



EMPLOYMENT TRIBUNALS

Claimant: Mr W Hunte

Respondent: Chief Constable of Gwent Police

Heard at: Cardiff **On:** 18, 19, 20, 21, 22, 25 and 26
February 2019

Before: Employment Judge S Davies
Members:
Mrs B A Currie
Ms C Lovell

Representation:
Claimant: In person
Respondent: Mr A Rathmell, Counsel

JUDGMENT having been sent to the parties on 1 March 2019 and written reasons having been requested by the Claimant by email of 27 February 2019 in accordance with Rule 62(3) of the Rules of Procedure 2013:

REASONS

Claims

1. Claims of breach of contract and discrimination complaints related to Mr Hunte's dismissal were dismissed at a Preliminary Hearing before Employment Judge Cadney on 4 June 2018. The remaining claims are of direct race discrimination, harassment and victimisation.

Issues

2. The issues in the remaining claims are set out in the allegations of direct discrimination and harassment at paragraph 3 a-i of the particulars of claim [13 to 14].

3. For direct discrimination, Mr Hunte relied upon named comparators, at paragraph 6 [14], and a hypothetical comparator.
4. With regard to victimisation, there was an issue as to whether Mr Hunte had made a 'protected act' (paragraph 9 of the particulars of claim [15]), which was discussed during the Preliminary Hearing on 28 November 2018 with Employment Judge P Davies. The act relied upon was an exchange the Claimant asserts happened in or around September 2016 with the mother of a defendant. The victimisation detriments are set out in paragraph 3 c-i.
5. We were referred to a Schedule of Agreed Facts, which identified areas of factual agreement in respect of the allegations.

Hearing

6. We heard evidence from Mr Hunte. There was some difficulty with the page numbers in Mr Hunte's witness statement, as it was prepared prior to the finalisation of the bundle. The Respondent's representative assisted Mr Hunte in identifying the page numbering, by reviewing the statement overnight. Mr Hunte accepted the numbering added to the statement the next day.
7. We heard from 5 witnesses for the Respondent in live evidence: Detective Chief Inspector Richard Williams, Detective Constable Simon Durston, (there were 2 versions of DC Durston's witness statement; dated 13 December 2018 and 14 February 2019 with amended page numbering, both versions were made available to us and no differences in content were brought to our attention), Police Constable Michael Patterson, Police Constable Matthew Mallett, and Detective Constable Sian Tyler (formerly Baumber) who was acting Sergeant at times. We read a written statement of Mr Gareth Jones, Central Authorities Bureau Manager, who did not appear personally, as the Claimant confirmed there were no questions for him.

Timetable

8. No adjustments to the hearing were requested by either party and timetabling was agreed at the outset and adhered to. The first day consisted of reading and dealing with preliminary issues and applications, at the start of the second day we watched a CCTV film and heard evidence from Mr Hunte. The parties did not attend in the afternoon of day 2 and the Tribunal continued with additional reading. The Tribunal heard from DCI Williams and DC Durston on day 3 with the remaining 3 witnesses for the Respondent on the morning of day 4 (the parties did not attend in the afternoon). On day 5 the hearing started at 11am, in order to allow the

Claimant time to review the Respondent's written submissions, which were sent to him by 5pm on day 4. Oral submissions were made by both parties. Day 6 was reserved to the Tribunal for deliberation and oral judgment with reasons delivered on day 7.

Bundle

9. We were referred to 3 volumes of the bundle (A1, A and B), with approximately 1500 pages in total. We admitted additional evidence at the Claimant's request; C1 and C2 pages 884 (d-i). These additional documents formed part of disclosure but had not been included in the bundle for the hearing. On day 5, just prior to submissions, the Claimant presented the Respondent's Disclosure List, which we also accepted into evidence.
10. References in this judgment in square brackets are to page numbers in the bundle.

Applications

11. We dealt with applications by the Claimant to (i) view CCTV of the custody suite on 7 September 2016 and for (ii) strikeout of the Respondent's response. The application to view CCTV was granted. The application for strike out was refused for the reasons given at the hearing. Reasons have not been requested for those decisions.

Background Facts

12. Mr Hunte was born in Barbados and identifies as black (African-Caribbean); he relies on his skin colour for the purposes of his race discrimination complaints. He settled in the UK in 1999, via Canada. Mr Hunte initially worked in Newport as a youth worker and has a particular interest in basketball; he worked with disenfranchised young people of varied racial backgrounds in the Newport area to encourage their positive development and to act as a role model.
13. Mr Hunte's success in youth work and his interpersonal skills were noted and he was approached for a career in policing. On 14 May 2001 he commenced service as a Police Constable with Gwent Police. He became involved in Gwent Black Police Officers Association from the early stages of his career, culminating in him holding the post of Chair between 2011 and 2014.
14. Between 2011 and 2016 intelligence reports were made to the Respondent to the effect that the Claimant had been seen with persons who were suspected of crime (in particular drug crime) and was considered to be passing on police information to a criminal suspect (JN) in return for a fee

[B3, B17, B35 and B53]. We note the distinction between intelligence reports and evidence of wrongdoing but there were a significant number of reports of a similar nature [bundle B].

15. Mr Hunte was subject to an Experian credit check in October 2015. We accept DCI Williams' evidence that this is quite a usual process for vetting new Police Officers and can be repeated on a periodic basis after appointment. The Police force is concerned to be aware of any officers who have incurred large debts because it is considered they are at risk of potential corruption. The Experian check in October 2015 noted that Mr Hunte had a debt of around £36,000.

Operation Quattro

16. Covert investigations by the Professional Standards Department (PSD) and Anti Corruption Unit (ACU) commenced into the Claimant's actions under 'Operation Quattro'.
17. In April 2016 DCI Williams and DC Durston, who worked within PSD/ACU, reviewed police intelligence regarding Mr Hunte, following receipt of further intelligence to the effect that police information was still being supplied for a fee [eg B67]. A couple of months later in mid-June 2016, further intelligence was received that the Claimant may be involved with those suspected of supplying Class A drugs; 'Wayne he told me to keep away from Abbaid Stores and Potter Street as police operation going on' [B77].
18. PSD ran a further credit check in June 2016 which showed that Mr Hunte had reduced his debt by over £17,000 in an 8 month period [B85].
19. On 24 June 2016 [B81] intelligence was received from that an organised crime group had a 'Police Officer on the payroll' and to catch him the Respondent should 'look where he is booking to go on holiday'.
20. DCI Williams decided to commence a criminal and professional standards investigation under Operation Quattro from 4 July 2016 [B104]. DCI Williams documented his decision making in a policy booklet. We accept Mr Williams unchallenged evidence of the reasons for starting the investigation, in paragraphs 12 to 31 of his witness statement. The policy file opens with the following:

'Intelligence has been received within the ACU over a number of years that PC Wayne Hunt has been disclosing sensitive confidential information to criminals in the Pill area of Newport. A large number of these individuals are linked to drug trafficking police operations and the information that is being disclosed relates to police tactics including surveillance, dates of specific activity etc. A number of tactics have been

used by ACU officers in an attempt to secure evidence of corrupt practices. However, no corroboration has been obtained from conventional methods to date. I have held discussions with DS Richard Barry and DC Simon Dunston due to continuing flow of intelligence into the ACU linking PC Hunte with nominals in Newport. This operation has been commenced in order to investigate PC Hunte and establish whether or not he is disclosing sensitive police information to members of the criminal fraternity.'

Indoctrination

21. We note that around this time DC Tyler was acting up as Sergeant and so was line manager for Mr Hunte. Although she could not remember the precise date, it appears from her statement that she was 'indoctrinated' into the investigation into Mr Hunte in or around July 2016. Indoctrination is a process whereby police officers are informed of covert investigations in respect of a fellow officer and reminded of their duties of confidentiality surrounding such investigation.

Holiday

22. Between the beginning of July and mid-December 2016 there were a number of declined transactions on Mr Hunte's bank account [A220]. At some point in August 2016 the Claimant went on holiday to Barbados. It was DC Tyler's unchallenged evidence that the fact that Mr Hunte was going on holiday and the destination was public knowledge; she informed DC Durston about it.
23. On 8 August 2016 a person (JN), who has now been convicted for drugs offences, was arrested with intent to supply cocaine in Operation Ironside [A853].

Custody Unit - 7 September 2016

24. On 7 September 2016, PC Patterson arrested a black man for possession of a firearm and took him to the custody suite. The detained person's skin colour is relevant, because Mr Hunte suggests that what followed was a result of racial stereotyping.
25. Mr Hunte was working that evening on shift as PC gaoler. Mr Hunte and the detained person greeted each other as Mr Hunte walked past him whilst his arrest was being processed. Mr Hunte also spoke with PC Patterson about the detained person afterwards. PC Patterson and PC Mallett became suspicious and reported their concerns that he may know the detained person verbally to a senior officer. This resulted in Mr Hunte being removed from the custody suite mid-shift.

26. During September 2016 [B101-103], contemporaneous reports were made by PC Patterson, PC Mallett and DC Tyler with regard to the incident on 7 September 2016. The last of those reports was made within 2 weeks of the incident itself.
27. The Tribunal viewed the CCTV (film only, with no audio) of the incident on 7 September 2016, which gave a partial picture of the incident; we could not see all of the interactions between those featured in the film. In particular we could not see the detained person's face prior to the interaction with the Claimant. At that point the detained person's face was not in view, although we saw Mr Hunte as he walked past and looked back over his shoulder towards him. PC Mallett's unchallenged evidence was that the detained person had not greeted any officer in the custody suite until he saw the Claimant.
28. PC Patterson indicated that the way Mr Hunte and the detained person acknowledged each other suggested that they knew each other. PC Patterson's concerns were compounded because the Claimant then spoke with him after the detained person had been processed, to discuss his background details (in particular that he was banned from Notting Hill Carnival and that he was a 'big gang banger' from London). PC Patterson says he avoided engaging in this conversation as it made him feel uncomfortable.
29. DC Tyler was not directly involved and did not witness the incident, but she was informed by a senior officer that Mr Hunte would be moved mid-shift because of an incident in the custody unit. Upon Mr Hunte's return to the station at around 5am, she had a discussion with Mr Hunte who said that he did not know the detained person. DC Tyler accepts that many of the details disclosed by Mr Hunte about the detained person would have been evident from the Police National Computer (PNC). However, she was concerned by Mr Hunte's comments to the effect that the detained person was in Newport to sell a gun, which information was not contained on PNC [B101] and this aroused her suspicion. We find that that her suspicion in the circumstances was legitimate. DC Tyler was aware of the covert investigation into the Claimant at this point in time and accepted that she would have been 'keeping an eye' on him.
30. As PC gaoler, we accept Mr Hunte's evidence that he would have had good reason to access PNC (although he did not on this occasion, saying he acquired information about the detained person from being present when other officers checked PNC). We also accept Mr Hunte's evidence that he was obliged to perform welfare checks on the detained person and this is part of normal duties. We perceived nothing untoward in Mr Hunte's

demeanour or actions from our viewing of the CCTV, with the caveat that we were only able to view part of the interaction and there was no audio.

31. PC Patterson was unaware of the investigation by PSD into Mr Hunte; when asked, he confirmed he had not been indoctrinated. PC Patterson worked with Mr Hunte over a two year period previously without any issue; there was no evidence of difficulty in their relationship prior to 7 September 2016.
32. It is an agreed fact that the information relating to the officers' concerns about the detained person and Mr Hunte were passed to PSD. Mr Hunte was questioned about the incident but the allegation was not taken forward to misconduct proceedings.
33. PC Patterson was asked to include two different incidents in his report [B102], the second occurring on 20 September 2016 when a different detained person spoke with Mr Hunte. PC Patterson brought this detained person in to a police station and observed him interact with Mr Hunte. Once Mr Hunte left the detained person provided PC Patterson with information which he passed on to his superior officers as being of concern. The detained person said that he knew Mr Hunte but gave the wrong badge number, confusing badge numbers with a different black police officer working for the Respondent.
34. PC Patterson could not recall the race or ethnic background of the detained person on 20 September 2016. PC Patterson was questioned by Mr Hunte as to whether the confusion over badge numbers indicated stereotyping on PC Patterson's part. PC Patterson merely reported the words spoken to him by the detained person about the Claimant. We find that if there was stereotyping at play, that this was by the detained person on 20 September 2016 not by PC Patterson.

Covert Surveillance

35. On 6 September 2016, under the auspices of Operation Quattro, DCI Williams decided that the Claimant should be investigated with covert surveillance (recorded in the policy booklet [B109]).
36. On 19 September 2016 [B114 – 122] an application was made under RIPA to conduct directed surveillance of Mr Hunte. The surveillance was to be carried out whilst Mr Hunte was on duty and in a public place, which is considered to include police vehicles and stations. DC Durston made the RIPA application. In section 4 headed "*give a description of the investigation/operation*" he made reference to the incident in the custody suite on 7 September 2016 [B116], which happened less than two weeks prior to the application being made. In section 6 of the RIPA application form [B117] it asks what "*information is expected to be obtained from the activity*

- and why it is necessary for the purpose indicated*", in this section DC Durston stated that conventional police methods had failed to gather intelligence and as a police officer Mr Hunte 'is careful not to leave a footprint'.
37. DC Durston was asked about the trigger for directed surveillance by Mr Hunte's Police Federation representative during the misconduct panel hearing in October 2017, [A1 931 - 932 and 941 – 943]. Questioning of DC Durston [943] by the panel chair included whether the incident on 7 September 2016 formed part of the reason for surveillance. DC Durston answered "no", but we find that this response must be read in the context of the surrounding questioning in which DC Durston makes it clear that he was aware of the incident on 7 September 2016 [931] and that the incident was not the catalyst for the RIPA application because intelligence was already held prior to that event taking place. In fact DCI Williams had decided on covert surveillance before the incident on 7 September occurred [B109].
38. In cross examination in the ET hearing, DC Durston admitted that he made an error in responding 'no' and that the incident on 7 September 2016 was included in the RIPA application. Mr Hunte suggested that DC Durston had misled the misconduct panel, however we are satisfied that having read the record of the full exchange, which took place more than a year after the RIPA application was made, that DC Durston made an error. DC Durston was not questioned with reference to the actual RIPA application document itself at the misconduct panel hearing.
39. The RIPA application for directed surveillance was passed on 21 September 2016, as referred to in Mr Jones' statement, and on 23 September 2016 direct surveillance was authorised by Detective Superintendent Fortey for a 3 month period. The RIPA application was made by PSD but needed authorisation by a senior officer outside of the investigation team.
40. On 27 September 2016 Mr Hunte's incoming and outgoing call data was obtained for a 12 hour period, authorised by Detective Superintendent Fortey [B128 – 131].
41. Audio recordings were made of the Claimant whilst on duty in late September and throughout October 2016. On 26 October 2016, Mr Hunte was recorded giving his girlfriend and her friend a lift to the station, whilst on duty in a police vehicle. At the time Mr Hunte was approached by a member of the public who reported an incident on the train. These audio recordings and the allegations arising from them, form part of the misconduct findings against Mr Hunte. On the same day, Mr Hunte arrested

a man (B) for failing to attend for bail. While escorting B to custody Mr Hunte disclosed to B information relating to the arrest of JN.

42. Further recordings were made in early November 2016. A review was undertaken by PSD on 4 November 2016, at which DCI Williams made the decision to cancel the RIPA authority for surveillance and to proceed under the Police (Conduct) Regulations 2012 with a misconduct investigation.
43. We accept the evidence of DC Durston, that once the nature of the allegations against Mr Hunte emerged that he made retrospective investigation of the GPS tetra data from his radio, to establish the Claimant's whereabouts in a period stretching back before Operation Quattro was commenced. We find that Mr Hunte was not subject to directed surveillance from March 2016 onwards but rather the GPS tetra data was obtained for that period. That data showed in the period from March to November 2016 that the Claimant attended his home address whilst on duty 41 times in 101 shifts (an agreed fact at the misconduct hearing that led to Mr Hunte's dismissal).

Regulation 15 notices and investigation meetings

44. On 15 November 2016 the first regulation 15 notice was served on Mr Hunte, followed by another on 10 February 2017. On 10 February 2017, Mr Hunte was interviewed by investigators and we find that he voluntarily provided his mobile telephone for inspection on that date. Mr Hunte disputed the date on which he gave consent regarding his phone and relied on a handwritten note [C2] which he asserted supported his position that he gave the phone for inspection on 24 February 2017 (which is when the second interview with PSD took place). The handwritten note from the second interview says, 'consent to download mobile phone'.
45. Having read the transcript of 10 February 2017 interview, we find that the phone was given to PSD during the course of that first interview. The transcript shows DC Love reporting difficulty accessing the content of the phone to download it because a password was needed. At [A368], Mr Hunte says "I'll be honest with you I can't remember the password due to the fact that I've had that phone for about four years." The interruptions of the interview by DC Love on 10 February 2017 happen in various places. This factor plus the Claimant's comment supports the finding that consent was given on 10 February 2017.
46. Mr Hunte suggested that the consent note dated 10 February 2017 [A214] with regard to the mobile phone was fabricated. We note the document is a photocopy, but it includes Mr Hunte's signature and his badge number and contains the handwritten words "you can see my phone". We reject the suggestion this document is a fabrication, we accept that it is a copy of a

genuine document. This conclusion is supported by the transcript of the same date and DC Durston's evidence.

47. Having read the transcripts of 10 and 24 February 2017, it appears logically correct that the phone was given on 10 February 2017. During that first interview the phone contacts were photographed, the phone returned after the interview and the Claimant was subsequently asked about his contacts during the second interview on 24 February 2017. The contact information was only obtained after reviewing the phone on 10 February 2017, while attempts were made to download or find a password. Logically, the investigators would not have been in a position to question the Claimant about the contents of the phone until a later point in time.
48. A further regulation 15 notice was served on 20 February 2017 and a second interview with PSD held on 24 February 2017, at which he was asked about the contacts in his phone.
49. It is agreed fact that as part of the investigation the call data for the Claimant's personal mobile was obtained. It is also an agreed fact that the Claimant was questioned about his finances (income and expenditure), including a recent holiday to Barbados as part of the investigation.

Restricted duties and driving

50. On 13 February 2017, Mr Hunte was placed on restricted duties but he was not suspended. He worked at Newport carrying out administrative work. The decision to place him on this work was taken by a senior officer, Ruth Price. Her email [A229] states that because Mr Hunte had declined to give a truthful account and because of the nature and totality of misconduct, indicating propensity to dishonesty and neglect of duties, that a move to non-operational duties was required.
51. We find that, as a result of the administrative role, there was no need for Mr Hunte to drive police vehicles. His driving duties were removed as a consequence of Ruth Price's decision.
52. It became necessary to restrict Mr Hunte's access to the custody suite, but we find that his warrant card was not deactivated; he used it to access Newport police station and to attend work in the administrative role.

Claimant's complaint

53. On 15 February 2017, Mr Hunte reported that officers were starting rumours that he had connections with criminals in the Newport area which he regarded as unfounded and he wished to record as a racially motivated

incident but not to proceed as a complaint [A91-2]. Mr Hunte refused to name individual officers.

Laptop

54. On 27 February 2017, as part of the investigation the Claimant was asked to, and did, produce a Toshiba laptop obtained from the Respondent's property store. He had discussed having the laptop fixed with a contact at an Indian restaurant (which conversation had been recorded during the directed surveillance). The Respondent retained the laptop, as it was obtained from the police property store without authorisation.
55. We note that Mr Hunte was not asked to bring an iPad (also discussed with the contact at the Indian restaurant) to the second interview with PSD. We note in the transcript that his Federation Representative says that she forgot to mention it to him, but when it was raised, and a request was made for the iPad, Mr Hunte confirmed he had no issue with providing it [A450] and subsequently did so.

Mileage

56. On 14 March 2017 DC Durston sent an email to the police pay department regarding the Claimant's personal vehicle use and mileage expense claims [A684], as a result of the Claimant's responses in interview with regard to the use of his personal car between March and December 2016. In that email exchange it is confirmed that no travel expenses had been claimed by Mr Hunte.
57. A further regulation 15 notice was served on 16 March 2017, a review was carried out shortly afterwards with regard to his restricted duties which were confirmed.

Misconduct hearing - laptop

58. On 19 May 2017, a misconduct meeting was chaired by Chief Inspector Townsend in respect of the Toshiba laptop computer that had been seized by police and marked for disposal. Misconduct was found, and a final written warning issued. The officer who provided Mr Hunte with the laptop was also disciplined for misconduct. Mr Hunte referred us to the appeal outcome in respect of that misconduct meeting [C1]; the appeal was dismissed by Superintendent Roberts on 20 December 2017.

Misconduct - dismissal

59. At the end of July 2017, a regulation 21 notice was served with the allegations to be considered at the second misconduct hearing, scheduled between 2 and 5 October 2017. That misconduct panel was chaired by Susan Davies, who sat with Superintendent John and Anthony Richards. Five allegations were found as gross misconduct and one as misconduct and we refer to, but do not repeat, the panel findings in that regard.
60. On 5 October 2017, Mr Hunte was dismissed from the police service without notice. Mr Hunte's dismissal was for reasons unrelated to involvement with or passing information for a fee to criminal gangs dealing in drugs. These matters formed part of intelligence reported to the police, but the Claimant was not subject to misconduct procedures nor criminal prosecution because of such allegations
61. On 8 February 2018, Mr Hunte brought his Tribunal claims at Cardiff Employment Tribunal.
62. On 16 May 2018, Ms Rachel Crasnow QC determined his appeal against dismissal, which was dismissed by the Police Appeal Tribunal.

Law

63. The relevant sections of the Equality Act 2010 are sections 13, 23, 26, 27, 123 and 136.
64. Discrimination is difficult to prove in circumstances where overt discriminatory behaviour is rare. It is for that reason that the burden of proof provisions are included in the Equality Act. Where a Claimant establishes facts from which, without an explanation, we could conclude that there was discrimination we look to the Respondent to provide an explanation, so that the burden of proof is on the Respondent. The burden of proof provisions have no place in a case where a Tribunal can make positive findings of fact which show, for example, there is no less favourable treatment. The Tribunal can approach discrimination complaints by considering the situation holistically, and the 'reason why' acts or omissions have occurred. It is not always necessary to adopt a two stage approach; the 'reason why' approach is appropriate in this case.
65. We were referred to **Bhal -v- Law Society [2004] EWCA Civ 1070**, in particular paragraphs 126 – 127, which deal with how a tribunal should approach allegations of unconscious discrimination, where there are findings of non-discriminatory considerations that could explain the treatment complained of.

66. **Chief Constable of Greater Manchester Police -v- Bailey EWCA Civ 425** provides that the causative link to establish discrimination must be established on more than a “but for” basis. **Bailey** also allows that material demonstrating institutional bias can support allegations of discrimination but that there is no “doctrine of transferred malice” when considering an individual’s actions.

Conclusions

67. To preface the conclusions, the Tribunal makes the following points of general application to the individual complaints.
68. The Tribunal has been able to make positive findings of fact which show that there was no less favourable treatment or harassment and the burden of proof provisions have not been engaged.

Reasons for Operation Quattro

69. We accept DCI Williams reasons for the instigation of Operation Quattro. Neither DCI Williams nor DC Durston were asked to investigate Mr Hunte, they acted on the intelligence received. There was a significant amount of intelligence about Mr Hunte, he had amassed significant debt with a large repayment over a short period of time and these matters are legitimate grounds for investigation by PSD. Having accepted a legitimate and non-discriminatory basis for the investigation, it follows that the matters flowing as a consequence of the investigation are also pursued on non-discriminatory grounds.

Institutional racism

70. Mr Hunte asserted the Respondent’s actions were motivated by unconscious bias of and stereotyping, by officers operating within an institutionally racist organisation. The Claimant has offered no supporting evidence for this contention, despite being Chair of the Black Police Officers Association for several years, an organisation that is likely to be aware of such issues. Furthermore, Mr Hunte accepted in cross-examination that he did not complain of the use of discriminatory or inappropriate race related language towards him by any of the officers named in his complaint.
71. We note that Mr Hunte did report the PSD investigation as being racially motivated on 15 February 2017. Mr Hunte alleged defamation of character but did not wish to proceed with the complaint, rather he wanted concerns to be noted. The fact of his allegation of a ‘hate crime’ is insufficient basis, of itself, to infer discrimination, particularly so where a formal complaint was not pursued, and officers were not named.

72. Throughout the misconduct process Mr Hunte asserted racial bias on the part of the Respondent. This wide ranging assertion, levelled at the many officers involved, and the sweeping nature of the accusation, without more substance, undermines its credibility.

73. DC Durston was questioned in cross-examination as to whether he had spoken to 'nominals' (those interviewed or implicated in criminal offences) about the Claimant and declined to answer that question. Whilst declining to answer a question may, in appropriate circumstances, form the basis of an inference of discrimination, we do not consider that declining to answer this particular question does. It did not appear to cloak or to try to conceal an inherently discriminatory course of action and/or motivation.

Documents

74. We were referred to issues with disclosure by Mr Hunte, who relied on additional documents, accepted into evidence. Some of which illustrated requests for disclosure of documents made by Mr Hunte's solicitors prior to the misconduct hearing. The correspondence we were shown was of a request and reply process regarding disclosure; with some additional documents being disclosed upon request and the Respondent resisting the disclosure of others. We note that issues related to disclosure were raised by Mr Hunte at his appeal which was rejected by the Police Appeals Tribunal. It is appropriate for us to and we do take those findings into account [1357].

75. It was common ground between the parties that there is no policy with regard to visits to home whilst on duty. Mr Hunte showed us a request his solicitors made for tracking information in respect of the whereabouts of all officers whilst on duty. The Respondent refused this request as disproportionate, in light of the size of the force and the fact that officers are not tracked routinely. We consider that this refusal was made for legitimate and non discriminatory reasons.

76. These disclosure and procedural matters appear to us to be routine and none provide a factual basis upon which to infer discrimination.

Victimisation

77. In order for a victimisation complaint to be established, the Claimant must demonstrate that he has made a 'protected act' (section 27(2)(a) - (d) Equality Act 2010), and as a result the Respondent has retaliated with a detriment.

78. The protected act relied upon is that in or around Summer / September 2016 Mr Hunte spoke to a defendant's mother in Tesco at Harlech Retail Park,

regarding the death of one of her sons in prison custody. At page 34 of Mr Hunte's witness statement he says his words were "if she felt that there was a case to answer to that she should seek legal advice." The Respondent's position is that they have no recording of this exchange and were unaware of it.

79. On the assumption that Mr Hunte did use those words and the Respondent was aware of them, we find that the words refer to duty of care owed to prisoners detained in custody. The words relied upon do not disclose an act such as is set out in section 27, which has a narrow application. A protected act must relate to matters of discrimination under the Equality Act 2010. Putting aside the issue of causation and whether the Respondent knew about the words spoken, the complaint cannot get off the ground because there is no actionable protected act.

80. The victimisation complaints are dismissed.

Direct discrimination

81. The Tribunal must consider whether there has been less favourable treatment compared with an officer of a different racial group to Mr Hunte, (either a real person or a hypothetical one). In order to test whether discrimination is in play, the comparison must be made in materially similar circumstances, to avoid the possibility that there is another reason for the action.

82. Mr Hunte has not provided evidence with regard to the named comparators (Sargent Baumber and Officers Hopkins, Andrews, Davies and Babour), to show that they were in materially similar circumstances to him and therefore they cannot be comparators that assist his case or our determination of whether discrimination has occurred. Our consideration of whether there has been less favourable treatment will be with a hypothetical comparator in mind.

83. There are two groups of allegations; (i) the incident on 7 September 2016 and (ii) the investigation, the decision to start it and the matters that flow from it. References are to paragraph 3 of the Claimant's particulars of claim:

(i) 7 September 2016

84.3c On 7 September 2016, two of the Claimant's colleagues made unsubstantiated complaints to the anti corruption team of the Respondent which led to allegations of misconduct. The comments arose from both the complainants perceiving the Claimant and detainee as being from the same racial group. Although the allegation was eventually dropped by the Respondent, the initial allegations have

been made by the officers and taken forward by the Respondent when they were clearly unsubstantiated by the CCTV footage at the time.

85. Mr Hunte asserts that he was merely carrying out duties with regard to the processing of a detained person on the night in question. He asserts racial stereotyping by the officers that reported him due to the way this interaction was perceived.
86. We note the Respondent suggests, at paragraph 5 of the written submissions, a white or Asian officer comparator interacting with a black detainee. We consider however that the appropriate comparator would be a white police officer interacting with a white detainee or an Asian police officer interacting with an Asian detainee. The alleged stereotyping being based on the perception of a shared ethnic or racial group between officer and detainee.
87. As mentioned above, the CCTV did not provide a complete picture of the interaction between Mr Hunte and the detainee, the timing and who instigated it. It cannot be said that the CCTV demonstrated that the concerns were unsubstantiated. The officers at the custody suite would have the benefit of having witnessed the entirety of the exchange. PC Patterson's concerns arose not only from the interaction but also Mr Hunte's discussion with PC Patterson about the detained person's background information. PC Patterson's decision to report Mr Hunte was made in the context of the arrest for a serious matter of possession of a firearm. We note the duties placed upon police officers to report concerns about colleagues and the natural suspicion which must be part and parcel of holding the office of police constable. There was no history of difficulty between PC Patterson and Mr Hunte. PC Patterson was unaware that Mr Hunte was being investigated by PSD. PC Patterson's evidence was persuasive; his discomfort at the situation was evident but overridden by his obligation to report all suspicions.
88. PC Mallett's suspicion is noted in his contemporaneous report, which identifies that the detained person had not acknowledged any officer in the custody suite until Mr Hunte walked past.
89. We do not consider there has been less favourable treatment. We find this incident is one which requires consideration of the 'reason why' action was taken, and we are satisfied that the incident on 7 September 2016 was reported for non-discriminatory reasons described by PC Patterson and PC Mallett in their evidence. We are satisfied that their actions would have been the same in the hypothetical comparator situation; they were bound by their duty to report concerns about officer colleagues.

(ii) Investigation and matters that flow from it

3(a) the Claimant was investigated under codename Quattro

90. The decision to investigate under Operation Quattro had nothing to do with Mr Hunte's race for the reasons explained above (and set out in DCI Williams and DC Durston's evidence). We consider that the steps of the investigation complained about were taken in furtherance of the investigation and it follows were taken for non-discriminatory reasons.

3(b) the Claimant was placed under surveillance by the Respondent for a period in 2016. Based on the information subsequently disclosed by the Respondent the Claimant, it is apparent the surveillance was in place for at least March 2016 until November 2016.

91. The decision to conduct a covert investigation was taken on 4 July 2016. It is agreed the Claimant was placed under surveillance, but the parties differ on the length of that directed surveillance. The Tribunal accepted DC Durston's evidence that he obtained that tracking GPS data for a 6 month period because of concerns arising from September 2016, following the directed surveillance, about where and what the Claimant was doing whilst on duty. The Claimant's allegation is not factually proven.

3(d) the Claimant was served with regulation 15 notices and placed on restrictive duties.

92. Mr Hunte was placed on non-operational duties after he was given an opportunity to give an initial account at investigation meeting on 10 February 2017. We accept the reasons set out at [A229] as legitimate and non-discriminatory in the circumstances.

3(e) the Claimant had his driving duties suspended and warrant card deactivated.

93. The Tribunal refers to our findings above that there were non-discriminatory reasons for these steps, which flowed from Ruth Price's decision.

3(f) the Claimant had his phone, laptop and iPad seized and examined by the Respondent.

94. Mr Hunte submitted to the examination of his phone voluntarily. The iPad was also voluntarily produced on 27 February 2017 and checked against stolen property records, (paragraph 62 and 63 of the ET3).
95. The laptop was police property from police property stores, which was given to the Claimant without authority by another officer. Both Mr Hunte and the officer were subject to misconduct proceedings receiving a Final Written Warning. In the circumstances the laptop was taken from the Claimant upon its production, as it had been taken without authorisation from the property store.
96. Mr Hunte complied with requests for the production of these items as part of the investigation and we find there was no less favourable treatment.

3(g) the Claimant had his phone records examined by the Respondent.

97. Authorisation was given for surveillance of a 12 hour period on 26 September 2016. DC Durston's application cites the reasons for it is to identify relationships with known criminals. The Respondent accepts that call data was obtained for the Claimant personal mobile as part of the investigation. In the context of the intelligence received by PSD and the ongoing covert investigation, we find that there is a non-discriminatory reason for this action.

3(h) the Respondent attempted to gather any information that might be used as grounds for dismissal and in particular the email of 14 March 2017 where enquiries were made about whether the Claimant made any travel expenses claims

98. We find that the investigation evolved in response to emerging information, intelligence and evidence gathered. DC Durston's email of 14 March 2017 [A684] was a routine enquiry following up on the matters discussed at the Claimant's interviews with PSD. Mr Hunte said and confirmed in the regulation 22 notice [A866], that he had used his personal car for work. DC Durston explained in his evidence there has to be good reason for PSD to collect this kind of data. We find there was good reason in this case to check whether Mr Hunte had claimed travel expenses for using his own car, to potentially verify his version of events.

3(i) the Respondent interrogated the Claimant about his trip to his country of birth: Barbados.

99. Questions were asked in relation to Mr Hunte's visit to Barbados. We find that they were routine questions in the context of the investigation. Mr Hunte travelled on a holiday, at the cost of approximately £2,000, in circumstances of personal debt. The questions about the holiday were posed in the context of questions about the declined transactions on Mr Hunte's bank card and the other intelligence available. We conclude that the same questions would have been asked in materially similar circumstances of a white or Asian officer who travelled abroad on a fairly costly holiday.

Harassment

100. The Claimant accepted that he did not complain of overtly or inherently race-related inappropriate actions or language towards him by the officers concerned. For the reasons already given the Tribunal finds no factual basis on which to infer discrimination.

101. Naturally instigation of an investigation into misconduct or criminal activity will be received as unwanted conduct but in order for it to amount to harassment in this case it must be linked to race. There is no apparent link. The Tribunal would then need to objectively view actions as producing the prohibited environment described in section 26 Equality Act 2010.

102. There were non-discriminatory reasons for the Respondent's actions in respect of those matters complained of as acts of direct race discrimination and also pleaded as harassment, and so the complaints of harassment are also dismissed.

103. It is not necessary to consider whether the Tribunal lacks jurisdiction on the basis that complaints were brought outside of the usual 3 month time limit in light of the findings made.

Employment Judge S Davies
Dated: 22 March 2019

REASONS SENT TO THE PARTIES ON

.....22 March 2019.....

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS