

**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case Nos: S/4111083/12 & S/4110383/15**

**Held in Glasgow on 4, 5 & 8 May 2017, 1, 2, 19, 20, 21, 22, 23, 26, 27, 28, 29 & 30 June 2017, 18 & 19 July 2017, 4, 5, 6, 7, 8, 11, 13 & 29 September 2017 and 2 & 3, 10, 19 & 26 October 2017, Members' meetings 7 and 15 November 2017 and 29 January 2018**

**Employment Judge: Robert Gall  
Members: Ms Laura Crooks  
Mr Andrew Grant**

**1. Mr Andrew Reid**

**1<sup>st</sup> Claimant  
In Person**

**2. Miss Amanda Daly**

**2<sup>nd</sup> Claimant  
Represented by:  
Mr A Reid -  
1<sup>st</sup> Claimant**

**The Chief Constable of the  
Police Service of Scotland**

**Respondent  
Represented by:  
Mr A Gibson -  
Solicitor Advocate**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The unanimous Judgment of the Tribunal is that:-

- (1) The claims brought by Mr Reid in terms of Section 48 of the Employment Rights Act 1996 of detriments to which he alleged he was subjected by acts or deliberate failures to act of the respondents, done on the ground that he had made protected disclosures, were brought out of time. It was not not reasonably practicable for them to have been brought in time, save for the allegation that DS Dillet submitted a false SPR. It was not reasonably

**E.T. Z4 (WR)**

practicable to submit that element of claim in time. Time is extended to enable that element of claim to proceed. Other than in respect of that one element of claim, other claims based on alleged acts or deliberate failures to act said to have been done by the respondents on the ground that Mr Reid made a protected disclosure cannot therefore proceed, being time barred.

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(2) The act of submission by DS Dillet of an alleged false SPR was not an act done on the ground that Mr Reid had made a protected disclosure. That element of claim is unsuccessful.

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(3) The claims brought by Mr Reid of failure to make reasonable adjustments in terms of Sections 20 and 21 of The Equality Act 2010 were brought out of time. It is not just and equitable to extend the period within which such claims require to be brought. These claims are therefore brought out of time and cannot proceed.

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(4) There was a protected disclosure made by Ms Daly in terms of the Employment Rights Act 1996, this being the statement she gave to Detective Sergeant Bassano on 12 April 2010.

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(5) The claim brought by Ms Daly in terms of Section 48 of the employment Rights Act 1996 that there were acts or deliberate failures to act by the respondents done on the ground that Ms Daly had made a protected disclosure is unsuccessful.

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(6) The claim brought by Ms Daly that there was a failure by the respondents to make reasonable adjustments in terms of Sections 20 and 21 of the Equality Act 2010 is unsuccessful insofar as founded upon any failure said to have occurred prior to 8 July 2013. That was the date when the duty on the respondents arose, being the date when they knew or ought reasonably to be expected to have known that Ms Daly was disabled in terms of The Equality 2010.

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(7) The claim brought by Ms Daly that the respondents had failed to make reasonable adjustments in terms of Sections 20 and 21 of the Equality Act 2010 was brought out of time in relation to the failure said to have occurred by the making by the respondents of a decision on 30 July 2013. It is not just  
5 and equitable to extend the time within which to bring this element of claim.

(8) The claim brought by Ms Daly of failure by the respondents to make reasonable adjustments in terms of Sections 20 and 21 of the Equality Act 2010 founded upon the decision by the respondents made on 20 April 2015  
10 is unsuccessful. There was no failure by the respondents to meet the duty incumbent upon them.

### **REASONS**

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1. Each of these claimants brought a claim against the same respondent. Many of the facts and circumstances giving rise to the claims overlapped. In that situation the decision was taken to conjoin the claims.

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2. The Tribunal heard evidence over a substantial number of days. It heard evidence from various witnesses, being those detailed below. There were 3 joint bundles of productions lodged. Two of those bundles related to the claim brought by Mr Reid. Any reference in the Judgment to a document produced  
25 in either of those bundles is indicated by the page number preceded by the letters "AR". Any reference to a document within the bundle relating to the case of Miss Daly appears on the basis of the page number, preceded by the letters "AD".

### **Witnesses**

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3. The Tribunal heard evidence from the following parties:-  
• The claimant, Mr Reid

- The claimant, Ms Daly
- Police Constable (“PC”) Paul Gavin
- 5 • Former Assistant Chief Constable (“ACC”) Valerie Thomson
- PC Fanning
- Former Detective Sergeant (“DS”) John Sallens
- 10 • Deputy Chief Constable (“DCC”) Iain Livingstone
- Chief Inspector (“CI”) Jane Black
- 15 • DS Craig Linton
- Inspector Audrey Hand
- Superintendent Alan Murray
- 20 • Duty Manager Ann McNally
- Temporary Superintendent Hilary Sloan
- 25 • CI James Trotter
- DCC Craig Naylor
- PC Gary McConnell
- 30 • Inspector David Cameron
- Sergeant Janette Cameron

- Superintendent Alan Gibson
- Former DCC Neil Richardson
- 5 • DS Jim Kerr
- CI David Sharp
- Amanda McDonald, National Head for Service Centres with the  
10 respondents
- Sergeant Scott McLoy
- ACC Andrew Cowie
- 15 • Superintendent Alan Cunningham
- Former CI Martin Clocherty
- 20 • Former DS Jim Dillet
- Chief Superintendent (“CS”) Hazel Hendren (formerly Knight)
- CS Alan Speirs

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4. The following parties are mentioned at this stage for ease of reference. None of them were witnesses. They were, however, mentioned at different stages during the Hearing:-

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- Gordon Blackstock, Journalist with The Sunday Post
- Craig Reid, brother of the claimant Andrew Reid

- William Reid, brother of the claimant Andrew Reid

5 5. The claimant Mr Reid appeared on his own behalf. He also represented Miss Daly. Mr Gibson appeared for the respondents.

6. A joint statement of agreed fact was lodged in the case of Mr Reid.

### **Ruling on Documents**

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7. At the outset of the claim, the claimants sought to lodge documents. The application was opposed by the respondents. The Tribunal heard arguments from Mr Reid and from Mr Gibson.

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8. The documents were relevant to events in 2016. Mr Reid's case was founded upon events prior to that date. An application to amend in that case to bring in events after 30 April 2015 had been refused prior to the case coming to Hearing. Mr Reid's position in evidence was that the last act or deliberate failure to act which he alleged to be one resulting in detriment to him and which had been done on the ground that he had made a protected disclosure, was what he alleged to have been a failure by Superintendent Murray properly to investigate his grievance at stage 1. This was said to have occurred immediately prior to the end of April 2015.

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9. The claim brought by Ms Daly was encapsulated in her claim form which was presented on 15 August 2015. There had been no amendment to her claim. It therefore related to events prior to that date.

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10. The claimants had said that production of the documents was of importance in order that they could be put to witnesses to challenge their evidence and ultimately their credibility. The Tribunal adjourned and considered the application and opposition to it. The Tribunal was conscious that documents to test credibility could be put to a witness in cross-examination without being

produced as part of the bundle. It took the view that credibility in this case would potentially be of high significance.

- 5 11. The Tribunal therefore allowed the documents to be lodged at commencement of the Hearing. It stated, however, that this was on the express basis that it was understood by both claimants that this was not a means of having before the Tribunal grounds of claim which had earlier been set out in the proposed amendment to the claim by Mr Reid, that amendment having been refused. Grounds of claim had to be founded upon the issues as set out in the pleadings.
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**Application to allow further documents, made in course of the Hearing**

12. Mr Reid sought that a newspaper article be produced. This application was made in the later part of the Hearing. By then Mr Reid had given his evidence and others, to whom questions might have been put about the newspaper article, had also given evidence. The application to have the newspaper article lodged as a production was opposed by the respondents.
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- 20 13. After adjournment to consider the application and opposition, the Tribunal refused the application. The Tribunal had weighed up potential prejudice to the respondents if the document was lodged, as against potential prejudice to the claimant if it was not permitted to be lodged. It had considered the interests of justice and the overriding objective. The Tribunal was conscious that there was a potential need to recall witnesses if the article was permitted to be lodged. It was also conscious that by then substantial time had been spent in the Hearing.
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**Proposed Amendment during the Hearing**

14. Mr Reid sought leave to amend his claim in a gap between Hearing dates. The amendment therefore came substantially late in the case. It sought to introduce further alleged protected disclosures as having been made by Mr Reid. It looked to add a claim of detriment based on those further alleged protected disclosures. The Tribunal refused to grant leave to amend, confirming that decision and the reasons for it to both parties when the case resumed. Briefly, those reasons were that the Tribunal had regard to various facts and to the principles of ***Selkent Bus Co v Moore [1996] ICR 386***. The alleged protected disclosures referred to in the proposed amendment had been made some time ago and there was no satisfactory explanation as to why they had not featured in the pleadings thus far. There had been substantial focus on what were and were not protected disclosures at earlier stages in the case, without any reference to the statements now sought to be advanced as protected disclosures. In addition, the case had reached an advanced stage. Witnesses had completed their evidence, however would be required to be recalled if the amendment was allowed. It was recognized that there would be prejudice to Mr Reid if the amendment was not allowed. There would be prejudice to the respondents if the amendment was allowed. Looking to the lateness of the application, absence of explanation as to it only now being made, proportionality and the interests of justice, the application was refused.

### **Designation of Parties and Witnesses**

15. The Tribunal heard claims by Mr Reid and by Ms Daly. Rather than any other alternative, it is considered that the easiest means of identifying the claimant in relation to various points is to refer to the claimants as Mr Reid and Ms Daly. It is appreciated that other witnesses are referred to by their rank. Consideration was given to referring to the claimants as PC Reid and PC Daly. It was in the view of the Tribunal preferable to refer to the claimants in the manner adopted. Consideration was also given to referring to witnesses as Mr (name) or Ms (name). Reference to rank of the witness might be of help however in identifying their place in the “*chain of command*”. It was on that



basis alone that reference to rank was determined as being appropriately contained within the Judgment. It is also recognised that individual officers have changed rank during the period covered by events. If any such change is felt to be of significance to a matter of fact, the Tribunal has sought to give the officer the rank and title appropriate at any such time.

### **Nature of this Hearing**

16. This hearing was to determine liability. If liability was found to exist, a separate hearing would then be arranged to determine remedy.

### **Claims Brought**

17. Both Mr Reid and Ms Daly brought claims alleging that they had been subjected to detriments following upon acts or deliberate failures to act said to have been done on the ground that each of them had made protected disclosures. They also each brought a claim of discrimination, the protected characteristic being disability. The claim of discrimination each of them made was that there had been a failure to make reasonable adjustments by the respondents. There was an issue as to whether the claims had been presented in time. In relation to elements of Ms Daly's claim of failure to make reasonable adjustments a Judgment had been issued following a Preliminary Hearing ("*PH*"). That Judgment had ruled that elements of Ms Daly's claim of failure to make reasonable adjustments had been presented out of time. She maintained that it was just and equitable that those elements were permitted to proceed. There was also an issue in Ms Daly's case as to the date from which the duty on the part of the respondents to make reasonable adjustment commenced. This turned upon the date when the respondents knew or ought reasonably to be expected to have known of Ms Daly's disability. The earlier Judgment in the case of Ms Daly also concluded that her claim in relation to detriments said to have been suffered following upon the making of the protected disclosure had been brought in time.

18. Mr Reid argued that his protected disclosure claim relied upon a series of similar acts, with the last one being within three months of the claim being presented. In relation to the discrimination element of his claim, Mr Reid maintained that there was conduct extending over a period, the last element of that conduct occurring within 3 months of the claim being presented. If not brought in time he argued that it was not reasonably practicable for the claims to have been brought within the relevant time (the protected disclosure claims) and that it was just and equitable that the Tribunal extend time to permit the claims to proceed (the failure to make reasonable adjustments element of the claims).

19. The respondents argued that no protected disclosure had been made by Ms Daly. In relation to Mr Reid's protected disclosure claim, the respondents argued at submission stage that the Tribunal should hold, notwithstanding an earlier ruling by a different Employment Judge sitting alone that there had been 6 protected disclosures made, that there were no such disclosures made. They also maintained that any claim in this regard brought by Mr Reid was brought out of time. Similarly they argued the claims of discrimination had been brought out of time. The respondents said that there was no series of acts in relation to Mr Reid's protected disclosure claim and no conduct extending over a period in relation to the discrimination claim. They argued that it had not been shown to be have been not reasonably practicable for Mr Reid to bring a claim of based on alleged acts or deliberate failures to act of the respondents done on the ground that he had made a protected disclosure within the time permitted for bringing of such a claim. They maintained that any claim of failure to make reasonable adjustments was, insofar as not already found to have been presented on time, presented out of time. They further maintained that it was not just and equitable that any claim by either claimant of failure to make reasonable adjustments be permitted to proceed if presented late. In relation to any such claim permitted to proceed, there had no failure to make reasonable adjustments, they said.

**Relevant Previous Judgments**

**(A) Mr Reid**

20. By Judgment dated 12 August 2016, issued to parties on 16 August 2016,  
5 Employment Judge Wiseman decided that there had been six protected  
disclosures made by the claimant. This Judgment appeared at AR 177 to 247.  
EJ Wiseman adhered to this view in a Judgment issued after reconsideration.  
That Judgment appeared at AR 248 to 262.

10 21. The protected disclosures were as follows:-

(1) On 6 March 2010, by way of a letter written to the Chief Constable by  
Mr Reid alleging officers from within the Police Standards Department  
("PSD") were engaged in criminal actions whilst conducting an enquiry  
15 into the actions of the claimant. (AR 345 to 349).

(2) Verbal statement by Mr Reid when he attended a meeting with CI  
Clocherty on 22 March 2010, a report of that meeting prepared by Mr  
Clocherty appearing at AR 355.

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(3) Verbal statements made by Mr Reid at a meeting with Inspector Scott  
McEwan and an HR representative of the respondents on 4 May 2010.  
Mr Reid stated at this meeting that he believed officers from PSD were  
treating him unfairly and were engaged in criminal activity during the  
25 course of carrying out their investigations. A note of this meeting  
appeared at AR 366 and 367.

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(4) Verbal statement made by Mr Reid to officers of PSD on 12 April 2010  
regarding alleged criminal conduct by DS Dillet and others. A record  
30 of this appeared in the witness statement of Mr Reid which comprised  
AR 356 to 359.

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(5) Letter from Mr Reid to the respondents dated 2 November 2010. A copy of that letter appeared at AR 387 to 388.

5 (6) Letter from Mr Reid to the Joint Police Board in August 2012 complaining about what he viewed as being the lack of investigation of his complaint.

10 22. No decision had been made in relation to whether Mr Reid's claims of detriment said to have been suffered due to an alleged act or deliberate failure to act by the respondents done on the ground that he had made a protected disclosure had been presented in time or not. The claim by Mr Reid that there had been a failure to make reasonable adjustments was, in addition to being disputed by the respondents, also a claim which saw them take a time bar point.

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**(B) Ms Daly**

20 23. A Judgment dated 18 May 2016, issued to parties on 19 May 2016, (Employment Judge Gall sitting alone) was varied upon reconsideration. The reconsidered Judgment was dated 29 July 2016 and was issued on 2 August 2016. That Judgment was, in relation to the protected disclosure claim by Ms Daly, that there was a series of similar acts alleged. The last one of those was said to have occurred on 20 April 2015. The claim by Ms Daly of alleged detriment said to have been suffered due to an act or deliberate failure to act of the respondents done on the ground of Ms Daly having made a protected disclosure was held to have been presented in time. The disclosure said to have been made by Miss Daly was by way of provision of a statement to DS Bassano on 12 April 2010. That statement referred to the letter from Mr Reid which comprised protected disclosure 1 in his case. The relevant passage in that judgment appears at AD 104.

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24. It was also held in that Judgment as reconsidered, that the claim brought by Ms Daly of alleged failure to make reasonable adjustments was brought out of time save for one element. The Judgment decided that, when the

respondents concluded that restrictions on duties of Ms Daly were appropriate and would not be removed or varied other than as occurred, individual decisions or acts had occurred, with continuing consequences. Those individual decisions were the alleged failures to make reasonable adjustments. They had occurred on 20 June 2011, 3 July 2013, 30 July 2013 and, finally, on 20 April 2015. On each of those dates a request had been made to the respondents to vary the restrictions imposed upon Ms Daly. The decision made on 20 April 2015 was the decision in respect of which the claim had been presented in time.

25. For the claim based on the other alleged failures to proceed, Ms Daly required to establish that the respondents knew or ought reasonably to have been expected to have known that she was disabled in terms of the Equality Act 2010 ("EQA") at the dates of the alleged failures. She also required to persuade the Tribunal that it was just and equitable that those elements of claim brought out of time be permitted to proceed.

26. The further issue was that the respondents maintained that the adjustments said by both Ms Daly and Mr Reid to be reasonable adjustments were not in fact in that category, given the background as to why and in what circumstances the restrictions were imposed or varied.

### **Amendments**

27. Four amendments submitted by Mr Reid were allowed. This was in terms of the Judgment of Employment Judge Gall dated 17 June 2015, issued to parties on 22 June 2015 appearing at pages AR 133 to 162.

28. Employment Judge Wiseman, in a Judgment dated 13 October 2016, issued to parties on 14 October 2016 and appearing at AR 248 to 262, stated that all arguments in respect of timebar of Mr Reid's claim, of failure to make

reasonable adjustments (including the four amendments to it), were to be reserved to the Merits Hearing.

### Previous Judgments

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29. Mr Gibson for the respondents argued that Employment Judge Wiseman ought not to have confirmed the six protected disclosures referred to above as being protected disclosures. The respondents maintained that they were not protected disclosures. They had sought to appeal Employment Judge Wiseman's decision. The Employment Appeal Tribunal had, however, not permitted the appeal to proceed.

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30. It seemed to this Tribunal that this was not a point which could be argued before it. A decision had been made and an appeal had been unsuccessfully attempted. The protected disclosures made by Mr Reid were those statements which were determined as being in that category by Employment Judge Wiseman.

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31. Mr Gibson also drew the attention of this Tribunal to the decision of the Employment Appeal Tribunal in ***Amey Services Ltd -v- Aldridge UK/EATS/0007/16***. That case confirmed that an amendment should not be permitted "*subject to timebar*". That had, however, occurred in this case on the basis of the judgments referred to above, concluding with that of Employment Judge Wiseman on 14 October 2016. This Tribunal should reverse the decisions made to allow those amendments, urged Mr Gibson.

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32. In the view of this Tribunal where evidence had been led in relation to the facts and circumstances detailed in the amendments and where no appeal had been taken at an earlier stage in relation to the decision to allow the amendments, the decision taken would not now be overturned and reversed by this Tribunal. A decision upon timebar can be made on the basis of the evidence now heard. Further, at the time when the amendments were permitted it was maintained by Mr Reid that there was a series of similar acts

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(in the “*protected disclosures*” case) and conduct extending over a period (in the “*reasonable adjustments*” case). This is the type of situation where, in the recent case of ***Galilee v Commissioner of Police for the Metropolis UKEAT0207/16***, the Employment Appeal Tribunal took the view that allowing amendment subject to timebar was possible.

### **Facts**

33. There was a substantial amount of evidence in the cases over many days. There were a large number of witnesses. Witnesses required on occasion to split their evidence either due to a break in the dates when the Tribunal was sitting to hear this case or, in some instances, on the basis of unavailability of witnesses for particular dates, or restricted availability of other witnesses. Either of those instances occasionally required witnesses to be interposed.

34. It is considered appropriate to distinguish between the cases in relation to findings in fact. There is substantial overlap in the circumstances of each case and in some of the points sought to be made upon the evidence. It is considered, however, that the most efficient way of dealing with the case in terms of the judgment made is to set out findings in fact in relation to Mr Reid and then in relation to Ms Daly.

35. The Tribunal is also conscious that there was much evidence led in relation to which there is no requirement for facts to be found in order for the Tribunal to make its determination in the case. It is appreciated that that will be frustrating, potentially for both parties. Nevertheless, as commented from time to time during the Tribunal proceedings, the Tribunal requires to deal with matters before it insofar as they are relevant to the claims brought before it rather than to deal with any more general aspect of consideration of the actions of the respondents, however much that might have been the wish of Mr Reid in particular and Ms Daly. The Tribunal heard evidence, for example, in relation to (a) whether or not there was a Standard Operating Procedure (“SOP”) in relation to restriction of duties, (b) the difference between policing

and non-policing purposes, (c) whether and when a Police Officer was on or off duty and (d) the definition of personal data. It was not necessary or relevant to make findings in relation to those matters to determine the claims.

- 5 36. The following are therefore the relevant and essential facts as admitted or proved.

**Facts relevant to both cases**

10 **Counter Corruption Unit and Professional Standards Department**

37. In addition to what might be viewed as the standard role of the Police in investigation of crimes such as burglary, driving offences, assaults etc, there is also a need for the Police to have a system to deal with misconduct or corruption alleged to exist and to involve a member of the Police Force.

38. This need is dealt with through two departments within the Police Force. These are the Police Standards Department ("*PSD*") and the Counter Corruption Unit ("*CCU*").

20 39. These departments were, until relatively recently, separately run and organised. There are now closer links between the two. There remains however a clear distinction in areas of responsibility. CCU is involved in instances where corruption is suspected. PSD deals with situations where there are allegations of misconduct. CCU has access to information from PSD. PSD, however, does not have access to files or information from CCU other than at the instigation or with the consent of CCU. This is as CCU is often involved in conducting covert enquiries.

25 30 40. Broadly put, PSD deal with standards and ethics within the Police, handling misconduct allegations and complaints. CCU deal with possible corruption, illegality or systems misuse by Police Officers. CCU have surveillance abilities, including being able to access telecoms equipment records.



41. Prior to 1 April 2013 there were different Police Forces within Scotland. Each had their own way of operating to an extent. From 1 April 2013 Police Scotland has been in place. Issues in the cases both of Mr Reid and Ms Daly straddle the period prior to the creation of Police Scotland and after its inception. Prior to commencement of Police Scotland, the relevant Police Force as far as Mr Reid and Ms Daly were concerned was Strathclyde Police.

42. The split in responsibilities between PSD and CCU existed in Strathclyde Police and continued when Police Scotland came into being.

43. At the head of PSD and CCU sits the Deputy Chief Constable (“DCC”). That was so in the days of Strathclyde Police and remains the case under Police Scotland.

44. The DCC for Strathclyde Police from July 2008 was Neil Richardson. He became Designated DCC in Police Scotland from 1 April 2013. He left Police Scotland in May 2016.

20 **Role of the DCC – Restricted Duties**

45. If there are allegations made against a member of the Police Force, the allegations being of misconduct or of corruption, consideration may be given by the Police Force to restricting the duties of the officer involved.

46. Any decision as to whether there are restrictions placed on the carrying out of duties by such a Police Officer is made by the DCC. The DCC receives a report by way of a briefing note in that circumstance. The briefing note provides background and makes a recommendation. It is prepared principally by one Officer either within PSD or CCU although it is subject to examination and possible revisal by superior Officers within PSD or CCU. At that time the allegations which may form the basis of any recommendation to the DDC as to restriction of duties are considered by that superior Officer. Revisals to the

5 briefing note may be made by the superior Officer. He or she must be satisfied as to the accuracy of the content of the briefing note to be presented to the DCC and with the recommendations made in the briefing note. Ultimately the Head of PSD or Head of CCU appears personally at the office of the DCC to present the briefing note to the DCC. The DCC may ask questions as to the information presented to him or her. The DCC will then make a decision as to whether duties are restricted or not. He or she will generally endorse the briefing note with a handwritten comment as to the decision made. That will be dated. A decision will also be made by the DCC as to suspension of any such Officer.

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47. It is then a matter for the division within which the particular Police Officer whose duties in that circumstance are then restricted works to ensure that the relevant restrictions are implemented in practice.

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48. At one time it was relatively commonplace for Officers who were subject to allegations of misconduct or corruption to be suspended. Suspension was on pay. That was considered to be a wasteful use of money in that there was no benefit to the Police Force if the individual Officer was suspended. It was also considered that it was more awkward and dispiriting for the individual Officer involved to be suspended over a period of time than it was for him or her to be placed on restricted duties. The more frequent outcome therefore, if an Officer was subject to an allegation of misconduct or corruption, was that the Officer involved would be placed on restricted duties.

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25 49. Restricted duties might involve one or more of the following:-

- The Officer to be engaged in a non-public facing role
  - The Officer to be engaged in non-operational duties
  - IT system access of the Officer to be precluded altogether or to be limited such that he or she had access only to particular IT systems
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50. At the time when the decision is made as to whether or not an Officer is to be placed upon restricted duties, or indeed whether that Officer is to be suspended, what the DCC has before him or her is information as to allegations made against that Police Officer. The DCC in each case where a briefing note is presented to him or her assesses the risk to the public, the Police Force and to the officer him or herself. The DCC will, in so doing, consider the seriousness and nature of the allegations. He or she will then assess whether to suspend an Officer or to place an Officer on restricted duties and if so what those restrictions will entail. Each case is decided by the DCC on its particular merits.

51. Imposition of restricted duties is not intended to be a punitive step. A decision is taken as to whether to place an Officer on restricted duties when that Officer is facing allegations and prior therefore to any finding of misconduct or of guilt in a criminal case.

### **Duration and Review of Restricted Duties**

52. If an Officer is subject to an allegation of misconduct or corruption, that is a stressful situation. It is even more stressful for the Officer if he or she is on restricted duties. Investigation of any such allegation takes time. In the case of an allegation of corruption the investigation can be conducted on a covert basis for some considerable time. In that circumstance the Officer would not be aware of the investigation. Some such investigations are therefore carried out and completed without knowledge of that on the part of the Officer against whom such an allegation has been made. Allegations of misconduct are made known to the individual Officers involved.

53. If there is a potential criminal charge involved, any progress in a misconduct enquiry is halted whilst the criminal case is considered and ultimately dealt with. An Officer can therefore be on restricted duties for some time. There was an attempt to try to deal with misconduct and criminal cases in parallel

however that proved to be impractical and was not continued. It is a course agreed between the Crown Office and Procurator Fiscal on the one hand and the respondents on the other that any misconduct process does not proceed whilst criminal investigations and charges are proceeding.

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54. In his time as DCC Neil Richardson carried out reviews of cases where Officers were on restricted duties. He did such a review three times in each year. The review was to determine whether the Officer involved was to remain on restricted duties, as was the case prior to the review, or whether those restrictions were in some way to be altered. Whilst precise numbers will vary from time to time, there are in general some 200 Officers on restricted duties at any given time.

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55. In addition to these reviews, a request may be made by a Divisional Commander that particular restrictions on duties of an Officer are reviewed by the DCC. That may be thought to be appropriate due, for example, to a proposed position for that Officer becoming available. Such a position might be capable of being taken up by the Officer if there is a variation to restricted duties. Such a variation might involve relaxation by, for example, access to particular IT systems being permitted such as the Internet or personal or group emails. An individual Officer subject to restrictions can also request that the DCC reviews the restrictions.

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56. On any review the DCC will consider the same elements as are considered when a briefing note making any recommendation as to imposition of restricted duties is presented to the DCC. Those are detailed above. In summary, the DCC will consider therefore whether operational duties on the part of the Officer are to be permitted, whether the Officer is to be public facing or not and whether and to what extent IT restrictions are to remain in place. The nature and seriousness of the allegation(s) remain of relevance. The risk to the force and its reputation, the risk to the public and the risk to the individual Officer of the taking of any such step or variation or relaxation of restricted duties will be considered. The passage of time since date of the

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original imposition of restricted duties is also of potential relevance, as is the performance in any role undertaken by the Officer in the interim. Progress in relation to a misconduct hearing and dealing with the allegations of misconduct or corruption is also a relevant factor which may be weighed by the DCC at the time of any such review.

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57. The integrity and reputation of the Police Force and avoidance of risk to that integrity and reputation, together with avoidance of risk to the public and risk to the Officer involved, are paramount in consideration of the DCC at time of taking a decision as to whether restricted duties will apply in relation to a particular Officer and at time of review of whether and to what extent those restrictions will remain in place. Those considerations outweigh the stress recognised as being caused to any Officer who is subject to allegations of misconduct or corruption and stress caused due to imposition of restricted duties and those restrictions remaining in place.

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58. Consideration of risk also outweighs any ill health impact to, or disability which might exist on the part of, the Officer in relation to whom the imposition or potential variation of restrictions is being considered. In other words, risks to health being created by or exacerbated by restrictions which may be imposed or confirmed are not considered sufficient to warrant non-imposition, relaxation or waiving of restrictions if the view of the DCC is that the imposition, continuance or non-relaxation of the restrictions is required in order to safeguard the integrity or reputation of the Police, the safety of the public or the safety of the Officer involved.

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59. Outwith any “*standard*” review which, as stated above, is carried out on a three monthly basis on relation to all cases where restrictions are imposed, a specific review of restrictions in relation to a particular Officer may be carried out by the DCC. That, in normal circumstances, is brought about by the divisional unit within which that Officer works requesting such a review, as mentioned above.

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60. On occasion such a review can be initiated by the particular Officer writing directly to the DCC requesting a review.
- 5 61. From experience of working with the DCC, PSD or CCU are able to develop a good sense of when the DCC may be of the view that imposition of restrictions is appropriate. Similarly, through that working relationship, an awareness of circumstances in which it is likely that the DCC would or would not vary or relax the restrictions is developed by PSD and CCU.
- 10 62. Officers who are senior within the division in which an Officer subject to restricted duties is working may, from time to time, approach PSD or CCU putting forward for their comment a proposition that the particular Officer subject to restricted duties take up a particular post within the division. The approach would be on the basis that in order for this to happen a variation or relaxation or potential waiving of restrictions would require to be agreed to by the DCC. The opinion of PSD or CCU would in those circumstances be sought as to the likelihood of the DCC agreeing such a relaxation or variation.
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- 20 63. If the view upon such a proposition is that it is likely that the DCC would approve a variation, relaxation or waiving of restrictions, then it can be requested that a briefing paper is prepared and passed to him. Such a request can also be made by the division notwithstanding any view expressed by PSD or CCU that it is unlikely that the DCC would agree any variation, relaxation or waiving of restrictions. The further alternative is that, in face of a view from PSD or CCU that it is unlikely that any variation, relaxation or waiving of restrictions would be made by the DCC, the divisional Officer might decide that no request is to be made to PSD or CCU for a briefing paper to be produced to the DCC seeking variation or relaxation of removal of restricted duties. Any application for variation, relaxation or removal of restrictions is dealt with on its own merits and is therefore specific to the case and Officer involved.
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64. Complaints are from time to time made against the Police.

5 65. There are SOPs to deal with the situation of complaints against the Police. In relation to Police Scotland the SOP appeared at AR 846 to 895. In relation to Strathclyde Police the SOP appeared at AR 896 to 955.

10 66. A complaint against the Police, in the broadest sense of that phrase, is, in the vast majority of cases, made by a member of the public who has been affected by behaviour about which a complaint is made, or by someone on behalf of such a person.

15 67. There are occasions when a Police Officer who is subject himself or herself to a complaint or investigation may take issue with the interaction or actions of a fellow Police Officer who is involved in the investigation or discipline procedure relative to that Police Officer.

20 68. A complaint from a member of the public about the conduct of the Police was dealt with by Strathclyde Police and is dealt with Police Scotland in accordance with the relevant SOP. If, however, issue is taken with the conduct of a Police Officer by a fellow Police Officer in circumstances where the Police Officer taking issue is subject to investigation or facing misconduct allegations, the raising of such an issue is not, and was not, dealt with in terms of the SOP. There would, in that situation, be an awareness that the initiator was not a member of the public. There would also be an awareness that the Officer raising the issue was himself or herself subject to investigation and/or misconduct proceedings. An assessment would be carried out as to whether the allegations made by an Officer subject to misconduct allegations amounted to more than an assertion and whether or not it appeared there was some substance in the allegations made by the Officer subject to misconduct proceedings. This would include consideration of the potential motive of the person making the allegation.

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69. If satisfied it appeared that there was substance in any allegation made by an Officer under investigation or subject to misconduct proceedings as to the conduct of a fellow Officer, and if satisfied that the motives in making that allegation were not such as to cause a different course of action, a report would in that circumstance be made to the Procurator Fiscal, Crown Office as to the conduct of the Officer as alleged by his fellow Officer to have been the case.

70. If the view was that the allegation by that Officer in that circumstance lacked substance or credibility and/or that it may, for example, have been made as a “*defence mechanism*” of some sort, then it would not be dealt with in the manner just stated. It would in that scenario be investigated as part of the misconduct proceedings against the Officer involved.

71. At the outset of any investigation into the behaviour of an Officer an audit of the officer`s IT use is routinely carried out. This is done to identify the nature and extent of that IT use. Such an audit may highlight instances where the Police computer systems have been inappropriately accessed or used by the Officer involved.

**Case brought by Mr Reid**

72. Mr Reid is employed by the respondents as a Police Constable (agreed fact). The date of commencement of employment of Mr Reid was 26 July 2004. Mr Reid remains employed by the respondents. (agreed fact).

73. DS Dillet worked within CCU between 2008 and 2013.

74. In late June 2009 there was an incident involving a potential offence by the partner of the Mr Reid`s brother William Reid. There were issues in relation to the care provided by Mr Reid`s brother`s partner to her children. Mr Reid reported the incident to the Police.



75. In October 2009 a different incident took place. That involved Mr Reid and his brother, Craig Reid. This incident led to a complaint against the Police being made by Craig Reid in relation to his brother, Mr Reid.

5 76. Because of the complaint made by Craig Reid, Strathclyde Police proceeded on the basis of there being a complaint against the Police.

77. At this point there was a covert CCU investigation ongoing in relation to allegations of criminal association on the part of Mr Reid. His connection to someone who was known to the Police and considered to be part of an organised crime group was being investigated. The person involved, when being interviewed by the Police, had said that he had friends in the Police and had referred to Mr Reid and another Officer. Whether that was correct or not, it had led to an awareness on the part of CCU of Mr Reid.

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78. In late 2009/early 2010 there was also a CCU investigation in relation to Mr Reid. This investigation was known as Operation Blight. The investigation was in respect of possible disclosure by Mr Reid to the media of information, including information about the conduct of a fellow Officer. That conduct was associated with the private life of that Officer although it had led to a confrontation at work and to an incident which had been reported to the Procurator Fiscal. It was considered possible that Mr Reid had informed the media of the incident and other matters and that he had received payment for so doing. Such payment may have been made to his mother or to him via his mother. That would be a potential offence under the Prevention of Corruption Act 1906. It would also be misconduct if established on the balance of probabilities.

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79. Given the different elements mentioned, DS Dillet was appointed Senior Investigating Officer in relation to these incidents and in relation to the general actings of Mr Reid. Ms Daly had been present during at least part of the time when the incident between Mr Reid and his brother Craig Reid had occurred.

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The appointment of Mr Dillet also extended to investigation of the actings of Ms Daly.

- 5 80. When someone in the position of DS Dillet is passed a file in relation to an Officer it is standard practice that an audit of all Police systems used by such an Officer takes place, as mentioned above. This occurred in relation to Mr Reid and Ms Daly. The audit included the Police Intranet Case Reporting System (“ICRS”). This audit confirmed that both Mr Reid and Ms Daly had accessed ICRS on different occasions in relation to the incidents involving  
10 Craig Reid and William Reid/Angela McDougall.
81. The dates on which the ICRS system had been accessed by Mr Reid and Ms Daly in relation to those cases were soon after the incidents and not close to any trial date set. Mr Reid and Ms Daly were not the investigating or arresting  
15 Officers in the cases. They were potential witnesses.
82. The circumstances of the incident with Craig Reid were that there was a concern on the part of those considering the incident that Mr Reid and Ms Daly may not have told the truth in relation to whether Ms Daly was present  
20 at the time of the incident between Craig Reid and Mr Reid. Given the accessing of the ICRS system in relation to this incident and also in relation to the incident involving William Reid and timing of that access by Mr Reid and Ms Daly this was regarded by DS Dillet as being potentially inappropriate accessing of the ICRS system. This was as witness statements were read,  
25 and in one instance printed, in circumstances where Mr Reid and Ms Daly were not the investigating or arresting Officers and when no trial was imminent. On one occasion, on 1 July 2009 Mr Reid accessed the ICRS system in circumstances involving PC Maini. It is unclear whether Mr Maini supplied a crime reference number to the claimant in relation to the case or  
30 whether he was asked by the claimant to access the file on the ICRS system on the claimant`s behalf and did that.

83. On 4 March 2010 PC Marcos was logged into the computer system for the respondents. At a time when PC Reid was temporarily relieving PC Marcos, during which time PC Marcos remained logged into the respondent`s system, PC Reid accessed the ICRS system in relation to the case involving Craig Reid.
- 5
84. There was, on the basis of the information available to the respondents in March 2010, a legitimate basis for concern on their part as to inappropriate access of and use by Mr Reid and Ms Daly of the ICRS system. That extended to potential breach of the Data Protection Act 1988 ("*DPA*").
- 10
85. In discussion between the Crown Office and the respondents, the Crown Office had emphasised to the respondents that any possible breaches by Police Officers of the DPA should be referred to the Crown Office for consideration of possible prosecution. Any decision on whether to prosecute or not is made by the Crown Office. The respondents submit to the Crown Office details of possible grounds for prosecution. In relation to Mr Reid and Ms Daly such a report was made. It was compiled by DS Dillet. A copy of it appeared at AR 460 to 505. That report was made on 6 February 2012. Reports of this type are known as SPR reports.
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86. As a result of information gained during the course of Operation Blight, the respondents had at the beginning of March 2010 a reasonable basis of concern as to the possible passing of information to a journalist by Mr Reid in exchange for money being paid to Mr Reid`s mother. They had a reasonable basis for concern as to possible association between Mr Reid and members of an organised crime gang. There was a reasonable basis for concern on their part as to a possible attempt to pervert the course of justice by Mr Reid and Ms Daly. There was a reasonable basis for concern on their part in relation to accessing of Police systems by Mr Reid and Ms Daly.
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87. During February 2010 a complaint against the Police was made by Kim Fanning. This arose from a telephone call in which she said offensive remarks had been made to her. She referred to the conversation as involving her

nephew PC Paul Fanning. She said that others were present. It was established through investigation that one of the others present at time of the call and who was said to have made remarks of an offensive nature to Kim Fanning was Mr Reid.

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88. As at March 2010 there was a reasonable basis for the respondents to reach the view that there were concerns as to the behaviour of Mr Reid during this telephone conversation, whether that was appropriate behaviour for a Police Officer and whether it might constitute breach of the peace, breach of the Telecommunications Act or some other offence or misconduct.
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**Police visit to Mr Reid`s mother on 1 March 2010**

89. As stated, there was a reasonable basis for the view on the part of the respondents on 1 March 2010 that Mr Reid might be involved in sale of information to the press. The respondents determined that they would interview the claimant`s mother given that money had been paid into the bank account of the claimant`s mother by a newspaper organisation.
- 15

90. DS Dillet and a colleague of his visited the claimant`s mother on 1 March 2010 at her home.
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91. This visit led to a complaint by Mr Reid about what he said was the behaviour of DS Dillet during the course of this meeting. Mr Reid did not make any allegations against the Officer accompanying DS Dillet. This complaint constituted protected disclosure 1.
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**Executive Action 5 May 2010**

92. Both Mr Reid and Ms Daly were detained by the Police (a step known as executive action) and interviewed by them on 5 May 2010. During the course of the interview Mr Reid made protected disclosure 4.

5 93. No complaint is made by either Mr Reid or Ms Daly that detention or executive action taken constitutes a detriment done on the ground that Mr Reid or Ms Daly made a protected disclosure.

**Decision by the DCC to place Mr Reid and Ms Daly on restricted duties**

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94. A briefing note was prepared for DCC Richardson on 6 May 2010. A copy of it appeared at AD 190 to 193 and (the same briefing note) at AR 369 to 372.

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95. The briefing note was prepared by DS Dillet and approved by his Superior Officer on 6 May 2010. It was presented to DCC Richardson by the then Head of CCU on 7 May 2010.

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96. DCC Richardson considered the content of the briefing note and its recommendations. He handwrote below the recommendations the following:-

*“The issue of suspension will be considered on return to work. Parallel proceedings should be progressed without delay. Happy for briefing to be progressed as recommended.”*

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97. He applied a date stamp showing 7 May 2010 immediately below his handwriting and initialed the page beside the date stamp. He did this on 7 May 2010.

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98. This is the second act which is said by Mr Reid and Ms Daly to have caused detriments and which is said to be an act done on the ground that Mr Reid and Ms Daly made protected disclosures. The first such act is said to have been the decision communicated to Mr Reid on 6 April 2010 that he was to move from Drumchapel to Partick.

99. The allegations which formed the basis of the recommendations as to restriction of duties were different as between Mr Reid and Ms Daly.

5 100. In relation to Mr Reid the allegations were:-

- Attempting to pervert the course of justice
- Breach of the Prevention of Corruption Act 1906
- 10 • Breach of the Telecommunications Act 1984, breach of the peace
- Breach of the DPA

15 101. In relation to Ms Daly the allegations were:-

- Attempting to pervert the course of justice
- Breach of the DPA

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102. The decision taken by DCC Richardson was not to suspend either Mr Reid or Ms Daly. The following restrictions were imposed in respect of both Mr Reid and Ms Daly by way of restricted duties:-

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- Non-operational
- Non-public facing
- IT restrictions (all systems access removed)

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103. The form signed by DCC Richardson confirming the restriction of duties earlier imposed and that Mr Reid was not to be suspended appeared at AR

378. The form confirming non suspension in respect of Ms Daly appeared at AD 194. In relation to both Mr Reid and Ms Daly the decision to place them on restricted duties was made after the assessment by DCC Richardson of the risk to the Police Force and public and the risk to the Officer in light of the allegations in relation to the individual cases involving Mr Reid and Ms Daly. It involved consideration by him of all of the relevant factors detailed above in relation to such a decision. It was not a decision taken on the ground of either of Mr Reid or Ms Daly having made a protected disclosure.

104. Mr Reid was aware of the imposition of restricted duties on 5 June 2010. His awareness is referred to in an email from Inspector McEwen to CI Black on 6 June 2010. A copy of that email appeared at AR 379. It refers to Mr Reid's planned return to the productions department and his "*removal from Police systems*". He was restricted from normal duties on his return to work on 25 July 2010. This was detailed in his pleadings at AR 11.

#### **Job roles of Mr Reid from April 2010**

105. In April 2010 Mr Reid worked at Drumchapel Police Office. He was told on 6 April 2010 that he was to move to Partick Police Station. He was informed by Inspector McEwen that the decision had been made by PSD. It is unclear whether this was the case or whether it had been communicated to Inspector McEwan by PSD.

106. This is the first detriment said by Mr Reid to have been suffered by him which was because of an act done on the ground that he had made a protected disclosure.

107. At this point Mr Reid was not subject to restriction of duties. There was an ongoing investigation, Operation Blight. The decision to move Mr Reid was made in light of that situation and not on the ground that he had made a protected disclosure.

108. Mr Reid commenced a period of absence on 6 April 2010. He returned to his work with the respondents on 25 July 2010. At that point he took up a post in Partick in the productions department.

5 109. At time of his return to work CI Black discussed his role and the restrictions upon it. She was aware of the restrictions upon Mr Reid. She discussed with him at this point that he would in a non-operational role and would be non-public facing. She was also aware of and discussed with Mr Reid that he would not have access to Police systems.

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110. Mr Reid's role in the productions department involved very occasional contact with the public. It was not, however, an operational or public facing role. Mr Reid's role related to the inventorying of productions and helping with disposal and storage of them. He carried out work during day shift hours.

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111. CI Black was not aware of the detail of the investigation against the Mr Reid. She had seen Mr Reid's letter of 6 March to the Chief Constable, protected disclosure 1.

20 112. In the early part of Mr Reid's role in the production department Mr Reid asked CI Black if he could get access to email which would make some of his tasks easier. CI Black spoke to someone within PSD and access to email for Mr Reid was granted. This was not a decision taken or approved by the DCC. It ought to have been referred to and then determined by the DCC.

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113. A practice had developed in relation to the practicalities of dealing with restrictions imposed by the DCC. Although any variation or relaxation of restrictions was a matter for the DCC, the practice which developed was that there would be contact with PSD by those responsible for management of an Officer who was on restricted duties. PSD would be asked for their view upon  
30 the possibility of the Officer taking up a particular post. To take up that post it might be that access to particular elements of IT, such as email, would be beneficial to the Officer in the role. Alternatively, whilst in a role an Officer



subject to restrictions might, in the view of those responsible for operational management of that Officer, usefully be granted access to elements of IT, such as email. In those situations those responsible for operational management of the Officer involved would seek a view from PSD as to variation or relaxation of an IT restriction on the Officer involved.

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114. For a period, the precise dates of which are unclear, PSD Officers would confirm their approval or otherwise in response to any such approach. If approval was given this would result in wider use of IT by the Officer involved. At some point, during the time when Mr Reid was on restricted duties, this practice ceased. It ceased in circumstances where PSD had informed an operational manager that particular access to IT for an Officer on restricted duties could happen. As a result of this becoming known, it was then made plain to those within PSD that it was the DCC who decided whether to vary or relax restrictions and that any variation or relaxation required the authority of the DCC. This was made plain at that point in no uncertain terms to PSD Officers including DS Dillet. This direction was then adhered to.

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115. The role in the productions department was carried out well and diligently by Mr Reid. It involved handling a degree of sensitive material and information about difficulties in such material having been accurately catalogued in the past.

**Report in relation to allegations against DS Dillet**

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116. On 24 February 2011 the respondents issued their findings in relation to the complaint about the behaviour of DS Dillet towards Mr Reid's mother. A copy of that report appeared at AR 402 to 411. The enquiry and report extended to consideration of the allegation that DS Dillet had behaved oppressively towards shift colleagues of Mr Reid in relation to investigation of the incident on the train.

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117. The investigation into the complaint was appropriate in its extent and conduct. The conduct of the investigation, decisions taken during its conduct as to its extent and the report produced after the investigations did not comprise acts or deliberate failures to act done on the ground that Mr Reid had made a protected disclosure. They were standard and routine decisions, acts or deliberate failures to act which would have occurred in any similar investigation which resulted from a complaint which had been made by someone who had not made a protected disclosure.

118. The report concluded that it was not appropriate to take formal action against the Officers subject to complaint, those being DS Dillet and, to an extent, his colleague who accompanied him during interaction with the mother of Mr Reid. The report stated in relation to Mr Reid:-

*“The allegations made against you were very serious and an enquiry was sanctioned by the Deputy Chief Constable to eliminate or substantiate the allegations. The process was subject to frequent review by the Head of the Counter Corruption Unit and Head of the Professional Standards Department. The investigation into corrupt practices resulted in a report to the Procurator Fiscal libeling 10 charges which included contraventions of the Prevention of Corruption Act 1906 and Attempting to Pervert the Course of Justice. The public are entitled to expect allegations of corruption by Police Officers to be thoroughly and robustly investigated. Strathclyde Police have a clear duty to comply with such expectations to ensure public confidence. I am unable to agree with your perception that this enquiry was disproportionate or unfair by reason of your occupation. Much of the enquiry was specific to your role as a Police Officer and you could not be considered as an ordinary member of the public.”*

**Mr Reid’s role June 2011 until January 2012**

119. In June 2011 CI Black was informed by PSD that there were allegations being made in relation to Mr Reid regarding something which had happened in his role in the production department. An enquiry was being made. It was said to her that PSD considered it appropriate to move Mr Reid to protect him from any further allegations. She was asked, however, not to disclose the specific reasons for his move. She adhered to this request from PSD and did not hint at the reason PSD had said to her that a move was required when informing Mr Reid of the move. The decision made was made on the basis of protecting Mr Reid in light of the new allegation and the ongoing investigation at that point. It was not an act done on the ground that Mr Reid had made a protected disclosure.
120. CI Black spoke with Mr Reid regarding the move on 26 June 2011. CI Black referred in this meeting with Mr Reid to Mr Reid potentially moving to "*the engine room*" from the production department. The role there involved predominantly administrative duties, handling phonecalls, passing on messages and dealing with some health and safety issues. The following day Mr Reid was absent from work through ill health. He remained absent between 27 June 2011 and 6 March 2012. Mr Reid returned to work on 6 March 2012. There was no comment made by CI Black as to Ms Daly when she spoke to Mr Reid regarding him being moved. The decision to move Mr Reid was unrelated to any matter involving Ms Daly.
121. During Mr Reid's absence between 27 June 2011 and 6 March 2012 attendance management meetings were held with him. He was referred to Occupational Health ("*OH*") in order that the respondents could obtain medical information. It is agreed between the parties that Mr Reid became disabled for the purposes of EQA and that the respondents were to be regarded as having been aware that Mr Reid was a disabled person due to the mental impairment of depression from 29 October 2011 onwards and not before that date.
122. Due to the restricted duties placed upon Mr Reid by the DCC, there were very limited roles available for him. He required essentially to be in an office based

job. Mr Reid wished to work hours other than day shift in order to enable him to assist Ms Daly with care of their child. That, however, was not possible given the restrictions upon Mr Reid, the roles which he might fulfill and the need for a degree of supervision of Mr Reid.

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123. The discussion regarding a phased return on the part of Mr Reid was, in November 2011, conducted by CI Black without any consultation with or input from PSD. Mr Reid stated at this time to CI Black that he could not return to work until a suitable shift pattern could be agreed. He wrote to CI Black by letter received 7 November 2011. A copy of that letter appears at AR 433. It contained the following:-

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*“We also discussed the option of a shift pattern and the fact that this was an absolute necessity owing to the fact that I am now a single parent with a 2 year old child.”*

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124. In addition to CI Black, whilst at Partick Police Station, DS Linton was a supervisor of Mr Reid. He was at that point Communities Inspector at Partick. He had responsibility for *“the engine room”*.

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125. CI Black and DS Linton were aware that Mr Reid was on restricted duties. They did not know the detail of the reasons for this. CI Black was told that it was something to do with a data protection investigation. Neither CI Black nor DS Linton had awareness of any matter referred to by Mr Reid in his protected disclosures. Mr Reid did not raise with them any suggestion that decisions taken by them were due to his having made protected disclosures.

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126. Both CI Black and DS Linton left Partick Police Station in November 2011. CI Gibson took over from CI Black. Mr Reid’s line manager was someone of the rank of Sergeant. That Sergeant reported to an Inspector. The Inspector reported to CI Black initially and subsequently to CI Gibson.

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127. When he took over responsibility as CI at Partick, CI Gibson was informed in the handover process that Mr Reid was off sick and was on restricted duties.

He was not aware of the matters referred to by Mr Reid in his protected disclosures.

**Mr Reid's role January 2012 until October 2013**

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128. There was communication between CI Gibson and Mr Reid between November and January 2011. Mr Reid was also referred to Occupational Health. An OH report dated 30 January 2012 appeared at AR 452 and 453. The OH report confirmed the following:-

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*“Inspector Alan Gibson has identified a role within division in management support for Andrew but this involves day shift hours. Andrew tells me he cannot work day shift hours as a direct result of the breakdown of his marriage which has left him as the main carer for his two year old daughter. He blames the stress of being under this investigation as the primary reason for the failure of his marriage..... I have discussed due to lack of family support the possibility of employing a private nanny but Andrew tells me this is not an option for him financially.*

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*Today it was agreed the barriers to Andrew`s successful return are two fold:-*

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*1. The overwhelming desire he has to understand the approach PSU undertook regards the investigation. I have explained it is unlikely this can be shared with him by the very nature of their work.*

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*2. The need for a shift pattern that will allow him and his ex-partner (without any other third party involvement) to manage their childcare demands. I have explained the responsibility for childcare is not the organisation`s and that parents are expected to make the necessary arrangements for childcare in*

*order to come to work. However, flexible working applications or contacting Equality and Diversity Unit to seek advice regards organisational support may assist him with his goal. “*

5 129. PSU is a reference to PSD. The reference to Inspector Gibson is a reference to CI Gibson who was the Area Commander at this point.

10 130. CI Gibson replied to Mr Reid by letter of 31 January 2012, a copy of which appeared at AR 454 and 455. In that letter he said that his position in relation to the hours proposed by Mr Reid was the same as had been the position of CI Black. The hours proposed did not follow any established work pattern which existed within the organisation at that point. It was explained that the role to which Mr Reid might return was a management support role as current restrictions prevented deployment of Mr Reid in a role interacting directly with the public, including prisoners. It was explained that this role would be a on Monday to Friday day shift pattern. CI Gibson also confirmed that the restrictions were in place as a result of an investigation being conducted by PSD, that they were implemented on instruction of the DCC and would remain in place until a decision was made that they were no longer required.

20 131. Mr Reid was viewed by those with whom he worked as an effective Police Officer with skills. The restrictions imposed by the DCC, if in the terms which were applicable in the case of Mr Reid, present substantial challenges, however, to those involved in management of the Police Officer subject to restrictions. This is as operational duties and public facing duties would generally be involved in the role of Police Constable. Similarly, access to IT systems would be involved in most roles within the Police Service. Management of Mr Reid was therefore very challenging. There were limited tasks which he could carry out in the management support role which was available to him at Partick Police Station.

30 132. Mr Reid returned to Partick in a management board or engine room role on 6 March 2012 as stated. To assist with childcare there was an element of

flexibility in hours authorised. Formal change, however, in working hours to those preferred by Mr Reid could not be accommodated in the role which he was performing. He sought the flexibility and accommodation of different hours for childcare reasons. CI Gibson did not know that something which comprised a protected disclosure had been made by Mr Reid. He did not know of the matters to which Mr Reid had referred in his protected disclosure. He was aware that there had been an issue raised by Mr Reid as to the restrictions imposed upon him and that Mr Reid was frustrated at the time being taken to deal with the investigation which had prompted the restrictions being imposed.

133. An attendance monitoring group meeting was held with Mr Reid on 1 February 2012. A note of that meeting appeared at AR 506 to 508. During that meeting Mr Reid confirmed that the division were "*very supportive of the situation and were very flexible*". CI Gibson said that restrictions imposed meant that this was a very difficult situation to try to facilitate some sort of meaningful role. There was discussion as to possible compressed hours to try to assist Mr Reid. Mr Reid said that he would discuss this with his partner so that he could put in place adequate childcare arrangements.

134. When Mr Reid returned to work on 6 March 2012 it proved difficult in practice to provide him with meaningful duties given the restrictions upon his activities imposed by the DCC. The Sergeant and Inspector organised day to day activities for Mr Reid.

135. At a meeting with the OH Adviser on 1 May 2012 following a self referral by Mr Reid, Mr Reid detailed that he had been given menial work such as cleaning out a cupboard and removing some bicycles. These tasks took little time. He expressed concerns as to the impact of the situation on his mental health. The OH Adviser requested in the report that some meaningful tasks were identified to occupy Mr Reid's day and provide some value to the division.

136. By email of 17 May 2012 to Ms Anderson in HR, CI Gibson responded to this comment. A copy of the OH report appears at AR 514 and 515. A copy of CI Gibson`s email appears at AR 517. His email reads:-

5                    *“As discussed – this is far more difficult than others may perceive.*

*Andrew cannot operate a computer or interact with the public or prisoners. I also have to be careful what information he is allowed access to.*

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*I will re-assess what tasks I can have allocated to him, however, I have been careful not to demean him with tasks which are not fitting of his post. As you can imagine, that could have a negative impact on his self esteem and mental health.*

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*I have had a conversation with Andrew in regard to all of this and he appreciates the position. I suspect he is trying to force change around the restrictions placed upon him and that obviously isn`t going to happen.”*

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137. On 2 July 2012 following upon a referral by CI Gibson an assessment was carried out by telephone by OH in relation to Mr Reid. Additional information was provided by Mr Reid following that appointment. A copy of the report produced by OH following this assessment appears at AR 527 and 528.

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138. Mr Reid was absent from work through ill health from 8 July 2012 until 28 October 2012. During that time, on 21 August 2012 an attendance management meeting was held with Mr Reid. A note of that meeting appeared at AR 532 to 535.

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139. During the course of that meeting, which was attended by CI Gibson and Inspector Clocherty, Mr Reid said that his work related stress *“was due to the ongoing PSD investigation surrounding him and the associated restrictions on his operational duties”*. He is noted in the report as stating that he had no



issue with “A” Division or his workplace at Glasgow West End Police Office. The restrictions placed upon Mr Reid by the DCC were gone over. Mr Reid raised his frustrations with the speed of the investigation. He did not at this meeting say that his view was that his complaints to the Police by way of his protected disclosures lay behind the actions taken.

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140. Mr Reid submitted 3 flexible working plans on 21 August 2012. By decision of 18 September 2012, a copy of which appeared at AR 510 and was confirmed to the claimant by letter of that date, a copy appearing at AR 541, the requests were refused. CI Gibson took the decision to refuse the requests as there was no organisational need fulfilled by them in relation to Mr Reid’s current role. He stated to Mr Reid that he did not require him to work evenings, week nights or weekends. The hours proposed by Mr Reid did not follow a discernable shift pattern, CI Gibson said. CI Gibson expressed concerns as to the level of support and supervision which would be available if the requests were granted. CI Gibson referred to the informal arrangements that Mr Reid work four 10 hour shifts to accommodate childcare. He said that a reasonable adjustment to those hours would be acceptable. He subsequently approved on 18 October 2012 an application by Mr Reid for those flexible hours, this on the basis that they would come into operation when Mr Reid returned to work.

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141. Mr Reid returned to work on 28 October 2012. He continued to work in the management support or engine room role until 24 March 2013 when he became absent from work through ill health. He brought his Employment Tribunal claim which is the subject of this Judgment. That was presented to the Tribunal on 12 November 2012.

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142. After he had gone off work through ill health on 24 March 2013 an attendance review meeting was held with Mr Reid in April 2013. A Force Attendance Monitoring Group Meeting was held on 10 September 2013. Mr Reid is noted at that meeting as having said in the meeting in April that “*there was nothing that could be done at that point to get him to return to work.*”

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143. At the meeting in September 2013 Mr Reid sought to explore returning to a more meaningful role and the restrictions being lifted. The minute of that meeting on 10 September 2013 appears at AR 563 to 565. It was noted that attempts would be made to identify a role that was meaningful. The minutes state:-

*“Constable Reid said no-one could be faulted at ‘A’ Division for the help they had given. He said it must be frustrating for officers watching him doing nothing while they did the work, but it was the fault of the system in place. He advised he could not fault the management in his Division.”*

**Request to vary restrictions in October 2013**

144. By letter of 1 October 2013 Mr Reid wrote to the DCC setting out what he saw as his position. He requested a review of his current working conditions. A copy of the letter appeared at AR 566 and 567.

145. Mr Reid’s letter was acknowledged by the office of the DCC. It was confirmed that a review would be undertaken.

146. In course of discussions around the claimant’s position in the subsequent few days, it was established that there was a vacancy within the Divisional Criminal Justice Unit as a Court Scheduler. Email and SCOPE access was required for the person who was to carry out this position. SCOPE is the respondents’ HR system. The role was identified by CI O’Donnell. He drew the role to the attention of Superintendent McLeod who worked within PSD. Superintendent McLeod said that the job seemed worthwhile for Mr Reid and that she saw no problem with it as long as the SCOPE access was strictly limited. She said that she would submit a briefing note to the DCC recommending that Mr Reid remain on restricted duties with basic access to

SCOPE and email. A copy of the emails exchanged between CI O`Donnell and Superintendent McLeod appeared at AR 569.

147. in his email of 18 October 2013 Mr O`Donnell said in relation to the Court Scheduler position:-

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*“I think that this would be a role suitable for Constable Reid, it is a fairly small office and there are two Sgts within the office which would allow for close supervision of him. Constable Reid also phoned me yesterday advising me of two officers who are currently awaiting trial for DPA charges who have been given access to systems to allow them to work. I am not sure who is feeding him this info but I suspect that it is probably someone within the Federation. Within this in mind (sic) it would be galling if he was later able to demonstrate at an ET that we didn` t treat him as fairly as everyone else. (I am sure that this is where he is heading with this).”*

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148. The briefing note was submitted to the DCC seeking a relaxation in restrictions to enable Mr Reid to perform the role of Court Scheduler. The DCC reviewed the restrictions on Mr Reid. He decided on or just prior to 29 October 2013 that a variation of Mr Reid`s restricted duties was appropriate, given the role available and the requirement for a variation of restrictions to enable Mr Reid to take up this role. The outcome of the review was confirmed in a note which appeared at AR 571. It read:-

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*“As you are aware, the above officer (a reference to Constable Andrew Reid) is currently subject of a report to the Area Procurator Fiscal and was subject to restricted duties on 3 June 2010, which included the removal of all IT access.*

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*In light of the availability of a suitable post within Division for Constable Reid, a review of current restrictions has been approved by the DCC Designate. As a result, Constable Reid`s IT restrictions have been*

*varied to include limited access to SCOPE under supervised conditions and access to email.*

5 *I would ask that the directions of this review of restricted duties are complied with to facilitate Constable Reid's deployment in the identified divisional post."*

149. The decision as to variation of duties on 29 October 2013 was intimated to the claimant on 1 November 2013 at a meeting to discuss a return to work by him. This decision was taken after the weighing by the DCC of the factors identified above as being relevantly involved in the taking of such a decision. Those included the role potentially available for Mr Reid and consequent potential need for relaxation of IT restrictions. It was not an act done on the ground that Mr Reid had made a protected disclosure.

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150. On 10 November 2013 Mr Reid returned to work. His role was within the Court Schedulers department at London Road Police Office. He worked a phased return. A flexible working application made by him on 11 November 2013 was approved on 14 November 2013. A copy of that application appeared at AR 572 to 584.

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151. The basis of the application made read, in a passage which appeared at AR 572:-

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*"I am a single parent with a 3 year old child. The mother of my child is a serving Police Officer who also works full time hours. She is currently working a shift pattern within the Public Service Desk.*

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*I submit this application to allow me to work full time hours and provide adequate care for my daughter.*

*Other than my daughter's mother I have very little childcare available to me."*

152. A further flexible working application was submitted by the claimant on 12 December 2013. A copy of that appeared at page 590 of the bundle. The claimant stated in that application as the reason for choosing to apply for flexible working that he was “*currently restricted from operational policing which prevents me from working in a shift pattern. I have a 4 year old child whose mother is also a serving Police Officer and works a shift pattern.*” He said that the flexible working hours applied for would allow him to work office based hours in line with his restrictions and to care effectively for his child.

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153. Mr Reid`s line manager commented that the computer restrictions placed upon Mr Reid precluded any other role for him within the department. The hours proposed involved Mr Reid stopping at 4pm 3 days one week and 5pm the other 2 days that week. The following week he would cease work at 4pm on 1 day, 5pm on 3 days and 3.30pm on 1 day. Mr Reid`s line manager said that countermands of witnesses were mainly generated in the late afternoon for immediate action and accordingly the business need was not met by the hours proposed. The application was refused due to a lack of work available during the proposed hours, detrimental effect on the ability to meet customer demands and detrimental impact on quality of service.

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154. At some point after 10 November 2013 Mr Reid attended 6 sessions of counselling with the respondents` provider of employee welfare service. This was a standard allocation to an employee in Mr Reid`s situation.

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155. Mr Reid attended work between 10 November 2013 and 11 May 2014. On 12 May 2014 Mr Reid went off sick from work. He returned to work on 8 November 2014.

**Additional sessions of cognitive behaviour therapy (“CBT”)**

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156. The respondents referred Mr Reid to OH around the beginning of February 2014. That referral resulted in the issue of a memorandum by Dr Westbrook of OH on 7 February 2014. A copy of that appeared at AR 608 and 609.

157. Mr Reid's GP had made a referral for Mr Reid to obtain psychological therapy through the NHS. That had been made in September 2013. It had not, however, resulted in any sessions by 7 February 2014.

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158. By 7 February 2014 Mr Reid had had the 6 sessions of CBT provided by the respondents as mentioned. This is described by Dr Westbrook as having had "some benefit".

10 159. The following paragraphs appear in the report from Dr Westbrook:-

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*"From a health perspective an early resolution of the work issues and resulting uncertainty would undoubtedly be of benefit to his overall wellbeing. However, he appreciates that the timeframe for these investigations are (sic) outside his control.*

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*From a health perspective it is important for him to keep as physically and mentally active as possible. I agree that some additional therapy (probably a short course of cognitive based therapy) may be of some benefit to help him manage his situation. I will ask my colleague Audrey Fitzgerald to explore this option and make arrangements."*

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160. Audrey Fitzgerald was an OH Adviser with the respondents. She received the report from Dr Westbrook who was the force Medical Officer. She wrote to CI Hilary Sloan in relation to possible referral of Mr Reid for further sessions of CBT. Ms Fitzgerald enclosed a copy of the report from Dr Westbrook. She highlighted that Dr Westbrook had said that a short course of CBT "may be of benefit" to Mr Reid in helping him manage his situation. She commented that there had been no indication from the GP of any start date for therapy for Mr Reid. She highlighted that Mr Reid had had the 6 sessions which would normally be provided to an employee. She said that due to that, OH was not in a position to request the provider of the welfare service to give Mr Reid a further short course of CBT. Ms Fitzgerald said to CI Sloan that a

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management decision required to be made in relation to the suggestion of Dr Westbrook. She said that the cost of the therapy involved would be around £150 per session and that a budget for about 10 and 18 sessions would be involved. Mr Reid was copied into this correspondence.

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161. CI Sloan considered the position. She did not make a decision upon it. Control of the budget for costs of something such as this proposed course of CBT did not lie with CI Sloan. She therefore referred the matter to Superintendent Hazel Knight. She subsequently became known as Hazel Hendren. Superintendent Hendren received a verbal briefing from CI O`Donnell in relation to this matter. He gave her the background as to the sessions which Mr Reid had had and which had been paid for through the provider of the employee assistance programme.

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162. Superintendent Hendren considered with CI O`Donnell whether funds might be available for any such sessions. This was considered both with HR and with OH. It was established that there were no funds available. Superintendent Hendren considered the position and took a decision.

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163. The view which she came to was that the respondents would not fund any private sessions of CBT as Mr Reid had requested. The reasons for this decision were that Mr Reid was awaiting treatment through the NHS as organised by the primary health carer, as the respondents saw it, namely Mr Reid`s GP. In addition, funds were not available and there was concern that if somehow funds were to be made available a form of precedent might be set where other Officers sought funding for similar additional sessions in the future. It was also key to the decision that Dr Westbrook had said that some additional therapy "*may be of benefit*". Superintendent Hendren communicated her decision to CI Sloan. Her decision was made on the grounds set out. It was not an act done on the ground that Mr Reid had made a protected disclosure.

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164. CI Sloan met with Mr Reid on 18 March 2014. A copy of the note of that meeting appears at AR 612. She informed Mr Reid that the force would not support the course of CBT. She reflects in her note the rationale which she gave to Mr Reid. That is that:-

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*“given the fact that it `may` be of benefit and the financial implications of this, it would not be fair to offer this to Andrew without doing the same for every officer in a similar position. Which was clearly not feasible.”*

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**Request to vary restriction on duties, May 2014**

165. By letter of 13 May 2014 Mr Reid wrote to the DCC. He set out the history to his job situation over the preceding 4 years. He explained that he did not have access to any systems other than SCOPE and personal emails. He referred to frustration and embarrassment which this caused him due to having to request others to print emails for use by him in relation to his job role. He expressed the view that the restrictions had been placed on him by the DCC as a result of an outstanding alleged DPA offence. In fact however, the restrictions had been placed on Mr Reid due only in part to the DPA allegation. It was also relevant to the decision and played a part in it that there were allegations of attempting to pervert the course of justice, of corruption and of breach of the Telecommunications Act.

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166. Mr Reid asked in his letter of 13 May 2014 that the DCC review the restrictions and adjust them. He referred to other Police Officers who he said had been found guilty or had pled guilty to offences identical to that which he was alleged to have committed but who had remained either entirely unrestricted or restricted to a lesser extent than he was. A copy of this letter appeared at AR 613 to 615.

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167. A report dated 23 May 2014 was submitted to the DCC by DI Sharp. A copy of that appeared at AR 619 and 620. That report recommended that the



restrictions remain in place. It recommended that Mr Reid`s divisional senior management were made aware of the content of the letter *“with a view to implementing welfare measures. In addition a divisional referral to Occupational Health may be appropriate.”*

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168. By letter of 27 May 2014, AR 621, DCC Richardson wrote to the claimant. He said that he had reviewed the full circumstances which had led to suspension of Mr Reid`s system access. His decision was that Mr Reid`s status remained unchanged with the restrictions as to system access remaining in effect. He asked that Mr Reid seek the support of his divisional management team in addition to Occupational Health and welfare services available to all Police Scotland employees. The decision was made after consideration of all the relevant factors involved in such a decision, as those are detailed above. This was the basis of the decision taken. It was not an act or deliberate failure to act done on the ground that Mr Reid had made a protected disclosure.

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### **Court Proceedings against Mr Reid**

20 169. As mentioned, an SPR had been submitted to the Fiscal by DI Dillet, as he then was, in February 2012. It formed the basis of criminal charges brought against Mr Reid and Ms Daly.

25 170. The information provided in the SPR was produced following upon the Police investigations into the accessing of computer systems by Mr Reid and Ms Daly, statements taken from potential witnesses, interviews with Mr Reid and Ms Daly and after general discussion with the Procurator Fiscal`s office in relation to possible data protection offences by Police Officers.

30 171. The content of the SPR set out the information obtained by and for DI Dillet. It set out relevant information as to possible charges in order that the Procurator Fiscal`s office could consider whether and to what extent charges should be brought against Mr Reid and Ms Daly. The Procurator Fiscal decided whether or not and to what extent the charges were to be brought.

The Procurator Fiscal asked for and obtained information from DS Dillet as to courses and information available to Officers regarding data protection. DS Dillet was asked for and supplied to the Fiscal the training records from SCOPE. Information from PC Maini was also supplied to the Fiscal. The Fiscal then framed the charges. It is not known how the information on training and from PC Maini sits with any evidence which may have been given at the trial.

172. Although various matters had been reported to the COPFS, the Fiscal had determined that the element which would be the subject of criminal charges in relation both to Mr Reid and Ms Daly was alleged breach of the DPA. An additional charge in respect of fraud was brought against Mr Reid.

173. These charges proceeded to trial at the beginning of January 2015, believed to be 9 January 2015. Both Mr Reid and Ms Daly were acquitted of the charges. The full extent of evidence given at the trial and the specific reasons for acquittal are not entirely clear.

174. The completion and submission of the SPR was not an act or deliberate failure to act done on the ground that Mr Reid had made a protected disclosure. It was completed and submitted to present the Fiscal with facts and circumstances relevant to possible criminal conduct.

175. Following upon the trial, Mr Reid made a report to the Crown office, complaints against the Police Department, that Police Officers who had given evidence in the trial had committed perjury. This matter was then investigated. No proceedings resulted. The misconduct proceedings, however, against Mr Reid and Ms Daly were deferred until the potential criminal case of perjury was investigated and concluded.

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**Mr Reid`s role March 2015**

176. An operational role within Glasgow Sheriff Court became available. The vacancy was known about at the beginning of February 2015. The post was one which could be taken up at the beginning of March 2015.

5 177. The respondents maintain a spreadsheet with details of the status of Officers who are subject to restricted duties. On that spreadsheet, through error, Mr Reid was noted following the acquittal in the court case mentioned above, as being “*operational*”. He ought in fact to have been shown as being “*non-operational*”. The restrictions imposed upon him by the DCC remained in  
10 place. Non-operational was therefore the correct designation of Mr Reid.

178. Due, however, to the spreadsheet showing him as operational, Mr Reid was considered for and obtained the role in Glasgow Sheriff Court. He worked there between 2 and 9 March 2015. On 9 March 2015 Superintendent Alan  
15 Murray contacted Mr Reid to inform him that he required to be removed from his post and placed back on duty at London Road Police Office as the deployment to Glasgow Sheriff Court had occurred in circumstances where that ought not to have happened given that he remained non-operational.

20 **Grievance lodged by Mr Reid in March 2015**

179. Mr Reid lodged a grievance with the respondents by written note of 13 March 2015. The grievance was acknowledged on 26 March 2015. The grievance was about the restrictions placed upon Mr Reid in accessing Police systems.  
25 In particular Mr Reid wished to know why restrictions had been placed upon him as his view was that reasons had never been adequately set out for him. Superintendent Alan Murray was the officer who was assigned to carry out an investigation into the points raised by Mr Reid in his grievance. In addition to the point mentioned above, Mr Reid also raised an issue with regard to  
30 competency related pay. He also wished to be back in the Courts department and sought that this be addressed during the course of his grievance. The grievance submitted to the respondents by Mr Reid appears at AR 664.

180. Superintendent Murray dealt with stage 1 of the grievance of Mr Reid. He interacted with PSD. He queried the reasons for the restrictions. He did this in an email of 26 March 2015 to Superintendent Clocherty of PSD. He followed that up with a reminder on 31 March 2015. A copy of those emails appeared at AR 637.
181. Superintendent Murray met with Mr Reid on 26 March 2015 prior to making contact with Superintendent Clocherty. He then wrote to Mr Reid on 2 April 2015, having received a reply from Superintendent Clocherty on 31 March 2015. A copy of the email from Superintendent Murray to Mr Reid appeared at AR 640 and 641 of the bundle.
182. Superintendent Clocherty stated to Superintendent Murray that CCU had carried out the investigation which led to the court case. He further set out that the DCC imposed the restrictions, with a review of these being undertaken during October 2013. That review had approved access to SCOPE, under supervised conditions, and access to email. It was thought that there had been a further earlier review in April 2013 when Police Scotland commenced. Superintendent Clocherty said that PSD were clear that the restrictions were imposed solely as a consequence of the offences for which Mr Reid was being investigated. He explained that a typing error had seen Mr Reid assigned to operational duties in the courts branch with that being altered when the typing error had been discovered. An unreserved apology was given for the error. It was stated that the restrictions continued to be in place at present.
183. Superintendent Murray then sought a meeting with PSD and CCU. He explained that, given this additional step, the standard timescales for stage 1 of a grievance would not be met. Mr Reid acknowledged the email from Superintendent Murray by email of 8 April 2015 a copy of which appeared at AR 644. He thanked Superintendent Murray for his response and efforts to date. He said that he was "*more than happy*" for Superintendent Murray to progress the matter as he deemed appropriate and that he (Mr Reid)

understood and appreciated that it would not be possible to adhere to the timescales in the SOP.

- 5 184. An email of 9 April 2015 was then sent by Superintendent Murray to Mr Reid. A copy of that email with the acknowledgement from Mr Reid appeared at AR 655.
- 10 185. It was explained in the email from Superintendent Murray that he had met with Superintendent Clocherty and DCI Jameson. He said that he was now in a position to update Mr Reid on the views of those two Officers as to the restrictions on Mr Reid's IT access. He also updated Mr Reid in relation to the competency related payments.
- 15 186. The response from Mr Reid was dated 23 April 2015. It was written on Mr Reid's return from annual leave. He said that he understood the update. He asked whether Superintendent Murray wished a written request from him for review of the restrictions. He also asked if he could have a copy of the form submitted to the DCC in relation to the restrictions.
- 20 187. Superintendent Murray met with Mr Reid on 23 April 2014. He sent an email that day to Mr Reid summarising the discussions. A copy of that email appeared at AR 669 and 670.
- 25 188. That email set out the steps taken by Superintendent Murray to investigate the grievance of Mr Reid. It explained the responses given by Superintendent Clocherty to the questions posed to him by Superintendent Murray with a view to obtaining an explanation of the reasons why restrictions had been placed on the access of Mr Reid to Police systems and as to the reviews thereof carried out. It concluded in relation to that element of the grievance of Mr Reid by stating that there were no plans to ask the DCC to review the restrictions on Mr Reid until such time as the complaints against Mr Reid had been considered and a decision made as to whether disciplinary action was to be taken against Mr Reid.
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189. Consideration of the complaints against Mr Reid was not, however, proceeding at that point given the allegations of perjury made by Mr Reid mentioned above and the consequent need for an enquiry into those allegations. It was said to Mr Reid that he could himself make a written request for review which would ideally be endorsed by the division. Superintendent Murray also explained the position in relation to the competency related payment which might be sought by Mr Reid.
190. The email from Superintendent Murray ended by making reference to the discussion which had taken place between him and Mr Reid which had concluded there was no alternative other than to move to stage 2 of the grievance procedure.
191. Mr Reid replied to the email from Superintendent Murray by an email of 24 April 2015. A copy of that email reply appears at AR 670 and 671.
192. In that email Mr Reid confirmed that he remained unhappy with the information he had received as to why restrictions were imposed upon him. He said that the response has *"not in any way cleared up matters"*. He said, however, *"I appreciate the efforts you have gone to in order to assist."* He also said *"I fully appreciate you have taken the time and effort to ask the questions and for that I am extremely grateful."* He went on to express dissatisfaction that PSD could in his view simply disagree with comments and provide no other explanation or evidence to support their decisions.
193. Superintendent Murray replied to this email from the claimant saying that he would move the grievance to stage 2. Mr Reid replied thanking Superintendent Murray and saying *"Once again I appreciate the efforts and assistance to date."*
194. Mr Reid alleged in evidence, although not in his case as pled, that there had been a failure by Superintendent Murray to investigate properly his grievance

at stage 1 and that this failure was an act or deliberate failure to act done on the ground that Mr Reid had made a protected disclosure. The investigation was thorough. It was appropriate in relation to the grievance lodged. A full response was given to Mr Reid. In the process of the handling of the grievance by Superintendent Murray and its investigation at stage 1 there was no act or deliberate failure to act done on the ground that Mr Reid had made a protected disclosure.

195. This was the last detriment which Mr Reid alleged he suffered as a result of an act or a failure to act done on the ground that he had made a protected disclosure.

**Other Officers, allegations and restricted duties**

196. The following restrictions applied in relation to the Officers mentioned.

**PC Gavin**

197. PC Gavin was alleged by a member of the public to have assaulted a member of the public. 3 charges were brought, none of which resulted in a conviction. He was placed on non-operational duties for a period of almost 5 years whilst the assault charges were dealt with. It took some 18 months for a report to be submitted to the Procurator Fiscal in relation to PC Gavin.

198. In addition to the alleged assault, PC Gavin was also reported to the Fiscal at some point, the precise date of which is unclear, in respect of alleged DPA offences. It is unclear what those offences were said to have involved. In circumstances which are again unclear, no charges were brought in respect of alleged DPA offences.

199. At a date which is also unclear, but while the DPA alleged offences were being considered either by the respondents or by the Crown Office, PC Gavin was made subject to IT restrictions. Those IT restrictions were that he was

not permitted access to the Scottish Intelligence Database (“SID”). He was able to have access to email and other systems.

5 200. There were two reports made in relation to PC Gavin to the Crown Office in relation to a possible attempt on his part to pervert the course of justice. It is believed that this related to alleged bullying of a colleague by him. No further details are known to the Tribunal as to the nature of this alleged offence. No criminal proceedings resulted.

10 201. A complaint was made by PC Gavin in relation to the way in which he regarded himself as having been treated by PSD. It was understood that this was in the category of a grievance and was treated as such. The precise details of the complaint or grievance are unknown. It is unclear whether this grievance would properly be categorised in law as a protected disclosure or  
15 not. Whilst on non-operational duties PC Gavin had no distinct role with the respondents. He did not have meaningful duties and it reached the point where he took a book to work to occupy his time by reading it.

### **PC Fanning**

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202. PC Fanning and Mr Reid were, together with some others, including at least one other Officer, on a train journey. This was prior to the first protected disclosure made by Mr Reid on 7 March 2010. Inappropriate remarks were made to PC Fanning’s aunt on a telephone call which she had with PC  
25 Fanning and some of those accompanying him on the train journey. She did not know who had made the remarks. PC Fanning told DS Dillet when interviewed by him that Mr Reid had made one of the inappropriate remarks. A different Officer who had also been present at the time of the phone call told DS Dillet that Mr Reid had made a different, again inappropriate, remark  
30 to PC Fanning’s aunt during the call.

203. PC Fanning was spoken to by DS Dillet whilst DS Dillet was investigating the incident on the train. In addition to investigating that matter DS Dillet asked



PC Fanning questions in relation to Mr Reid. DS Dillet made comments to PC Fanning about taking care in relation to being friendly with Mr Reid. PC Fanning was unhappy as to this remark. He did not, however, make any complaint in relation to those comments made. Mr Reid complained to PSD  
5 about the way that PC Fanning had been treated. There was no contact made by the respondents with PC Fanning to obtain a statement from him in relation to his interaction with DS Dillet during the investigation of the incident on the train.

10 204. PC Fanning was charged with assault of a female prisoner whilst on duty. He was not placed on restricted duties. The trial took place some 3.5 years after the incident. PC Fanning made a complaint about the behavior of PSD towards him. It is unclear whether this was properly categorised as a protected disclosure or not. After the trial PC Fanning was given a Deputy  
15 Commander`s warning on the basis that the force had potentially been brought into disrepute by his behaviour. PC Fanning was at no time charged with DPA alleged breaches. There was at no time an allegation of an attempt to pervert the course of justice made against him.

20 **PC McConnell**

205. PC McConnell was in September 2012 interviewed in connection with alleged accessing of SID without a policing purpose at various times between 2003 and 2012. It was alleged by PSD Officers when they interviewed PC  
25 McConnell that PC McConnell was passing intelligence to criminals. He denied this. A report was made to the Fiscal. PC McConnell had IT restrictions placed on him in that whilst he could continue to input information into SID, he was not permitted to search SID. He remained on operational police duties.

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206. There were no criminal charges brought by the Fiscal. There were, however, misconduct proceedings initiated by the respondents after the Fiscal had confirmed that there were to be no criminal proceedings. Twenty two

breaches of DPA were alleged by the respondents to constitute misconduct. The charge of misconduct was upheld. There was never any allegation in relation to PC McConnell that he had attempted to pervert the course of justice, that he had breached the Corruption Act or that he had breached the Telecommunications Act. PC McConnell received a warning from the DCC, 5 intimated to him by the Divisional Commander, for bringing the Police Service into disrepute as the outcome of the misconduct charges. That was issued to PC McConnell in December 2015.

10 **Mr Reid – Case as pled**

207. The claim by Mr Reid was presented to the Tribunal on 14 November 2012. It was a claim that the respondents had discriminated against Mr Reid on the ground of sex discrimination. It was also a claim that there had been a failure 15 by the respondents to make reasonable adjustments, a duty incumbent upon the respondents on the basis that Mr Reid was a disabled person in terms of EQA.

208. For the purposes of setting out the timings, and consideration of timebar, it is assumed that the claimant is correct in his allegations that there were acts, 20 or deliberate failures to act, causative of a detriment to him, which acts were done on the ground of his having made a protected disclosure. Equally, it is assumed for these purposes that there was a failure to make reasonable adjustments in breach of a duty incumbent upon the respondents. That duty was “*triggered*” on 29 October 2011 when it is accepted and agreed that the 25 claimant was known to the respondents to have been a disabled person in terms of the EQA. Alternatively, that was the date when the respondents could reasonably have been expected to have known that the claimant was disabled in terms of the EQA.

30 209. The Tribunal has identified the following acts or deliberate failures to act as, according to Mr Reid in this claim, being acts or deliberate failures to act done by the respondents on the ground that Mr Reid had made a protected

disclosure, which acts caused Mr Reid to suffer a detriment. The alleged acts are now considered together with the date on which they were pled as part of the case brought by the claimant. For clarity, it is Mr Reid's position in relation to those acts or deliberate failures to act which is now set out, rather than findings in fact being made.

**Mr Reid moved to Partick Police Office**

210. This was something which happened in early April 2010. Mr Reid's position was that it was "*a shot across the bows*" as a result of him making his protected disclosure just prior to the move. This is pled in form ET1 presented on 14 November 2012.

**Alleged falsely dated briefing note, showing date as 6 May 2010 resulting in restriction of duties**

211. Mr Reid alleged that at a date prior to 27 June 2011 a report was prepared for submission to the DCC recommending a restriction of duties. That report bore the date of 6 May 2010 although it was not produced until a later date, he alleged. The DCC restricted Mr Reid's duties on the basis of this report. The date on which his duties were purported to have been restricted was 7 May 2010. That date was also inaccurate, having been "manipulated", it was said. The correct date was sometime in the period immediately prior to 27 June 2011. A restricted duties form which confirmed the restrictions and which also confirmed that Mr Reid was not suspended, and which bore the date of 3 June 2010, had not in fact been signed on that date. It was signed sometime in the period prior to 27 June 2011, the date which appeared on it having been "manipulated". The claims in relation to these matters did not appear in the pleadings but were the subject of evidence from Mr Reid and of cross-examination of DS Dillet and DCC Richardson.

**Alleged failure by the respondents through Superintendent Bailey to investigate properly Mr Reid's complaint as to DS Dillet's interviews of officers**

**who had been present with the claimant on the train when the call to Ms Fanning took place.**

212. This alleged failure by Superintendent Bailey occurred prior to preparation of  
5 the report by Superintendent Bailey into the complaint by Mr Reid about DS  
Dillet. That report appeared at AR 402 to 411. It was dated 24 February 2011.  
This failure was the alleged act/deliberate failure to act as a result of which  
Mr Reid said he suffered a detriment. The act or deliberate failure to act was  
10 alleged by him to have been done on the ground that he had made a  
protected disclosure occurred at some point prior to 24 February 2011. This  
is not a matter specifically pled in either the claim form or amendments  
permitted to it. It was, however, a matter about which evidence was given.  
The first time therefore it was formally before the Tribunal was when oral  
evidence was led about it at the Hearing.

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**Mr Reid being moved from his role in the production store on 26 June 2011**

213. Mr Reid had been working in the production store. He was moved from that  
role for reasons which were never clearly explained to him. His position was  
20 that he was moved due to the protected disclosures which he had by then  
made.

214. This act was one which was referred to in form ET1. It was not referred to  
specifically as being an act done on the ground that there had been a  
25 protected disclosure made by Mr Reid. The "*relabeling*" of the case initially  
brought occurred for the first time when the amendment lodged on 11  
February 2014 was allowed. The case at that point became, in part, a claim  
of detriment said to have been suffered due to acts, or deliberate failures to  
act, done on the ground that Mr Reid had made a protected disclosure.

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**Alleged false SPR report submitted**

215. On 6 February 2012 the SPR referred to above was submitted by DI Dillet, as he then was, to the Procurator Fiscal. Mr Reid alleged that he suffered detriments as a result of this act. He further alleged that this act was done on the ground that he had made a protected disclosure. Ms Daly did not allege that the SPR was an act done on the ground that she had made a protected disclosure.

216. Mr Reid became aware of the information supplied by DI Dillet in the SPR at the trial during the course of December 2014 and January 2015. The trial concluded on 9 January 2015. The claim that making of the SPR was an act done on the ground of Mr Reid having made a protected disclosure was set out to the Tribunal in his amendment submitted on 30 March 2015.

**Variation rather than removal of restricted duties on 29 October 2013**

217. As detailed above, a role which Mr Reid could potentially fill became available in October 2013. To take up this role there required to be an element of relaxation in one of the restrictions which then existed, that restriction being that Mr Reid was not to have access to IT systems of the respondents. The variation of that restriction, which meant that he could take up this post, was granted by the DCC. That variation enabled Mr Reid to have access to SCOPE on a supervised basis and to have access to group email. Mr Reid was of the view that the restrictions on access to IT systems were unnecessary and ought to have been removed.

218. The claim to the Tribunal does not specifically refer to the decision made on 29 October 2013 as being an act or deliberate failure to act done on the ground that Mr Reid made a protected disclosure. The first amendment allowed in the period after 29 October 2013 was that submitted by the claimant on 11 February 2014.

**Adherence on 27 May 2014 to the decision made on 29 October 2013 as to the level of restricted duties applicable to Mr Reid**

219. As detailed above a decision was made on 29 May 2014 by the DCC that the restriction on duties of Mr Reid would remain in place at the level determined on 29 October 2013.

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220. The first amendment made by Mr Reid in his pleadings following upon the decision of 27 May 2014 was that presented on 13 January 2015. That made no reference to the act of 27 May 2014.

10 **Alleged failure properly to investigate the stage 1 grievance of Mr Reid in March and April 2015**

221. This element of claim was first presented to the Tribunal in an application to amend made by Mr Reid on 22 June 2015. It appears as part of that application at AR 41. The application to amend was presented on the basis that the matters detailed in the amendment relate to alleged failures by the respondents to make **reasonable adjustments** in terms of obligations incumbent upon them under EQA. In evidence, however, Mr Reid said that he founded upon the **last act or deliberate failure to act done on the ground that he had made a protected disclosure** as being what he said was the failure by Superintendent Murray properly to investigate his grievance in March and April 2015. A claim to that effect does not appear in the pleadings. This was a proposition first advanced therefore in course of the Tribunal hearing.

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**Timebar in relation to protected disclosure case**

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222. Whilst detriments may have been suffered by Mr Reid on an almost daily basis whilst at work, the critical date for determination of timebar is when the

acts causative of those detriments occurred. Those acts as advanced in evidence were those set out above in paragraphs 210 to 221 above.

223. The case brought founded upon the acts of:-

5

(a) Moving Mr Reid from Drumchapel to Partick in April 2010.

10

(b) Alleged failure in the period immediately to 24 February 2011 to investigate Mr Reid's complaint in that colleagues were not interviewed.

15

(c) The preparation of the briefing note bearing the date 6 May 2010.

(d) The decision in relation to restriction of duties on Mr Reid bearing the date 7 May 2010.

(e) The decision to restrict the duties of Mr Reid in terms of a form bearing the date 3 June 2010.

20

(f) The decision to move Mr Reid on 27 June 2011 from the production store where he worked at that point.

25

(g) The easing of rather than removal of restriction on duties on 29 October 2013.

(h) The adherence on 27 May 2014 to the relaxation of restriction on duties as determined on 29 October 2013.

30

(i) Alleged failure by Superintendent Murray to investigate properly the stage one grievance submitted to the respondents by Mr Reid on 13 March 2015.

- (j) Alleged submission of a false SPR report by DS Dillet to the Procurator Fiscal in February 2012.

5 224. The above grounds of claim were each presented to the Tribunal more than three months after the date of the alleged act or deliberate failure to act on which they were respectively based. They are therefore each out of time. The claim in relation to the last of the acts founded upon was brought out of time. Accordingly the claim brought based on a series of acts said to have occurred and to found that claim was presented out of time.

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225. Mr Reid made the allegation that there had been submission of a false and misleading/inaccurate SPR on 6 February 2012. That is in this instance the act of the respondents said to have been done on the ground that Mr Reid had made a protected disclosure. It is advanced as a claim in terms of an amendment presented on 30 March 2015. Although Mr Reid only became aware of what he regarded as the submission of a false and misleading report on 9 January 2015, or soon thereafter, the act had occurred in February 2012. This element of claim was therefore presented out of time.

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20 226. The claim that there was an act by Superintendent Murray in failing properly to investigate the grievance of the claimant in March and April 2015 done on the ground that Mr Reid had made a protected disclosure was not pled. The first time this became a claim advanced was at the Tribunal hearing. Prior to that time there had been mention of the stage 1 grievance and that Superintendent Murray had investigated it. This was in the amendment submitted on 22 June 2015. That amendment however was stated as being relative to alleged failures to make reasonable adjustments and to claims "*under the equalities act 2010*".

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30 227. The alleged failure properly to investigate the grievance at stage 1 and the allegation that this was done on the ground that Mr Reid had made a protected disclosure was therefore made out of time when advanced at this hearing.



**Finding in Fact and Law.**

5 228. The alleged acts or deliberate failures to act set out in paragraph 223 which  
are said by Mr Reid to have been done on the ground that he had made  
protected disclosures were a series of similar acts or failures. Each of the  
claims relative to each of these alleged acts or deliberate failures to act was  
presented out of time. The claim relative to the last in the series of alleged  
acts or deliberate failures to act said to have been done on the ground of Mr  
10 Reid having made a protected disclosure was also brought out of time.

**Extension of time in the claim in respect of claim brought by Mr Reid based  
on acts or deliberate failures to act said to be done on the ground that Mr Reid  
had made protected disclosures.**

15 229. The claim initially brought was, in addition to a claim of discrimination brought  
on the grounds of the protected characteristic being disability, a claim of  
discrimination brought on the grounds of a protected characteristic being sex.  
As already mentioned, the claim was presented by Mr Reid on 14 November  
20 2012. The amendment in which Mr Reid sought to introduce a claim of  
detriment said to have been suffered due to acts or failures to act by the  
respondents done on the ground that Mr Reid had made a protected  
disclosure was presented to the Tribunal on 11 February 2014.

25 230. Mr Reid was informed around May 2013 by a former Police Officer, Mr  
Sallens that other Police Officers who had been accused of breaches of the  
DPA or who faced misconduct charges in relation to other offences had not  
been made subject to the same level of restrictions as had Mr Reid. From this  
contact and as a result of this discussion. Mr Reid said he formed the view  
30 that the reason for imposition of what he understood to be a greater level of  
restriction in his case than was the position in relation to the other Officers  
mentioned to him by Mr Sallens, was that Mr Reid had made protected  
disclosures.

231. Mr Reid was, however, aware in January 2013 of there being a ground of claim open to him on the basis that he had made protected disclosures and had been subjected to unfair and detrimental treatment by his employer. He set this out in a document which he presented to a PH held for case management purposes on 18 January 2013. The document was not, however, presented as a possible amendment nor was amendment permitted in terms of that document. A copy of the Note produced following upon that PH appeared at AR 107 to 109. The document produced by Mr Reid to that PH appeared, insofar as referring to a protected disclosure and unfair or detrimental treatment linked to that, at AR 120 to 122.

232. The passages in question at AR 120, 121 and 122 are headed as follows:-

(i) AR 120

*“CLAIM 2 HAVING MADE A PROTECTED DISCLOSURE, I HAVE BEEN THE SUBJECT OF UNFAIR AND DETRIMENTAL TREATMENT BY MY EMPLOYER. I HAVE BEEN BULLIED AND VICTIMISED BY MY EMPLOYER OWING TO THAT DISCLOSURE.”*

(ii) AR 121

*“CLAIM 3 I HAVE SUFFERED DETRIMENTAL TREATMENT BY THE FORCE AS A DIRECT RESULT OF MY SUPPORT OF A PROTECTED DISCLOSURE MADE BY MY COMPARATOR AMANDA DALY.”*

(iii) AR 122

*“CLAIM 4 HAVING MADE A PROTECTED DISCLOSURE BETWEEN THE DATES OF 25 JULY 2010 AND 5 MARCH 2011 I*

*WAS SUBJECT TO DETRIMENTAL TREATMENT AND VICTIMISATION BY THE RESPONDENTS AS A DIRECT RESULT OF THAT PROTECTED DISCLOSURE.”*

5 233. Mr Reid spoke to the Police Federation to obtain advice from them on his position. This was towards the start of 2012, during the course of March 2012 at the latest. Through the Police Federation he was put in touch with a firm of solicitors. As Mr Reid understood the advice from the firm of solicitors he required to submit a grievance before proceeding with a claim to the  
10 Employment Tribunal. Mr Reid had a conversation with the solicitors prior to commencing his claim by presentation of the claim in November 2012. Mr Reid also obtained advice from Citizens Advice Bureau prior to presenting his claim. Mr Reid was clearly aware in January 2013 that he could bring a claim alleging detriment due to his having made a protected disclosure. He was  
15 aware in May 2010 that he had been placed on restricted duties as stated above. He believed that the reason for his move to Patrick in April 2010 was because he had lodged a complaint or protected disclosure.

234. Mr Reid was hesitant about bringing a claim against the respondents to an  
20 Employment Tribunal. He made a complaint, however, about the actings of a fellow Police Officer within PSD. That complaint was made in March 2010. It led to an investigation and subsequently to a report being issued by the respondents on 24 February 2011. The very nature of a claim of the type being made is that a claimant has been subjected to a detriment.

25  
235. There was no threat made by the respondents warning Mr Reid not to raise a claim. He was in receipt of advice from the Federation and from solicitors through the Federation. He knew in his mind why the treatment which he viewed himself as having received and as being to his detriment had taken  
30 place, this being due, in his view, to the complaint which he had made about the behaviour of the respondents. There was no issue with the health of Mr Reid such that it was not reasonably feasible or reasonably practicable for him to present a claim to the Employment Tribunal.

**Findings in fact and law in relation to possible extension of time to permit claim based on alleged acts or deliberate failures said to have been done on the ground that Mr Reid had made protected disclosures to act to proceed, though late**

236. It was not not reasonably practicable for the grounds of claim under Section 47B of ERA which are presented late to have been presented within the relevant period of 3 months, except for the claim that a false report, the SPR, had been submitted by DS Dillet in February of 2012. Mr Reid only found out about that act in January of 2015. Ignorance of the terms of the SPR on the part of Mr Reid until that time was reasonable. It was not reasonably practicable to present this ground of claim to the Tribunal until that time. The claim was presented by amendment in March of 2015. That was a reasonable time after knowledge of the ground of claim was gained. Time is therefore extended to enable this ground of claim to be advanced.

**Findings in fact and law in relation to detriments to which Mr Reid alleged he had been subjected by acts or deliberate failures to act done on the ground that he had made protected disclosures**

237. The Tribunal was satisfied on the evidence that, in relation to the claim brought by Mr Reid, the respondents had shown, as required in terms of Section 48(2) of ERA the ground on which any act or deliberate failure to act which formed the basis of a claim in the case brought by Mr Reid was done. The Tribunal was satisfied on the evidence that there was no instance of any such act or deliberate failure to act being done on the ground that Mr Reid had made a protected disclosure. The test applied is whether they were done on that ground to any more than a minor or trivial extent. In coming to this view the Tribunal considered the individual instances as “stand alone” instances. It also considered the “*wider picture*” and whether there was what might be referred to as a cumulative effect or overall weight of evidence which might point to acts or deliberate failures to act having been done on the

ground that Mr Reid had made protected disclosures. It was satisfied, looking at the facts on the evidence it heard, that when considered individually or in conjunction with other decisions and events, the reasons advanced by the respondents as being the basis for the making of the decisions in question had been cogently explained and shown as being the ground on which any such act or deliberate failure to act had been done.

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238. The alleged acts or deliberate failures to act which were said to have been done on the ground that Mr Reid had made a protected disclosure and were said to have resulted in a detriment to Mr Reid were not, had they been brought in time or, in the one instance where time was extended to enable a ground of claim to proceed, acts or deliberate failures to act which could form the basis of a successful claim by Mr Reid.

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15 **Claim by Mr Reid of failure to make reasonable adjustments**

239. The restriction on duties placed upon Mr Reid on 7 May 2010 was one of two Provisions, Criteria or Practices (“PCP”) which was said to put Mr Reid as a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who were not disabled and therefore to require the respondents to take such steps as it was reasonable to have to take to avoid that disadvantage.

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240. The date on which the duty on the part of the respondents towards Mr Reid as a disabled person commenced was on 29 October 2011. That was the date on which the knowledge of the respondents that Mr Reid was a disabled person was regarded as existing, or on which the respondents could reasonably be expected to know that Mr Reid was disabled in terms of EQA.

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241. The disability which affected the claimant was that of anxiety and depression. The substantial disadvantage at which he was placed by the PCP was an increased level of anxiety or depression as compared to someone who did not suffer from the disability which affected the claimant. That in turn meant

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that he was potentially more prone to absence from work due to anxiety and depression.

5 242. A reasonable adjustment would potentially have involved removal of restrictions or variation of those restrictions enabling Mr Reid to carry out meaningful work for all or a substantial part of shifts which he worked for the respondents.

10 243. The decision to apply the PCP to Mr Reid on 7 May 2010 was a single act with continuing consequences. It meant that each day thereafter Mr Reid was faced with restrictions on his duties as a result of the PCP. The application of the PCP on 7 May 2010 took place prior to the basis of a claim of disability discrimination existing, the potential duty to make reasonable adjustments to the PCP having commenced on 29 October 2011.

15 244. There were allegations against Mr Reid which led to the imposition of restricted duties on 7 May 2010. Those allegations had at the very least a *prima facie* basis of being well founded. They comprised an allegation of corruption involving the selling of information/stories to the press, attempting  
20 to pervert the course of justice, DPA offences through accessing Police computer systems for non-policing purposes and breach of the Telecommunications Act by making offensive comments to a member of the public over the telephone.

25 245. In these circumstances there was a basis on which the restriction of duties placed upon Mr Reid were put in place. That was a reasonable decision by the respondents. It had regard to the balancing of various interests and to the need to prevent or reduce risk to the respondents and to the public.

30 246. It would not have been a reasonable adjustment at any point during the claim to remove the restrictions or to vary the restrictions enabling Mr Reid to return to operational duties, to be a public facing Police Officer or to have access to IT systems even to a limited extent. The exception to this related to access

to IT systems where it may have been a reasonable adjustment to relax exclusion from IT systems provided that there a particular purpose for this and provided that appropriate close supervision existed. That reasonable adjustment was made on 29 October 2013. As stated above, Mr Reid was absent from work from 27 June 2011 until 6 March 2012. He was at work from 6 March 2012 until 8 July 2012. He was then absent from 8 July 2012 to 28 October 2012. He was present at work from 28 October 2012 to 24 March 2013. He was absent from work from 24 March 2013 to 10 November 2013.

247. During these times, when at work, Mr Reid was in a management support or engine room role in Partick. Given IT restrictions which precluded him from use of the respondents` IT systems, he was unable to perform any meaningful role for the respondents. There was no such meaningful role available for him within the division. The respondents sought to accommodate Mr Reid and to provide work for him such as they could in line with the restrictions applicable in terms of the PCP. It would not have been reasonable during this period to adjust the PCP by varying or waiving the restrictions imposed by the DCC on 7 May 2010.

248. On 29 October 2013 the DCC varied the restrictions on Mr Reid`s access to IT systems. He did this as the respondents had identified a post which could be filled by Mr Reid but which, for that to occur, necessitated Mr Reid being given access to an element of IT systems, SCOPE and email. The DCC authorised the variation to restrictions on Mr Reid`s duties. He took that decision after consideration of the relevant factors involved in such a decision being taken as those are set out in this Judgment. The respondents then placed Mr Reid in a role as Court Scheduler. Mr Reid took up that role on 10 November 2013 when he returned to work.

249. This variation of the PCP by the DCC on 29 October 2013 was a reasonable adjustment. The allegations against Mr Reid which led to the imposition of the restrictions remained “live” at this time. It would not have been a reasonable adjustment to remove the restrictions or to vary them prior to that

time or to relax them to any greater extent at that point. Whilst time had elapsed, it was reasonable of the respondents to take the view that they would vary the restrictions only as occurred on 29 October 2013.

5 250. It was also reasonable and appropriate of the DCC on 27 May 2014, in application of the principles applicable in the making of the decision, not to make any adjustment to the PCP. At this point the PCP was the original restriction on restriction of duties, as varied by the decision made on 29 October 2013.

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251. As at 27 May 2014 allegations against Mr Reid remained “live”. The reason therefore for restrictions precluding Mr Reid from being operational, public facing and from having access to the vast majority of IT systems of the respondents, remained applicable. Although time had passed, it was  
15 reasonable to regard the risk as remaining as it had been.

252. For the same reasons, and notwithstanding the additional time which had elapsed, the decision made following upon the handling of the grievance of the claimant by Superintendent Murray was a reasonable one. The outcome  
20 of that grievance was made known to the claimant on 23 April 2015. The decision by the DCC to maintain the restrictions on the claimant at the level set on 29 October 2013 was taken by the DCC on 12 May 2015. It was taken as result of application by him of the principles and factors detailed in this Judgment as being involved in the making of such a decision. There was no  
25 failure in the duty to make reasonable adjustments. For clarity, there was nothing in the investigation and/or report by Superintendent Murray of Mr Reid’s grievance that constituted a failure to make a reasonable adjustment.

253. It was not open to anyone other than the DCC to make adjustments to the  
30 PCP. In practice, in applying the PCP, divisional personnel would in some instances permit IT access notwithstanding the preclusion of such access in terms of the PCP. Where that occurred in relation to Mr Reid, that was a decision made by divisional personnel without full knowledge of the reasons



why the PCP had been imposed, why it had been imposed in the terms decided upon and the extent of prohibition of the use by Mr Reid of IT systems of the respondents. Sometimes such a decision was taken after consultation with PSD. When the fact that divisional personnel made such decisions, sometimes after speaking to PSD, became known PSD officers were told clearly that this practice was forbidden. Any variation or relaxation made without authority from the DCC did not therefore confirm or signify that it was a reasonable adjustment to the PCP to vary or relax the prohibition on Mr Reid using the respondents` IT systems.

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254. Mr Reid sought that further sessions of CBT be paid for by the respondents. The PCP in this regard was that the standard provision of sessions under the employee assistance programme. That PCP was applied in the case of Mr Reid. This therefore was the second PCP. He sought that this be varied. The substantial disadvantage to him through not having this additional set of CBT sessions was a potential increased level of absence. Whether that was a substantial disadvantage at which Mr Reid was put due to the PCP is uncertain. It is also uncertain if additional sessions of CBT would have avoided the possible substantial disadvantage, given the reference to the sessions being something which "may" assist.

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255. The decision not to fund these additional sessions of CBT was made known to Mr Reid on 18 March 2014. This alleged failure to make reasonable adjustments was pled in Mr Reid`s case to the Tribunal by amendment lodged on 13 January 2015. Assuming there was substantial disadvantage to Mr Reid through application of the second PCP, given the cost, likely precedent and uncertainty as to avoidance of the substantial disadvantage through the respondents arranging and paying for additional counselling, not arranging and not paying for such additional counselling was not a failure to make a reasonable adjustment to the second PCP.

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256. In May 2016, as part of the stage 3 hearing of the grievance of Mr Reid, ACC Cowie was largely instrumental in securing a post for the claimant within the

training arm of the respondents. This was a role which came about through discussion with the claimant and through exploration by ACC Cowie as to possible alternative roles. It remains a non-operational role and is non-public facing. There is limited access to IT. There has been no variation in either of the PCPs since 29 October 2013.

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257. There was evidence led in relation to the period after matters covered in the amendment by the claimant of 22 June 2015, the last date of amendment by Mr Reid of his case. None of that evidence however shed light on the events prior to that time such that it was established that there had been a failure by the respondents to make reasonable adjustments in the period covered by the pleadings and case of Mr Reid.

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**Findings in Fact and Law relative to Timebar in respect of claim of failure to make reasonable adjustments**

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258. Each of the decisions made by the respondents to vary or not to vary the restrictions was an act with continuing consequences. There was no conduct extending over a period.

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259. The duty to make reasonable adjustments became one to which the respondents were subject on 29 October 2011. A period would appropriately be allowed before it could reasonably be maintained by Mr Reid that there had been a failure to meet this obligation. Equally it would be clear to Mr Reid (or ought to have been) within a relatively short period of that time that there was to be no variation of the PCP by the respondents.

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260. The claim was presented on 14 November 2012. It was therefore presented more than 3 months after a date on which it was reasonable to regard the respondents as having failed in any duty incumbent upon them to make reasonable adjustments to the PCP. It was therefore out of time when brought.

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261. Any alleged failure by the respondents to make a reasonable adjustment to the PCP as a result of the decision reached by them on 29 October 2013 ought to have seen a claim lodged within 3 months of that date if it was to be on time. The first reference to the variation in restrictions which was made  
5 on 29 October 2013 appeared in the amendment lodged by Mr Reid on 19 February 2015. The relevant passage appears at AR 27. Mr Reid`s position is then repeated at AR 38 in an amendment lodged on 22 June 2015. That amendment also sees Mr Reid specify in a passage at AR 40 a basis of claim  
10 alleged to be the decision by the DCC to adhere to the levels of restrictions applicable in October 2013, that decision being made known to the claimant shortly after it was taken on 12 May 2014.

262. The allegations therefore of failure to make reasonable adjustments by not removing or varying the restrictions to a greater extent than occurred are  
15 presented out of time.

263. The claim of failure to make a reasonable adjustment by reason of failure to arrange and pay for additional CBT counselling was made on 13 January 2015. The alleged failure occurred on 18 March 2014 when the respondents  
20 made their decision known to Mr Reid.

264. The allegation that the refusal to meet the cost of the additional CBT therapy sessions was a failure to make reasonable adjustments was also brought out  
25 of time.

**Possible extension of time in relation to claim of failure to make reasonable adjustments brought by Mr Reid**

30 265. The claim of discrimination, the protected characteristic being said to be disability, was part of the claim presented by Mr Reid on 14 November 2012. He had awareness at that point of there being a requirement on the part of the respondents to make reasonable adjustments to avoid disadvantage to

5 him as a disabled person. He had awareness of the legislation providing for comparators. He researched on the internet and Googled in relation to disability discrimination. He spoke to the Police Federation around March 2012 about his situation at work and to obtain advice thereupon. He was referred to a firm of solicitors for advice upon those matters. The precise date on which he took advice from the firm of solicitors is unclear but was certainly prior to October 2012. He sought advice from Citizens Advice Bureau in relation to his work situation. Again the precise date of that advice being sought is unclear.

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266. Mr Reid believed that he was disabled when he presented the claim form on 14 November 2012. His position was that there had been a failure to make reasonable adjustments to assist with his disability by the respondents at that time. He referred in his claim form to having suffered "*with depression, stress and anxiety, all work related*", "*for 3 years*" at the time when he presented the claim form.

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267. Mr Reid had concerns as to bringing any claim in respect of any alleged failure to make reasonable adjustments on the part of the respondents in that he was advancing the claim to an Employment Tribunal. This concern existed notwithstanding the fact that Mr Reid had expressed dissatisfaction to the respondents as to the effect of the PCP.

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**Finding in fact and law relative to possible Extension of Time to Present the case of Alleged Failure to make Reasonable Adjustments**

268. It is not just and equitable to extend the period within which a claim of failure to make reasonable adjustments might be made. Such a claim involves the allegation that the PCP placed Mr Reid as a disabled person from 29 October 2011 at a substantial disadvantage in relation to a relevant matter compared

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to a person who was not disabled and that steps which it was reasonable to take to avoid the disadvantage had not been taken by the respondents.

269. In coming to this view, the Tribunal has had regard to the facts set out above. 5  
Regard has also been had to the prejudice which is suffered by Mr Reid due to the fact that these claims cannot proceed. If the claims were permitted to proceed prejudice would be suffered by the respondents given the delay in bringing of these elements of claim and consequent reduction in ability to recall specific details relevant to the claim. The respondents would face a 10  
claim presented out of time. The Tribunal kept in mind in that regard that whilst there had been significant delay in the case coming to a hearing, the period of delay to which it was appropriate to have regard was that involved in the bringing of the claims. There had been impact on ability of witnesses to recall events. The other relevant factors were the knowledge of Mr Reid as 15  
to the ground of claim existing in each instance and the lack of convincing explanation for delay.

270. The claim by Mr Reid that failure to make payment for him to have 6 further sessions of CBT was presented out of time. Mr Reid was aware of the duty 20  
on the respondents to make reasonable adjustments what the time when he was informed of the decision of the respondents upon his request. The decision to refuse additional sessions of CBT was made to him on 18 March 2014. There was no explanation of why this matter was not raised at Tribunal until 13 January 2015. Mr Reid knew of the ability to bring a claim alleging 25  
failure to make a reasonable adjustment as he already had such a ground of claim set out to the Tribunal. It is not just and equitable to extend the period of time enabling that claim to proceed.

30 **Findings in Fact and Law Relative to Claim of Alleged Failure to make Reasonable Adjustments**

271. If any element of claim alleging a failure to make reasonable adjustments in terms of Section 20 of EQA has either been lodged in time or time would

appropriately be extended to enable such a claim to proceed, there has been no failure to make reasonable adjustments by the respondents in terms of Section 20 of EQA. It was not unreasonable to retain in place the PCP that Mr Reid was on restricted duties to the extent originally imposed in the period  
5 to 29 October 2013. The decision on 29 October 2013 to vary the restrictions permitting Mr Reid to have access to email and SCOPE on a limited basis from that time was not a failure to make reasonable adjustments in breach of Section 20 of EQA. Similarly the decision of the respondents on 27 May 2014 to adhere to the decision made on 29 October 2013 was not a failure to make  
10 reasonable adjustments in terms of Section 20 of EQA. The respondents' view as to the potential risk of removing restrictions or easing them to a greater extent than occurred was a reasonable one given the allegations against Mr Reid. Taking steps to relax the restrictions, relax them further than occurred or to remove them was not a reasonable adjustment to the PCP in  
15 the circumstances.

272. If time was extended to enable the ground of claim in relation to non payment of additional CBT sessions of claim to proceed, there was, in the evidence before the Tribunal, no failure to make a reasonable adjustment by the  
20 respondents' decision not to make the payment enabling the sessions to proceed. The cost of the sessions, the precedent which was likely to be set and the uncertainty over whether the sessions would avoid the substantial disadvantage meant that there was no failure in the duty to make reasonable adjustments when the respondents refused to make payment for the  
25 additional sessions of CBT for Mr Reid.

**Ms Daly**

273. Ms Daly presented her claim to the Tribunal on 3 August 2015. Her claim was not amended thereafter. Mr Reid acted as her representative at the point  
30 of presentation of her claim. He has acted as her representative since that time.

274. The claim brought was on the basis that there had been discrimination, the protected characteristic claimed being that of disability. There was said to have been a failure to make reasonable adjustments. The PCP said to have placed Ms Daly at a substantial disadvantage in comparison to persons who were not disabled was the decision to restrict the duties of Ms Daly made on 7 May 2010 and variations to that on 20 June 2011, 3 July 2013, 30 July 2013 and 20 April 2015.

275. It had been determined by Judgment of 18 May 2016, issued to parties on 19 May 2016, as varied by reconsideration in terms of a Judgment dated 29 July 2016, issued to parties on 2 August 2016, that the decision to impose restrictions and the decisions as to varying of restrictions were each separate acts rather than comprising conduct extending over a period. It had further been determined that the claim of failure to make reasonable adjustments as brought in relation to the decision to impose restrictions on 7 May 2010 and decisions as to variation of restrictions made on 20 June 2011, 3 July 2013 and 30 July 2013 had been brought out of time. The claim alleging a failure to make reasonable adjustments by the decision made in relation to restrictions on 20 April 2015 had been brought in time, those Judgments determined. The issue of whether it was just and equitable to extend time to enable the claim in respect of the earlier decisions to impose restrictions and decisions to vary or otherwise those restrictions was one for this Hearing.

276. The second ground of claim brought was that Ms Daly had suffered a detriment due to an act or failure to act done on the ground that she had made a protected disclosure.

277. It had been determined in the Judgments referred to in the preceding paragraphs that the acts of the respondents in imposing any determination as to variation of restricted duties comprised a series of similar acts or failures said to have been done on the ground that Ms Daly had made a protected disclosure. Whether they were therefore timebarred was to be judged by whether a claim had been brought within time in relation to the last of this series. That claim had been presented in time, it had been determined. It had

5 been brought within 3 months (allowing for the ACAS Early Conciliation provisions) of the final determination upon variation relevant to the claim, namely that on 20 April 2015. There is a dispute as to whether Ms Daly made a protected disclosure. There is also a dispute as to when the respondents knew or ought to have known that Ms Daly was a disabled person for the purposes of EQA.

**Protected Disclosure March 2010**

10 278. Mr Reid made what an earlier Judgment had determined was a protected disclosure when he wrote to the respondents on 7 March 2010, the letter which appeared at AR 345 to 349.

15 279. That letter referred to Ms Daly. It did not state that Ms Daly made the same complaint. It did not say that it was written on behalf of Ms Daly. Ms Daly was not a signatory to the letter. Ms Daly did not have sight of the letter before it was sent.

**Finding in Fact and Law**

20 280. The letter sent by Mr Reid to the respondents on 7 March 2010 was not a protected disclosure made by Ms Daly.

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**Protected Disclosure April 2010**

30 281. Ms Daly made a statement to DS Bassano on 12 April 2012. A copy of that appeared at AD 182 to 186. That statement confirmed that Ms Daly was aware that Mr Reid had sent a letter of complaint to Strathclyde Police relative to DS Dillet. Notwithstanding the content of that letter and its lack of reference to being on behalf of Ms Daly, the statement said that the letter had been sent



on behalf of both Mr Reid and herself. Ms Daly says in her statement that she informed DS Dillet that Mr Reid's brother had telephoned their mother saying to their mother that she "*better change her story to back him (Craig) up*". This, Ms Daly said, saw DS Dillet being uninterested in taking this matter further, although she had informed him of Craig Reid interfering with a witness.

**Finding in fact and in law**

10 282. The statement by Ms Daly to DS Bassano gave DS Bassano information which in the reasonable belief of Ms Daly tended to show that a criminal offence had been committed, was being committed or was likely to be committed. The criminal offence which it tended to show in her reasonable belief was the lack of investigation by a Police Officer of a criminal allegation.  
15 The allegation was that a witness was being pressurised and that an attempt was being made to pervert the course of justice. Whilst it might or might not be a basis for criminal proceedings or for any misconduct proceedings, the test under ERA Section 43B(1)(a) was met. In the alternative the test under Section 43B(1)(b) was met in that in the reasonable belief of Ms Daly the information which she disclosed tended to show that a person (DS Dillet) had  
20 failed, was failing or was likely to fail to comply with a legal obligation to which he was subject. Again whether there was such a failure is not necessary to establish for there to have been a protected disclosure.

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**Detriments to which Ms Daly said she had been subjected which were done on the ground of her having made a protected disclosure**

30 283. There were investigations by the respondents into actings of Mr Reid and Ms Daly which were underway prior to the protected disclosure made by Ms Daly. They related to events well prior to the protected disclosure. In particular in relation to Ms Daly the investigation related to the incident involving Mr Reid

and his brother in October 2009 and subsequent accessing of data related to that.

5 284. There was no allegation by Ms Daly that in submitting the SPR report in February 2010 there had been an act or deliberate failure to act by DS Dillet done on the ground that Ms Daly had made a protected disclosure.

10 285. The decision to place Ms Daly on restricted duties was a decision taken by the DCC for the reasons set out above in relation to the decision taken on the day in respect of Mr Reid. It sought to balance risk and had regard to the allegations against Ms Daly together with all the factors mentioned in this Judgment as being relevant to the taking of such a decision.

15 286. A role became possible for Ms Daly in June 2011. The DCC was approached. The relevant form for completion for completion by the DCC appeared at page AD 226.

20 287. That form confirmed that the two allegations involving Ms Daly were "*Attempt to Pervert*" and DPA. The form stated:-

*"This is a review of IT restrictions to provide subject Officer with access to certain systems to enable her to fulfill a role in contact centre.*

25 288. The outcome was that restrictions were varied by the DCC. Access for Ms Daly to AVAYA telephone system was permitted. It is noted that all calls are recorded. Ms Daly was also permitted to record incoming call data on the system. She was given limited access to a further element of the system to create incidents, set the diary and to create car appointments for Officers. She was also given authority to search incidents. It is recorded in the decision  
30 of the DCC that Ms Daly was to be notified that her systems access would be monitored on a regular basis with arrangements to be put in hand to ensure weekly audits, particularly in relation to STORM access. The form is signed by Valerie McIntyre who was the rank below DCC Richardson. DCC

Richardson agreed to Ms McIntyre signing the form on his behalf and sanctioned the decision.

5 289. The decision of 20 June 2011 was one which saw the DCC weigh up the interests of the Officer and the risk to the respondents in assessing whether to vary restrictions and if so to what extent. His decision also involved consideration of the allegations against Ms Daly. It further involved consideration of the role proposed and of the passage of time since original imposition of restrictions. All relevant factors were taken account of in coming  
10 to the decision made.

290. On 3 July 2013 a further review of restricted duties took place. A request had been made for a relaxation of restrictions in relation to Ms Daly. The note of the outcome of the review appears at AD 227. It is confirmed that the DCC  
15 has authorised access for Ms Daly to email and intranet in addition to the access authorised in the note of 20 June 2011. This decision was as a result of consideration of the risk in the interests of Officer and the role of the Officer. It involved the DCC in consideration of the factors earlier mentioned in this Judgment as being weighed and considered by the DCC in the making of  
20 such a decision.

291. On 30 July 2013 there was a further review carried out by the DCC. As a result of that view Ms Daly was permitted access to STORM, limited access not being possible. A note of that decision appears at AD 314. That note  
25 confirms that partial access to STORM is not technically possible. Ms Daly was to be advised in terms of the decision that access was only for incident operation, setting diary car appointments and incident search. Use by Ms Daly of STORM was to be monitored. This decision involved weighing of the same elements as had the decisions of 20 June 2011 and 3 July 2013.

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**Finding in Fact and in Law**

292. The respondents satisfied the Tribunal that any act or deliberate failure to act by them said to have been done on the ground that Ms Daly had made a protected disclosure was not in fact done on that ground. Any such act or deliberate failure on their part to act had been done for legitimate and proper reasons and not on the ground that a protected disclosure had been made, in the sense that any such decision was not on that ground at all or, if it was in any way, was not on that ground to anything more than a minor or trivial extent. The Tribunal had regard to the reasons advanced by the respondents for the individual acts done. It also considered the “wider picture” and evaluated to whether the reasons advanced by the respondents for the acts or deliberate failures to act were appropriately accepted by it given the possibility of there being doubt cast on those reasons when the whole circumstances, including other decisions made by the respondents, were taken into account. It remained satisfied that the acts were not done on the ground that Ms Daly had made a protected disclosure.

**Knowledge or reasonable expectation of knowledge on the part of the respondents of Ms Daly being disabled for the purposes of EQA and consequent duty to make reasonable adjustments**

293. The duty to make reasonable adjustments does not apply if the person on whom that duty potentially falls does not know and could not reasonably be expected to know that the person to whom the duty is owed, in this case Ms Daly, had a disability.

294. Ms Daly was absent from work between March 2010 and June 2011. The medical certificate she submitted gave as the reason for absence “*stress*”. A referral was made by the respondents to OH. A memorandum was issued by OH on 16 April 2010. It stated that there was no evidence to suggest the DDA (a reference to Disability Discrimination Act 1995) applied at this time. The claimant`s position was that she was disabled and the respondents ought to have had knowledge of that as at January 2011. This had been confirmed

in a case management PH. That was detailed in the notes of the PH which appeared at AD 54.

5 295. Ms Daly was absent from work between 25 April 2012 and 4 July 2012. An OH referral was made on 2 May 2012 referring to the reason for the absence being panic attacks and anxiety. The medical certificate submitted by Ms Daly referred to "*pre syneoph symptoms*" in respect of the first week of absence and for the month between 4 May and 5 June 2012 to work related stress. The OH report of 1 June 2012 said that the absence of Ms Daly was due to anxiety attacks related to internal investigations which had been ongoing for more than 2 years. It said that she was not permanently incapacitated.

15 296. The next period of absence of Ms Daly was between 17 April 2013 and 11 July 2013. An OH referral was made on 20 April 2013. An OH report was completed on 7 May 2013. A copy of the referral appeared at AD 286 and 287. A copy of the report appeared at AD 289 and 290.

20 297. The report of 7 May 2013 expressed the view that EQA was unlikely to be applicable.

25 298. A further OH referral was completed on 17 June 2013. A copy of that appeared at AD 300 and 301. The OH report in response to that referral was dated 8 July 2013. A copy of it appeared at AD 304 and 305.

299. In relation to EQA, the OH report of 8 July 2013 stated as follows:-

30 *"With the information I have available the Equality Act 2010 may (emphasis in original) be applicable on the basis that she states she has a 3 year history of depression and anxiety. However, I would not recommend any current adjustments under the Act. OH only advise*

*as this is a legal decision rather than a medical decision and is ultimately decided by a court of law”.*

5 300. The respondents accept that they knew or could reasonably have been expected to know that Ms Daly was disabled for the purposes of EQA as at 8 July 2013.

10 301. The claimant`s line manager from August 2011 until a date in March or April 2016, after the claim had been lodged therefore was Ms McNally. She was Duty manager responsible for the public assistance desk. She was a civilian rather than a Police Officer.

15 302. Calls were taken from the public at the Police assistance desk or Police service desk. Police Officers such as Ms Daly might be able to deal with a call there and them. Alternatively the Police Officer might be able to schedule a diary appointment for an Officer to visit the person making the call at a mutually convenient time. The role was not however either operational or public facing as those terms are regularly interpreted and understood in relation to the role of a Police Officer.

20 303. Ms Daly enjoyed her role at the public assistance desk. She applied for a permanent position there in January 2012 stating in a document which accompanied her application that she had enjoyed her time in relation to work matters. A copy of the application and the information in support of application appeared at AD 229 and 230.

25 304. In the period prior to 8 July 2013 Ms McNally did not observe any upset on the part of Ms Daly in carrying out her role such that there would have been support for the view that Ms Daly was unable to carry out normal day to day functions due to a physical or mental impairment which had a substantial or long term adverse effect on her ability so to do. Information gained from attendance review meetings held with Ms Daly prior to 8 July 2013 was that Ms Daly viewed herself as being affected by work related stress. She

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attributed that to the ongoing investigation rather than to her daily work within the public assistance desk.

5 305. On the information which the respondents had from medical certificates, Ms Daly herself and from OH reports, it is not reasonable to impute to the respondents knowledge that Ms Daly was disabled in terms of EQA until the OH report of 8 July 2013. Until that date the respondents did not have knowledge and could not reasonably expected to have knowledge that Ms Daly was disabled in terms of EQA. The duty to make reasonable  
10 adjustments, if applicable, became applicable on 8 July 2013.

306. The PCP was the restrictions imposed on Ms Daly`s duties. As at 8 July 2013, those restrictions were IT restrictions as varied by the decisions of the DCC on 20 June 2011 and 3 July 2013. Both of these decisions relaxed, to an  
15 extent, the restrictions imposed on her duties in the initial decision of the DCC on 7 May 2010. The other restrictions were that Ms Daly was to be non-operational and non-public facing.

**Timebar – “Reasonable Adjustments case”, Possible Extension of Time**

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307. As previously determined and as stated above, claims in respect of three alleged failures by the respondents to make reasonable adjustments said to have occurred by the decisions of 20 June 2011, 3 and 30 July 2013 were brought out of time. The alleged failures to make reasonable adjustments  
25 which are said to have occurred on 20 June 2011 and 3 July 2013 were decisions taken before the duty was owed by the respondents to Ms Daly given the above finding as to the duty commencing on 8 July 2013. No claim therefore lies in relation to those 2 decisions and alleged failures.

30 308. As just mentioned and as previously found, the claim relative to the decision taken on 30 July 2013 was presented out of time given that the claim was presented on 3 August 2015. This meant that the claim was presented just over 2 years late.

309. Ms Daly was represented by Mr Reid at time of presentation of her claim. She had been in close contact with him in the period prior to and after the events of 2010. She was aware of the claim lodged by Mr Reid against the respondents from the time it was presented to Tribunal. She was aware of the grounds on which that claim was being advanced, including the position of Mr Reid that he had been discriminated against, the protected characteristic being disability and the ground being alleged failure to make reasonable adjustments. Mr Reid advanced that proposition in his claim form presented on 14 November 2012. Ms Daly therefore knew of the duty to make reasonable adjustments and of the ability to bring to an Employment Tribunal a claim of alleged failure in that duty.

310. Ms Daly was hesitant about raising a Tribunal claim. She was concerned at the impact raising the Tribunal claim had had on Mr Reid as she perceived that. She worried that her health might be adversely affected if she presented such a claim herself. There was no evidence however that illness on her part precluded her from raising a claim. She remained affected by depression and work related stress in August 2015, at time of presentation of her claim. Being affected by disability did not prevent her from presenting her claim at that point. It did not prevent her from presenting her claim at an earlier date.

311. Ms Daly lodged a grievance with the respondents on 27 August 2014. A copy of that grievance appeared at AD 361 to 364. The grievance detailed the position in respect of complaints made by Ms Daly as to actions of CCU Officers. She said that her view was that due to this she had been treated unfairly and had been bullied by Officers from PSD. She set out details relative to that. A grievance meeting took place on 13 March 2015. A note of that appeared at AD 402. After considering the position Ms Daly lodged an appeal against the outcome of the grievance. She did this on 26 March 2015. A copy of that appeared at AD 403 and 404.



312. Ms Daly had therefore spoken up about and criticised individual Officers within the respondents' organisation in terms of the protected disclosure she made in April 2012. She had similarly spoken up in lodging her grievance in August of 2014. She had proceeded to a grievance meeting in March 2015.  
5 She had also appealed the outcome of her grievance in March 2015. She had therefore challenged decisions of the respondents in an open way.

313. Ms Daly was hesitant about putting responsibility for her claim upon Mr Reid's shoulders given that he was already pursuing his own Tribunal claim. She did  
10 not however instruct any other representative to present her claim to the Employment tribunal.

314. In June 2015 Superintendent Alan Cunningham said to Ms Daly that he would support her staying in the role in which she was at that point. This gave Ms  
15 Daly some confidence in reflecting upon the position and in considering whether or not to present a Tribunal claim.

315. Memories of witnesses have faded in relation to the decision as to restriction on duties made on 30 July 2013. In particular the memory of the person who  
20 made the decision, DCC Richardson, as to the facts and circumstances presented to him leading to the decision which he took at that date had faded. Again the Tribunal was careful to keep in mind that the period of delay it required to consider was that between the grounds of claim coming into existence and being known to Ms Daly and the time of presentation of her  
25 claim.

316. There was prejudice to Ms Daly if her claim in relation to this alleged failure was not permitted to proceed. There was prejudice to the respondents if her claim was permitted to proceed. The quality and to a degree availability of  
30 evidence has been adversely affected by the passage of time.

**Finding in fact and law**

317. It is not just and equitable to extend the time for presentation of the claim in respect of any alleged failure to make reasonable adjustments by virtue of the decision of the respondents in relation to restriction on duties made on 30 July 2013.

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**Decision of the respondents of 20 April 2015 said to have been a failure to make reasonable adjustments**

10 318. This element of claim was brought in time. The decision on 20 April 2015 was made by the DCC. It was that the restrictions as they then were in relation to Ms Daly were to remain in place.

15 319. The decision made by DCC Richardson took account of the same elements as had the earlier decisions in relation to restrictions of duties for Ms Daly. It weighed up the interests of the Officer and the perceived risk to the respondents if the restrictions were varied by relaxation beyond the relaxation already in place or were removed entirely. A copy of the note confirming restrictions are to remain as they then were appeared at AD 457.

20 320. The decision by DCC Richardson followed upon investigation and production of a briefing paper by CI Trotter. A copy of that briefing paper appeared at AD 457 to 461.

25 321. That report by CI Trotter was completed following upon acquittal of Mr Reid and Ms Daly in respect of the DPA charges. It notes that in a passage at AD 458. The report also notes in a passage on the same page that misconduct proceedings remain live but have been delayed due to criminal proceedings. It notes the interconnection between the alleged actings of Mr Reid and Ms Daly and that Mr Reid had at time of the report made an allegation that  
30 Officers who had given evidence at the trial in relation to the DPA alleged offences had committed perjury. That allegation of perjury is productive of further delay, CI Trotter notes. He also records that it has been requested that CAAPD (Criminal Allegations against the Police Department within the

Fiscal`s office) prioritise consideration of the complaint to reduce further delays.

5 322. The decision of 20 April 2015 was made as a result of consideration of the facts and circumstances relative to Ms Daly as at that date. It involved weighing up the position of the Officer, the passage of time since imposition of restrictions, the relaxation of restrictions which had occurred in the interim and assessment of the risk to the respondents if restrictions were removed or relaxed further. It took account of the fact and nature of the allegations which remained “live”. It took account, as did previous decisions of the DCC in relation to restrictions, of the roles and performance of Ms Daly since 10 imposition of restricted duties.

**Events after the period of claim**

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323. As detailed, the claim was presented by Ms Daly on 3 August 2015. No amendment was made to the claim. The basis of claim therefore involved matters set out in the claim as originally presented and did not extend to matters that might have occurred after 3 August 2015.

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324. The Tribunal heard evidence as to some events after 3 August 2015. This was as it was considered that such events might shed light upon the reasons for decisions made by the respondents in the period prior to 3 August 2015. Insofar as they did, they supported the position of the respondents that acts had not been done by them on the ground that Ms Daly had made a protected disclosure.

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325. In particular the Tribunal heard evidence from former ACC Valerie Thomson. ACC Thomson considered the grievance of Ms Daly at stage 3. A copy of the outcome letter from her to Ms Daly appeared at AD 490 and 491. It is dated 12 May 2016.

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326. The outcome of the grievance at stage 3 was that ACC Thomson made a recommendation to the DCC that it was no longer necessary for restrictions

to remain in place relative to Ms Daly. The DCC instructed that all restrictions in relation to Ms Daly were removed with effect from 4 May 2016.

5 327. A recommendation from ACC Thomson to the DCC and the decision then  
taken by the DCC involved assessment of factors as had occurred when  
previous decisions on restrictions of duties both for Mr Reid and Ms Daly had  
been determined. It involved therefore consideration of passage of time, the  
position of the Officer, including role and performance and assessment of risk  
10 to the respondents having regard in particular to the nature of the allegations.  
It weighed the proportionality and reasonableness of the restrictions as had  
all previous decisions in relation to restriction of duties and possible variation  
thereof, whether those decisions were in relation to Ms Daly or Mr Reid.

15 328. ACC Thomson set out in her letter of 12 May 2016 to Ms Daly the basis for  
the recommendation which she made to DCC Richardson. She said:-

20 *“As we discussed during our meetings the restrictions were placed on  
you at a point where you were under investigation in relation to a  
criminal matter and the Force position on this is that they would have  
considered this normal policy at that time. Over the years since the  
restrictions were first introduced they have been reviewed a number  
of times and some changes have been implemented, however, due to  
the matter not being fully concluded from the Police Scotland  
perspective some restrictions have remained in place.*

25 *As I explained at our meeting on 4 May 2016 this was due to Crown  
Office not yet making a decision in relation to the perjury allegation  
related to witness evidence at your Court appearance last year.*

30 *Having fully reviewed this information and your conduct over the last 6  
years I considered that retaining some restrictions was neither  
proportionate nor appropriate and indeed could find no reason to  
suggest that they remained necessary. To that end I wrote to the*

*Deputy Chief Constable and requested that he reconsider the situation. Following discussions with Crown Office, which determined that no decision has yet been made in relation to the perjury allegation, the Deputy Chief Constable has instructed that all restrictions on you have been lifted with effect from 4 May 2016.”*

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329. It weighed therefore with both ACC Thomson and DCC Richardson at this point in May 2016 that there was no end immediately in sight to the Crown investigation with regard to the perjury allegation. ACC Thomson was of the view that the restrictions were reasonable when imposed in 2010. However, with the passage of time, the role which Ms Daly had carried out during the period and with no end apparently in sight in relation to the perjury charge and proceedings in that regard, and in light of the restrictions which already had been lifted to some extent, her view was that it was not reasonable for the remaining restrictions to remain in place as at May 2016. ACC Thomson was conscious that the extent of restrictions had been reviewed in April 2015 and that the decision made at that point was that the restrictions were to remain as they had been since July 2013. She made the recommendation which she did on 4 May 2016 based on the circumstances which pertained at that date. Had she been making a recommendation in April 2015, her recommendation might not have been to that effect. Her opinion is that it does not follow that as she recommended removal of restrictions in 2016, she would have made the same recommendation had she considered the position in relation to Ms Daly in 2015. It weighed with her in particular in May 2016 that there had been a delay with the Crown Office regarding the criminal investigation and that there was no information as to when that investigation was likely to conclude. ACC Thomson made the recommendation. DCC Richardson made the decision upon removal of the restrictions.

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30 330. There was no basis from which to conclude that because restrictions had been lifted in May 2016 it was unreasonable that they were not removed or further relaxed in April 2015 or at any earlier point by way of a reasonable adjustment. In particular, the evidence in relation to May 2016 did not support

there having been a failure to make reasonable adjustments in April 2015 when restrictions were retained to the extent which they were.

**Finding in fact and law**

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331. There was no failure by the respondents to make reasonable adjustments to the PCP in the period after the duty to make reasonable adjustments arose for the respondents in the case of Ms Daly. Given the allegations against Ms Daly and the potential risk to the respondents, it would not have been a reasonable adjustment for the restrictions then in place in relation to Ms Daly to have been relaxed further or removed altogether. For the avoidance of doubt that was the position when the review of restricted duties was undertaken on 20 April 2015. This was as there was a reasonable and proper basis for the view taken by the respondents that the risk to the public and to the respondents themselves through removal or further relaxation of the restrictions made removal or further relaxation unreasonable. Retaining the restrictions or varying them to the extent which occurred did not breach the duty upon the respondents from 8 July 2013 to make reasonable adjustments to the PCP.

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**The Issues**

**Mr Reid**

25 332. The issues in the case brought by Mr Reid were:-

(1) Protected disclosure claim

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(a) Was there a series of similar acts which constituted acts or deliberate failures to act of the respondents said to have been done on the ground that Mr Reid had made a protected disclosure and as a result of which acts Mr Reid had suffered a detriment? In the alternative were those acts “stand alone acts”?

5 (b) Was any or all of the claim of detriment said to have been suffered by Mr Reid due to an act of the respondents done on the ground that he had made a protected disclosure brought out of time?

10 (c) If any such element had been brought out of time, was it not reasonably practicable for that element of claim to have been brought in time, leading to the claim being permitted to proceed although brought out of time?

15 (d) In relation to any element of claim of detriment said to have been suffered by Mr Reid, which detriment had arisen from an act or deliberate failure to act said to have been done on the ground that Mr Reid had made a protected disclosure, was the act done on that ground?

(2) Failure to make reasonable adjustments

20 (a) Was the alleged failure to make reasonable adjustments constituted by stand alone acts or by conduct extending over a period?

25 (b) Was any or all of the claim of alleged failure to make reasonable adjustments brought out of time?

(c) If any such element of claim was brought out of time, was it just and equitable to permit the claim to proceed nonetheless?

30 (d) Had there been any failure to make reasonable adjustments by the respondents?

- (3) Were the respondents vicariously liable for the actings of their employees in circumstances where the disclosures had been made prior to 25 June 2013?

5 **Ms Daly**

333. The issues in the case brought by Ms Daly were:-

- 10 (1) Protected disclosure claim
- (a) Had there been a protected disclosure made by Ms Daly and if so what was that protected disclosure and when was it made?
- 15 (b) Were any of the acts or deliberate failures to act said by Ms Daly to have caused her to suffer a detriment and to have been done on the ground that she had made a protected disclosure, in fact done on the ground that she had made a protected disclosure?
- 20 (2) Claim of failure to make reasonable adjustments
- (a) When did the respondents know or when ought they reasonably have been expected to know that Ms Daly was disabled in terms of EQA?
- 25 (b) Were those elements of the claim of failure to make reasonable adjustments which were out of time to be permitted to proceed nevertheless on the basis that it was just and equitable for that to be the case?
- 30 (c) In respect of any element of claim which was brought in time and any elements of claim brought out of time but permitted to proceed on the basis that it was just and equitable for this to



occur, had there been a failure by the respondents to make reasonable adjustments?

**Applicable Law**

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334. Section 43B of ERA states (insofar as relevant to these claims):-

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*“a qualifying disclosure` means any disclosure of information which in the reasonable belief of the worker making the disclosure tends to show one or more of the following:-*

(a) *that a criminal offence has been committed, is being committed or is likely to be committed;*

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(b) *that a person has failed, or failing or is likely to fail to comply with any legal obligation to which he is subject.”*

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335. Section 47B of ERA states (insofar as is relevant to these claims) the following:-

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*“(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.”*

The case of ***Fecitt v NHS Manchester [2012] ICR 372 (“Fecitt”)*** confirms that *“done on the ground that”* means done to more than a minor or trivial extent on that ground.

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336. In terms of Section 48(2) of ERA on a complaint being presented by a worker to the Tribunal under Section 48(1)(A) of ERA alleging breach of Section 47B of ERA , it is for the employer to show the ground on which any act or deliberate failure to act was done.

337. Section 1A of Section 47B of ERA was inserted on 25 June 2013. That provides that a worker has a right not to be subjected to any detriment by any act, or any deliberate failure to act, done by another worker of the worker`s employer in the course of that other worker`s employment. It applies, however, only in relation to qualifying disclosures made after 25 June 2013. In other words where, as here in the cases of both Mr Reid and Ms Daly, any qualifying disclosure was made prior to 25 June 2013, there is no vicarious liability on the part of an employer for detriments done by a co-worker of the claimant.

338. A claim of detriment said to have been suffered by a claimant due to having made a protected disclosure must be brought within 3 months of the act or failure to act to which the complaint relates. Where that act or failure is part of a series of similar acts or failures it must be brought within 3 months of the date of the last of those acts or failures to act. This is in terms of Section 48(3)(a) of ERA.

339. If such a claim is not brought within that 3 month period then it can be permitted to proceed if it was brought within such further period as the Tribunal considers reasonable in a case where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months. That is in terms of Section 48(3)(b) of ERA. The onus is on the claimant in that scenario to persuade the Tribunal that the test has been met and that the claim should be permitted to proceed although late.

340. The case of **Warrior Square Recoveries Ltd -v- Flynn UK/EAT/0154/12** ("**Warrior Square**") makes it plain that the relevant date for consideration of timebar is that of the act complained of rather than the detriment suffered.

341. In considering whether it was not reasonably practicable to lodge the claim within 3 months, a Tribunal should keep in mind that the phrase, broadly put,

means that it was not reasonably feasible. This is confirmed in the case of **Palmer & Another -v- Southend-On-Sea Borough Council [1984] ICR 372**. A Tribunal should have regard to whether a claimant was unaware of the right to present a claim to the Tribunal of the type in question and whether that ignorance was reasonable or not. Regard should also be had to any awareness or otherwise on the part of a claimant as to the time limit applying in respect of claims. The situation of a claimant being unaware of a fact which is of importance to the case is also generally something relevantly considered by a Tribunal. Again it is of relevance whether that ignorance was reasonable or not.

342. Whether a claimant had taken advice or had the opportunity to take advice is also of relevance in consideration by a Tribunal of this area. The source of that advice is of significance. If a claimant takes advice from a solicitor it is generally not the case that failure to present a claim on time will be regarded as being something which was not reasonably practicable. This is highlighted in particular in the case of **Dedman -v- British Building & Engineering Appliances Ltd [1974] ICR 53**. A trade union representative would also be presumed to know time limits and to understand the need to present a claim in time. If advice therefore is taken from a trade union representative it is difficult to maintain that it was not reasonably practicable to lodge the claim in time. This is confirmed in the case of **Times Newspapers Ltd -v- O`Regan [1977] IRLR 101**. It has been held to have been reasonably practicable for a claim to have been presented in time in circumstances where advice had been taken from the Citizens Advice Bureau. That is the case of **Riley -v- Tesco Stores Ltd & Another [1980] ICR 323**.

343. Health or disability of a claimant can be of relevance in the deliberation of a Tribunal as to whether it was not reasonably practicable to the time limit for presentation of a claim.

344. If a Tribunal is persuaded that it was not reasonably practicable for a claim to be presented within the time limit, a Tribunal must then consider whether the

claim was presented within a further reasonable period. The gap therefore between expiry of the time limit and the time when the claim is presented will be considered by the Tribunal if it is satisfied that it was not reasonably practicable for the claim to be presented in time. That gap in time in the period to presentation of the claim must be reasonable in the circumstances.

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345. This requirement means that a claimant must present a claim with reasonable speed after the expiry of the 3 months to minimise the delay. Again factors such as ignorance of fact or law and whether that was reasonable, illness and disability and the steps taken to obtain advice may be of relevance in the consideration by a Tribunal of this element of the test.

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346. Section 6 of EQA states that a person has a disability if he or she has a physical or mental impairment and the impairment has a substantial and long term adverse effect on the ability of that person to carry out normal day to day activities.

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347. In terms of Section 20 of EQA a duty is imposed upon an employer to make reasonable adjustments, the requirement being that where a PCP of the employer puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, such steps as it is reasonable to take to avoid the disadvantage must be taken.

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348. There may be circumstances in which a person on whom the duty lies does not know of the disability of the employee or worker involved. If that is said to be the case then the Tribunal must have regard to paragraph 20 of Schedule 8 of EQA. That states that a person is not subject to a duty to make reasonable adjustments if a person does not know and could not reasonably be expected to know that the disabled person had a disability and was likely to be placed at a disadvantage.

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349. In the case of ***Croft Vets Ltd and others v Butcher UKEAT 0430/12 (“Croft Vets”)*** the Employment Appeal Tribunal held that, in the particular

circumstances of that case, by not making payment for private psychiatric services and counselling for their employee the employer had failed to make a reasonable adjustment as required in terms of the provisions of the Disability Discrimination Act 1995 then in force.

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350. In some situations there is an act which has continuing consequences. In other situations there is a continuing act. The latter would comprise conduct extending over a period. The decision upon “act with continuing consequences” or “continuing act” will turn on the nature of the act. Relevant cases are:-

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- ***Hendricks -v- Commission of Police for the Metropolis [2003] IRLR 96***

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- ***Barclays Bank Plc -v- Kapur & Others [1991] ICR 208***

- ***Lyfar -v- Brighton & Sussex University Hospitals Trust [2006] EWCA Civ 1548***

20

- ***Sougrin -v- Haringay Health Authority [1992] IRLR 416***

- ***Owusu -v- London Fire & Civil Defence Authority [1995] UK/EAT/334/93***

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351. The Tribunal is to consider whether there is a regime, rule, practice or principal operating. If that is not the case then there is not conduct extending over a period, even in circumstances where there may be an effect over an extended period of time. There may therefore be an act or acts with continuing consequences rather than conduct extending over a period.

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352. In considering whether a claim although late should be permitted to proceed, the Tribunal requires to apply the statutory provisions which allow for

admission of late claims. In a case of alleged discrimination, a late claim will be permitted to proceed if the Tribunal is of the view that it is just and equitable for that to occur. The onus is on the claimant to persuade the Tribunal that the statutory test has been met.

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353. Applying the test of whether it is just and equitable that a claim is permitted to proceed though late involves a Tribunal in considering the circumstances which led to late submission of a claim. The Tribunal has a wide discretion in this area. As mentioned above, the onus is on the claimant to persuade the Tribunal that it is just and equitable to permit the claim to proceed though late. The case of ***Robertson -v- Bexley Community Centre t/a Leisurelink [2003] IRLR 434*** emphasises that there is no presumption that discretion should be exercised to allow a late claim to proceed. It is said that “*the exercise of the discretion is the exception rather than the rule.*”

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354. It is relevant for a Tribunal to consider the length of delay and the reasons for it. Ignorance of the right to bring a claim, time limits and any critical facts are all matters to which a Tribunal should have regard in its deliberation. The prejudice caused to each party if on the one hand the claim is allowed to proceed and if on the other it is not allowed to proceed is also of significance in the Tribunal’s exercise of its discretion. A Tribunal should also have regard to whether and to what extent memories or physical evidence may be affected by any delay.

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355. In assessing whether it is just and equitable to permit a claim presented late to proceed, it is relevant that advice may have been taken. That fact is however of less relevance and weight than is the case where the test is whether it was not reasonably practicable for the claim to be presented in time.

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### **Submissions**

356. Both parties lodged extensive written submissions. They spoke to those during the course of a Tribunal day. They did not cover all points in their written submissions when making their oral submissions. The Tribunal assured parties that it would consider the verbal submissions made and also read carefully the written submissions tendered. This has occurred.

357. Subsequent to the diet where submissions were heard and the case was closed, Mr Reid lodged further written submissions. Mr Gibson`s position in relation to those was that the Tribunal should not consider them insofar as they constituted submissions. The Tribunal confirmed to Mr Reid that it would take account of those submissions where they were of that nature. Much of what was said in this further document was essentially by way of further evidence in the case or was comment on events during the Hearing of the case.

358. A copy of the submissions made by Mr Reid is attached to the Judgment and is marked Appendix 1. A copy of the further submissions lodged by Mr Reid is attached and forms Appendix 2.

359. Appendix 3 is the written submission lodged by the respondents in the case of Mr Reid. Appendix 4 is the written submission lodged by the respondents in the case of Ms Daly.

360. The submissions for both parties are now briefly summarised. The submissions themselves are far more extensive and wide ranging as can be seen from the appendices.

### **Submissions for the Claimants**

361. For the claimants, it was submitted that there was ample evidence to support the view that the restrictions on duties had been imposed as a result of protected disclosures made. There had been no restrictions prior to protected disclosures being made. The restrictions were imposed soon after the protected disclosures were made in the case of Ms Daly. Mr Reid maintained

5 that the restrictions in his case were imposed in June 2011. He argued that the briefing note and decision of the DCC in May 2010 were not events which happened at that point. Ms Daly, however, did not take that point. In her case it was maintained that the restrictions were imposed in May 2010, the disclosure having been made less than a month prior to that.

10 362. Whilst investigations had been underway, it appeared, prior to restrictions being imposed, it was only when disclosures were made that executive action followed and restrictions then were imposed.

15 363. The claimants` position was supported, it was submitted, by the fact that other Police Officers had been accused of far more serious things than had the claimants, yet there had been no restrictions imposed in their cases. Alternatively, as some evidence came out, at least one other Officer had made what might have been a protected disclosure and then had had restrictions imposed.

20 364. In short, it was submitted, the respondents did not like being criticised and had closed ranks to make the working lives of the claimants very difficult. They had been unnecessarily heavy handed. It took a very long time for cases to be progressed. Meantime restrictions had remained in place. The complaints were essentially about DS Dillet. PSD and CCU had closed ranks around him. He himself had prepared an SPR report which he knew to be false and which had resulted in criminal proceedings based on alleged breaches of the DPA. A fraud charge had also been brought against Mr Reid. 25 DS Dillet knew, however, that the basis of his SPR report was false, it was submitted. He passed the SPR to the Crown Office in the terms set out as a means of "*getting back at*" the claimants. The SPR report in particular had formed the foundation of continuing restrictions. The actings of DS Dillet 30 which were a reaction to the protected disclosures had therefore formed the foundation of other detriments suffered by the claimants at the hands of the respondents.



365. In relation to the claims based on the protected disclosures, there had been a series of similar acts. The claims had been brought in time. That had been confirmed in Ms Daly's case by earlier Judgment of the Tribunal. Insofar as not in time Mr Reid's claim on this ground should be permitted to proceed.  
5 He had to think long and hard before proceeding with claims against the Police. He had legitimate worries as to career consequences if such steps were taken. In general terms Police Officers did not take action of this type. If his claim was determined to have been presented late, it was not reasonably practicable for Mr Reid to present his claim under the protected  
10 disclosure provisions of ERA to the Tribunal prior to the time he did present it.

366. The evidence and testing of it established, it was submitted, that the basis for the restrictions was not well founded. The evidence of Mr Richardson in  
15 particular was said by the claimants not to be credible. There was no basis on which the restrictions and maintenance of them in respect of each of the claimants was reasonable and proportionate.

367. Further, it was a reasonable adjustment for the restrictions to be relaxed or  
20 removed to enable each of the claimants to carry out meaningful work in circumstances where they were disabled. They had each worked diligently and with integrity in roles which they had been asked to perform. In reality, Mr Reid in particular had had access to IT systems notwithstanding the restrictions placed upon him by the DCC. Giving access to IT systems would  
25 have enabled IT use by each of the claimants to be more accurately tracked than was the case through obliging them to ask others to send on material or print off material for them.

368. Insofar as any element of claim had not been lodged in time, there were good  
30 and appropriate reasons why that had occurred. Time limits ought to be extended on the basis that it was not reasonably practicable for the claim of detriment said to have been suffered as a result of acts or deliberate failures to act which were due to the making of a protected disclosure to have been

lodged within the relevant time as detailed above. It was just and equitable to extend the time limit in respect of the disability discrimination claim if extension of time was required. That was so in the case of both claimants. Evidence supported the Tribunal taking that view.

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**Submissions for the Respondents**

369. The evidence from the witnesses for the respondents had been credible and should be preferred to that of either of the claimants, Mr Gibson submitted. Indeed, he said, the evidence from Mr Reid in particular was contradictory at times and in conflict in places with the position he set out in his pleadings. Evidence from other witnesses for the claimants did not in fact support the position of the claimants. The argument advanced that other Officers had committed far more serious offences yet had not been subject to restrictions was not substantiated on the evidence. The Tribunal required to bear in mind the range of offences which it was alleged were involved in the cases of Mr Reid and Ms Daly and the nature of those offences. It required to consider the nature of the offences which other Officers had been said to have committed and the range of those offences as alleged. What could be deduced from that evidence was that each case had been dealt with on its merits. Similarly the evidence as to restrictions imposed on Ms Daly and relaxation of those over time and their ultimate removal supported the view that each case was considered on its own merits.

25 370. Mr Gibson urged that the Tribunal accept the evidence of the respondents' witnesses. A cover up was not supported by the evidence.

371. It had taken a long time to get even to the present position. That was not, however, a deliberate act of the respondents. It reflected the time taken in the criminal process. It then reflected further time taken in the criminal process due to the allegation of perjury made by Mr Reid. The respondents had done what they could to provide work for Mr Reid, however, it was difficult to find meaningful work given the restrictions imposed upon him. Those restrictions

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were, however, necessary having regard to the nature and extent of the allegations against him.

5 372. Mr Gibson reminded the Tribunal of DCC Richardson`s evidence that whilst an Officer might have health issues which the restrictions did not assist, it would not be appropriate to waive or relax those restrictions purely on that ground if that meant exposing the respondents and the public to risk. That was his assessment. Ultimately in fulfilling his duty in considering whether and to what extent restrictions were appropriate, the interests of the public  
10 and of the respondents in reducing or eliminating risk outweighed health considerations in relation to the individual Officer involved. It was not therefore a reasonable adjustment, the respondents submitted, to remove or relax the restrictions further than had occurred.

15 373. There had not been a protected disclosure by Ms Daly.

374. The claim as brought by Mr Reid in relation to detriment said to have been suffered by him as a result of an act done on the ground that he had made a protected disclosure or disclosures and his claim of discrimination on the  
20 ground that there had been a failure to make reasonable adjustments were both late and should not be permitted to proceed applying the appropriate statutory test. The elements of claim of failure to make reasonable adjustments brought by Ms Daly and which had been held by a Preliminary Hearing to have been brought out of time ought not to be permitted to  
25 proceed.

375. Insofar as claims were either already regarded as being appropriately before the Tribunal or were permitted to be before the Tribunal, they should be unsuccessful. There had been no acts done on the ground that either  
30 claimant had made a protected disclosure such that a claim in respect of alleged detriment was well founded. Equally there had been no failure to make reasonable adjustments.

**Discussion & Decision**

5 376. This case involved substantial evidence being led before the Tribunal over a lengthy period of time. The days initially set down proved insufficient for the Hearing of the evidence in the case. Evidence was therefore taken over various dates between May and November 2017. Due to difficulties with witness availability at certain points, from time to time witnesses were interposed. This meant that the obtaining and assimilation of evidence was not straightforward.

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377. There were two cases involved, one at the instance of Mr Reid and one at the instance of Ms Daly. Although there was overlap between the cases and it was an efficient use of time to hear the cases in the same Tribunal sessions, the fact that there were two cases, each with separate although related facts and circumstances, added to the material before the Tribunal.

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378. These elements are mentioned as it has taken longer than might ideally have been hoped for the Judgment to be reached by the Tribunal and then for this Judgment to be prepared ready for issue to the parties. Apologies are tendered for that delay.

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379. Mr Reid acted on his own behalf and also on behalf of Ms Daly. The Tribunal kept in mind whilst hearing the case and in considering the various points of dispute during that time that Mr Reid was not legally qualified. The Tribunal was mindful throughout of the over-riding objective, dealing with the case fairly and justly. It sought to ensure that balance was maintained. It is appropriate, however, to record in this connection that Mr Reid had an excellent grasp of the extensive paperwork in the case. Despite the circumstances of bringing a claim against his current employers, those employers having a hierarchical structure and a “*command and control*” type of organisation, Mr Reid was well able to set out his own position and to advance the position on behalf of Ms Daly, taking issue with witnesses for the respondents and challenging them in a robust manner.

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380. There were various points during the Hearing at which witnesses were asked by the Tribunal to leave the Tribunal room in order that points of challenge either by Mr Gibson or Mr Reid to lines of evidence could be considered by the Tribunal. Mr Reid proved himself an able advocate in advancing his own position or that of Ms Daly in any such situation. He had acquired an understanding of the law in different areas.

381. The Tribunal was conscious throughout the case that in the claim brought on the basis of detriments said to be due to acts or deliberate failures to act done on the ground that the claimants had each made a protected disclosure, it required to consider the evidence of all parties as to the circumstances in which restrictions had been imposed and to consider the surrounding documentation and reasons advanced for imposition of the restrictions. It required to test the propositions advanced by all parties and to weight those up. It would seldom be likely that there was an obvious “*smoking gun*” by way of written evidence or an admission during evidence by a witness as to the reason (in this case) for imposition of restrictions not being that advanced by the party who had called that witness to give evidence. The Tribunal required to consider the individual acts or deliberate failures to act said to have been done on the ground that Mr Reid or Ms Daly had made protected disclosures.

382. It also was appropriate for the Tribunal to “stand back” to look at the position as a whole. It might be that doing that would disclose a pattern or would reveal more about the nature of the acts or deliberate failures to act. The Tribunal undertook that examination and the process of “standing back” and looking at the whole picture. It did this in coming to the determination which is set out in this Judgment.

383. With this approach in mind, the Tribunal allowed lines of questioning and a range of evidence beyond that relevant to the periods of claim brought by each of the claimants. In particular, evidence was led from the now retired ACC Ms Thomson. She had recommended to DCC Richardson that the restrictions on Ms Daly be removed. DCC Richardson had acted upon that

recommendation and had decided to remove those restrictions. This was in May 2016. The claim brought by Ms Daly was relative to the period to 3 August 2015 when she presented her claim.

5 384. Mr Reid and Ms Daly were keen that the Tribunal hear from ACC Thomson. Her evidence was felt to be of potential relevance in that it would allow the Tribunal to assess why she had recommended removal of restrictions in 2016. In addition to hearing from DCC Richardson as to why he decided not to remove the restrictions in 2015 but decided that the restrictions would be  
10 removed in 2016, hearing from ACC Thomson was thought to be a means of “*casting light*” on decisions earlier taken in the case of Ms Daly.

385. Similarly hearing from DCC Livingstone was thought to be of potential assistance to the Tribunal in assessing the reasons for decisions earlier made  
15 upon imposition or relaxation of restrictions.

386. Likewise, evidence from other Police Officers was heard at the instigation of Mr Reid and Ms Daly. Their position was that other Police Officers had been alleged to have committed more serious crimes or acts than had Mr Reid or  
20 Ms Daly. Those other Officers had not, however, been subjected to restrictions, it was said. The difference was, it was said, that the other Officers had not “*whistleblown*” whereas Mr Reid and Ms Daly had whistleblown. It was argued that this therefore showed that imposition of restrictions, or certainly restrictions to the extent to which they were imposed, was done on  
25 the ground that Mr Reid and Ms Daly had made protected disclosures.

387. In fact it became apparent from evidence led from all of these sources ACC Thomson, DCC Richardson, DCC Livingstone and the three Police Officers, that the position of the respondents was supported rather than that of the  
30 claimants.

388. The respondents maintained that each case was looked upon on its own merits. That was, in the view of the Tribunal, plain from the evidence which it

heard. Mr Reid faced different allegations to those faced by Ms Daly. Both  
faced allegations under DPA and in respect of an attempt to pervert the  
course of justice. In addition, however, Mr Reid faced allegations of  
corruption and breach of the Telecommunications Act. Mr Reid and Ms Daly  
5 were dealt with differently. They were associated with one another both  
personally and in relation to the offences said to have been committed. After  
the initial period when both faced a blanket ban on IT systems use however,  
Ms Daly saw restrictions being removed to a greater extent than did Mr Reid.  
She gained access to a wider range of systems and at an earlier date than  
10 did Mr Reid. Her restrictions were ultimately removed.

389. It was also of note that Mr Reid was not simply banned from all IT systems  
with that ban remaining in place throughout the period involved. When a  
particular job opportunity arose, the IT restrictions were eased so that he  
15 could fulfill the post in question by having access to some systems.

390. Insofar as the other Police Officers were concerned, looking to allegations  
made against them, there was a basis for the differentiation between  
restrictions imposed upon them and those imposed upon Mr Reid and Ms  
20 Daly. The allegations against the other Officers were different in nature or  
not as extensive as those in the cases of Mr Reid and Ms Daly.

391. The Tribunal appreciated that the position of Mr Reid and Ms Daly was that  
there was a greater risk to the respondents and to the public through some  
of the Officers to whom they referred and from whom the Tribunal heard  
25 evidence having access to IT systems than the risk posed by Mr Reid and Ms  
Daly having access to IT systems. It heard from the Officers as to their  
understanding of decisions made and restrictions imposed together with the  
allegations made against them. In the view of the Tribunal, it was not for it to  
make a detailed assessment in respect of risks. That would have involved  
30 hearing much detailed evidence about the other Officers and their alleged  
offences and the reasons for decisions taken in relation to them. In that  
scenario the Tribunal would also require to have heard from senior Officers  
within the respondents' organisation as to what they made of the information

as to alleged offences and restrictions imposed on those other Officers. Rather than becoming involved in the detail of each Officer and the alleged offences involved, the view of the Tribunal was that it could hear the evidence which it did and then make an assessment of that evidence and whether it revealed apparent anomalies which supported the position of Mr Reid and Ms Daly or whether it supported that of the respondents.

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392. The view to which the Tribunal came upon the evidence from other Police Officers was that there were no other Officers in the same position as Mr Reid or Ms Daly. In particular, of those Officers, only PC Gavin was subject to an allegation that he had attempted to pervert the course of justice. The allegation against him appeared to relate to alleged assault of a colleague. No other Officer was alleged to acted corruptly by selling information or stories to the press in exchange for money.

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393. The evidence from PC Gavin was unclear to the point of being contradictory in some areas. The Tribunal viewed his evidence as not being particularly reliable. He denied, for example, that he had been subject to IT restrictions then later accepted that had been subject to such restrictions. He initially referred to having taken a grievance, although later said he had whistleblown.

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394. The closest analogous Officer was PC McConnell. He was prosecuted under the DPA, the allegation being that he had accessed SID without a Policing purpose. He was questioned by Officers from the CCU as to whether he had passed intelligence to criminals. He was never arrested or charged in relation to any such allegation. 22 breaches of the DPA were alleged to have occurred. IT restrictions were placed upon him such that he was not allowed to search SID. He remained able to input information into that system. It was difficult for the Tribunal to assess the strength of the information which had been put to PC McConnell during the investigation and accordingly to assess the level of risk perceived by the respondents.

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395. It was not possible in reality in the view of the Tribunal to draw much from the evidence from other Police Officers. There was certainly no clear picture which emerged to support the view that the decisions made as to restrictions in the cases of Mr Reid and Ms Daly were at odds with decisions made in other cases. Indeed it was hard to draw that inference on the evidence the Tribunal heard. The Tribunal was unable to conclude that any difference in treatment between Mr Reid and Ms Daly and the other Officers involved was attributable to the fact that Mr Reid and Ms Daly had made protected disclosures, the Tribunal looking to determine whether it was attributable to that reason to any more than a minor or trivial extent. Any evidence given supported the respondents' position that each case was dealt with on its own merits.

396. During the case the Tribunal heard much evidence as to alleged actings of the Police in different situations. The workings of CCU and PSD were explored as was the Police handling of complaints against the Police. Mr Reid in particular sought to make much of what he viewed as being complaints against the Police made by him which had not been investigated in what he regarded as proper and legally compliant fashion. The respondents on the other hand highlighted that whilst allegations had been made by Mr Reid, they were not complaints by a member of the public. He made the allegations as a Police Officer who was being investigated for alleged misconduct. His complaints were also, in the respondents' view, not appropriately treated as complaints against the Police in the formal sense. This was as they were criticisms or expressions of dissatisfaction (those expressions not being used by the respondents in evidence, for clarity), or complaints, in the broadest sense rather than in the sense of the SOP. They had been made by Mr Reid at a time when he was under suspicion and pressure. The respondents did not see their formal Complaints against the Police procedure being triggered in that scenario. The Tribunal was satisfied that they had a reasonable basis for that view. The respondents confirmed that the allegations made by Mr Reid would be investigated as part of the misconduct proceedings, as would normally occur in the situation which had arisen.

**Assessment of Credibility**

5 397. The Tribunal had some difficulty in this area. Mr Reid and Ms Daly gave their evidence with much conviction and passion. They are each clearly convinced of the correctness of their position and of the accuracy of their recollection. They are each entirely suspicious of evidence put forward by the respondents. Mr Reid in cross-examination of the respondents` witnesses expressed disbelief and cynicism when any witness from the respondents had difficulty recalling any particular matter. The position for the claimants was that DS Dillet had been heavy handed to the point potentially of criminal actings in March 2010. That, it was said, had led to the protected disclosures being made. DS Dillet had then "*over egged*" things in preparing the briefing note. He had presented false information in that note, it was alleged. That had led to imposition of restrictions. He was said to have acted in this way due to the protected disclosures made.

20 398. Prior to that, Mr Reid had been moved to Partick. That may have been on the order of PSD. PSD had then ordered his removal from the production store in Partick and into a divisional role. There was no meaningful work in that divisional role. He said he had been faced with day to day absence of work or a requirement to carry out humiliating tasks. The SPR submitted to the Fiscal had ultimately led to a trial to the decision to prosecute. At trial it had become apparent that the information at the heart of the SPR was not supported by the evidence led at the trial or did not form the basis of possible conviction upon the charges brought. This had all occurred because Mr Reid and Ms Daly had made protected disclosures, it was said. Officers had committed perjury at the trial, it was alleged.

30 399. The evidence the Tribunal heard, and accepted, was that it would not have been in the power of DS Dillet to mastermind and control the sequence of events which occurred. He had a role in preparation of the briefing note. He had a role in preparation of the SPR. Others, however, were involved. The

Fiscal in particular considered the information available. This comprised not only the SPR but also precognitions. The Fiscal determined that prosecution was appropriate. The Fiscal decided both that charges would be brought and what the nature of those charges would be. The Fiscal drafted and framed the charges. The information given to the Fiscal as to training and anticipated evidence from PC Maini was appropriate material to be given to the Fiscal. It appeared to have been the case that the evidence given at the trial was such that the offences were not established. That is something which happens from time to time. Evidence given at a trial may differ from that given by way of precognition. Alternatively, it might have a different emphasis to what might be said in the precognition. The possibility remained that others had acted with DS Dillet to bring about events which occurred, the ground of acting being the protected disclosures made by Mr Reid and/or Ms Daly.

15 400. The Tribunal found it impossible to accept on the evidence it heard as to (1) how a briefing note was prepared, with the involvement of various parties, (2) how the decision on restrictions was made given again the involvement of various parties and (3) the preparation of the SPR which again involved more than one party, that DS Dillet, whether on his own or with others, others within  
20 CCU or others within the wider elements of the respondents` organisation had acted as they did either individually or together on the ground that Mr Reid and Ms Daly had made a protected disclosure. There was a credible and persuasive alternative explanation of the decisions made as to restriction of duties and consequent variations. The Tribunal accepted that decisions  
25 had been properly made for operational reasons and/or as a result of assessment of the allegations and information available at the time.

401. The respondents had established the ground on which their acts or failures to act were done. That ground was not the making of protected disclosures  
30 in the assessment and determination of the Tribunal.

402. It was of significance to the Tribunal in this regard that for some time prior to DS Dillet conducting any interviews in March 2010 and for some time before

therefore any protected disclosure was made, there had been an investigation underway into alleged actings by Mr Reid, and also Ms Daly, involving possible attempts by them to pervert the course of justice and possible DPA offences. In Mr Reid`s case the investigations also extended to  
5 selling information to the Press for financial reward, breach of the Telecommunications Act and association with organised crime group members.

403. The Tribunal was satisfied that the restrictions were imposed following upon  
10 the covert operation, latterly Operation Blight, having become overt. The reason for imposition of restricted duties was not because Mr Reid and Ms Daly had made protected disclosures. There was a cogent explanation by the relevant witnesses for the respondents of the grounds for the decision taken and why the decision taken was appropriately taken in the terms in which it  
15 was. Those witnesses included in particular DCC Richardson, who took the decisions on restrictions of duties and as to variations thereof.

404. The allegations made against Mr Reid and Ms Daly, whether ultimately  
20 upheld or not, had a genuine basis in that there was, on the evidence before the Tribunal, a perfectly reasonable basis on which to advance those allegations.

405. Equally in light of those allegations and the basis which appeared to exist for  
25 them to be advanced, the decision to impose restrictions in principle and to the extent which occurred was accepted by the Tribunal as being one which reasonably could be made in implement of the authority of the DCC. His decision involved the application by him of the elements properly to be considered in deciding whether or not to impose restrictions and if so to what extent. The Tribunal was also of the view set out in this paragraph in relation  
30 to the decisions made as to variations about which it heard evidence.

406. The Tribunal considered very carefully the allegation that the briefing note and decision of the DCC thereupon were not correctly dated 6 and 7 May 2010 respectively.

5 407. The Tribunal had on the one hand the evidence of Mr Reid as to why in his view the dates could not be correct. His position was that the person who he said was within his house, and who he said he had telephoned on the day of the assault involving Craig Reid, could not have been contacted by CCU on 6 May 2010 to confirm that he had not in fact been at Mr Reid`s house that day. Mr Reid said it was not possible that CCU contacted this person on 6  
10 May 2010 and established that. This was as whilst they may have spoken to the girlfriend of the person said to have been at Mr Reid`s house on 6 May, she had not passed on a contact number that day. That contact number had only been supplied by her some days later. The person involved could not  
15 therefore have been spoken to on 6 May, it was said by Mr Reid. The briefing note was incorrect when it said he had been spoken to.

408. Mr Reid in giving his own evidence did not wish to disclose why it was that he said the report of 6 May 2010 and the decision of the DCC on 7 May 2010  
20 could not in fact have been acts done on those dates. Given the sensitivity of the situation the Tribunal agreed that he could "*keep his powder dry*" and raise the point he wished to make, said to establish his proposition, only in cross-examination of DS Dillet. At that point it was uncertain that DS Dillet would in fact give evidence. DS Dillet did attend to give evidence. The point  
25 was put to him "*cold*" in cross-examination.

409. The Tribunal accepted DS Dillet`s evidence that, to his recollection, whilst Mr Reid had been interviewed on 6 May 2010, at the same time as the interview was occurring, an Officer within CCU was seeking to track down the person  
30 who Mr Reid had said was at his house when the incident with Craig Reid took place. DS Dillet said that his recollection was that the person who was said to have been at the house was formerly with the Army and was in Afghanistan, although not on Army business at that point. He said that his

recollection was that his colleague had spoken to the Army and that the Army had been able to pass on a contact number on 6 May. Contact had then been made on 6 May. The person had been spoken to then. That led to the ability to complete the briefing note that day, including the statement that the person involved had said that he was not at Mr Reid's home on the date of the incident involving Craig Reid.

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410. In addition to DS Dillet's evidence on this point the Tribunal also heard evidence, which it accepted, from DCC Richardson that , whilst he could not recall specifically signing the document on 7 May 2010, he would have dated it when he signed it. It was also of relevance that Ms Daly did not challenge the restrictions having been placed on her duties with effect from 7 May 2010.

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411. Mr Reid also suggested that the form signed by DCC Richardson and dated 3 June 2010 which appeared at AR 378 had not in fact been signed by him on that date. That form confirmed restriction on duties and that Mr Reid was not suspended. The note at AR 372 confirmed that suspension would be considered on return to work. The form at AR 378 confirmed that there was to be no suspension in the case of Mr Reid. He was anticipated as returning to work at that point. The same form appeared for Ms Daly at AD 194. It is dated 7 May 2010. It does not specify whether or not Ms Daly is to be suspended, both options, "Yes/No" being left unmarked on that form. Ms Daly was at this point absent from work. The Tribunal was satisfied that DCC Richardson had considered the possibility of suspension in relation to Mr Reid on 3 June 2010. He confirmed at that point that restricted duties applied in relation to Mr Reid and that he was not to be suspended.

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412. The Tribunal wishes to underline that it did not simply consider that this and all other evidence from the DCC must be truthful because he was, or had been, the DCC. It evaluated the evidence critically and carefully. It also approached this and indeed the other evidence in the case, very much aware that one view was that the respondents were trying to "*pull the wool over the eyes of the Tribunal*". That was perhaps a reasonable summary of a key point

advanced by Mr Reid. The Tribunal was alive to that proposition. It kept that in mind in its assessment of the evidence. After diligent consideration of the evidence it did not however accept that this was what the respondents were seeking to do in these cases.

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413. Also of importance was that, Mr Reid said that restrictions on his duties were not imposed until July 2011. However, an email to Chief Inspector Black of 6 June 2010, AR 379, whilst not from Mr Reid, sets out his reason for not returning to work on 7 June 2010. It refers to his "*removal from Police systems*". That is consistent with restrictions having been imposed prior to that time and that having been communicated to Mr Reid, notwithstanding his evidence to the contrary. Mr Reid also said in his pleadings in a passage at AR 11 that on his return to work on 25 July 2010 "*I was placed in a job within the sub-divisional production store. However, I was restricted from normal duties and allowed to do very little work whilst enquiries were ongoing.*" This supports the view that he was on restricted duties and knew that in July 2010.

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414. Perhaps in relation to the position of restricted duties, the high point of the challenge to credibility of there being a risk to the respondents through systems access on the part of Mr Reid and Ms Daly was in relation to the position after January 2015 when the trial in respect of DPA offences had resulted in acquittal of Mr Reid and Ms Daly. It might have been thought that with acquittal in the criminal proceedings the risk to the respondents of access to IT systems on the part of Mr Reid and Ms Daly had diminished. It might have led to relaxation or removal of restrictions. That did not occur.

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415. The respondents were, however, convincing in their explanation that with misconduct proceedings still "*live*" and about to move forward, and with there being a lower standard of proof in the misconduct proceedings than in the criminal trial, the risk had not in fact reduced. The respondents remained of the view that misconduct had potentially occurred, even if the actions of Mr Reid and Ms Daly were not, in terms of the DPA, criminal in nature. Other allegations also remained "*live*". As it turned out with the allegation of perjury

made by Mr Reid the misconduct proceedings did not in fact move forward at that stage.

5 416. In assessing credibility the Tribunal took full account of the number of times and the number of witnesses who said in relation to different points of evidence that they could not remember specifics. On occasion help was obtained from documentation at the time. Occasionally that documentation did not help to any great extent.

10 417. Mr Reid was very doubtful as to that being an accurate reflection of the knowledge or lack of recall of any such witness. His view was that the Police are trained to recall events and indeed to document events. That is certainly true. Equally, however, even the best of memories fade over time. Further, it may well be the case that it is difficult to recall detail of an event which did not  
15 seem of particular significance at the time but has since become of significance and has been placed under the microscope in the context of a Tribunal or Court Hearing. If the person being questioned has moved on to other roles or has retired from employment with the organisation involved in Tribunal Hearings, access to documentation in the period prior to the Tribunal  
20 Hearing with a view to assisting recall potentially, may also present difficulty. In addition, although it can be hard for an individual who brings a claim to accept, the circumstances and full detail relevant to that individual may not, no matter how key or important they are to the individual themselves, particularly log in the mind of the person within the organisation who is dealing  
25 with the matter in question.

418. The Tribunal assessed the evidence of former DCC Richardson against the background of the reviews which he said had been carried out of cases where restrictions had been imposed, including the cases of Mr Reid and Ms Daly.  
30 It kept in mind that the cases of Mr Reid and Ms Daly had been subjected to review apparently on a regular basis over a period of 5 years by the time Ms Daly's claim was brought. It bore in mind that DCC Richardson had retired from that role some 16 months prior to the Tribunal Hearing.



419. The Tribunal accepted that DCC Richardson could not recollect the detail of each review. Recommendations with explanations had been tendered to him. Questions may have been asked by him, however, the outcome was that he had agreed with the recommendations for the reasons set out in the briefing notes to him. The Tribunal did not accept that his lack of recollection was other than genuine.

420. One of the difficulties which the Tribunal faced and in relation to which it had sympathy with the respondents, was that there was a substantial volume of written material submitted by Mr Reid setting out both his own case and that of Ms Daly. Some of this had been by way of pleading in the sense of the claim and amendments. Other elements had been by way of information presented to the Tribunal but not incorporated within an amendment.

421. There were some variations or contradictions in the information presented in writing by Mr Reid both as between different elements of those writings and also between what was said in print and what was said in evidence at the Tribunal. The reference above to restrictions being in place in June and July 2010 is one such instance. Oral evidence given by Mr Reid departed from that position.

422. Another example is that Mr Reid was clear in written communications at the time of his complaint that it was the conduct of DS Dillet about which he was complaining. He specifically excluded from criticism at that point the conduct of the Officer who accompanied DS Dillet. Ms Daly's disclosure was similarly about the conduct of one Officer, DS Dillet. In evidence Mr Reid was firm in stating that the conduct of the colleague with DS Dillet in March 2010 was just as bad as the conduct of DS Dillet. That seemed to the Tribunal to be a position adopted by him when, in particular, it was highlighted that an Officer accompanying another Officer would have a duty to speak up in some fashion if that Officer felt that the conduct of the other Officer was inappropriate or

unsatisfactory. It appeared that Mr Reid adjusted his position in evidence by then criticising the other Officer as well as DS Dillet.

5 423. A further example of a contradictory position on the part of Mr Reid is that previous evidence had been given by him at a PH that he first had contact with Mr Sallens in September 2013.

10 424. In evidence before this Tribunal Mr Reid said that the meeting with Mr Sallens had been in May 2013. He also, however, said in evidence at this Tribunal that he had had contact for the first time with Mr Sallens in August 2013.

15 425. Mr Reid said that it was only on meeting Mr Sallens and discussing the position with him that he realised other Officers had been dealt with differently and that the making by him of protected disclosures was, he believed, the reason he was treated as he was. The difference in treatment is not however critical for there to be a complaint made to the Tribunal of detriment done on the ground of the making of a protected disclosure. In January 2013 Mr Reid had set out in correspondence to the Tribunal his view that he had made protected disclosures and that as a result he had been treated unfairly. He  
20 did not seek to amend the claim, however, to bring that matter appropriately before the Tribunal. The timing and content of this document did not sit with the evidence from Mr Reid as to him becoming aware only in September 2013 of a potential case based on detriment said to have been suffered due to the making by him of protected disclosures. The variation in evidence from him  
25 as to that date, being referred as being August 2013 or May 2013 as well as September 2013 was also not helpful to his credibility and reliability in this area.

30 426. Two further aspects illustrate the concern of the Tribunal that Mr Reid had convinced himself that a version of events represented the facts whereas the actual facts might be slightly different. DCC Livingstone said that he was awaiting a report on the investigation in relation to misconduct allegations against Mr Reid. He said that he required the report from the investigating

officer. Mr Reid challenged him on this saying that DCC Livingstone had the report. DCC Livingstone said that this was categorically wrong. Mr Reid then challenged DCC Livingstone by saying that Inspector Cameron, who was initially carrying out the investigation, said that he had sent the report to DCC Livingstone`s office. Mr Reid said that an email had been sent by Inspector Cameron with the report. Mr Reid said he had seen that email, although he did not produce it to the Tribunal. Inspector Cameron was to give evidence at a later stage in the proceedings. DCC Livingstone reiterated that he had never seen the report.

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427. When Inspector Cameron came to give evidence he confirmed that he had not in fact completed the investigative report. He had not therefore sent it on to DCC Livingstone. The investigation had been sisted due to the allegation made by Mr Reid of perjury in the criminal trial in relation to alleged DPA offences by Mr Reid and Ms Daly.

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428. Despite the position put to DCC Livingstone, with some force, by Mr Reid and despite Mr Reid as part of that challenge saying, as mentioned, that Inspector Cameron said he had sent on the report and that Mr Reid had seen an email confirming that, Inspector Cameron`s evidence that he had not completed the report and had not sent it to DCC Livingstone was not challenged by Mr Reid. Had this been a relatively insignificant part of evidence, it might have been viewed as being an omission by an untrained representative. The knowledge which Mr Reid had of his case and the specific point he had put to DCC Livingstone on this matter, however, made it extremely unlikely in the view of the Tribunal that Mr Reid had simply overlooked challenging Inspector Cameron as to his evidence. Putting the position as strongly to DCC Livingstone and then leaving evidence contrary to Mr Reid`s position, and therefore entirely consistent with the evidence from DCC Livingstone, unchallenged led the Tribunal to wonder why the questions had been put to DCC Livingstone in the manner which they had. It suggested at the very least that Mr Reid saw things a particular way without there necessarily being substance behind that.

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429. A further relevant passage of evidence in this regard came again from Inspector Cameron. A key and repeated part of Mr Reid`s evidence was that the respondents could not possibly have believed that he had sold the story to the Press to which reference was made in these Tribunal proceedings. An important aspect of that assertion was his position that the payment to his mother had been before the incident occurred so could logically not have related to information passed about the incident.

430. Inspector Cameron gave evidence of there being 3 payments to Mr Reid`s mother all of which were after the date of the incident. That evidence was also unchallenged. This also might have been an example of an oversight on the part of an untrained party acting as his own representative. The Tribunal again found that hard to accept, however, given the repeated and strong emphasis Mr Reid placed upon this aspect when he was giving evidence. Further, in later questioning of witnesses, he implicitly accepted that there had been more than one payment to his mother.

431. The Tribunal did not conclude that Mr Reid had lied during his evidence but rather came to the view that he had convinced himself of the truth in a particular version of events. His credibility and reliability was however significantly dented by the contradictory evidence and the elements just mentioned.

432. The Tribunal concluded that the witnesses for the respondents had given evidence to the best of their ability and in a credible fashion. There were some instances where reliability on particular elements of evidence was doubted. Where that occurred, however, that was due to the passage of time and an inability to recall matters rather than due to any view on the part of the Tribunal that the evidence from those witnesses on any such point was contradictory. It was, in particular, helpful to have evidence from DS Dillet. That enabled the Tribunal to assess more accurately the basis for his actions. It informed its view on the decisions of the respondents. It should be stressed that the Tribunal did not simply accept the evidence of DS Dillet without

weighing that against evidence from other parties including in particular the evidence from Ms Daly and Mr Reid.

5 433. Assessment of all of the evidence, both oral evidence given and evidence in documentation, together with the manner in which that evidence was given by various witnesses and taking account of the testing and robust cross-examination by both Mr Reid for the claimants and Mr Gibson for the respondents, resulted in the Tribunal being satisfied on two key points.

10 434. Firstly, the acts, or deliberate failures to act, done by the respondents which were said to have been done on the ground that the claimants had made a protected disclosure were not done on that ground. This is in the sense that the reason for those acts being done was not to any more than a minor or trivial degree due to the making of any such protected disclosure. That is the  
15 test as stated in *Fecitt*. The accepted evidence did not support the making of a protected disclosure as having played any part in the acts said to have caused each of the detriments said to have been suffered by Mr Reid and Ms Daly. The reasons advanced by the respondents for the acts or deliberate failures to act being done were accepted by the Tribunal. They had shown to  
20 the Tribunal the grounds on which those acts were done.

25 435. Secondly, it was not a reasonable adjustment to relax or remove the restrictions in respect of each of the claimants other than as occurred. This was so given the assessment of risk involved to the respondents and to the public if restrictions were further relaxed or removed at those times. The Tribunal wished to underline that it did not simply “*take the respondents` word for this*”. It considered the analysis put forward by the respondents. They had set out the factors of which account was taken and the reasons for assessing  
30 the risk as they did. The Tribunal considered the allegations made against Mr Reid and Ms Daly and whether there was a basis for those allegations to be made against Mr Reid and Ms Daly. It was satisfied that there was such a basis. That is not to say that the allegations are true, it must be stressed. The

respondents' position was that if the risks to which they referred were regarded as existing, then any adverse impact of restricted duties on the health of an Officer was unfortunate but did not outweigh the need for restricted duties to be imposed in some respect. The Tribunal accepted that, providing there was a reasonable basis set out to it by the respondents for their view that risk existed, this was a position they were entitled to take. The removal or relaxation of restricted duties was not in those circumstances a reasonable adjustment to the PCP.

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10 436. The claims are to a large extent unsuccessful due to being timebarred as detailed below. Given the length of the Hearing and the issues involved, the Tribunal considered it appropriate to set out its view on the substance of the claims, notwithstanding timebar meaning that the vast majority of the claims were unsuccessful before the merits fell to be considered.

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437. It is recognised that the Judgment does not deal with several areas about which evidence was heard. That evidence was permitted as it seemed to the Tribunal that there might be a relevance in relation to the points which it had to determine. That ultimately did not prove to be the case in many instances.  
20 There was concern expressed during the Hearing that some elements of evidence which Mr Reid was keen to lead and which were allowed by the Tribunal might potentially be of more relevance if there was an enquiry into the handling of various events by the respondents or as to their adherence or otherwise to particular principles or requirements. As was highlighted at different times by the Tribunal, what it required to do was to consider the  
25 claims made and whether the evidence did or did not support those claims.

438. There were certain elements of the events about which the Tribunal heard that did cause it concern. The misconduct proceedings had been "*hanging over*" the heads of Mr Reid and Ms Daly for an extremely long time. That must have been, and must continue to be, very stressful for each of them. Further, the restrictions meant that for periods there was a lack of meaningful work in particular for Mr Reid. It was far from ideal that this was so. Having heard the  
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full range of evidence in the case, however, the Tribunal understood why these situations had occurred. The time taken for criminal proceedings to be brought and determined was the main factor.

5 439. The issues are now addressed more specifically.

**Mr Reid - Case in relation to protected disclosures**

10 440. The acts which were said by Mr Reid to have caused him detriments and which were said to have been done on the ground that he had made a protected disclosure formed a series of similar acts. The allegation was that the acts done on the ground of Mr Reid having made a protected disclosure comprised those set out in paragraph 223.

15 441. It is appreciated that Mr Reid and Ms Daly were of the view that there was, in effect a daily act by the respondents. The Tribunal determined, as detailed above, that the acts which led to alleged detriments were the initial decisions to restrict duties and the decisions from to time as to variation of those restrictions. Although the situation on a day to day basis was one with which  
20 Mr Reid in particular was unhappy, there was not, however, a daily act by the respondents. What was happening was that the consequences of the act, the decisions as to restrictions or variations thereof, were being "*played out*" on a daily basis by implementation of those decisions.

25 442. Where there is a series of acts of a similar type the relevant date in terms of judging timebar is the last date of any such act. Some of those acts founded upon might be sometime prior to the claim being lodged. If, however, a Tribunal concludes that there is a series of similar acts then those earlier acts may be viewed as having been subject of a claim within the relevant time if  
30 the last of the acts alleged occurs within 3 months of the claim being presented.

443. This was, however, a slightly different scenario. The claim was presented on 14 November 2012. It was then amended by amendments of 11 February 2014, 13 January 2015, 19 February 2015 and 30 March 2015. Various other documents were lodged but did not constitute amendments to the claim.

5 Whilst Mr Reid was clear that the last event to which he referred was the alleged inadequate investigation by Superintendent Murray of the stage 1 grievance brought by Mr Reid, and whilst substantial evidence was led around that matter, there was in fact no amendment setting that out as a ground of claim. The evidence was however led without objection.

10 444. The view of the Tribunal is that the acts or deliberate failures to act said to have been done on the ground that protected disclosures had been made were done more than three months prior to the date when the relevant complaint was presented to the Tribunal, including the act which was the last

15 in the series.

445. In the circumstances set out above, the Tribunal concluded that it was not not reasonably practicable for those grounds of claim to be brought within the appropriate time period save for one element. The one exception to that is

20 the allegation that there was an SPR submitted in February 2012 which contained false information and which, it was said, did so on the ground that a protected disclosure had been made by Mr Reid.

446. Awareness on the part of Mr Reid that there had been, as he saw it, false information within the SPR only came about after his acquittal at the trial in

25 January 2015. In the view of the Tribunal it was not reasonably practicable for him to make this allegation prior to his being aware of what he saw as a false statement in the SPR. He brought the allegation before the Tribunal in terms of his amendment dated 30 March 2015. That amendment was lodged within a reasonable time of his becoming aware of what he saw as facts and

30 circumstances which gave rise to this element of claim. That element of claim therefore was permitted to proceed notwithstanding it having been brought out of time.



447. The Tribunal was satisfied, however, that the contents of the SPR reflected a view reasonably held by DS Dillet on the information which he had both from precognitions and information available to him that offences had been committed as described in that SPR. The fact that the criminal trial did not result in conviction and may have been subject to comments by the Sheriff as to it being brought, did not mean that the SPR contained false information.

448. There was no claim brought within 3 months of the decisions in relation to restricted duties of 29 October 2013 and 27 May 2014. They are not matters referred to specifically in an amendment. In the view of the Tribunal therefore these elements of claim are timebarred if regarded as individual grounds of claim and also on the basis of being part of a series of acts, given that the last in the series of acts resulted in a claim being presented to the Tribunal late. It could not be said for reasons outlined above, that it was not not reasonably practicable for Mr Reid to advance his case based upon those acts within the relevant 3 month period. Even if other elements of claim relative to the making of protected disclosures were permitted to proceed, however, for the reasons detailed above, the Tribunal was satisfied that the acts or deliberate failures to act founded upon were not done on the ground that Mr Reid had made a protected disclosure.

449. The Tribunal was also satisfied firstly that there had not been an inadequate investigation by Superintendent Murray of the grievance of the claimant at stage 1. Secondly, if it could be said that the investigation was inadequate, that was not an act or failure to act done on the ground that Mr Reid had made a protected disclosure.

**Alleged failure to make reasonable adjustments**

450. As detailed above, the PCP was the imposition on Mr Reid of restriction of duties as those restrictions had been varied and confirmed. The reference therefore was to the decision made on 7 May 2010, as varied by the decision

made on 29 October 2013 and that made on 27 May 2014. These decisions were “*stand alone*”. There was no conduct extending over a period.

5 451. Again, it is recognised that there was continuing consequences of these acts experienced by Mr Reid on a daily basis when he was at work.

10 452. The claims based upon these acts were brought out of time. For the reasons set out above, it is not considered just and equitable that time be extended to permit the bringing of these claims. It is recognised that there is prejudice to Mr Reid through that decision in that he is prevented from proceeding with these elements of his claim. Whilst the passing of time in getting to the hearing in these cases did not assist the recall of evidence, the delay in presentation of the elements of claim was bound to have affected recall of witnesses. It is one thing to have paperwork going back to the event and then  
15 perhaps to have to speak to that and any relevant meetings or discussions around that time in the context of a claim, if that claim is made within a short period of the event. It is quite another, even for an organisation and witnesses as familiar with dealing with facts and evidence as are the respondents` organisation and witnesses, for those matters then to be brought to a Tribunal  
20 by initiation of a claim some time after the events involved. It is the fault of neither party that it took this long for the case to reach the stage of a Hearing. The Tribunal does have concerns that 7 and now heading towards 8 years after the initial executive action and restriction of duties, misconduct proceedings have not been concluded and restrictions remain in place in  
25 relation to Mr Reid, albeit those restrictions are not as wide as they initially had been. Restrictions have now been removed in relation to Ms Daly, however, it took some 6 years for that to occur. That is not to be critical of the respondents given that in the view of the Tribunal there were reasonable and appropriate grounds for the decisions which were taken in relation to  
30 restrictions. It is in reality to express sympathy for the claimants who have had to cope with the misconduct allegations hanging over them for many years and the restriction of duties over many years.

453. This is particularly so when both Mr Reid and Ms Daly were, from the evidence, well regarded as Police Officers. The evidence also was that they had performed their roles during the period of restricted duties diligently and with integrity.

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454. Having heard the evidence the Tribunal was in a position to express its view on whether there had been a failure to make reasonable adjustments had the claim in that regard been one which was able to be advanced i.e by overcoming the timebar point. Given that this element of claim was timebarred, the view which the tribunal reached that there had in any event been no failure to make reasonable adjustments was not necessary for determination of the case, however.

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455. For the reasons identified above, the view of the Tribunal was that it was not a reasonable adjustment that the restrictions be removed or relaxed to any degree more than occurred. Mr Reid put the crux of the point firmly to DCC Richardson. He put to him the proposition that if the restriction of duties caused ill health or injury to an Officer surely that would be a reason to remove or alter the restrictions. DCC Richardson was clear, however, that whilst it might be unfortunate if health issues were caused, the risk to the organisation and to the public had to be addressed. Health issues were not, he said, a reason to expose the organisation and the public to risk. Removing or relaxing restrictions, he said, on the basis that stress and upset was being caused to an Officer was not in his assessment appropriate or reasonable if the risk and threat to the respondents and the public was reasonably viewed as requiring the restrictions to remain in place. The Tribunal accepted that position in principle. It regarded there as being a reasonable basis for the view he took in these cases.

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456. The Tribunal was satisfied that the appropriate exercise had been undertaken by the respondents. This resulted in the view that, in light of the allegations and all other relevant factors, the restrictions were initially appropriate and fell only then to be varied as had occurred.

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457. A further alleged failure to make reasonable adjustments occurred by the decision of the respondents not to fund additional CBT sessions for Mr Reid. That decision was made on 18 March 2014. The claim relative to it was brought by way of amendment on 13 January 2015. It is therefore brought out of time. For the reasons identified above, it is not considered just and equitable for the time limit to be extended such that the claim can be brought. This was one area of potential claim which seemed to the Tribunal to have a stronger basis on which it might be argued that there had been a failure to make a reasonable adjustment. The Tribunal, however, did not require to determine that point given the timebar to this ground of claim proceeding. The case of **Croft Vets** details circumstances in which a failure to pay for private medical care was regarded as being a failure in the duty to make reasonable adjustments. Had the point been for determination in this case, it would have been relevant that counselling sessions had already been provided through the Employee Assistance Scheme of the respondents. What was sought as a reasonable adjustment was an additional element of counselling. The cost would also have been of relevance as would consideration of whether the adjustment, if made, would have avoided any disadvantage regarding as existing due to the PCP.

### **Ms Daly**

458. The Tribunal concluded that the letter to the Chief Constable sent by Mr Reid around 7 March 2010, AR 345 to 349, was not a protected disclosure made by Ms Daly. The statement, however, given by Ms Daly to DC Bassano on 12 April 2010 did, however, constitute a protected disclosure by Ms Daly. This is for the reasons set out above.

459. The claim of detriment said to have been suffered by an act or failure to act by the respondents done on the ground that Ms Daly had made a protected disclosure related to the restriction on her duties imposed on 7 May 2010 and

acts comprising review and decision upon relaxation of restrictions on 20 June 2011, 3 July 2013, 30 July 2013 and 20 April 2015. As previously determined, these constitute a series of similar acts. The last of those acts, the decision made on 20 April 2015, was followed by presentation of the claim on 3 August 2015. The earlier decision of the PH had confirmed that this element of claim was therefore brought in time.

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460. For the reasons identified above, however, the decisions made as to imposition and variation of restricted duties were not acts done on the ground that Ms Daly had made a protected disclosure. That element of claim is therefore unsuccessful.

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461. In relation to the claim of failure to make reasonable adjustments, the PCP is the imposition of restricted duties as those duties were varied by the different decisions reached on 20 June 2011, 3 July 2013, 30 July 2013 and 20 April 2015.

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462. Each of those decisions stands alone. There is not conduct extending over a period. That was determined by the earlier PH in the case.

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463. The allegation of failure to make reasonable adjustments is not a relevant claim in relation to events which occurred prior to 8 July 2013. That was the date when the duty to make reasonable adjustments arose. This element of claim is brought out of time insofar as it relates the variation of restrictions or lack thereof on 30 July 2013. For the reasons identified above, it is not just and equitable that the time period to bring that claim is extended. In short there was no ignorance of fact or law which meant that the claim could not have been advanced. There was no compelling health reason precluding presentation of the claim. Whilst any claimant may hesitate before proceeding with a claim, it is relevant that Ms Daly had taken the step of making the protected disclosure and of lodging a grievance. Mr Reid as her representative was fully seized of the issues and of the jurisdiction of the Employment Tribunal to tackle such matters. There was scant evidence

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before the Tribunal to explain the delay in presenting the claim. Steps had been taken by Ms Daly to “speak up” and to “speak out” in relation to her complaints. This did not sit with her position that she had not presented her claim to Tribunal due to worry about taking the step of challenging the respondents. The evidence before the Tribunal did not persuade it that it was just and equitable to permit the claim to proceed.

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464. The claim, insofar as it related to alleged failure to make reasonable adjustments by the decision made on 20 April 2015, is brought in time. The decision of the respondents, however, not to vary the PCP by removal of restrictions at that point was not a failure on their part to make a reasonable adjustment. The allegations outstanding against Ms Daly and the assessment of risk to the public and to the respondents was appropriately undertaken by the respondents, together with consideration of all relevant factors as detailed above. Whilst Ms Daly’s health may have been adversely affected by the retention of restrictions in part, the circumstances were such that it was not reasonable to make the adjustment to remove the restrictions.

### **Vicarious Liability**

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465. Finally, in the circumstances where the protected disclosures were made prior to 25 June 2013 there is no vicarious liability on the part of the respondents for the actings of employees. For it to be actionable, the act involved has to be that of the employer. This was a plea taken by the respondents in the case of Mr Reid.

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466. A corporate entity clearly cannot act other than through individuals. The question therefore is upon whether the acts of the individuals involved are properly those of the employer. That, as this Tribunal views it, turns upon the position of those employees in the organisation.

467. The acts were those of DDC Richardson in imposing and in making the decision upon possible relaxation or removal of restricted duties. The other

acts said to form a ground of action were carried out by a Detective Sergeant (Dillet) and two people at Superintendent level (Murray and Bailey). The Tribunal was of the view that these Officers were of sufficient seniority for their actions to be viewed as actions by the employer rather than actions of a co-worker.

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468. Nevertheless, for the reasons set out, the unanimous decision of the Tribunal is that the claims are unsuccessful.

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**Employment Judge: Robert Gall**  
**Date of Judgment: 31 January 2018**  
**Entered in register: 31 January 2018**  
**and copied to parties**

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