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THE EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms C Howard	**v**	**Independent Police Complaints Commission**

Heard at: London Central **On**: 1 – 22 March 2018

Before: Employment Judge Wade

Members: Mr M Simon
Mr J Carroll

Representation:

Claimant: Mr L Davies, Solicitor
Respondent: Mr D Panesar, Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that:

The Respondent did not:-

(a) Directly discriminate against the Claimant.
(b) Victimise the Claimant.
(c) Harass the Claimant.
(d) Subject her to detriment because she had made protected disclosure(s).

The claims are accordingly dismissed.

REASONS

1. The Claimant worked for the Respondent from 31 October 2016 to 31 March 2017 (there is a dispute about the exact date of termination). She describes herself as BAME and says that she was a victim of a large number of detriments, thirty three, in total which arose:-

   (a) Because she is black, direct discrimination.
   (b) Because she had brought a claim against the Metropolitan Police, victimisation.
   (c) Because she made protected disclosure(s),

   She also asserts that she was harassed for a reason related to her race.

2. We have not found any evidence of any detriment which could cause us to be concerned that the Claimant had been treated unlawfully. We set out below a brief summary of the law. It is brief because it is uncontroversial. We also summarise the findings of fact. A great deal of material was covered over the 15-day hearing, there was extensive oral evidence and a bundle running to 1,817 pages.

The Law

3. Direct discrimination arises where the Claimant has suffered less favourable treatment than a comparator because of their race. We are well aware that discrimination is rarely overt and that it can be unconscious. The Claimant's argument is mainly that the discrimination that she experienced at the IPPC was unconscious.

Direct discrimination

4. Mr Davies argues that discrimination claims often start with a feeling that the reason for perceived unfavourable treatment is discriminatory. This may be so, but in the process of deciding whether to pursue a claim to a hearing an individual must assess the evidence. First, a detriment or disadvantage must be established (or harassment identified) and then the reason why this has occurred decided. Where there is no direct evidence of discrimination, inferences can be drawn. If and when an individual shows facts from which a Tribunal could conclude that there was discrimination, the burden of proof passes to the Respondent to show a cogent and non-discriminatory reason why the detriment arose. In the case of *Madarassy, all all all* the Court of Appeal made the point that the burden does not pass until "something more" than simply unfavourable treatment is identified. Quite what the "something more" is has been hotly debated and we would have given serious consideration to the possibility of unconscious discrimination had we identified unexplained incidents of unfavourable treatment. We did not get to that point as there was no evidence of detriment and regret to say that the facts recorded below show that the Claimant and her witnesses failed in their analysis of whether they had sufficient evidence to prove discrimination.

Victimisation

5. Victimisation arises where there has been a protected act, in this case a number of discrimination claims by the Claimant against the Metropolitan Police. The Claimant must then establish that she has been treated detrimentally because of her protected acts.

Harassment

6. The Claimant also claims harassment. This is where an individual engages in unwanted conduct related to race and the conduct has the purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. The perception of the Claimant must be reasonable.

Protected disclosure detriment

7. Under the Employment Rights Act 1996, where a protected disclosure is made, an employer behaves unlawfully if they subject an individual to detriment because of it.

8. The Claimant makes the important and familiar point, as emphasised by Baroness Hale, that "in law context is everything". That is the case with all fact finding, however wide or narrow the focus. The Claimant urges that we look not just at the individual facts, but also the broader environment in which the Claimant worked. We are experienced in "walking round" the situation and looking at it from a number of perspectives so that we see the wood as well as the individual trees and are able to put the events complained of into their context. We of course bear in mind that a specific act of discrimination is not in the atmosphere of an organisation and that it takes place through the individual perpetrator.

The Evidence

9. We heard evidence from the Claimant and, on her behalf, from Mr Nishan Sahodree, currently a lead investigator with the Respondent (which has now changed its name to the Independent Office for Police Conduct) and Ms Lileath James who was formerly a lead investigator with the Respondent.

10. The Claimant provided witness statements for two witnesses, Messrs Deehan and Saddique and had witness summonses for two further witnesses for whom witness statements were prepared. There was a discussion about whether the evidence of these four witnesses was sufficiently relevant for it to be proportionate for the Tribunal to hear what they had to say. Having spent time reading the statements we told the parties that we did not think that it was and the Claimant did not try to dissuade us, but accepted our view.

11. This was one of a number of occasions when the Claimant put forward material which she and her representative ought to have know was not relevant, leaving us to make that decision. This had two slightly troubling consequences, one was that we spent time reading the irrelevant statements and the Respondent spent time preparing cross examination. The other was that we were regularly put in the position of rejecting evidence about very serious allegations of racism in the police, opening us up to the accusation that we were not interested in this material. We therefore wish to record that Mr Davies did not ever challenge when we said that we did not see material as sufficiently relevant, and he was aware that he was able to do so.

12. For the Respondent we heard from, in alphabetical order, Siobhan Bowry, Senior HR Advisor, Colin Dewar, Operations Manager, Tejbir Ghatore, HR Advisor, Lily Harris, HR Advisor, Gerard Kelly, Change Programme Manager, David King, Operations Team Leader and the Claimant's Line Manager, Christopher Lovatt, Operations Team Leader, Christopher Mahaffey, Operations Manager, Clare McDermott, HR Advisor, Annabelle McMillan, Press Manager, Amanda Rowe, Deputy Director Operations, Colin Sparrow, Operations Manager, Amanda Spencer, Operations Team Leader, Erik Waitt, Lead Investigator, Holly Witty, Lead Investigator and Colin Woodward, Head of HR.

13. The hierarchy in the Respondent, as far as the witnesses were concerned, was that Amanda Rowe was the Line Manager of the Operations Managers. They in turn where Line Managers of the Operations Team Leaders who manage the Lead Investigators. The investigators, of whom the Claimant was one, were also managed by the Operations Team Leaders.

Interlocutory Matters

Anonymity

14. Anonymity Orders were made in respect of individuals who were either involved in an enquiry or were comparator employees of the IPCC. This was in order to protect the integrity of IPCC investigations, the identity of which were also anonymised. The press attended the hearing on the first few days and indicated that they might wish to make applications for anonymity to be lifted. No application was made.

Disclosure

15. On 7 March an order for disclosure of documents related to the Claimant's second, third, fourth and fifth legal claims which involved the MPS was made. The Claimant cooperated with the request but this material was relevant and should have been disclosed earlier.

16. On 13 March the Claimant disclosed that a sixth claim had been made against the MPS and issued on 1 November 2016, see the chronology below. Disclosure was also ordered in respect of this claim.

Respondent's Application to call Sarah Green

17. The Respondent applied on Friday 16 March for leave to call an additional witness, Deputy Chair of the Commission Sarah Green, in relation to the alleged failure of the IPCC to supervise the investigation in which the Claimant was an interested party. She was available to give evidence on Monday or Tuesday and a witness statement was offered by Saturday. The Claimant mainly objected to this application although with "mixed feelings". We decided to refuse the application because:-

    1. The parameters of the hearing were set a long time ago and the issues identified. Witness statements were exchanged as ordered (albeit perhaps with a bit of delay). To depart from the parameters now can risk substantial disadvantage on either side.

    2. There was also a risk that the timetable might be affected and it was very important that the hearing finished on time.

    3. This had already been a long and burdensome hearing for the representatives, it is not right that the claimant should be expected to prepare further cross examination at very short notice.

    4. The issue about which Ms Green would give evidence has been clear for some time and it was the Respondent's decision not to call her. The Respondent was professionally represented.

    5. If we thought that the interests of justice would be seriously damaged if Ms Green was not called we might have disregarded the points above but Mr Waitt had given us what we considered to be enough evidence to make our decision.

    6. Ms Green was in fact not directly involved throughout the material time, only becoming involved in the case in 2017.

    7. There was some suggestion that we might allow witness statements but not the accompanying disclosure from Ms Green. We did not think that this half-hearted approach was in the interests of justice, especially as it might raise more questions than it answered.

The Issues

18. The 33 agreed issues divide into eight broad categories which are:-

    1. The decision that the Claimant should not work on MPS cases due to perceived conflict of interest causing detriment (issues 3, 4, 5, 16, 25, 25 and 26).

    2. The Claimant changing the name she was known by at work from which a detriment arose (issues 6 and 7).

3. The type of work which the Claimant was allocated, she says that she was allocated inappropriately low status, back-room administrative work (issues 9, 10, 11, 12, 13, 14, 18 and 28).

4. That the Claimant was put under too much scrutiny, required to work from the office and not in a pod (issues 17, 19, 20, 22, 23 and 25).

5. The Respondent failing to take the Claimant seriously and support her, being dismissive of her protected disclosure(s) and the delay in the IPCC supervised investigation following her successful MPS claim (issues 8, 15 and 27).

6. Not short listing the Claimant for a permanent Investigator role (issue 29).

7. Mr King, her manager, telling her to look for work elsewhere towards the end of her fixed term contract(issues 21 and 30).

8. Failing to extend her fixed term contract, falsely accusing her of disciplinary matters and dismissing her (issues 31, 32, 33, 34 and 35).

We have categorised the issues in this way because the 33 were repetitive, sometimes quite minute ("a salami slice of a salami slice") and the themes did not emerge because they were in chronological order. The parties would have been criticised if they had not provided this level of granularity, and we do not criticise now, it is just they by grouping the claims we have been able both to make specific findings and review the claims from a distance. The table of issues is attached.

The Facts

19. The Respondent is a non-departmental Government body set up independently to investigate complaints against the Police nationally. It is "an equal opportunities employer" and has an equality and diversity policy and related training, including unconscious bias training. The Claimant made much of the fact that the policy was not updated following the 2010 Equality Act and asserted that it had been inadequately promoted to staff. The principles by which the IPCC operates are far more important than the paper policy, and how staff are treated on the ground demonstrates whether the organisation lives its commitment to equality of opportunity.

20. The organisation also has a conflict of interest policy and a code of conduct which says, not surprisingly given the title of the organisation, that independence and the highest level of integrity are key and that the Respondent must deliver, and be seen to deliver, its public duties free from any bias.

The conflict of interest policy

21. The conflict of interest policy is said to be key to the Respondent's independence from Police, Government and individual complainants and it applies to everybody in the organisation. It defines a conflict of interest by the question:

> "whether a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that a member of staff or commissioner could be biased".

The Claimant agrees that a process would not be fair if there was conflict but she struggled to understand that this includes perceived conflict. The policy goes on to say that a conflict of interest is not a negative reflection on the parties involved.

22. The procedure is that a conflict of interest form is completed by those working on every enquiry. The employee is expected to make a careful declaration of any potential conflict and then, if they raise it as they should, the form goes to management who decide whether action is needed. Most conflicts are dealt with on an enquiry by enquiry basis but there are situations where a general prohibition is imposed. For example, there is a policy that for three years after starting at IPCC Lead Investigators should not work on enquires involving a police force where they have previously worked.

The claimant's successful claim against the Metropolitan Police Service ("MPS")

23. On 30 June 2014, the Central London Employment Tribunal gave judgment in favour of the Claimant who had brought a range of discrimination claims against the Metropolitan Police. There followed a formal investigation by the Equality and Human Rights Commission and an enquiry by Professor Roy Lewis commissioned by the MPS.

24. Two more claims against the MPS followed in fairly quick succession, together with two wrongful arrest claims, both involving the MPS and one involving Surrey Police.

25. As a result of this successful litigation, the Claimant received a great deal of publicity and says that she is very well known among black police officers who often contact her for support and advice. Despite the publicity, memories have faded so that some people in the IPCC at the time that she was employed had heard of her, but a number had not, or had only vague memories. This is consistent with our experience in other high-profile discrimination or whistleblowing cases; memories fade at a rate that is sometimes surprising to the individual Claimant.

The IPCC supervised investigation

26. The IPCC also started a supervised investigation which was ongoing during the time that the Claimant was employed by the Respondent. A supervised investigation is where the internal police Department of Professional

Standards (DPS) runs the investigation and the IPCC supervises it. Some investigations are run independently by the IPCC, but not this one.

27. The decision as to the mode of the investigation was made by senior people in the IPCC at the time and the decision itself is not the subject of the present litigation. The Claimant says that it was deeply flawed because she had successfully complained against the DPS in the Tribunal and so the investigation should have been independent of the DPS.

28. The Claimant was an "interested person" in the investigation and it was of course obvious, with no need to look at a policy, that she should not have any direct connection to the investigation whilst working for the IPCC.

The claimant leaves MPS, February 2015

29. In February 2015, the Claimant left the MPS by agreement and around this time all the existing claims were settled. The investigation continued, however, and the Claimant remained an interested party.

The claimant applies for roles with the respondent, July 2016

30. In July 2016, the Claimant applied for a project manager role at IPCC. She had never worked as a project manager and so did not have the direct skills although she says she had transferrable skills. She submitted a one-page application which did not address the competencies in the job advert/job description.

31. Mr Kelly from the IPCC and two colleagues carried out the sift and he told us in evidence that he knew nothing of "Carol Howard" or her claim and therefore it was not possible for any stigma to attach which might influence the marking.

32. The Claimant was not successful, the successful candidate scoring 66.67% on the sift whereas the Claimant only scored 12.5%. Looking at the poor quality of her application and her lack or relevant skills and experience, it is hard to see how she could have expected to secure this role, but she nonetheless alleges that the decision not to shortlist her was discriminatory.

33. Her logic was troubling:

    33.1 She first argued that she should have been shortlisted and repeatedly said that Penna (Recruitment Consultants) were known to be very unreliable and that no evidence of how the sift was marked had been provided, leading to an inference of discrimination.
    33.2 Then when sifting sheets were provided to her, she dismissed the markings saying that she had transferrable skills.
    33.3 Then when she realised that Penna had not been involved at all, but that the marking was done internally, she responded "it is even worse then … I have been treated terribly".

She would not accept the evidence in front of her and that it was possible that she was not shortlisted because she was less suitable than the successful candidate and had not demonstrated the relevant skills.

34. We describe this incident because it is, chronologically, the first of many showing that the Claimant has a poor ability to judge whether a situation is "terrible" or entirely understandable once the context is known and so her "feeling" that she suffered discrimination needed careful interrogation. Our conclusion is that there was nothing in the process that would lead us to conclude that the Claimant had been discriminated against, victimised or harassed.

The claimant applies for a fixed term Grade 10 role as an investigator

35. In September 2016, the Respondent identified a need to recruit some grade 10 investigators on fixed term contracts because there was a backlog of work. Investigators are not decision makers and they work under the direction of lead investigators. However, the Respondent wanted to recruit investigators with some experience so that they could "hit the ground running" without training.

36. As well as these investigators, the Respondent was recruiting at least one trainee. They come without investigative experience and are put on a training programme covering the breadth of the Respondent's work so that they become investigators once trained. Their work pattern is therefore different from that of an investigator who already has the experience. A benefit of recruiting trainees is that the Respondent can employ people from outside the police and train them to investigate. This helps to improve diversity within the IPCC as the ex-police recruits are perceived to be, and often are, retired white, male police officers.

37. On 15 September 2016, the Claimant applied for one such fixed term investigator role. She applied in her married name, Carol McCabe.

38. Two operations team leaders, Christopher Lovatt and David King carried out the sift.

39. Mr King did not recognise the Claimant as the famous "Carol Howard", but Mr Lovatt did from what she had said in her application, although she did not mention the litigation. He was concerned that there might be a conflict of interest which might cause an operational issue; as he put it, he understood conflict "both ways" as a former MPS Officer. He therefore checked with his manager, Mr Sparrow, who told him to carry on with the recruitment but highlight at the end of the interview that they recognised her and would have to talk about conflict issues. Mr Woodward of HR was consulted and said the same, although he was not aware at this stage that the Claimant was an interested party in an IPCC supervised investigation.

40. The Claimant was interviewed by Mr Lovatt and Mr King and was successful. Had they had discriminatory or victimising attitudes towards the Claimant

they had an easy opportunity to reject her application. They did not do that. The Claimant was to work on Mr King's team and he was happy with that.

41. At the end of the interview, the two discussed the Claimant's ET claim with her and Mr Lovatt recalls her saying that she had put the matter behind her. The Claimant says she was upset to have this matter discussed and first suspected discrimination although it is hard to know what her grounds were given that she was appointed. She implies that she would not have got the job if she had applied as "Carol Howard" but there was no evidence of this and the job offer was made knowing her name.

The claimant is appointed, 5 October 2016

42. The Claimant was appointed as a fixed term grade 10 investigator on 5 October. She says she expected to do investigations and that the Respondent would not cherry pick tasks from the job description and hide her away. A large number of the issues in this case surround her contention that she was not given sufficiently interesting or important work, meaning that she was not allowed to conduct investigations. She compares herself to the other fixed term contractors who were recruited at the same time, but the benefit of the comparison is limited because they were working in a different directorate under a different manager and the needs of each directorate are specific.

The claimant's managers discuss the possible conflict of interest

43. Once the Claimant was appointed, Mr Sparrow, Mr King's Line Manager, led a discussion about what should be done in terms of the perceived conflict of interest. The Claimant had not just worked for the MPS, she had litigated against them (at this stage they only knew of the one claim) and there was also the matter of her being an interested party in an IPCC supervised investigation. The mechanics flowing from the latter point could be specifically dealt with by security "lockdowns" but her managers believed, and we agree, that there was a significant risk of a wider perceived conflict of interest in the circumstances.

44. On 11 October Mr Sparrow met with Georgia Wilson, Head of Operations Management and they produced a document headed "Minimising any conflict of interest". This was approved by Amanda Rowe, Deputy Director of Operations. The question was not whether the Claimant could be deployed but how her deployment could be managed. The organisation trod carefully because they had never before employed an "interested party" and they unanimously concluded that the Claimant should not be work on MPS Investigations. This was not a problem because there was still ample work for her to do.

45. The managers understood that this suited the Claimant too because she had indicated that she wished to distance herself from her past and had told HR a few days earlier that she wished to be known as Carol McCabe not Carol

Howard whilst at the IPCC. Ms McDermott remembers the conversation because she has not had one like it before.

46. Mr Sparrow said that the reason for this restriction was 90% the fact that the Claimant was an interested party in one of their own supervised investigations and 10% because she had brought a claim against the MPS. Whatever the percentage, we cannot see why this was not a perfectly sensible decision. We deal with the claim that detriments arose from this decision in the Conclusions below.

The claimant starts work, 31 October 2016

47. The Claimant started work on 31 October 2016. She was required to complete timesheets regularly. These were completed manually and as a result TOIL accrued where appropriate. The policy is that TOIL does not require prior consent but its accrual is monitored by the manager to make sure that it does not get out of hand. Therefore, the timesheet has a direct effect upon the ability of the employee to take additional time off.

48. On the same day, Hannah, a grade 10 trainee, also started work. As recorded above, she was not expected to hit the ground running and was to do a range of work in order to gain the necessary experience. The Claimant has sought to compare herself to Hannah but they were in different material circumstances and so the latter was not a comparator.

49. The nature of an investigator's work can, frankly, be quite dull. In any investigation there is much paperwork to be examined and processed before formulating specific lines of enquiry and it is part of the role to do this for the lead investigator who then decides on the direction of the enquiry. Someone has to do this work and, as the lowest investigative grade, it makes sense that it was often the grade 10 investigators.

Mr Dewar explains the "Minimising any conflict of interest" restrictions to the claimant

50. On 1 November 2016 there was a meeting between the Claimant, her manager Mr King and Mr Dewar, Operations Manager and Mr King's manager. They told the Claimant that a general restriction applied whereby she would not be deployed on MPS work because she was an interested party in an ongoing investigation and had litigated and asked her to complete a conflict of interest form to that effect.

51. At the time the Claimant appeared to understand and there is no evidence of her objecting. She argues that Mr Dewar told her that the IPCC was risk averse towards her but of course what he meant was that they were risk averse to possible conflict situations arising, as they should be given their core objectives.

52. The Claimant makes much of her allegation that Mr Dewar lied when he told her that the policy that lead investigators should not conduct investigations

against a force they had worked in for three years applied also to her. There is no evidence, apart from the Claimant's, that this was ever said. Mr Dewar says that in order to make her feel that she was not being singled out, he explained that lead investigators were also sometimes subject to general restrictions and this restriction on her was analagous to that policy. In our view, this was quite a helpful and sympathetic way of putting it, but the Claimant just accuses Mr Dewar of lying. We prefer his evidence which is consistent with what we have read and heard.

53. We regret to say that the Claimant showed no recognition or understanding at all, during the hearing or otherwise, that it had been explained to her that her integrity was not in question. The issue was whether there might be a risk of perceived conflict of interest and the restriction was in place to help her move on and to protect her from accusations.

54. Indeed, her lack of recognition that there could be a perceived conflict can be no more clearly illustrated by the fact that on that very day, 1 November 2016, she issued a sixth claim against the MPS which she did not ever declare on any conflict of interest form. Not only did she not declare it at the time but disclosure was never provided and this claim was only identified during the hearing.

55. The excuse, argued in final submissions, was that once the "blanket ban" was in place on her doing MPS work it did not matter whether she was litigating against the MPS because there would be no conflict. This is disingenuous to say the least in that throughout her employment, and certainly after she had issued the claim, the Claimant continued to argue that she should be allowed to do MPS work in the mistaken belief that if she thought there was no conflict, one did not exist.

56. On 2 November the Claimant had the first of many one to one meetings with Mr King. The meetings were minuted and both parties signed at the end. The Claimant made the rather extraordinary assertion that she did not agree with what was in the minutes and that the fact she signed them was irrelevant because she was not shown the first page when she signed. As a former detective constable, who must have conducted countless interviews with suspects, she must know that a record should not be signed if an individual does not agree with the content. Also, Mr King told us that he read out his notes as he went along so there was no chance at all of the Claimant not knowing what he had written down. We do not accept that she did not agree with the notes of the meetings at the time she signed and find that her assertion undermines her credibility

57. During the four months that the Claimant was at work (her final month was taken as sick leave) she worked on eight investigations and she received appropriate support from Mr King. Having monthly one to one meetings is not evidence that she was over managed or intrusively supervised as alleged.

58. On 2 November the Claimant completed her general MPS conflict of interest form as she had been asked to do. Despite the meeting the previous day which had explained the position, she put nothing about her litigation or supervised investigation on the form. It therefore had to be amended at the request of Mr King. She then included the 2014 claim against MPS and stated: "I have no dealings with this matter nor any contact with either party". She failed to mention her other claims and particularly the fact that she did have contact with the MPS through the litigation which had just begun. She finished off the declaration by saying:

> "I have been informed by the IPCC that appropriate restrictions have now been put into place in order to:-
>
> 1. Protect the integrity of this investigation.
>
> 2. Protect me as an employee of the IPCC.
>
> I am content with this decision".

59. The Claimant now says that this decision to impose restrictions and make her amend her form was discrimination and victimisation.

Name change from "McCabe" to "Howard"

60. Having told the IPCC in early October that she wished to be known as Carol McCabe to distance herself from her MPS claim, she contacted Ms McDermott again on 2 November to say that she wished to change her name back to Carol Howard. The reason she gave was that it was proving difficult to change all her documents, such as her passport, into the name of McCabe which was her married name (she had since divorced), not that she wanted "to hold her head high" and not hide her identity.

61. The reaction of the Respondent, which the Claimant has made much off, was that although there was no problem with this, it was surprising given the Claimant's earlier request. They therefore felt they needed to check out that she meant what she said. This was light touch and there were no formal, minuted meetings.

62. Ms McDermott, Mr King and Mr Dewar were all involved and the Claimant says that this was all very heavy handed and intended to make her feel that she should be hiding her true identity. However, we are not surprised that they were perplexed by this change of position and there is no evidence that they bullied her or that she was upset at the time. By contrast, during the hearing she became quite agitated and shouted that their behaviour had made her feel like a criminal and that they were hounding her. Later that day she rang her solicitor, Mr Davies, who she says agreed that she was being discriminated against and/or victimised; we do not understand why.

63. The Claimant also complains that Mr King was guilty of another act of discrimination (by which we also mean victimisation and harassment) when

he emailed the whole office to tell them of the change of name. This was an appropriate administrative action which we do not find troubling.

64. We pause to note that the Claimant criticised Mr King in particular for "stalking" her when he took file notes or recorded minutes of meetings but, on the other hand, when minutes of meetings were not recorded this was also criticised. The name change incident, which according to the managers was something and nothing, was dealt with informally and the Claimant said that this was sinister. This "incident" was over in a short period of time and she never complained then, or later, about the way it was handled.

The claimant's work

65. On 4 November the Claimant started working on an investigation known as "Y". She was an investigator, there to assist the lead investigator, Ms Witty. Ms Witty had never heard of "Carol Howard" but the Claimant told her about the case and completed a conflict form in relation to that particular investigation which did not raise a conflict issue. We are, by contrast, clear that if the Claimant ever had been asked to work on an MPS investigation, she would have had to raise multiple possible conflicts of interest which would have made it impossible for her to do it. It was therefore much better to have what she calls a "blanket ban" so that the position was clear. We explained that we, as judges and members, have a list of possible conflicts which might arise with our listings department so that we are not allocated those cases. This is in effect a "blanket ban", but Mr Davies did not accept that this was comparable to the claimant's case.

66. The Claimant had 14 years of experience as a Detective Constable and other roles in the Police and Ms Witty was pleased that she was able to work on Y, particularly because she had a lot of other investigations going on and was not able to give it much attention.

67. The Claimant was also working on the T investigation with lead investigator Emily Borelli two days a week. This was an important investigation regarding an alleged assault by the police on black youths and at that stage the Claimant did not object to assisting by checking and summarising witness statements. The Claimant also did some work on the W investigation, reviewing CCTV and on the X investigation where the lead investigator was Mr Sahodree.

Alleged protected disclosure

68. The Claimant says that she made a protected disclosure to Ms Witty on or about 23 November. Having read through the papers on the Y investigation she had identified some lines of enquiry against Officer A who she thought might be complicit in encouraging Officer B to victimise the complainant.

69. The Respondent says that far from being a protected disclosure, to the extent that this material was drawn to Ms Witty's attention, uncovering lines of enquiry was simply part of the Claimant's day to day job. There is much

dispute about whether Mr King was every informed of this particular line of enquiry and he does not remember that he was. Ms Witty does not recall much because at the time the Claimant was working on Y she was busy working on trying to finish another investigation.

Focus on the T investigation with a deadline of 19 December 2016

70. The organisation was very busy at this time which was why the fixed term investigators had been brought in. Each lead investigator was juggling on average five investigations and their managers were becoming concerned that the investigations were not progressing fast enough. Mr King became particularly concerned that the T investigation was behind and so in late November he set a deadline for its completion in the week commencing 19th December, and therefore the Claimant was told to concentrate on her work on T.

71. She alleges that she was removed from the X and then from the Y investigation and demoted into admin work as an act of discrimination, victimisation or whistleblowing detriment. She says that the Respondent wanted to make her less visible particularly now that she was known as Carol Howard. Mr King says that the explanation was more prosaic in that they needed their fixed term investigators to do the "heavy lifting" by focussing on working through the documentation. As there is documentary evidence that the focus shifted to T for this period we can detect no detriment to the Claimant, in her role as a grade 10 investigator, when she was asked to concentrate on it. She regularly argued that the trainee, Ms Sweetman, should have been deployed onto the "boring" work instead of her but a trainee could not be left to get on with investigations and was also expected to move around to gain experience. Therefore, she was not the obvious candidate, nor was she a comparator.

72. On 8 December the Claimant requested a transfer to the Croydon Office, it was much nearer to her home and it would save her time and money getting to work. She now says that she was desperate to get away from Mr King who was discriminating against and harassing her. She made the point in her application, however, that she "loved" working at the High Holborn Office and so contradicts this assertion as she did not need to say this. It was not possible to transfer her to Croydon because the policy was that transfers were only considered when someone has been with the organisation for 12 months, so this was not discriminatory.

73. The work on T was still going slowly and on 13 December Mr King allocated Ms Sweetman and two other white staff to the investigation, showing that when the need was there he allocated the necessary resources, even allocating a trainee. They were all doing work that the Claimant would consider administrative, but which she also agrees was important for investigations.

74. There is an email dated 16 December which shows the friendly relationship between Ms Witty and Ms Howard. Ms Howard begs to be allowed back

onto the Y investigation because "the T investigation is driving me insane x". Ms Witty laughs and says that she will speak to Mr King in the New Year. This email shows that Ms Witty was not hostile towards the Claimant so when she told us that she was disappointed by her performance this was likely to be an objective assessment. Ms Witty also told us that this pattern of having to move from one investigation to another was normal for operational reasons and she did not think that the way the Claimant was allocated was surprising.

The claimant allowed to work from home

75. Also during this period, and particularly in the new year when there were train strikes, the Claimant was allowed to work from home.

Prioritisation of the Z investigation, December 2016 – January 2107

76. On 20 December 2016, Mr Dewar, Mr King's Line Manager, decided to reprioritise certain investigations in order to try to get one finished. He emailed Mr King's team to announce that Z was now the number one priority and that resources should be allocated to it.

77. The Claimant makes much of the fact that Mr King responded very quickly to the email saying that he would allocate the Claimant to Z as it would cause "minimal disruption". She took exception to this because she thought that Mr King should have taken longer to decide whether she or Ms Sweetman should be allocated for a 3 week period between 3 and 23 January 2017, and possibly longer. During his evidence Mr King was able to explain cogently and to our satisfaction why the Claimant, as an experienced investigator, was the best person to put on this job. It had nothing at all to do with her race, her protected act or a protected disclosure. As discussed, Ms Sweetman was a trainee and not able to hit the ground running, so she was not a comparator.

78. Another team member who could have been allocated to Z, but was not, was Jenny Agyepong, a black colleague. She was having performance issues (predictably the Claimant says "they broke her") and was being supported to improve her performance so Mr King did not want to tie her up in one investigation for so long. She has not made an allegation of discrimination against Mr King, nor has she appeared as a witness for either side. In fact, white Grade 10 investigators from other teams were also moved onto the Z investigation so the Claimant was not alone. We were not troubled by the claimant's move to Z and found no sign that it was for an unlawful reason.

79. The Claimant duly worked on the Z investigation, she did not enjoy it and her enthusiasm started to wane. The lead investigator, Ms Reid, fed back that she did not feel that the Claimant's work was up to standard, she never knew where she was and she was unenthusiastic.

Working from home and in a pod, 2017

80. There was an incident on 4 January when the Claimant said that Mr King had treated her with suspicion because she wanted to work from home and he questioned this. He said he was just worried about the security of documentation which was confidential and should not be put at risk by being taken into a public place, for example on the train or Starbucks Coffee Shop where the Claimant says that she worked on a regular basis. Starbucks is in the building but outside the Respondent's office area and therefore the in/out swipe card records would show that she had left the office. We found it hard to believe that both she and Mr Davies thought that there was nothing wrong with working in public places where the material might either be lost or read by a member of the public. The point is that a manager ought to urge caution when someone is doing confidential work and so Mr King's concern was understandable.

81. Mr King did have concerns in that he often did not know where the Claimant was because she resisted working with the team. He noted that she liked to work from home and also, when she was in the office she worked in a pod which was a private office away from the team's bank of desks. There are emails from him of 12 and 19 January politely asking the Claimant where she is going to be working and that she does not work in a pod. The team culture was that the team sat together in the open plan office, and Mr King sat with them. Holly Witty told us that she was also discouraged from working in pods when she wanted to, so the Claimant was not singled out and the desire to make her more part of the team was understandable and in her interests.

Alleged conversation with the IPCC press office

82. Also in January, the Claimant had a conversation with Ms McMillan of the Press Office. The Claimant says that Ms McMillan said that her employment by the IPCC might be seen by MPS as an act of revenge. Ms McMillan strenuously denies that she ever said anything like this and was able to recall very specifically the meeting that she had with the Claimant which she thought was odd because she could not understand why Ms Howard had visited her. It turned out that Ms Howard wanted to know whether Ms McMillan had ever spoken to the MPS Press Office about her, which she had not. Ms Howard may have misinterpreted something that Ms McMillan said because, like us, Ms McMillan does not really understand what she is meant to have said, who was revenging who against what? If something was said along the lines of the MPS potentially being upset to know that their nemesis was working for the IPCC, this was another iteration of the conflict issue and not surprising. It seems that Ms Howard mentioned her sixth MPS claim in this discussion but it had no significance to Ms McMillan who was not involved in managing the conflict issue, the same applied to a mention made to Ms Witty. This was not at all equivalent to formally declaring it.

The claimant's work on the T investigation

83. On 10 January 2018, Ms Borelli fed back to Mr King that she had concerns about the quality of the Claimant's work on the T investigation. The Claimant suggests that Mr King was out fishing for comments but this appears not to have been the case, or if it was it was the normal function of a manager. There is an email from Ms Borelli summarising her concerns which says that some of her grammar and choice of words were not appropriate and the Claimant accepts that perhaps that was the case. However, predictably unfortunately, the Claimant hotly denies that summaries that she was expected to write were not complete and, most troubling, some were written in a way that made assumptions about the information in the statement or misrepresented to an extent what it said. This was exactly why it was not appropriate for the Claimant to be working on MPS cases because any misuse of language, however unintentional, could be read as bias. Ms Borelli said in an email that she intended to provide this feedback to the Claimant, we do not know if this happened.

84. On 19 January the Claimant responded to Mr King's polite request that she should not work in a pod by asking him why. She made much of the fact that he did not reply and says that he was just harassing her and micromanaging. Mr King says that he responded verbally, and whether he did or not it was obvious from the way the team worked and earlier emails that he wanted his team to be working together.

The claimant asks to be moved off the Z investigation and Mr King agrees

85. On 25 January the Claimant and Mr King had a meeting and she complained that she was still working on the Z investigation. In direct response to this, Mr King arranged for her to return to the Y investigation for three days a week, thus showing that he was responsive to her concerns. The Claimant was happy working with Ms Witty on the Y investigation. She said she also enjoyed the X investigation, led by Mr Sahodree, because he trusted her to follow her own lines of enquiry. This was how she had envisaged her job at the IPCC. Mr King's note of the meeting suggests that he thought that if he conceded to the Claimant's request he might enable her to be more productive when she was working on Z and that he wanted to ensure that she was in the office so that her managers could get the most out of her.

Mr King discusses the end of the claimant's fixed term contract

86. Also on 25 January, the two talked about the fact that the Claimant's fixed term contract was ending on 31 March. Mr King recorded in his note of the meeting that he told her that he had asked whether there was a budget to extend the contract and was waiting to hear. He also told her that there was to be a recruitment round for a permanent Grade 10 investigator which she could apply for. He recorded that she said that she would definitely apply as she enjoyed working for the IPCC and with the people in the office, something that she now denies, saying that the environment was "toxic" to BAME people. Mr King also "explained to Carol that I would be flexible with regard to interviews if she applied for other positions to ensure she had opportunities for employment from April onwards". Ms Howard interprets that

as Mr King telling her that she should start looking elsewhere; this is not an accurate representation of what was said according to Mr King's evidence and his contemporaneous note.

87. The Claimant says that this behaviour in having meetings with her, was akin to stalking and that Mr King keeping a note/diary was bizarre. We find nothing odd as he was just doing his job, particularly in the light of the fact that his lead investigators had raised problems, so he had cause for concern.

88. Mr King was entitled at this point to think about whether he really wanted to extend the Claimant's fixed term given his concerns. After late January he did not actively pursue the idea of an extending the contract and he understood (wrongly as it turned out) that if he did nothing it would just expire at the end of March. He did not realise at this stage that there was an HR procedure and that he needed to give a reason why the contract was terminating.

The claimant attends an inquest

89. In early February Mr King asked for volunteers to attend an inquest in Croydon, the Claimant volunteered and was asked to attend for two days. She complains about the number of days she was offered but the documents show she was happy at the time. She also says that the decision to allocate her to the inquest was hypocritical because it related to a case involving the MPS which demonstrates that there was in fact no perceived conflict. This was an inquest not an enquiry although someone from the IPCC needed a presence there so the circumstances of the Claimant attending are not the same and we do not see an inconsistency. It was possible that, following the inquest, the investigation might be reopened at which point investigators would be allocated.

90. There was also an enquiry which the Claimant might have been able to help on, but she had to pull out because it was an MPS enquiry. As the policy says, having to withdraw because of conflict of interest is not an individual's fault and it should not bring shame.

The claimant applies for a permanent investigator job

91. On 9 February 2017, the Claimant applied for the permanent investigator role which was being advertised externally. It is interesting to note that she gave Croydon as her first-choice location, but her second was Holborn. It was not necessary to put down a second choice, especially if the Claimant felt that she was working in a discriminatory environment which she could not bear. We should say that there is absolutely no contemporaneous evidence that the Claimant felt she was working in an unbearable and discriminatory environment. She had raised no grievance, had not made any complaint under the Dignity at Work Policy, had not joined the union, not sought advice from the staff association, not attended the race and religious diversity network and had not accessed the employee welfare service.

92. The Claimant faced being taken off the Y investigation because it was moving wholesale with its lead investigator to Wakefield. This was an operational decision not personal to the Claimant.

The claimant asks for the "ban" on her doing MPS investigations to be lifted

93. On 14 February the Claimant had a meeting with Mr King at which she raised concern that she was feeling marginalised by not being allowed to do MPS work. At this point she was fully aware that she had an active Tribunal claim against the MPS but this did not stop her complaining and she had no recognition of the potential for conflict of interest. Mr King amicably agreed that he would talk to his manager, Mr Dewar, to see if the decision could be reviewed and they agreed to speak with the Claimant, which they duly did.

94. Mr King and the claimant also discussed the application for the permanent Grade 10 role and he offered help with the application and to prepare her for interview. He also said that if there was going to be a gap between the expiry of the fixed term and the commencement of the Grade 10 permanent role he would be flexible regarding the termination date and also with time off for other job interviews. This could not have been more helpful and there is no sign at all of detrimental treatment.

95. We should pause to point out that the Claimant may well say that we have swallowed the Respondent's account of how things were. We have to go on the evidence available and we have seen no evidence from the Claimant, notes, messages to friends, emails which suggest that at the time she understood that Mr King was trying to get her to leave because of her race.

The claimant talks to HR

96. What did happen was that on the same day the Claimant went to talk to Tejbir Ghatore, an HR Assistant, and raised that she was concerned about the end of her fixed term contract and "different treatment" regarding having to do so much document management work whilst a trainee investigator was doing more interesting things. She also talked about being prevented from doing MPS work and uncertainty about whether her fixed term would be extended, along with a few other matters.

97. Ms Ghatore asked her if she was raising a grievance and she did not say yes. She then explained to the Claimant that if she felt like taking it further she could detail her concerns in writing and send this to Mr Dewar or to HR. She also explained that the Claimant had the right to appeal the end of her fixed term contract, that this would be communicated to her by her manager and that she would ensure that HR informed Mr King of this standard process. Ms Ghatore had quite rightly identified that Mr King probably did not know that there was a process for ending the fixed term contract.

98. Ms Ghatore told us that she had no idea that the Claimant might be complaining about race discrimination, and indeed said she felt that it would be stereotyping if she had assumed that a complaint about being treated

differently was a complaint about discrimination. Therefore this was not identified as a protected act. Ms Ghatore went on to say that she is BME and understands BME issues so why would she cover up if the Claimant had complained about discrimination? Although, unlike every other Respondent witness, she was not cross examined about the toxic atmosphere in the organisation she volunteered that she had had a really positive experience there and had been developed in HR which she had found "amazing".

99. Ms Ghatore fed back to Ms Bowry, Senior HR Advisor, and they agreed that they would wait to see if the Claimant brought a grievance. There was quite a lot of debate in the hearing about whether HR should have been more proactive in encouraging the Claimant to pursue a grievance but given that they did not think that she was suggesting that she had been discriminated against, their alarm bells did not ring. Indeed, Ms Bowry, who had never met the Claimant, did not even know that she was black, and of course because this was irrelevant Ms Ghatore had not mentioned it. There were support networks in the organisation for staff as listed in paragraph 91 and the Claimant had access to these if she had wanted help to pursue a grievance. Without more, we cannot conclude that there was a closing of the ranks against the Claimant at this point or a decision that she should be ejected from the organisation.

100. Mr King and Mr Dewar met on 15 February to discuss the Claimant's concerns about doing too much admin work and not being allowed to work on MPS cases. There was nothing unusual about two managers discussing the complaints of an unhappy employee; in fact, it would be odd if they had not done so. This was not a conspiracy as alleged and they agreed to meet with her.

101. Ms Bowry emailed Mr King with the information about ending a fixed term contract subject, as she confirmed, to any extension agreed by the budget holder. Mr King did not open the email until 27 February and he remained ignorant of the requirement that he go through a procedure to end the fixed term contract.

Mr King discusses timesheet inaccuracies with the claimant

102. On 16 February, Mr King politely raised a query about the Claimant's timesheets, he said:-

> "Hi Carol, I don't keep track of when people get into the office, but please can you can check W/C 6 Feb when we were on day response. I sent an email to Team 2 on Wednesday 8 Feb as team members were not in at 9am and I have you arriving at approximately 9.35am. Your timesheet states 8.45am.
>
> Best wishes"

103. The Claimant replied saying that he was right and that she had arrived later; day response means that the team has to be on call to respond to any urgent matter involving the IPCC and so it was important that they were in the office on time, which they were not. She asked for some clarification about how

the system worked which was a little odd given that she had been working at the organisation for nearly four months.

104. As a result, they looked together at her TOIL claim for 28 hours and it was revised down to 12 hours, the Claimant having over-claimed her TOIL by 16 hours. Mr King made a file note at the time which is not surprising because this was a serious matter and the Claimant says that he was preparing a case against her, although at the hearing she also complained every time that a meeting was *not* minuted.

105. This incident left Mr King thoughtful about whether there was an integrity issue with the Claimant because of the substantial misrecording on her timesheet. He did not do anything straightaway, still thinking that if he did nothing the contract would expire of its own accord on 31 March.

The claimant is not shortlisted for the permanent role

106. On 16 February Penna, who were doing the short listing on this occasion, did not shortlist the Claimant for the permanent Grade 10 investigator role. The Claimant says that Mr King was involved in the sift behind the scenes which was why she did not get shortlisted. There is no evidence at all of this.

107. On 21 February Ms Witty asked those who had assisting her on the Y investigation to provide the reports that they had prepared so far so that when she moved to Wakefield she had all the work that had been generated in London. The Claimant delayed in providing the information and in the end Ms Witty received very little material from her even though she had been working on Y three days a week for about four weeks.

Discussion about the MPS restriction

108. On 27 February the planned meeting between the Claimant, Mr King and Mr Dewar took place to discuss whether the restrictions on the Claimant working on MPS work could be reviewed. They agreed that if the Claimant moved to Croydon it would be for management in Croydon to decide on restrictions, which makes sense to us and does not suggest double standards. Mr Dewar again explained the reasons for the restriction and reiterated that it was not about trust but about protecting the Claimant and the organisation and the public's perception.

109. At the one to one which followed the Claimant told Mr King that she had been pleased to be able to discuss the issue. Mr King's concern that she ensure that her time sheets were accurate was recorded. They discussed the Claimant working on another investigation, I, and the Claimant says this was ridiculous because it was another "admin" role although the minutes of the meeting show that there were other tasks involved as well.

110. As a result of her complaints about delay in the IPCC-supervised MPS investigation in which she was an interested party, Mr King contacted Mr Waitt who was the lead investigator for the IPCC. Mr Waitt responded to Mr

King saying that he was very unhappy that the Claimant was using her position as an employee of the Respondent to complain about progress of the investigation. The Claimant says it was Mr King not she who made the approach to Mr Waitt but she had of course wanted some action and he was trying to help her. The approach did not respect the boundaries in place and yet again emphasises the "live" nature of the claimant's conflict of interest issue.

111. Mr Waitt was not able to provide all of the information which the Claimant requested during cross examination because the decision maker was not he but the deputy chair of the IPCC. What he did point out, firstly, was that this was a supervised investigation which meant that the DPS at the Metropolitan Police and not the IPCC had responsibility for moving the investigation on. However, he agreed this was meant to be an "intrusive" supervised investigation and argued that indeed this was what it was. This was partly because, rather than the supervisor at the IPCC being a case worker, an investigator was allocated. Also, careful screening had been done to make sure that personnel in DPS involved in the investigation were not conflicted because some of the Claimant's successful claim in 2014 had involved findings against DPS.

112. There has been a great deal of delay in concluding this investigation but we have learned, somewhat to our surprise, how many investigations the IPCC is having to juggle and how long they take so this is unfortunately not unusual. Also, we have seen evidence that the Claimant's solicitor, Mr Davies, is very actively involved in pursuing progress and that progress reports have been provided regularly albeit not every 28 days as prescribed. Where there has been a delay, the DPS has explained the reasons. We were disappointed that Mr Waitt was cross examined on the basis that the IPCC never progress chased the DPS whereas there was evidence in the bundle of him doing just that.

113. The information that we were able to glean left us satisfied that any delay on the part of the IPCC was "par for the course" and that their options were limited by the fact that the terms of reference of the enquiry would have to be radically changed if they were to take control away from the DPS. That decision would be for the Deputy Chair. The main point, however, is that there is no evidence that would suggest that we should infer that the IPCC was collaborating with the DPS to cause a delay in order to punish the Claimant for making a claim and victimise her.

HR tells Mr King of the procedure for ending fixed term contracts and he raises his concerns about timesheet irregularities

114. Ms Bowry and Mr King discussed the termination of the fixed term contract on 27 February. Mr King did not understand the process and Ms Bowry asked Mr Woodward to come and explain it to him because Mr King was not terribly happy. He was by this time clear that he did not wish to renew the Claimant's contract because of a range of issues. It was at this point that he

raised with HR the fact that he had significant concerns about the timesheet irregularities.

115. The Claimant has pointed out that Mr King was quite vague about when he decided that her contract should be ended and we were not able to get complete clarity from him. Having heard from Ms Bowry we now understand that the decision was not so much that the contract was going to be ended as that it was not going to be renewed, so Mr King did not think he needed to make active decisions. Far from "dreaming up" a timesheet issue when Mr King decided to dismiss her, the issue was a genuine one which he raised with HR when he understood that he needed to articulate his reason for terminating the contract.

116. It would have been easier if the Respondent had simply told the Claimant that there was not a budget to extend her contract but, as Ms Bowry said, the timesheet issue was important and if there was dishonesty it needed to be explored. The Respondent needed to take the correct route rather than the easiest.

The claimant's sick leave

117. The Claimant left the office on 28 February, worked at home the next day and then took sick leave for the remainder of her employment. The first sick day on 6 March was because she had burnt her neck while having laser treatment and after that her sick note said stress. After the timesheet issues had emerged she was never in the office again.

118. On or about 3 March the Claimant's current claim against the MPS was settled.

A case to answer about timesheet irregularities is identified

119. At the beginning of March, Ms Bowry produced information for Mr Dewar and Mr King which showed that Mr King's concerns about the Claimant's time recording had some foundation. Mr Dewar recommended that the Claimant be suspended but Ms Rowe said that that was not necessary because she could be doing work which did not risk problems with her honesty and integrity. The issue was academic as the claimant was on sick leave.

120. The Claimant criticises her and/or Mr King for not sitting down with her at that point and telling her about their concerns, but of course Mr King had already done that and so at this stage the Respondent needed to see whether there was a case to answer.

121. The investigator, Ms Spencer, finished her investigation and identified that there was a case to answer so on 22 March the Claimant was invited to an investigatory interview.

122. The Claimant has consistently maintained that the timesheet irregularities were a fiction. She says that the allegations were not credible, but having

heard the articulate and crystal-clear evidence of Ms Spencer, and examined the documents, we cannot agree. We will never know whether the apparent discrepancies showed a lack of integrity on the part of the Claimant because she declined to attend an investigation meeting, but the source material is very clear. There is not a single timesheet irregularity in the Respondent's favour, in other words all of them record that the Claimant worked for longer hours than seems correct.

123. The Claimant appears to have recorded many hours of work which there is no evidence of her doing. She says that some of the apparent irregularities are caused by the fact that she did so much work out of the office and so the swipe records do not tell the full story. First, this conflicts with her argument that she was restricted to the office doing mainly admin work but, secondly, Ms Spencer made allowances for this possibility and looked only at the records during times when the Claimant was definitely in the office. This was explained at the hearing but the claimant's position remained unchanged.

124. The Claimant says that the accusation of timesheet irregularities was a ploy typically used against black colleagues. We have, however, seen evidence of white as well as BAME employees being pulled up on this issue. In any event, the evidence against the Claimant was so compelling that it is impossible for her to argue that the allegations were just a conspiracy. Ms Spencer, a lead investigator from another team, had no axe to grind against the Claimant and knew very little about her, and yet she came to the same conclusions as Mr King and Ms Bowry. Had she looked, the Claimant would have been aware that under the disciplinary policy falsification of records including timesheets is gross misconduct. How Ms Howard can continue to argue, in the face of such clear documentary and witness evidence that the Respondent had no cause for concern is astounding.

The termination of the claimant's employment

125. Ms Bowry wrote to the Claimant extending her contract to 30 April to allow the termination process to take place along with the disciplinary investigation.

126. The Claimant says that she was the victim of a witch hunt at this point and that the Respondent was conspiring against her which was why she would not take part in the process.

127. The contract was due to expire on 31 March and on 4 April the Claimant's solicitor wrote to the employer to say that the contract had ended on 31 March, that as a matter of law it could not be extended without her consent and that she did not agree to an extension. Mr Woodward replied on behalf of the Respondent agreeing to the termination on 31 March.

128. During the hearing Mr Davies tried to argue that the position was uncertain and that perhaps the contract had ended due to the Claimant's resignation which was her alternative argument. However, his position could have not have been clearer at the time, the respondent agreed with it, and so do we. The employment ended on 31 March 2017.

129. The Claimant was the first (or a rare) fixed term worker not to have her contract extended. However, she was also a fixed term worker about whom there were a range of concerns. The two other fixed term staff who were taken on at the same time as the Claimant had their contracts extended, but their conduct had been satisfactory. Therefore they are not comparators in the same material circumstances for the purposes of claims relating to the termination of employment.

130. Before and during the hearing the Claimant maintained that Mr Dewar and Mr King were also comparators who had not been dismissed despite their gross misconduct. They both denied the allegation and it was only at submissions that the Claimant agreed that she was no longer pursuing the argument. This baseless allegation was something which would have been distressing for them both and it would have been helpful, to say the least, if the Claimant had withdrawn it sooner.

The claimant is invited to an assessment for the permanent Grade 10 role

131. On 7 April the Respondent recognised that Penna had made a mistake when it had not shortlisted a total of nine internal candidates for the permanent Grade 10 role. Something had gone wrong, and the Respondent proactively sought to make things right and organised for three operations managers to do another sift. The Claimant was then passed by all three and has tried to argue that this indicates that Penna absolutely should have shortlisted her and that there was some discrimination in the original process which is attributable to Mr King rather than to Penna. This is very far fetched.

132. The Claimant was therefore offered the chance to go to the next stage, which was an assessment centre. She made much of the fact that Ms Rowe commented that the Claimant, along with her eight colleagues, was working "at and above the standard required". Ms Rowe clarified that what she meant by that was simply that they did not have any performance plans in place, but she did not know any detail and this was not a ratification of the Claimant in contradiction to Mr King's views.

133. On 20 April the Claimant respectfully declined the invitation to pursue her application for the permanent role on the advice of her solicitor, because she felt that malicious allegations which were not proportionate had been made against her.

Post-employment issues

134. In July 2017 the Respondent became aware that the Claimant had accessed the IT system both before and after her employment had ended and removed data to her home address. The information commissioner is currently conducting an investigation.

The claimant's broader allegations and her witnesses

135. The Claimant and her witnesses made allegations of a toxic environment, Mr Sahodree even comparing the state of affairs at Holborn as being like the apartheid system. Whilst the primary focus of our investigation must be on the conduct of the individuals who the Claimant says discriminated against and victimised her, the wider context is relevant. This is because it may be that having understood that it was toxic to BAME people, we then look back at the separate incidents of apparently innocent conduct and see a more worrying pattern emerging.

136. The key evidence for these allegations is:-

    1. The minutes of the Respondent's diversity network meeting; this is a network set up for staff to network and support one another not a management-led group.

    2. The staff survey.

    3. The evidence of Mr Sahodree.

    4. The evidence of Ms James.

    5. The evidence of the respondent's witnesses.

The diversity network

137. We have seen one set of minutes from the diversity network meeting of December 2016. The meeting was not attended by any of the protagonists in this narrative. The minutes are troubling and all the Respondent's witnesses said that they did not recognise the organisation as portrayed in them. For example, every BME person is reported as trying to leave and it is said that there were no black people on the interview panels. We think that the latter is unlikely and were told by Mr Woodward and his colleagues that this was untrue. We know of black staff who have not left, for example Jennifer Agyepong and another person who Mr Lovatt said had left but was trying to return. However, the fact remains that the network expressed extreme distress at the state of affairs in the organisation and said that they feared reprisal if they complained.

The staff survey

138. Contrast this with the staff survey of 2016. 73% of staff felt that the IPCC respected individual difference and was a good place to work for BAME staff. This means that 27% of staff did not think so, but of those 27% not a single employee felt that they were being discriminated against because of ethnic background. This survey is anonymous and organisation-wide and so would be expected to be accurate, and it presents a positive picture. Apparently, these overall figures are not exceptional when benchmarked against other non-Governmental public bodies, and from our experience we would agree with that.

The Equality and Diversity Group

139. Mr Sahodree says that absolutely nothing was done in response to the concerns of the network group, but from the documents in the bundle, this is not true. The Equality and Diversity lead in the organisation, Helen Derbyshire, was at the network meeting and she reports direct to the CEO who directly manages the Equality and Diversity agenda because of its importance (the corollary of this being that we did not feel that HR owned the Equality and Diversity issue to the extent that we might have expected). Far from being inactive, the IPCC-wide Equality and Diversity Group meet regularly and is comprised of everybody from Commissioners to staff. They discussed the concerns of the Network Group and recorded a number of measures that were being put in place and/or reinforced to reassure BAME staff and to address the two apparently greatest problems. These are, first, that there were/are not enough BME staff in the higher ranks of management and, second, that a disproportionate number of BME staff were leaving the organisation.

140. At this point the picture becomes complex and we do not know enough to make firm judgments, but it does appear likely from the evidence that problems had arisen following a particular recruitment round. The bar was lowered for a cohort of lead investigators who were unfortunately not able to hit the ground running, and a number of these were black. Whilst this was probably done with the best of intentions it has led to a lot of distress. Two in that cohort were Ms Agyepong and Mr Sahodree. Ms Agyepong was not successful as a lead investigator but, rather than being dismissed, she was supported and offered an extended improvement plan at the end of which she was allowed to go down to the rank of investigator, a role which she retains. When there was a reorganisation in September/October 2016 she had the opportunity to leave Mr King's team but chose not to do so which suggests that she is reasonably content with what has happened to her.

141. Mr Woodward also thinks there is a particular problem in the IPCC which is that black members of staff experience particular stress because they are perceived by their communities as working for an establishment organisation and this also has to be considered.

Mr Sahodree

142. Mr Sahodree was also recruited in the cohort and months after the claimant had left, in September 2017, he came out with a range of grievances against management which he had never raised before, whilst stating that he did not wish to pursue a formal grievance. One of his complaints was that he was discriminated against by Mr King who pulled him up for coming into the office in a smart jumper with no shirt underneath or in his locker which he could put on with a tie if called out to an urgent incident. Sometimes these incidents include the death of a member of the public and respectful dress needs to be worn.

143. Mr Sahodree said that this was discrimination because a colleague called Sarah used to walk around the office in a micro skirt and you could nearly see her underwear, somebody else white came in gym gear and Mr King himself used to wear trainers. When asked whether he knew that these three all had formal wear in their locker which they could change into if needed, he said that he did not know, and he did not seem to understand that if they did, they could not be criticised. He is a lead investigator and yet he had jumped to the conclusion that he was being discriminated against without making even the most basic of enquiries about whether his colleagues were in a comparable situation. Unlike them, he did not have a shirt in his locker and he had been asked about this matter by Mr King before. He argued that it was perfectly acceptable these days to attend formal events without a shirt, which may be so, but when he attended the Tribunal, another formal event, he came smartly dressed in a shirt and a tie, so for him a shirt was standard formal dress. We were quite shocked that he decided to argue this as an incident of discrimination because Mr King may have been old fashioned but his comments were on any analysis reasonable. We were also shocked by his irresponsibility in arguing in his statement that Mr King would favour white staff by arranging for them to have additional unofficial time off and then withdrawing this without explanation on the day of the hearing as he presumably realised he could not prove it.

144. The most telling piece of evidence for us was that although Mr Sahodree now says that he suffered apartheid-like discrimination at the hands of Mr King, all his appraisals were very appreciative and respectful on both sides. Further, Mr Sahodree signed Mr King's leaving card in July 2017 saying: "thank you for the support you have given … take care". There was absolutely no reason why Mr Sahodree should sign the card, let alone write such a grateful message if he really had experienced the discrimination that he now asserts. With regret, we have to conclude that his evidence has been vastly exaggerated after the event in order to assist the claimant.

Ms James

145. Ms James also gave troubling evidence. She asserted that when the Claimant was at home with her sick child, Mr King had refused to allow her to work from home. The fact is that the Claimant had asked for time off to care for her sick child and did not ask to work from home; indeed she could not do so because she was tending to the child. When the illogicality of her position was pointed out to Ms James, she persisted that this was race discrimination. Similarly, Ms James says that on the day the Claimant took sick leave because she had been burnt by a laser and was in pain, she should have been allowed to work from home. Again, the Claimant told Mr King that she was in pain and did not ask to work from home but Ms James persisted that it was race discrimination. Perhaps Ms James thought that managers should offer, dishonestly, home working when someone was not actually able to work, which is troubling.

Conclusions

146. Mr Davies has told us that a discrimination claim often starts with a feeling and that we should respect the Claimant's instinct, particularly as she is an experienced detective, and drill down from there in the expectation that we will find something. Regrettably we do not consider that the Claimant has demonstrated that her instincts are reliable as her judgment throughout was very poor.

147. We are also told that we should unpack the facts and look at them critically, for example why did Mr King not realise that Mr Sahodree could have gone to a local shop and bought a shirt if he needed one? We doubt that Mr Sahodree would have thought it feasible to go out in Holborn and spend £60 on a shirt when there was an emergency. That Mr King did not think of this option goes nowhere towards establishing the possibility of discrimination. The timesheet issue required very little scrutiny to see that there was clearly a case to answer. The more we unpack the facts, the clearer we are that none of the Respondent's behaviour gave rise to concern that there might have been discrimination, victimisation, harassment or protected disclosure detriment.

148. Mr Davies also suggested that Mr Panesar's cross examination was so brilliant that it deluded us but, with great respect to Mr Panesar's skills, we think that we are sufficiently able to see the facts for ourselves.

149. We are left with the uncomfortable conclusion that the Claimant has an unshakable but incorrect belief that if she does not like what is happening or is prevented from doing the work she chooses, this is discrimination, victimisation, harassment or protected disclosure detriment.

150. Looking at the eight overarching issues, we conclude as follows:-

    1. The decision that the Claimant should not work on MPS cases was absolutely correct because it could have led to a perception of conflict. There was nothing inconsistent about the way the Respondent treated the conflict of interest issue. The Claimant's failure to disclose that there was a live claim against the MPS throughout her employment, with a schedule of loss of £229,000, is quite extraordinary and illustrates her poor judgment and understanding. The claimant argued that various detriments arose from the decision that she should not work on MPS investigations, but we disagree:

    a. *Restricting her work*. We are satisfied that there was plenty of investigative work to be done in respect of other police regions.
    b. *MPS is the most high profile and prestigious force in the country*. An investigator should not expect to work just on prestigious work, and anyway this is debatable nationally.
    c. *The MPS work was likely to be local to where the Claimant lived which was convenient and also helpful to her as a single parent*. The Claimant had been employed to work at the High Holborn office of the Respondent which was a central office close to other police forces as well as MPS. As a single parent she benefited from the Respondent's

family friendly working policies; we were not told of one actual example of the Claimant having difficulties working because of childcare responsibilities.

d. *There was a possible stigma attached to her not doing MPS work.* Although Mr Sparrow could see this point of view, it is clear from the policy that having a conflict of interest is not a matter for embarrassment, as Mr Woodward said it is just part of being professional.

e. *The result was that the Claimant was hidden away on low grade admin work.* This was often the nature of the work and we did not find any allocation decision concerning. Anyway, the restriction on MPS cases was not the reason for the work the Claimant was allocated.

f. *The Claimant was not able to use her knowledge of how the MPS worked*. This was the whole point of the restriction. If the Claimant was working on MPS cases using her experience, derived partly from the litigation, she could be seen as open to letting her background influence her decisions when she should be coming at a matter objectively.

2. The change of name issue did not give rise to a detriment. The Claimant behaved in a contradictory way and the Respondent was right to check it out, but they did this in a light touch way which did not cause her a detriment. The Claimant was able to work under the name she chose.

3. The Claimant did do a great deal of paperwork but its correct status is that it was necessary work and part of her role. Most investigations were long and complex and somebody who was, frankly, at the bottom of the investigation hierarchy was required to do the routine work. As a fixed term Grade 10 investigator the Claimant was there to take on some of the burdensome backlog in order to help to progress investigations. She was not entitled to demand high profile investigative work although she nonetheless worked on eight investigations in her 4 months there, being moved from the Z investigation to 3 days a week on the Y investigation after she complained. There was no detriment and, if there was, it was caused by operational needs and was not discrimination or victimisation.

4. The scrutiny which Mr King applied was appropriate. She was allowed to work from home but Mr King wanted his team to work together which would have been to the Claimant's advantage so that she got to work well in the team. He did not want his staff working in a pod and this wish had nothing to do with the Claimant in particular, or her race. Mr King did minute the one to one meetings which was good practice and the claimant agreed with and signed the notes at the time; he also made notes of critical meetings which was sensible. It is very notable that the Claimant has no contemporaneous written evidence to corroborate her side of the story even though as a police person she would have been used to making notes. There was no detriment; to suggest that Mr King was stalking her is offensive and it was not harassment.

5. The Respondent did not fail to take the Claimant seriously or support her and Mr King listened to her concerns. He tried hard to make an effective investigator out of her and had expected that she would be hitting the ground running given her background. He was not dismissive of the alleged protected disclosure and responsibility for lines of enquiry did not lie with him. Many investigations ran slowly and investigators moved from investigation to investigation and back again which seemed to us potentially rather inefficient. In that context, there is no evidence that the IPCC was responsible for a delay in the supervised investigation by the MPS, or that the delay was so unexplained or excessive as to raise concern that this might be discrimination or victimisation. This allegation actually contradicts allegation 4 above; that the claimant thinks she was both over-scrutinised and under-supported illustrates that she had a subjective and illogical view of her role at IPCC.

6. It is extraordinary to us that the Claimant has pursued an argument that it was discrimination on the part of the Respondent not shortlist her for the permanent investigator role. The decision not to shortlist her was Penna's and there is absolutely no evidence that the Respondent was involved. The Claimant was then offered an interview which she declined following a re-sift by the Respondent. Mr King did nothing to get in the claimant's way. There was no detriment.

7. Mr King did not tell the Claimant to look elsewhere in an inappropriate way; he outlined her options to her and told her that he would be supportive if she needed to take time off. He also said he would be supportive of her application for a Grade 10 investigator role and would facilitate the transition between the fixed term and the permanent role. It is true that from February 2017 onwards he expected that the fixed term would expire and became increasingly sure that he did not want the claimant to remain in his team, but he was honourable about how he dealt with her. He was not obliged to think well of her. There was no detriment.

8. Finally, as we have said a number of times, we cannot understand how the Claimant can argue that she was falsely accused of timesheet irregularities. The matter got no further than the investigation stage because she resigned and declined to participate, but the evidence which has been accrued was compelling and certainly the Claimant needed to account for herself. Her failure to participate was in itself incriminating and her reasons for not doing so were patently unsustainable. This issue was an amply good reason for the decision not to extend her contract. In the end, the contract ended because the Claimant did not consent to its extension.

151. As we said at the beginning, there were 33 separate issues which can be combined into the eight categories which we have identified. Mr Davies on behalf of the Claimant agreed with this formulation and Mr Panesar was slightly left comfortable about it but addressed them in his closing

submissions. We believe that we have covered all of the issues, but if we have not it should be inferred from our findings of fact and conclusions that any omitted issued would result in a finding against the Claimant. Harassment has been mentioned little and none was identified.

152. It is a matter of great sadness to us, first, that Ms Howard and her witnesses came to this Tribunal with such a misguided view of her position. Some of her claims required evidence and fact finding but the first and last issues are so clearly not detriments that her lack of perspective is astonishing; it gives rise to concern that winning a Tribunal claim may have a detrimental effect on future judgment. Second, we are sad to see the polarisation in the IPCC and that the claimant and her witnesses believe in a toxic atmosphere which, try as we might, we did not detect.

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Employment Judge Wade on 26 April 2018