations 12 and 13 of the Scott Schedule. In summary, those were complaints made by the claimant about use of social media (specifically allegations that racist comments had been made about him by retired police officers on a Facebook site). The deposit was paid but those allegations were withdrawn very shortly before the hearing before us. Since giving our oral reasons in this case, the respondent has made an application for costs which we understand to be in respect of those allegations. This has triggered an application for written reasons by the claimant. The costs application was to be heard on 25 May 2018 but was postponed as a result of a joint application by the parties and will now be heard on 19 November 2018.

9. Judge Holmes declined to make a deposit order in respect of the remaining allegations. He accepted disclosure of the dossier to the IPCC was a public interest disclosure but did not consider disclosure to HMIC was (because the IPCC is in the Schedule of prescribed bodies for the purpose of disclosures qualifying for protection but HMIC is not). That point is no longer in dispute. Turning briefly to the victimisation claims, it was not in dispute that by bringing a number of employment tribunal claims and compiling the dossier, the claimant had carried out protected acts.

8. We were provided with the following documentary evidence:

(1) A trial bundle, R1, which was over 3,200 pages long. References in square brackets in these reasons are to pages in the trial bundle;

(2) R2, an opening note from the respondent's barrister;

(3) R3, an agreed list of issues;

(4) R4, a cast list which also contained information about the other tribunal claims and the various operations summarised above;

(5) R5, the respondent's written submissions

(6) R6, the respondent's chronology, which not agreed to be neutral;

(7) C1, the claimant's chronology, which was agreed to be neutral; and

(8) C2, the claimant's written submissions.

9. Witness evidence it was heard over 6 days: 4 to 8 December 2017 and 20 March 2018. We heard submissions on the 21 March and, following in Chambers deliberations, gave oral reasons to the parties at their request on the afternoon of 22 March 2018. The witnesses we heard evidence from were as follows:

(1) The claimant, in support of his case;

(2) Mr Paul Rumney, a Detective Chief Superintendent with the respondent (Greater Manchester Police)

(3) Mr Michael Ryan, who was an Acting Detective Inspector in West Yorkshire Police ("WYP") and was predominantly responsible for taking over the operation Woodmay investigation when it was referred to WYP by the respondent.

(4) Mr Simon Bottomley, a DCI in WYP Professional Standards Branch who oversaw the operation Woodmay investigation with Mr Ryan reporting to him;

(5) Mr Julian Flindle, a DI with the respondent in the Professional Standards Branch who carried out preliminary investigations (referred to as fact-finding) on operation Woodmay. He also carried out a fact-finding investigation in respect of issues arising from the claimant's dossier (i.e. operation Crimea/ Recital);

(6) Mr Paul Savill, a Detective Superintendent in the respondent's Professional Standards Branch until June 2014 and had oversight of the fact-finding investigation carried out by DI Flindle up to that point; and

(7) Assistant Chief Constable Garry Shewan who took over from Assistant Chief Constable Copley as Appropriate Authority in relation to operation Woodmay. This took place after the service of the Regulation 16 Notice on the claimant. ACC Shewan decided that there should be no further investigations by WYP and the claimant should no longer be subject to the Regulation 16 Notice.

Primary Findings of Fact

10. From the evidence we saw and heard we made the following primary findings of fact relevant to the issues we had to consider.

(1) The claimant joined the respondent on the 15th of January 1990 and (as we understand it) was well regarded as a Police Officer. From 1999-2017 he was the chair of the Black and Asian Police Association ("BAPA"). It was common ground that the claimant is a staunch campaigner for racial equality and was a prominent and vocal in arguing for racial equality within the respondent police force. This included criticising various aspects of the way the force operated. Some of his views were in the public domain because he issued tweets and gave media interviews. One issue he raised as being of concern (both internally and externally)

was “cronyism”. Specifically, he alleged that fast-track promotion was available only to certain individuals on the basis of who they knew, and that this preferential treatment did not extend to black and minority ethnic officers.

(2) As already noted the claimant did not institute Employment Tribunal proceedings against the respondent until 2007. Prior to him doing so and the situation becoming adversarial, the claimant could be regarded as a “critical friend” of the force, although it was clear from the documents before us that on some occasions senior officers expressed concerns about how the claimant pursued his criticisms. Put another way, they took issue with the means the claimant used rather than the legitimacy of raising concerns.

(3) As explained above, operation Holly led to operation Atticus which resulted in Crown Court proceedings in respect of alleged misconduct in public office by X1 and X2. The criminal proceedings ended when the CPS decided to present no evidence. Following that, the respondent commenced disciplinary action against X1 and X2 which led to X1 resigning on the 6 of November 2013 and X2 being dismissed shortly after that. It could fairly be said that X1 and X2 ceased to work for the respondent under something of a cloud.

(4) In or around September 2013 a Police Federation Representative called Mr Kielty provided a copy of a report he had produced to BAPA. The report concerned alleged corruption and unfair practices in the respondent force. Thereafter the Kielty Report was leaked to the Manchester Evening News (“MEN”). Mr Kielty denied responsibility for doing so and said the report was intended for internal use only. The identity of the person who leaked the report has never been determined.

(5) Two Police Federation representatives provided assistance and support to X2 and X1: PC Neil Gilmore provided support to X2; and PC Lance Thomas to X1.

(6) On 25th January 2014 the MEN carried an article about X1, X2 and operation Atticus. The respondent’s witnesses explained that on subsequent investigation it transpired that most of the information in the article was in the public domain. However, there was one piece of information regarding X1 and X2 which had not been published. That was their job roles in the force at the time of Atticus.

(7) On 26th of January X1 put in a formal complaint to the Chief Constable, who was then Mr Fahy, about the leak to the press and the fact that it identified his job role. He specifically stated that he did not think the information would have come from his Police Federation Representative, PC Lance Thomas. The letter was also critical of the respondent’s Professional Standards Branch (“PSB”).

(8) On 27th of January this was forwarded to the PSB for recording as a complaint and for a fact-find. This is an opportune moment to explain the difference between a fact-find and an investigation. This was explained by DI Flindle and accorded with our prior understanding of how the process works in relation to complaints against police officers. The first stage is a fact-find. That is followed by a "severity assessment". Thereafter the process may come to an end or it may lead to the officer being offered advice or to a formal investigation. The fact-find and severity assessment determine whether there is a case to investigate further and, if so, whether the alleged conduct could constitute a criminal offence and, if not, whether it could amount to misconduct. If there is alleged criminal activity, any misconduct investigation does not take place until after a decision has been taken about whether to prosecute. There was some confusion as to who was responsible for the fact-find on on Woodmay (i.e. the complaint by X1 and subsequently X2 about the MEN article). There was reference [at 246] to DI Maddocks; but in fact it was clear from the evidence of DI Flindle, which we accepted, that DI Maddocks was not in responsible for the fact-find in relation to operation Woodmay He was in fact the investigating officer on Atticus. After a somewhat convoluted chain of events DI Flindle was tasked with carrying out the fact-find on Woodmay which, by that point, also included a complaint from X2.

(9) To summarise the relevant part of DI Flindle's witness statement (which we accepted to be correct) on 29th of January 2014 he was initially briefed by DCS Rumney who explained the nature of the complaint. DCS Rumney informed him that there was information that Detective Sergeant Tom Elliot (who was a Police Federation officer) had photocopied the file and given a copy to the claimant although neither of them had any reason to access the file because they were not representing X1 or X2. DI Flindle was told that it was possible that Woodmay could be referred to another force for investigation (which, as we now, know it was). DI Flindle carried out the fact find in line with Home Office Guidance issued in 2012. It was his role establish whether there was sufficient information to be able to conduct an informed severity assessment. DI Flindle explained that the Home Office expected Professional Standards to establish key facts prior to making a severity assessment unless, for example, the process needed to be formally recorded from the outset.

(10) It transpired when this matter was investigated that PC Gilmore (representative for X2) said that he had a conversation with Sergeant Elliot on the 27th of January 2014 regarding the MEN article during the course of which Sergeant Elliot told him he had photocopied the Atticus file and given a copy to the claimant in the expectation that the claimant would leak the information to the press. Two other Police Federation representatives were in the Police Federation office at the time (PC Thoroughgood and PC Phillips) and corroborated PC Gilmore's account, as did PC Lance Thomas ((representative for X1). The Administrative Assistant in the Police Federation office confirmed she had been asked

to copy a file by DS Elliot. Those accounts were documented later as part of the investigation but the alleged conversation involving DS Elliot was said to have taken place shortly after publication of the MEN article. The reason that the claimant became a "person of interest" in relation to Woodmay was the fact he was referred to in the alleged conversation as being the recipient of a copy of the file. Also later it emerged during the investigation that at a Police Federation meeting in the Chop House on the 13th of January DS Elliot was alleged to have said to PC Gilmore words to the effect of "Did I say I passed the file to Paul Bailey [the claimant]? Well I haven't/didn't". PC Gilmore said that this was very different to what was said during the previous conversation. It could be inferred that Sergeant Elliot was back-tracking.

(11) On the 29th on January PC Gilmore made a complaint to Chief Constable Fahy about the MEN article [250]. He pointed out that the Court had imposed reporting restrictions in respect of the criminal proceedings. He said he was concerned that the article could leave X1 and X2 vulnerable. He made reference to the fact that the article [our copy was redacted] made it clear that one of them had carried out a sensitive role (in fact as we understood it both of them had carried out sensitive roles). PC Gilmore expressed concern that the criminal fraternity might try to contact X1 and X2 because of their knowledge of the internal workings of covert police operations.

(12) On 2nd February 2014 X2 put in a formal complaint about the fact that the MEN article contained information about him [376].

(13) ACC Copley (now retired) was the "Appropriate Authority" overseeing the fact find.

(14) On the 31st January 2014, following the Chop House incident, Also a decision was taken by the chair of the Police Federation , Mr Hansen, to place Mr Elliot on garden leave. He notified DS Savill of that on the 31st of January saying: "Mr Elliot has been placed on garden leave with immediate effect; he's been locked out of all federation IT systems and I've taken his office keys." He said that he had been asked by DI Flindle to email details of those able to supply statements and identified PCs Gilmore, Thoroughgood, Phillips and Thomas. DS Savill informed DI Flindle of this and said it appeared that Sergeant Elliot might be trying to persuade PC Gilmore to change his recollection of the first conversation.

(15) At that stage and indeed throughout the entirety of what to become Operation Woodmay, the four officers who reported the alleged conversation were treated as witnesses rather than suspects. It was part of the claimant's case before us that because they would have had access to the Atticus file they should have been treated as suspects. We did not accept that. Mr Flindle and Mr Savill were very clear in saying there was no reason to treat them as suspects whatsoever as indeed was Mr Rumney, who pointed out that in fact it was PC Gilmore who had raised the concern about DS Elliot having some responsibility for the

leak. They were also clear and consistent in confirming that they regarded DS Elliot as a potential suspect but did not class the claimant as such because the only evidence against him was what Mr Elliot was alleged to have said. We accepted that it was apparent from the oral and documentary evidence that all of the officers involved in Woodmay took the view that there was more evidence against DS Elliot than the claimant. It is also material to note that during the fact-finding, DS Elliot gave a different account to that reported by PC Gilmore. He said that he had given a file to the claimant but insisted that it was not the Atticus file.

(16) On the 31st of January 2014 DI Flindle provided a written briefing for the investigating team that he was supervising for the fact-find [266]. It identified the topics they should cover when interviewing the four Police Federation officers. There were eight questions all of which were relevant to the allegation. For instance, one question concerned whether there could have been a legitimate reason for DS Elliot's actions.

(17) When interviewed as part of the fact-find, the four Police Federation officers were consistent in saying that Mr Elliot said he had taken a copy of the Atticus file, and had given a copy to the claimant who may have leaked it to the MEN.

(18) Also, as part of the fact-find, DI Flindle investigated how much of the information in the MEN article was already been publicly available e.g. contained in press statements made by the respondent. He also investigated coverage of the Atticus trial (prior to its collapse) and what reporting restrictions were in place.

(19) On the 6th of February 2014 DI Flindle met DS Savill and ACC Copley in order to update them as to the progress of the fact-find. They decided further information was necessary so there was more work to be done. ACC Copley made a note of what had been discussed [508 & 509]. It was difficult to read but included the following: Mr Elliot's emails were to be checked; and there was no direct evidence that the claimant had seen the file. The emails were checked but took the investigation no further.

(20) Mr Flindle told us that he established that the job roles of X1 and X2 had not been disclosed via any legitimate channel. Therefore, having completed interviewing the Police Federation officers, the fact-find was concluded. He decided that there was sufficient evidence to recommend issuing a Regulation 16 Notice (i.e. a Notice commencing a formal investigation) in respect of DS Elliot but that it was not appropriate or necessary to do so in respect of the claimant. He also said that the fact-find had not revealed any potential criminal actions by DS Elliot but had established there were grounds to investigation potential gross misconduct by him.

(21) His rationale for the Regulation 16 Notice in respect of DS Elliot was accepted by DS Savill and ACC Copley. They also must have agreed that there was no case for a Regulation 16 Notice to be served on the

claimant, because they did not query DI Flindle's assessment. It is material to record that the consequence of not issuing the claimant with a Regulation 16 Notice, was that he did not know anything about the fact-find and so was unaware that his name had come up in connection with the leak.

(22) The Regulation 16 Notice was approved by ACC Copley on the 11th February 2014 and served on DS Elliot that day. ACC Copley decided that the case should be referred to an outside force for investigation.

(23) On the 24th of February 2014 DS Elliot gave his response to the investigation into leaked information about X1 and X2. His representative forwarded his written account to DCI Flindle. DS denied any wrongdoing, and said he was "hurt and wounded by the allegations made against me". He admitted disclosing a report to the claimant but said it did not relate to Atticus. He said that he provided the report to the claimant because the case concerned was discussed in a meeting chaired by ACC Shewan and the claimant had asked for a copy. He said that he was disappointed that details he had given to the claimant were later disclosed to the press because he had not thought the claimant would do so. He went on to say that when he was talking to his colleagues in the Police Federation about the MEN article he might have misunderstood the nature of the conversation and thought it related to the other case. He asked that the claimant should be spoken to confirm the above. That did not occur.

(24) On the 28th of February 2014 DI Flindle did an initial written severity assessment [510 to 530]. It stated: "at this stage the only significant evidence supports the fact that DS Elliot has improperly disclosed confidential information to a third party being reckless as to whether this would be further disclosed to the press. There is no evidence that he sought consent or authority in doing this and he was not acting in execution of his Federation duties. There is no evidence other than that of DS Elliot that DC Bailey has been involved in disclosures in relation to operation Atticus." He went on to say that he believed, on the current evidence, that if proven DS Elliot's behaviour would be a breach of confidentially to the extent that it could be gross misconduct. Clearly at this stage it was not thought that there was sufficient evidence to implicate the claimant and hence it remained the case that the claimant was not the subject of a Regulation 16 Notice.

(25) The external force was (eventually) WYP. It is fair to say that there was quite some delay in WYP agreeing to take on the investigation and getting a team together to undertake it. ACC Copley sent the Woodmay file to WYP on 11th March 2014. It contained the evidence gathered during the fact-find. The brief to WYP was to review the severity assessment. At that stage, as was confirmed by ADI Ryan (WYP), the claimant was regarded as a person of interest rather than a suspect. Once WYP took over the investigation DI Flindle had no active role in

operation Woodmay and instead gathered information if requested to by WYP.

(26) On the 17th February (going back slightly in the chronology) Mr John Scheerhout, the MEN reporter responsible for most of the media coverage of Atticus (including the article with the leaked information) contacted the respondent's press office to say that he'd been leaked a copy of the Kielty Report (see (4) above) and that it contained allegations about a number of cases dealt with by the PSB and/or alleged wrongdoing by the PSB.

(27) On 19th March Sergeant Hargreaves interviewed Mr Kielty [577]. During the course of that interview Mr Kielty said that he had emailed the report to the inbox of BAPA with the intention it would be forwarded to an external police force investigating allegations about PSB investigations. That investigation had apparently come about because of a MEN article quoting BAPA. Mr Kielty stated he did not intend the report to be in the public domain and expected circulation to be limited to the investigators. Mr Kielty then said that within a short space of sending the report to BAPA he received a lengthy phone call from a BAPA officer who he would not name. He said that officer had put him under considerable pressure to speak to Mr Scheerhout of the MEN saying that it was "in the public interest and the right thing to do" and that he would "let people down" if he did not do so. Mr Kielty's account was that he was close to falling out with the BAPA officer over it. He also said that he was then told that his report might be leaked in any event. Mr Kielty said he felt angry, let down and manipulated.

(28) As a consequence of the issues relating to the Kielty report and the PSB, the respondent took a decision to report itself to the IPCC on the 23rd of March 2014 [581]. DCI Flindle produced the report which was sent to the IPCC. On 27th of March the IPCC referred the matter back to the respondent having decided that it should be investigated locally [593].

(29) On the 2nd of April 2014 terms of reference relating to operation Woodmay were sent to WYP by DCS Rumney. At that stage there were two allegations. The first allegation concerned the operation Atticus/X1/X2 MEN disclosure issue [598 to 600]. WYP was asked to: (1) review the severity assessment undertaken: (2) establish whether there was unauthorised disclosure of restricted material to the claimant or to the MEN; (3) identify the person or persons responsible for making the disclosure; and (4) to identify whether any subject of the investigation had committed a criminal offence or had a case to answer for gross misconduct, misconduct, UPP (which we understood was either a verbal warning or a record on the officer's file), or no case to answer. Clearly there was a sliding scale of possible outcomes.

(30) The second allegation related to the Kielty Report. The background to the allegation was recorded by DCS Rumney who summarised the call to the press office from Mr Sheerhout to say he had the Kielty Report

and the fact that Mr Kielty had confirmed he had provided the report to BAPA for the purpose of feeding into the investigation into PSB by the external police force but not for external circulation. DCS Rumney said that the report contained sufficient detail to identify seven of the eight officers referred to in it. He said Mr Kielty had not in fact sought permission from the affected officers to send his report to BAPA. DCS Rumney also said that Mr Kielty alleged he was pressured to talk to the MEN. He requested that WYP review the initial severity assessment and compile a joint or cumulative severity assessment addressing both allegations.

(31) In the hearing before us the claimant's representative queried where the second allegation had come from. In fact, we thought it very clear from the documentary evidence that the second allegation came about because the Kielty Report was disclosed to the MEN. As such, it was understandable that WYP was asked to investigate, however the result was that WYP did not identify the claimant being associated with the Kielty leak and that allegation went no further,

(32) It was not until 29th of May 2014 that a handover meeting took place between DI Flindle and WYP. WYP asked DI Flindle to obtain further information [613]. This included copies of relevant email trails between the claimant and force command in relation to disclosure of information to the MEN about a number of cases (the names of which were redacted in our documents). WYP also details of work and mobile phone records for the claimant and for Mr Elliot and asked for their email accounts to be locked down.

(33) DC Hargreaves, who reported to DI Flindle, then sent contact details for "Subject 1 Paul Bailey" and "Subject 2 Tom Elliot" [619, 623]. In cross-examination, the claimant's representative queried why the claimant was now "Subject 1". Mr Flindle's explanation was that it was simply a response for information on both the claimant on Mr Elliot by WYP. The respondent's representative made the point that "Subject 1" does not equal "Suspect 1" which is of course correct. We were quite satisfied that DC Hargreaves and DI Flindle were simply providing information as requested by WYP and that nothing was to be inferred from the reference to "Subject 1".

(34) On the 12th June 2014 Sergeant Julie Barnes who the claimant reported to and worked with sent an email to the IPCC saying she was concerned that her phone calls were being monitored. We came to realise that her contention was that ACC Copley was responsible for this. DS Savill dealt with this in paragraph 36 of his witness statement. He said that it was never the case that her calls were being monitored, that there was no reason to do so, and that she had not been the subject of any investigation at all. That evidence was not challenged and we accepted it.

(35) On the 25th of June 2014 the claimant sent the dossier to HMIC. This did not constitute a disclosure. On 28th of August 2014 HMIC handed the dossier to the respondent to investigate locally. That was the first time the respondent knew of the existence the dossier. Put simply, although sending the dossier to HMIC was not a protected disclosure, the fact that the claimant had done so became known to the respondent. The dossier did contain protected acts i.e. allegations of race discrimination.

(36) On the 5th of July 2014 DS Elliot retired before the investigation into his alleged disclosures about X1/X2/Atticus was completed. By this point WYP officers had not carried out any investigation into operation Woodmay. The Home Office Guidance into investigation of police officers which was then in force did not prevent an officer from retiring whilst the subject of a potential or actual disciplinary process. That is no longer the case but it was then.

(37) On 10th of July WYP officers confirmed that they were still trying to identify a team to work on operation Woodmay. At that point any information being gathered by DI Flindle and those reporting to him was being sent to Superintendent Khan. He handed over to DI Ryan on the 4th of August 2014.

(38) n the 19th of August 2014 DI Ryan carried out an initial review based on the paperwork thus far. He summarised his findings in an email to DCI Bottomley [664]. He questioned the severity assessment in respect of the claimant by annotating the paragraph which contained the statement "the role of Constable Paul Bailey has been considered, and it appears that the information available does not meet the threshold test required and no severity assessment has been completed". His annotation said: "N.B. it is unclear when this decision was made, and it should be considered that this position is reviewed by the Appropriate Authority." The short point being that by this early stage DI Ryan questioned the decision by the respondent that no severity assessment was required for the claimant. Indeed, when he gave evidence DI Ryan was clear and consistent in saying that he thought the view that the claimant did not meet the threshold test was wrong or, at the least, open to question. When giving evidence, DI Ryan made it abundantly clear that his view was not in any way influenced by ACC Copley who remained the Appropriate Authority, albeit that she'd outsourced the investigation. It is material to note that the respondent was unaware of the dossier at this point.

(39) In summary, we were wholly satisfied from the evidence of the witnesses for WYP that it was their decision to recommend a review of the severity assessment. It was also clear that they later decided that there were grounds to issue the claimant with a Regulation 16 Notice. We were also satisfied that rather than influencing WYP, ACC Copley was reluctant to issue a Regulation 16 Notice. We shall return to that point later in our findings.

(40) On or around the 28th of August DI Flindle met WYP who by this point had identified an investigation team. On the same day the claimant's dossier was given to DCC Hopkins by HMIC. He passed it to ACC Copley because she was the Appropriate Authority. Having reviewed the dossier, ACC Copley declared a potential conflict of interest because she was one of the officers whose actions were criticised in it. For that reason she decided to send the dossier to the IPCC. She nominated Chief Superintendent Hull and DI Flindle to review the dossier and do a fact-find before sending it to the IPCC.

(41) ACC Copley's thoughts on the dossier were captured in an email sent to DCC Hopkins on 28th August [679 – 681]. Firstly, she summarised content of the dossier, noting, amongst other things, that it alleged corruption by her and others. She said she wanted to provide some clarity about the alleged corruption. It concerned an email from DS Julie Barnes to the IPCC alleging that ACC Copley had authorised covert monitoring of her mobile telephone. ACC Copley stated that she did not think she had had any personal contact with DS Barnes apart from on one occasion when she and the Chief Constable had a meeting met with the claimant to discuss concerns about the way he was communicating about the respondent with bodies such as the IPCC. She explained that following the meeting she had asked someone to speak to the claimant's line manager (DS Barnes) to check on his welfare because she thought he may have been upset by the meeting, and DS Barnes reported back that there were no welfare concerns. ACC Copley said that DS Barnes had never been under investigation. She went on to say that she would step aside at any point from any investigation of the dossier if this was thought to be necessary. ACC Copley said the intention was that DI Flindle (Supervised by CS Hull) would conduct a fact-find by looking into cases referred to in the dossier. She said that it appeared that many of them had been previously investigated by the PSB or members of the Chief Officer's team. Some were ongoing, some were subject to appeal, and some were the subject of legal proceedings. ACC Copley stated: "what is clear though is they've not been dealt with to the claimant's satisfaction as he's submitted them individually and collectively as evidence of corruption", noting that the claimant had provided his own definition of what he meant by corruption.

(42) ACC Copley concluded by stating: "there are some associated issues which trouble me on this". These were as follows: (1) "DC Bailey, the claimant, has an ongoing ET which is due to be heard in September"; (2) "DC Bailey, the claimant, may become implicated in the WYP investigation into Mr Elliot's alleged breach of confidence in sharing misconduct files"; (3) the claimant had shared details of a case with HMIC knowing that the case was covered by reporting restrictions, and that she was unclear as to whether such reporting restrictions would extend to that kind of disclosure; and (4) "other current considerations regarding DC Bailey's conduct". ACC Copley said: "we will need to carefully discuss how we progress any or all of these different strands

as any one of these could quickly be alleged to amount to victimisation and/or further evidence of malpractice".

(43) We were satisfied that the email was appropriate and carefully considered. It is fair to say that ACC Copley's concerns about the claimant having ongoing Employment Tribunal proceedings and possibly making further claims was prescient. It is right to say, as has been pointed out by Mr Gorton QC, that raising concerns about the possible implications of WYP's investigation into the claimant's action was not of itself victimisation. In fact we thought it evidenced concern that a difficult situation did not get any worse.

(44) It is fair to say that the dossier was a very large document and it contained allegations about a lot of cases including eight covered by the Kielty Report. Researching the background and status of those cases was undoubtedly a significant piece of work.

(45) On 29th of August 2014 DI Ryan met with DCI Bottomley, DCI Flindle and DI Hargreaves, to discuss the terms of reference of the WYP investigation, including a review of the severity assessment [683]

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(46) On 1st of September DCI Flindle started working on fact-find relating to the dossier. He had identified a number of strands at that point [741]. He identified these as: (1) what he described as the "BAPA dossier"; (2) BAPA's use of social media (3) allegations related to ACC Shewan; (4) something referred to as the 'cabal of corruption' (explained below); and (5) allegations of discrimination by a person whose name was redacted. The 'cabal of corruption' was the title of a website set up by someone referring to themselves as a whistleblower. Their identity was unknown and the respondent has never suggested that it was the claimant. The website contained information which, if it had been posted by a police officer, which the respondent thought was likely given the nature of the information, could constitute gross misconduct. The only matters relating to the claimant directly were the dossier and use of social media by BAPA, bearing in mind that a lot of posts on social media were in the claimant's name. The sole connection between the claimant and the 'cabal of corruption' was that he re-tweeted an item that the person calling themselves 'the whistleblower' had posted.

(47) On the 2nd of September 2014 WYP produced a synopsis relating to the matters they had been asked to investigate i.e. the leaks regarding X1 and X2 and the leaking of the Kielty Report. It made reference to eight cases investigated by the GMP (i.e. the Kielty Report). Lines of investigation were said to be witness accounts, forensic strategy, recovery of emails, recovery of telephone data, and press liaison with the MEN.

(48) On the 4th of September 2014 the terms of reference for operation Crimea which became operation Recital were set out by the respondent. The terms of reference referred to the strands and to the involvement or

suspected involvement of one individual i.e. the claimant, being the chair of BAPA. At that stage there was no criminal or misconduct investigation and the remit was to carry out a fact-find with the purpose of making an informed severity assessment to be followed by voluntary referral to the IPCC. DI Flindle was directed to take legal advice about the content of the IPCC referral and prepare regulation 16 notices and a rationale to delay service of them due to the sensitive nature of the investigation.

(49) In summary, at this point WYP was looking into the two matters that they had been asked to investigate, and DI Flindle was conducting a fact-find on behalf of the respondent relating to issues stemming from the dossier.

(50) On the 24th of September 2014 a record was made by DI Ryan that he'd met with DI Bottomley to provide an operational update and review and that he was unsure about the 'severity assessment' by GMP [658]. Strictly speaking there had been no severity assessment of the claimant by GMP, so DI Ryan's issue was with the fact there it had not happened.

(51) On the 26th of September DCI Flindle produced what we were told was his severity assessment. He made it clear that apart from the re-tweeting issue there was no apparent link between the claimant and the 'cabal of corruption'. He went on to say that prior to assessing whether there was evidence to support a misconduct investigation there were some key issues requiring consideration. He pointed out that the claimant may not be aware that his behaviour in relation to use of social media was potentially outside the bounds of acceptability. He observed that the claimant was doing so in his capacity as Chair of BAPA, and that given that context, the behaviour was defensible in the context of what the blogs were seeking to address. He queried if it would be reasonable to expect the claimant to use alternative channels of communication. He went on to say that it was clear that the manner in which the claimant conducted himself and the mechanisms and tactics he utilised to further his cause had already been subject to challenge. We concluded that was probably a reference to the claimant's meeting with ACC Copley and the Chief Constable. DI Flindle then said: "It is fair to conclude he's aware of the fact that his behaviour's deemed as less than satisfactory and that on receiving advice from ACC Copley the claimant confirmed he saw his role as a critical friend but he was pushing the boundaries". His conclusion at was that there was sufficient prima facie evidence to support instigating a misconduct investigation into the claimant's use of social networking [880]. DI Flindle stated that the investigation would need to establish the attribution of the messages to the claimant and consider obtaining his account of his reasons and rationale when using the approach he had. It must give due consideration to his role as Chair of a staff network and to the amount of leeway afforded to other staff networks. He noted the claimant was potentially a whistleblower. He said those factors would require careful consideration as they might mitigate the claimant's actions on social media such that fresh consideration as to whether they amounted to misconduct might be necessary. DI Flindle also expressed the view that if the claimant's actions did amount to

misconduct, it could be dealt with by a misconduct meeting. He did not suggest that the threshold for a criminal investigation was met, or that the actions could amount to gross misconduct. So, reading between the lines, there would be no grounds for a Regulation 16 Notice in respect of use of social media. In any event no action occurred in relation to it – there was no misconduct meeting.

(52) In our opinion the fact that the respondent took no further action in relation to the social media issue was cogent evidence that (contrary to the claimant's case) the respondent was not looking for reasons to discipline him. The same observation applies to the difference of opinion between WYP and the respondent over the severity assessment on Woodmay.

(53) On the 1st of October DI Ryan emailed DCI Bottomley regarding the WYP investigation into the alleged leak of information about X1 and X2. He stated: "the initial severity assessment completed by GMP identified the complaint was the subject of special requirement and Sergeant Tom Elliot was served with a Regulation 16 Notice for gross misconduct." He added that on reviewing the information now available "…This should extend to include the conduct of Paul Bailey whose conduct is now the subject of investigation". He added that he was meeting DCS Rumney the following day to consider a further severity assessment. His email included extracts of the Home Office guidance around severity assessments and Regulation 16 Notices [963]. It was apparent to us that WYP believed that the claimant should be served with a Regulation 16 Notice.

(54) On the 2nd of October ACC Copley updated DCC Hopkins saying that DCS Rumney had met WYP and had established that they believed it would be necessary to serve a Regulation 16 Notice on the claimant because he was potentially implicated in the leak by the evidence obtained to date. ACC Copley explained that WYP would complete a severity assessment within 7 to 10 days and that "it is expected to assess this as potential gross misconduct".

(55) On the 6th of October DI Ryan emailed DCS Rumney and DI Flindle making referring to the severity assessment. He explained that WYP felt that the material available indicated that the conduct of DCI Paul Bailey (i.e. the claimant) may amount to a criminal offence or a breach of standards of professional behaviour which could justify bringing disciplinary proceedings. He made reference to legal advice obtained by the respondent in respect of other issues relating to the claimant and said WYP was willing to review those issues if required.

(56) On the 7th of October 2014 DI Ryan produced a written review of the severity assessment which (in summary) stated that WYP considered the public complaint from X1 and X2, if proven, was subject to "special requirement", namely that there was an indication that Sergeant Tom Elliot and Constable Paul Bailey may have (1) committed a criminal

offence and (2) behaved in a manner which would justify the bringing of disciplinary proceedings [para 3.7 of 984]. It then stated that WYP was seeking to consult with the Appropriate Authority with a view of completing further severity assessment and to ensuring the officers concerned are provided with a Regulation 16 Notice unless this might prejudice this or another investigation. We concluded that this made it very clear that WYP was pushing for a Regulation 16 Notice to be served on the claimant. They could not do this without approval from the Appropriate Authority i.e. ACC Copley.

(57) DCS Rumney made ACC Copley aware that this was the position by an email dated the 12th of October 2014.

(58) The next key event concerned the first alleged protected disclosure. The claimant sent an email sent to the IPCC on 16th of October 2014 [1024]. He stated that he was the chair of BAPA and was "alarmed by the level of corruption that occurs within Greater Manchester Police, especially at the very highest levels and within the Professional Standards Branch". He went on to say: "What is even more alarming is the steps that senior officers take to minimise or cover up the corruption. This is a significant threat to natural justice and to the so-called integrity of the force. Whistle blowers live in fear of persecution and reprisals". He said that he has sent his dossier to HMIC but had learnt that a copy of it had been sent to the respondent. He then stated that his understanding was that HMIC was going to refer GMP to the IPCC (this was incorrect because it was respondent's decision to make a voluntary referral to of allegations in the dossier to the IPCC). The claimant expressed disappointment with HMIC's failure to act on the information he had submitted.

(59) Under cross-examination it was put to the claimant that he had not disclosed information in the email and had merely made general assertions of corruption at the highest level etc. The claimant appeared to reluctantly accept that proposition.

(60) We concluded that this was not of itself a protected disclosure because it was not a disclosure of information. However, the claimant did make a protected disclosure on or around 5th of November 2014 because he sent the dossier to the IPCC on that date [1116]. This meant the second disclosure relied on was a protected disclosure. Furthermore, as already noted, as from the end of August the respondent knew of the existence of the dossier albeit not directly from the claimant.

(61) We shall deal with the third disclosure at this point. The claimant alleged that on the 28th of November he made a statement to the IPCC about the dossier. We had no copy of the alleged statement although we did not doubt that it may have been made. If so, it may have been a further protected disclosure. However, the claimant accepted under cross-examination that he could not confirm the respondent knew of it, and the respondent denied such knowledge. Therefore the alleged third disclosure was not relevant.

(62) In summary, we concluded that the only protected disclosure material for our purposes was that made on 5th of November 2014 but that the dossier itself constituted a protected act for the purpose of the victimisation claims.

(63) On the 19th of October 2014 ACC Copley sent an email to DI Flindle and DCS Hull stating: "Something struck me over the weekend: do the people whose cases are contained within the BAPA dossier actually know that their cases are being championed in this way? Do they support it and do we need to seek their views or tell them before we submit it to the IPCC?" She then made reference to the fact that there had been a case where an officer had made it clear that he did not want details of an investigation into him to be sent to the IPCC. She said she was uncomfortable not inviting the views of the officers whose cases were referred to in the dossier prior sending it back to the IPCC. We shall call this the "consent issue", because that is essentially what it was.

(64) There were two material points about the consent issue: (1) DI Flindle confirmed that legal advice was taken about whether the people who were named in the dossier had consented to their personal information going to an external body i.e. the IPCC; and (2) the legal advice was that it was necessary to establish that they consented. In our view that advice was sound and actions taken by the respondent to find out whether there was consent were appropriate and necessary.

(65) As a result on the following day DI Flindle identified 17 potential interested parties including two ex-officers [1043]. He tooks steps to contact them by sending a form of words to Ms Jessica Samouelle on 22nd October. She was responsible for contacting those concerned to find out if they consented. The form of words was quite lengthy. It stated that enquiries were being made about a BAPA dossier and that: "whilst we cannot divulge the content of this document we can inform you that a case involving you is included within the document. The cases are cited to provide individual evidence of bias, unfair practices and conduct indicating discrimination and corrupt practices". That was an accurate summary of the purpose of the dossier. The wording then stated: "I need to ask you a number of questions. (1) Were you aware of the dossier? (2) If so were you aware that your case had been mentioned in it? (3) Did you give your consent to BAPA to include your case? (4) Was BAPA representing you in relation to that case? (5) Is BAPA still representing you? (6) If you have not given consent are you happy for your case to have been included? and (7) Would you have given consent if you had been approached?" The document then stated that the respondent intended to refer the dossier to the IPCC and in respect of that asked: "(1) Do you consent to your details being provided as per BAPA unredacted documents? (2) If not, what is your view on the matter being referred to the IPCC? and (3) Do you have any other observations you would like to make?" It concluded by saying "If you feel you need support

on this matter we can refer you to the Police Federation or if you like you can arrange this yourself."

(66) The long form of proposed wording later was shortened (see below).

(67) The claimant's case was that there was something untoward in the offer to refer the persons mentioned in the dossier to the Police Federation for support. We did not accept that. Given that the dossier was a BAPA document, it could well be that some of the people referred to in it would want to obtain advice and/or support from a representative body other than BAPA.

(68) DCI Flindle did not check his proposed wording with ACC Copley or anyone else with the result that Ms Samouelle contacted the officers involved using virtually the format set out above, although the wording about the Police Federation was changed to say: "A referral to the Federation can be made on your behalf if you require". DCI Flindle was unable to explain why this change was made. We concluded it was not a material change.

(69) One of the officers who received the email was referred to in proceedings before as Officer K. On the 24th of October ACC Copley was approached by Officer K. Her written record of the conversation stated that it was fair to say that K was: "rather confused, perplexed and worried" and did not understand what the mail referred to or its significance. ACC Copley stated she had explained that the claimant had submitted a dossier of cases to HMIC on behalf of BAPA and that K's case notes had been concluded. Officer K then told her that she had not known of the dossier and did not want her case to be in the public domain. Officer K expressed concerns about the way the PSB operated and had dealt with her case. ACC Copley concluded by saying: "I've asked her to consider whether she wishes her case to be included and, if we have permission to send it to the IPCC, whether she wants to speak with Paul Bailey to inform her view". She stated that Officer K said she trusted the claimant because he had supported her but was absolutely clear that she had not given permission to send details of his case to HMIC and was not told by him that he had done so. She concluded by saying that Officer K was nervous about getting anyone into trouble and did not want details of his case leaking to the press [1058].

(70) As a result of that conversation, ACC Copley queried the wording being used over the consent issues. As a result DCI Hull asking DI Flindle to send it to him so it could be discussed. DI Flindle sent it on to him and ACC Copley [1059-1060]

(71) On the 29th of October ACC Copley wrote to DI Flindle and DCS Hull stating: "it's important we get the message across clearly but reading a script sounds overly formal and is likely to make people defensive, unnecessarily so. I also think the first set of questions makes it sound

like we're investigating BAPA about how they've put the dossier together when we are not. The second set of questions are the crucial ones."

(72) This led to DI Flindle producing a revised version limited to the last three questions set out in paragraph (65). ACC Copley's response to that was that it should not be sent as a round robin email and that only the second and third questions were important.

(73) DCI Flindle accepted her view because the key issue was consent. We thought it was understandable that ACC Copley intervened to limit the questions to the consent issue when she because aware that the original wording had worried Oficer K. The difficulty was that by that point most, if not all, of the people named in the dossier had received the first form of words before receiving the final version.

(74) The claimant was on holiday at this point, but found out about the consent issue on his return. On the 13th of October 2014 Officer M, one of the people whose case was in the dossier, said that he was asked a series of questions about it and that Ms Samouelle had seemed surprised when told her he had consented, replying that he was first person to say so and that everyone else was surprised to find out about it. Officer M told the claimant that it appeared the PSB were contacting people whose cases were quoted in the dossier to incite them to complain about BAPA and the claimant. Officer M clearly believed there was a campaign against the claimant. Unsurprisingly the claimant formed the same view. However, the reality, as we have already stated, was that the enquiries about the dossier were the result of legitimate concerns and were now restricted as per paragraphs (72) and (73).

(75) Officer K also sent an email to the claimant about it [1106]. It stated that although Officer K had not seen the dossier, she had made it clear that the claimant had her implied consent to include her case. K said she had then met ACC Copley for "well over an hour" and had been advised to think about whether she had given permission for the claimant to send her case to HMIC, and that she might wish to seek Federation advice. K said that she had replied by saying she trusted the claimant and he would not have forwarded anything that was untrue and that she did not want any embarrassment for the force. K expressed the view that ACC Copley was acting in good faith but that she (K) had absolutely no trust in the PSB and trusted the claimant totally. This no doubt reinforced the claimant's view that the respondent was looking for reasons to discipline him.

(76) Officer Julie Barnes sent an email stating she was concerned about the level of stress the claimant was under [1096]. She said: "It appears to Paul [the claimant] that while he's been on leave the PSB has carried out an investigation into him of which he had no knowledge. "

(77) On 3rd of November the claimant wrote to DCS Hull, stating: "I understand I'm being investigated in relation to a complaint of corruption

that I made to the HMIC and more recently to the IPCC. I provided a file of evidence in support of the complaint. I would be grateful for the following information: (1) How did the PSB come into possession of the file of evidence? (2) Who authorised this investigation? and (3) What are the parameters of the investigation?

(78) DCC Ian Hopkins replied the same day saying that he was surprised by some of the questions the claimant had sent to DCS Hull because: "I know from HMIC that they informed you that a copy of the file of evidence was handed to me with a request that I consider what action should be taken". He said he had discussed it with ACC Copley as Appropriate Authority for misconduct matters and it was agreed that she would refer the matter to the IPCC. He added that many of the cases in the dossier had been investigated and/or concluded and that there was an ongoing exercise to retrieve relevant paperwork and information to present to the IPCC. He said the purpose was to ensure the IPCC was aware of the full picture in order to take what he described as a "rounded view". DCC Hopkins stated that the individuals named in the dossier had been quite correctly contacted to ascertain if they were happy to allow details of their cases to be passed to the IPCC. He added that initially more questions were asked than was necessary, but that once ACC Copley was aware of this, it was rectified. He said that it was unfortunate that this had led the claimant to assume he was being investigated. He said that the process was almost concluded and that report would then be sent to the IPCC.

(79) The claimant's case was that DCC Hopkins' email led him to believe he was under no investigation at all. We did not accept that because the email was specifically about the consent issue in respect of sending the dossier to the IPCC. It was however true to say that the claimant was unaware at this point that WYP was representing the complaint by X1 and X2 or that WYP thought there was a case to issue him with a Regulation 16 Notice.

(80) On the 27th of November 2014 the referral was made to the IPCC. The accompanying report from DCI Flindle explained about the consent issue and said that the dossier covered 15 investigations involving 17 police officers, 7 of whom had refused consent for their cases to be sent on. In fact we understood from the evidence that 6 had refused outright and 1 had agreed to their case being included if personal details were redacted i.e. had provided limited consent. It also stated that 2 officers were considering their position and that if they gave permission their cases would be forwarded later, and that 1 officer had not replied at all and that 1 ex-officer had not replied either so their cases were not included.

(81) In our judgment, the outcome of investigations into the consent issue showed that concerns over consent were justified.

(82) There was then email traffic between WYP and the respondent concerning serving a Regulation 16 Notice on the claimant. On 26th

November DI Ryan sent draft proposed working to DI Flindle [1173]. DI Flindle replied sending two draft Regulation 16 Notices he'd prepared [1174 to 1180]. DI Ryan 's account (which we accepted) was that DCI F'indle thought there was a case for issuing a notice in respect of XI, X2 and leaks to the MEN, but that his view was that the only there were only grounds to issue a Notice in respect of the allegation that the claimant accessed X2's disciplinary file. DI Ryan said there was no information to support and allegation that the claimant had leaked information to the MEN.

(83) Di Ryan said he spoke to DCI Flindle on the 27th of November and was told that there was a forthcoming Employment Tribunal hearing involving a claim by the claimant. He said that this was the first time he had been told about it. He asked the respondent to confirm that a Regulation 16 Notice could be served on the claimant by early December 2014.

(84) There was then a telephone conference on the 10th of December which included ACC Copley, DCS Rumney and DCS Hull plus DI Ryan and DCI Bottomley. DI Ryan said that WYP provided an overview. His account was that ACC Copley confirmed that she had previously advised the claimant about obtaining permission to make disclosures about other people. She said she was mindful there could be reporting restrictions. She raised the fact that the claimant may have made "confidential disclosures" but that at that time there was no indication that he had done so in relation to X1 or X2". ACC Copley asked for some additional work to be carried by DI Ryan, specifically that he should explain the rationale as to why it was a misconduct investigation only i.e. not criminal, and to set out the reason why a Regulation 16 Notice (or Notices) should be served.

(85) DI Ryan provided an updated report to DCS Rumney on the 15th of December 2014 [1345 to 1354] He made it very clear that he thought it was important to serve a Regulation 16 Notice in order to interview the claimant formally.

(86) He did not receive approval to do so, and chased it up again on 5th January 2015 asking if the Appropriate Authority had given approval to interview the claimant under a Regulation 16 Notice.

(87) It was not until after the Employment tribunal hearing was over that ACC Copley authorised service of the Notice.

(88) The Notice was signed by DI Ryan and served by him and DI Flindle on 19th January 2015 [1482 to 1484]. The claimant refused to sign it. In terms of the chronology, service of the Notice was the last allegation we had to determine.

(89) There are only two other matters that we think we need to refer to in relation to the chronology going forward. The first is that on 1st April 2015 the claimant's solicitor sent a letter to the respondent about the

Regulation 16 Notice alleging bias on the part of ACC Copley and DCC Hopkins. The consequence of that letter was that ACC Copley ceased to be the Appropriate Authority on Woodmay. The letter itself caused yet another operation ("Essex"). The second is that ACC Shewan became the Appropriate Authority in relation to Woodmay. He very rapidly took a view that no further action should be taken in respect of the claimant and that the case could not be progressed against Mr Elliot because he had retired. There was some delay between ACC Shewan making that decision and the claimant being informed of it. ACC Shewan was cross-examined about the delay in some detail and provided an explanation involving a number of factors including: him being on holiday; and the need to inform X1 and X2 of the outcome. It Is important for us to emphasis that delay in lifting the Notice was not an allegation before us. We mention it merely because it appeared that the claimant was seeking to broaden the allegations before us.

Evaluation of witnesses and brief summary of submissions, of far as is relevant

11. In summary, our assessment was that the witnesses called by the respondent were all straightforward and truthful. We found their evidence to be impressive. It was important that we heard from those witnesses and analysed their evidence as set against the contemporaneous documentation in great detail because the respondent was unable to call ACC Copley who has retired.

12. Without wishing to go into the submissions in detail, it is fair to say that we accepted what Mr Gorton said in relation to ACC Copley. Whilst it would have been ideal for her to give evidence because the claimant's case was that she drove forward the process leading to the Service of the Regulation 16 Notice, her absence was not fatal to the respondent's defence of this claim. It was completely clear from the evidence of DI Ryan and DCI Bottomley that they were frustrated with what they perceived (rightly, in our view) to be stalling of the Woodmay investigation. As Appropriate Authority, ACC Copley was instrumental in delaying service. That was wholly inconsistent with the proposition that she was pushing for disciplinary action against the claimant. The more likely explanation for her action, as stated in out findings of fact, was that she was risk-averse and mindful that any action against the claimant would more likely than not result in further Employment Tribunal proceedings. Put another way, absent ACC Copley's direct evidence, we were able to conduct what could be described as a forensic analysis of the documentary and witness evidence, in order to identify whether her actions were motivated by protected acts or the protected disclosure.

13. Our assessment of the claimant's evidence was that he genuinely believed that he was victimised (using that term to cover the PID and victimisation allegations) because he has championed the rights of black and minority ethnic officers and was committed to doing so because of his role at BAPA. However, there were aspects of his evidence that troubled us. Mr Gorton reproduced certain parts in his skeleton argument, but it was not necessary to reproduce all of them for these purposes. In summary, the claimant's evidence demonstrated a tendency to exaggerate and to make the most serious of allegations with no factual basis for them. By way of example, during cross-examination the claimant was asked about DI Flindle and said

he “absolutely thought he was corrupt”. When pressed on this, the claimant said DI Flindle had been involved in investigations that he believed were dealt with incorrectly and not according to procedure and the law. He was asked to explain how this could amount to corruption rather than for example incompetence His reply was to say DI Flindle had “behaved unlawfully”. There was a further troubling exchange in relation to the letter from his solicitor dated 1st of April 2015 which alleged bias by DCC Hopkins and ACC Copley. The claimant replied that he had not made the allegations – his solicitor, Mr Kumar had. He eventually conceded that he must have agreed to the content of the letter, because Mr Kumar would not have made such allegations unless instructed to.

14. It is, to say the least, unhelpful to the claimant’s claim or his credibility that he made very serious allegations of a generalised nature without evidence. We did not accept that the very robust and forthright views the claimant expressed about many of the respondent’s witnesses, and indeed other people who did not give evidence, were justified by hard evidence. It may well be that the claimant holds those views, but it seriously undermined the cogency of his evidence.

15. A further example of this was certain statements made (no doubt on instructions) in Mr Searle’s skeleton argument. For example paragraph 3 stated (as though this was factually correct): “the respondent is known as an institutionally racist organisation”. It then made reference to the respondent’s attempts to tackle institutionalised racism in 1988 adding: “sadly racism still pervades the service.” Understandably, Mr Gorton QC took issue with that and we completely understood why. In paragraph 6 of the submissions the claimant contended the respondent views him as a nuisance and troublemaker adding: “Notwithstanding that his complaints are legitimate, the recent litigation history between the parties only serves to prove the respondent routinely victimises the claimant because of his protected acts.” We have outlined the litigation history of the claimant’s numerous claims against the respondent and it demonstrates no such thing. The position is that all of the complaints which proceeded to trial have now been dismissed, bar the one part of the Holmes Tribunal claim remitted by the Court of Appeal. We make no criticism of Mr Searle, no doubt he was instructed to make those points, but they did not help the claimant’s case in the slightest.

<u>The Issues and the law</u>

16. It was not necessary for us to summarise the law because the representatives had accurately done so in their submissions and because this case tuned on the facts. Ultimately it was common ground that despite the volume of evidence there were only two allegations in this case which are examined below.

17. Firstly, as to protected acts, it was not in dispute that the claimant had carried out such acts (e.g. the earlier Employment Tribunal claims, statements to the media etc.) before the two allegations relied on in these proceedings. As will be clear from the background and issues and our findings of fact we concluded there was one protected disclosure which was made to the IPCC on 5th of November 2014 i.e. the dossier which was a disclosure of information and was protected because it was made to the IPCC. The respondent, of course, had already received the dossier

18. The first allegation involved a factual enquiry defined by the parties as: “has the claimant proven that the respondent did commence an investigation into him and his dossier?”. It will be clear from our finding of facts that the answer to that question is “no”. There was a fact-find which initially encompassed the BAPA dossier, but eventually became a narrower enquiry into the consent issue which was the result of legitimate concerns. Despite the fact that the outcome showed some officers had not consented to their cases being in the dossier, the respondent took no action against the claimant and, specifically, did not initiate a formal investigation. It was understandable that the claimant thought he was being investigated but if, and to the extent that he was, it was because the dossier contained personal details of cases involving other officers. There was no evidence whatsoever that the claimant’s protected acts or his disclosure influenced the respondent’s action in any way whosoever. Furthermore, it is difficult to see how a fact-find into a legitimate concern over the dossier which resulted in no action against the claimant could be detrimental to him. Put simply, the allegation failed on the facts.

19. The second allegation related to the service of the Regulation 16 Notice on the claimant on the 19th of January 2015. The short point (which we have perhaps laboured in our findings of fact) is that it was WYP who wanted to serve the Notice and eventually obtained authority to do so after many requests. This was not a claim against WYP. The only way the allegation could have succeeded is if we had accepted that ACC Copley had influenced WYP. Perhaps tactically on the part of the claimant, the allegation was put that way because ACC Copley was not available to give evidence and therefore could be the respondent’s Achilles heel. In fact, the evidence was wholly to the contrary for reasons which are abundantly clear. There was no evidence that the claimant’s Employment Tribunal claims influenced ACC Copley to push for service of the Notice, quite the contrary. There was absolutely no evidence that the claimant’s protected disclosure was an influence either - the genesis of the Regulation 16 Notice was a complaint by X1 and X2 many months before the protected disclosure and which had to be investigated because of possible misconduct by DS Elliot and possible involvement of the claimant. In summary, this allegation also failed on the facts.

20. The respondent had raised a time limitation point in respect of the first allegation. It was not necessary for us to determine that because the allegation did not succeed on the facts. If we had thought it necessary to decide it, it is likely we would have concluded it was out of time and there was no jurisdiction to hear it, because it was not part of a continuing course of conduct ending with service of the Notice.

21. In conclusion, and for the above reasons, we decided to dismiss the claimant’s detriment and victimisation claims.

22. The lengthy history of litigation between these parties is, in our view, most regrettable. It has involved considerable public expenditure by the respondent and by the Employment Tribunal Service. We would recommend that the parties reflect on whether continual litigation is a useful or productive exercise at all. Given that the claimant still works for the respondent, it is high time that the parties find some permanent resolution of the issues between them, without further litigation. We say this in the knowledge that it has been said before by more august bodies than us. It sadly does not appear to have been heeded thus far.

Employment Judge Hughes

Date 3 July 2018

REASONS SENT TO THE PARTIES ON

7 August 2018

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FOR THE TRIBUNAL OFFICE