EMPLOYMENT TRIBUNALS

Claimants: 1 Mrs Jane Higham (formerly Little)
2 Ms Laura Escott

Respondent: Chief Constable of Greater Manchester Police

HELD AT: Manchester **ON:** 5-14 & 16-23 March (in Tribunal) and , 28 August, 4 September 2018 & 28 May 2019 (in Chambers)

BEFORE: Employment Judge Tom Ryan
Ms J K Williamson
Ms V Worthington

REPRESENTATION:

Claimants: Mr E Beever, Counsel
Respondent: Mr D Hobbs, Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The complaints by both claimants of being subjected to detriment by reason of having made protected disclosures are upheld.

2. The complaints by both claimants of direct sex discrimination are upheld.

3. The respondent is ordered to pay compensation to the first claimant in the sum of £12,500.

4. The respondent is ordered to pay compensation to the second claimant in the sum of £30,000.

REASONS

Claim, complaints and issues

1. This is a complex case involving interrelated legal issues of protected disclosure, sex discrimination and legal privilege, numerous allegations of detriment and treatment by senior officers of the respondent, including those at chief officer rank, of claimants who are themselves long serving and senior officers of the respondent

2. By a claim presented to the tribunal on 22 April 2017 the claimants brought complaints of direct sex discrimination and detriment by reason of having made protected disclosures.

3. The respondent defended the complaints.

4. The issues that the tribunal had to decide are set out below. They derive from a list of issues included in the tribunal hearing bundle (108 and following). As a result of a preliminary hearing on 27 February 2018 the claimants were granted permission to amend their claim to include a further protected disclosure as set out at paragraph 7.c of the issues below.

ISSUES

Direct Sex Discrimination:

1. Whether the Claimants were treated less favourably than male officers:

2. The Claimants rely upon the following acts/omissions of less favourable treatment:-

    a. Being voluntarily referred to the Independent Police Complaints Commission ("IPCC") by the respondent when the respondent had full knowledge at all material times there was no merit to Insp Winter's allegation that the information alleged to have been disclosed by the claimants was not true.

    b. Failing to provide all the necessary information to the IPCC that showed that the alleged information that was disclosed was not false, resulting in the claimants being served Regulation 16 Notices and being [sic] and facing gross misconduct proceedings.

    c. Removing the claimants from their respective roles within the Professional Standards Branch ("PSB") and the Major Incident Team ("MIT").

    d. Placing the claimants on restrictive duties.

    e. Keeping the claimants on restrictive duties for 8 months.

    f. Subjecting the claimants to gross misconduct and misconduct charges.

g. Denying the claimants the opportunity of putting their side of the story across by deliberately failing to inform the claimants that the BBC had made a direct request for their comments on Mr. Winters' allegations.

h. DCI Pervaiz's failure to notify the claimants of the BBC`s request even after the claimants had asked to be notified of the broadcast.

i. The biased manner in which the respondent reported the matter to the press i.e. simply confirming that two PSB officers had been under investigation for gross misconduct but not disclosing that Mr Winters had been accused of and investigated for the assault.

3. Who are the comparators?

   a. Whether any male officer in materially similar circumstances would have been treated in the same manner.

   b. The claimants rely upon :-

      i. DCI Jim Riley;
      ii. DSupt Simon Retford; and
      iii. Officers B, D, C and E
      iv. In the alternative, the claimants will rely upon a hypothetical comparator.

4. Whether any of the allegations in 2.a. to f. are proved.

5. If so, whether the reason for the act/omission was because of the claimants' protected characteristic of sex.

Protected Disclosures:

6. Whether the claimants made any qualifying disclosure that are protected?

7. The claimants rely upon the following disclosures:-

   a. Alleged disclosures on 9 February 2015, to the respondent's legal advisors;

   b. The first claimant providing information to the respondent's force solicitor, Ms Catherine Shackleton on 2 June 2015

   c. The second claimant providing information to the respondent's force solicitor, Ms Catherine Shackleton on 8 June 2015.

   d. The second claimant providing information by email to DCC Ian Pilling of the respondent, on 4 July 2016. [para 52 to 60 GofC (Grounds of Complaint)].

8. Whether the information at 7.a (above) tended to show that there had been, was being or was likely to be:-

a. a failure to comply with a legal obligation;

b. the commission of a criminal offence; [para 54 GofC];

c. that the health and safety of an individual had been, was being or was likely to be endangered.

9. Whether the information at 7.b and c (above) tended to show that there had been, was being or was likely to be:-

   a. a criminal offence committed [para 54 GofC];

   b. a failure to comply with any legal obligation [para 55 GofC]

10. Whether the information at 7.d (above) tended to show that there had been, was being or was likely to be:-

    a. a miscarriage of justice [para 57 GofC];

    b. a criminal offence committed [para 58 GofC];

    c. a failure to comply with a legal obligation [para 59 GofC]

11. Whether the claimants held the reasonable belief that the disclosures were in the public interest.

Detriments:

12. Whether the Claimants were subjected to detriments?

13. The claimants rely upon the following detriments:-

    a. The respondent ignoring the findings of C/Supt Hull;

    b. ACC Shewan making a voluntary referral to the IPCC, knowing at the material time there was no merit to any allegations;

    c. The respondent's failure to provide all necessary information to the IPCC that showed that the alleged disclosed information was not false, which resulted in the IPCC serving Regulation 16 Notices on the claimants.

    d. Issuing an order to the claimants that prevented them from effectively defending themselves or providing a full account during the IPCC investigation,

    e. Placing the claimants on restrictive duties;

    f. Removing the claimants from their postings;

    g. Refusing or in the alternative failing to review the restrictive duties;

h. Prolonging the investigation against them, knowing the allegations to be without substance;

i. Causing damage to the claimants' personal and professional reputations.

j. Denying the claimants the opportunity of putting their side of the story across by deliberately failing to inform the claimants that the BBC had made a direct request for their comments on Mr Winters' allegations.

k. DCI Pervaiz's failure to notify the claimants of the BBC`s request even after the claimants had asked to be notified of the broadcast.

l. The biased manner in which the Respondent reported the matter to the press i.e. simply confirming that two PSB officers had been under investigation for gross misconduct but not disclosing that Mr Winters had been accused of and investigated for the assault.

Causation

14. Whether any of the allegations of determent are found proven?

15. If so, whether the reason for the act/omission was because the claimants' had made a protected disclosure.

16. Whether the respondent has any liability in respect of actions/decision taken by the IPCC.

Burden of proof

17. Has the respondent shown grounds on which the acts or deliberate failures to act alleged as detriments were not materially influenced by the protected disclosures made by the claimant?

Limitation

18. Have the claimants' complaints been brought in time? Specifically:

18.1 Is there a continuing course of conduct?

18.2 What was the date of the last alleged detriment?

18.3 Have the claimants' brought their complaints within 3 months of the last detriment complained of?

Remedy

19. What remedy, if any, are the Claimants entitled to?

Privilege

5. The question of privilege was one with which we had to engage throughout the course of the hearing. It is appropriate therefore to set out here the way in which this issue has been addressed in principle.

6. At the preliminary hearing on 27 February 2018 a determination was made that the disclosures at sub-paragraphs 7.a, b and c of the issues above were subject to litigation privilege ("LPP"). The respondent had not waived that privilege. The consequence was that the claimants could not seek to prove those disclosures by direct evidence. It was agreed that the disclosure at sub-paragraph 7.d to DCC Pilling was not privileged.

7. We were reminded properly by Mr Hobbs in his skeleton argument and in oral submissions at the outset of the hearing of the need to exercise care in relation to the reliance by the respondent on LPP. The effect was that the claimants were precluded from giving direct evidence of what was said at a meeting with counsel and solicitors which they allege comprised the first protected disclosure. Although the respondent disputed that there was a protected disclosure, Mr Hobbs accepted that it would be open to the tribunal to infer what was said or communicated by either or both of the claimants, from the evidence and the surrounding circumstances. The parties had redacted from witness statements and the documents matters which were the subject of LPP.

8. A number of other redactions had been made to the documents. Some of these were in part designed to protect the identity of individuals who are named in the documents especially Female Officer A to whom we refer below. Other redactions in minutes of notes of meetings which appear to have been attended by the respondent's legal advisers had clearly been made in an assertion of legal professional privilege.

9. We reminded ourselves at the outset and kept firmly in mind in hearing the case and reaching our conclusions that no inference could be drawn adversely against the respondent from the assertion of any privilege. Nevertheless, we had to engage in our conclusions with the question of whether the effect of the assertion of privilege could amount to a detriment in respect of issues 2g and 13d.

Sex discrimination comparators

10. Prior to the exchange of witness statements in this case, which took place in the week before the tribunal hearing, the claimants were relying upon the first two comparators identified in the list of issues above, DCI Jim Riley and DSupt Simon Retford. A third comparator originally named, DI Ged Scales, had been intimated but was not relied upon.

11. The witness statements of DCC Pilling and DCS Anderson referred to a policy whereby officers against whom allegations in respect of the standards of honesty and integrity were restricted from duties while those allegations were being investigated. The two original comparators relied upon had been subject to investigation proceedings but at a point in time prior to DCC Pilling and DCS Anderson assuming their responsibilities in respect of the Professional Standards Branch ("PSB").

12. For that reason the claimants in the first days of this hearing identified 4 further officers, identified to us only by the initials B, C, D and E, as male police officers whom it was

alleged had also been investigated in respect of breach of the professional standard of Honesty and Integrity ("H & I") but had not been subjected to restrictions. As a result, two additional witness statements, those of Mr Wood and Mr Thomas, were served upon the respondent. The respondent served a further statement from Supt Egerton together with documents disclosed in respect of those officers now relied upon. Although no formal application for amendment was made, Mr Beever, for the claimants, indicated in final submissions that he relied upon officers B, C, D and E as actual comparators and Mr Hobbs did not object on behalf of the respondent.

13. In the course of the evidence the tribunal was also given information concerning DCS Hull and Supt Spragg whom it was alleged had also been subject to H & I allegations and yet had not been restricted at the material time. They, together with Mr Winters, were relied upon by the claimants not as actual comparators but, evidentially, for the purpose of the tribunal constructing, in so far as might be necessary, appropriate hypothetical comparators.

Evidence

14. The tribunal heard evidence from the claimants and on their behalf from former Chief Superintendent David Hull ("DCS Hull"). The claimant also called during the hearing Police Constable Lance Thomas ("PC Thomas") and Sgt Mark Wood ("Sgt Wood"), Police Federation representatives. On behalf of the respondents the tribunal heard evidence from:

    Detective Chief Inspector Julian Flindle, ("DCI Flindle")
    former Assistant Chief Constable Garry Shewan, ("Mr Shewan")
    Deputy Chief Constable Ian Pilling, ("DCC Pilling")
    Superintendent John Egerton, ("Supt Egerton")
    Chief Superintendent Annette Anderson, ("CS Anderson")
    Detective Chief Inspector Javid Pervaiz, ("DCI Pervaiz")
    Detective Sgt John Graham-Cumming, ("DS Graham-Cumming")
    Mr Adrian Worsley
    Superintendent Nicola Spragg, ("Supt Spragg")

15. The tribunal was provided with: statements from all those witnesses; 5 bundles of documents to which we refer by page number; an amended list of issues; an initial skeleton argument from the respondent and a note from Mr Hobbs clarifying what issues were in dispute.

16. In the course of the hearing we were provided with a chronology and closing written submissions. Because the claimants intimated that they wished to rely upon the evidence of PC Thomas and Sgt Wood in respect of additional comparators, officers B, C, D and E, a supplementary statement was produced by Supt Egerton and further documents relating to the circumstances of those officers were annexed to the statements served for that reason.

17. During the course of our deliberations we consider that we would be assisted by having further submissions from counsel in respect of the issue identified as 2g and 13i in the list of issues. By a letter of 29 March 2018 we invited further written submissions from both parties which were provided on 23 and 24 April 2018.

Regrettably, we were unable to reconvene our deliberations in chambers until late August 2018 and our deliberations took further time to conclude.

18. Since the time of the matters complained of first claimant has married and been promoted and we refer to her in this document now as Supt Higham. For simplicity we refer to former officers by name and serving officers by name and rank save where it is necessary to refer to them again by former name or rank when those are used in a document.

19. At the time of the matters complained of part of the case revolved around referral to and decisions of the Independent Police Complaints Commission ("IPCC"). Latterly that agency has been renamed the Independent Office of Police Complaints but, as we understand, still discharges the same functions and has the same authority. For convenience we refer to it as the IPCC throughout this judgment.

Findings of fact

First Disclosure

20. On 9 February 2015 the claimants were present at an employment tribunal ("ET") hearing in respect of a claim brought by former Inspector Scott Winters for race discrimination against the Chief Constable. They were to be witnesses for the respondent and, were in effect, the client for the purposes of discussions with legal representatives.

21. Supt Higham's claim is that she made a protected disclosure to David Flood QC, counsel instructed for the Chief Constable. She alleges that information that she disclosed in conference was then used by Counsel in cross examination of Mr Winters. It is her case that that disclosure began the sequence of events in respect of which this claim is brought.

22. DI Escott denies that she made any protected disclosure at that time. Subsequently she was to assert that she was not aware of the information disclosed by Supt Higham prior to that conference.

23. No direct evidence has been given by either claimant as to what was said by either of them at that conference due to the respondent continuing to maintain privilege, as he is entitled to do.

24. In the absence of direct evidence the tribunal is asked by the claimants to infer that there was a disclosure information by Supt Higham and that it tended to show the commission of a criminal offence by Mr Winters. Although the respondent disputes that there was such a disclosure (or that it was protected by reason of having been made to a legal adviser) it has not been disputed that, if such a disclosure were made, Supt Higham would have believed reasonably that such a disclosure was in the public interest.

25. It is the claimants' case that Ms Laura Shuttleworth, a force solicitor was present at the conference. That evidence was not challenged by the respondent.

26. It appears that a complaint to the Bar Standards Board may have been made (we infer by Mr Winters) since there was included in the bundle (1130) a document which appears to be the response of a solicitor on behalf of Mr Flood in respect to allegations concerning his conduct of the Winters ET proceedings in respect of this matter.

27. To an allegation that, "Mr Flood put a question to Mr Winters in cross examination in which he accused Mr Winters of grabbing a female colleague and pinning her against a wall when no complaint of any such incident never taken place", the following response is given:

> "Mr Flood accepts that he made an enquiry of Mr Winters as to whether one of the historical complaints against him involved an incident in which it was alleged that he grabbed a female probationer by the throat. Mr Flood did not put it to Mr Winters that this had occurred as he was aware that there was no witness evidence or document in the bundle the gave him an evidential basis to advance a positive case that this had occurred. Accordingly our question was an enquiry, and Mr Flood treated Mr Winters' answer as final"

28. There was other circumstantial and documentary evidence before us which corroborated that it was likely to be Supt Higham who provided the information to Mr Flood which he then used in cross examination. The following matters support a finding by inference that this occurred.

    28.1. The assertion by Supt Higham in these proceedings of having made such a disclosure.

    28.2. DI Escott's consistent denial that she was aware before that day of the information allegedly disclosed.

    28.3. Mr Flood's statement as to what he put to Mr Winters in cross-examination.

    28.4. Mr Winters' complaints of what he said had occurred at the employment tribunal hearing.

    28.5. The respondent's investigation of the complaints by Mr Winters that the claimants, or one of them, made a false allegation as further described below.

    28.6. The respondent's contention that the information was not part of Counsel's brief prepared on behalf of the respondent.

    28.7. The content of DI Escott's subsequent disclosure, accepted by the respondent as a protected disclosure, to DCC Pilling.

29. The claim brought by Mr Winters in the ET was settled without either of the claimants having to give evidence. The outcome of that earlier claim was reported in the Manchester Evening News.

30. One of the consequences of that report was that a female police officer, referred to by the parties as Female Officer A ("FOA"), alleged to Sgt Ian Sanderson of PSB, probably on 3 March 2015 (323), that in 1998 she was "assaulted by Scott Winters".

31. This was investigated when FOA was interviewed on 17 August 2015 by two officers from the PSB, Mr Jessop and Mr Cropper. The interview was tape-recorded. A transcript of the recording (284-322) was made and is referred to by FOA in an undated witness statement (271-277).

32. In that witness statement FOA states that she saw from an article in the Manchester Evening News that Mr Winters had taken proceedings against the respondent in the ET and she described that this made her extremely angry because "as a young police officer, I was … physically assaulted by Mr Winters".

33. It appears from later documentation that on or about 30 April 2015 Mr Winters had a meeting with then Deputy Chief Constable (now Chief Constable) Hopkins and complained about the claimants or one of them informing counsel of FOA's allegation.

34. It was Mr Shewan's evidence that he was informed of the conversation between Mr Winters and DCC Hopkins. He produced no written record of that conversation. In cross-examination he said he could not remember what was said.

35. On 3 June 2015 (134) Mr Shewan's assistant was seeking an appointment for him for a meeting with Ms Stone of the IPCC. In his witness statement Mr Shewan said that he wanted support and guidance from the IPCC, "to establish the best way to address the concerns being raised by Insp Winters". In oral evidence he said that he wished to discuss a range of concerns with the IPCC and that this was one of the cases he wished to discuss. He acknowledged the difference between his written statement and his oral evidence. Mr Shewan gave no evidence about whether there was in fact a meeting with the IPCC at this stage or, if there was, what was said.

<u>The second and third disclosures</u>

36. These disclosures are said to have been made by Supt Higham and DI Escott to Ms Shackleton, the force solicitor who is alleged to have been present at the meeting with counsel in February of that year, on 2 & 8 June respectively. No direct oral or documentary evidence was adduced to show what was said by the claimants on those occasions. No evidence was given by Ms Shackleton and no note that she might have taken was produced upon disclosure. It was not suggested by Mr Beever that the tribunal could infer what was said on those occasions. They were not relied upon in the final event by the claimants. It would

be speculation for the tribunal to attempt to make findings of fact of what was said. These alleged disclosures played no further part in our fact-finding or conclusions.

37. On 15 June 2015 a letter before action in respect of a potential claim for defamation was served on the respondent, we infer by solicitors acting for Mr Winters.

38. On 18 June 2015 Mr Winters formally reported concerns about the claimants' behaviour to Supt Spragg and named them (138-139).

39. At this time DCS Hull was in charge of the PSB. Supt Spragg was one of two superintendents who reported to him.

40. Mr Winters stated in his report,

> "On or after 9 February 2015 during the course of an employment tribunal at the Manchester tribunal offices either or both of the [claimants] informed David Flood (Counsel) I had been subject to a complaint where a female officer alleged I had grabbed her by the throat and pinned her to the wall. This was false, it never happened, was not reported and was not investigated.

41. Mr Winters went on to describe the meeting that he said he had with DCC Hopkins on 30 April 2015. According to Mr Winters, Mr Hopkins said that he was aware that an officer had claimed she was the victim of the assault at Bolton in 1997. Mr Winters said that he refuted the allegation saying he was not at Bolton in 1997. According to Mr Winters, Mr Hopkins assured him that Ms Shuttleworth did not instruct Mr Flood to say what he did. Mr Winters alleged that either or both of the claimants had felt "able to convey deliberately false information" in the circumstances and that he believed that they did an act intending to pervert the course of public justice.

42. When allegations are received by PSB a file is opened. It is designated with the initial "Y" if the complaint emanates from a member the public and "YD" if the complaint is made by a police officer. On 22 June 2015 (142E) Supt Spragg gave instructions for a YD file to be created.

43. On 24 July 2015 DCC Hopkins called a meeting which was attended by DCS Hull, DCI Flindle and Ms Shuttleworth concerning Mr Winters' complaint. DCC Hopkins said that the matter should be determined as a conduct matter and that DCS Hull should lead the fact-finding process. DCI Flindle was allocated the task of carrying that out.

44. The file that was created in response to Mr Winters' allegations and was allocated to DCI Flindle. DCI Flindle had been working in PSB but within a different section from that in which the claimants had worked. He recorded his considerations and actions in a case book (143-156). Upon receipt of the case he was required to consider the nature of the complaint in order to determine how it should properly be taken forward.

45. We break of from our chronological account to summarise the relevant procedural steps.

46. Where misconduct is alleged against a police officer, a statutory disciplinary process is invoked. That process is contained within the Police (Conduct) Regulations 2012. Where unsatisfactory attendance or performance is alleged the matter is dealt with under separate regulations.

47. We were provided with a copy of the relevant regulations (1146-1266) and a copy of the Home Office Guidance (as revised in May 2015) in respect of those regulations and their application (1281-1403).

48. Mr Winters' complaint was one of misconduct. When such an allegation is made the "appropriate authority" (i.e. a senior officer with delegated authority from the Chief Constable) is required to make an assessment whether the allegations if proved would amount to misconduct, gross misconduct or neither.

49. The Home Office guidance at paragraph 2.120 and 2.121 (1310) indicates where that officer is not able to make an immediate assessment under regulation 12,

> "a process of fact-finding should be conducted but only to the extent that it is necessary to determine which procedure should be used. It is perfectly acceptable to ask questions to seek to establish which police officers may have been involved in a particular incident and therefore to eliminate those police officers who are not involved."

50. Because the formal investigation process affords safeguards in relation to the serving of notices on the officer concerned and providing a right to consult with a police friend the guidance also states, "the initial assessment and in particular fact-finding should therefore not go so far as to undermine the safeguards."

51. We resume our chronological findings of fact.

52. On 29 July 2015 DCI Flindle sent an email to DCC Hopkins (165), which was copied to Mr Shewan, acknowledging that he had been allocated the file and that he was "attempting to establish the basic facts" in order to advise the appropriate authority so that the regulation 12 assessment could be made. From this email the recipients would immediately know that it was the behaviour of the claimants about which Mr Winters was complaining.

53. On 30 July 2015 Mr Shewan enquired of Supt Spragg who was the appropriate authority ("AA") for this allegation. By reply she confirmed that he was the AA and indicated that it concerned the same issue that she had discussed a month earlier with him. She confirmed that DCI Flindle was conducting the initial fact find. Mr Shewan did not suggest at this stage that it was inappropriate for PSB officers to carry out that process.

54. This was the start of the process under the Police (Conduct) Regulations 2012.

55. We consider that it may be convenient to set out here what the consequences could be depending upon the outcome of the fact-finding and the initial assessment. We take this from the helpful summary incorporated in the respondent's closing submissions.

55.1. The initial assessment of conduct (under Regulation 12) merely determines whether the conduct alleged could amount to (a) a breach of any of the 'Standards of Professional Behaviour'; and, if so (b) whether, if proven, such matters would amount to misconduct, gross misconduct or neither. The amount of evidence required at the initial assessment of conduct is therefore not very great.

55.2. Assuming that the Regulation 12 initial assessment of conduct identifies potential misconduct or potential gross misconduct [1145]:

55.2.1. an investigating officer ("IO") will be appointed (Regulation 13);

55.2.2. there will be an investigation (Regulation 14);

55.2.3. a misconduct notice will be served on the accused officer (Regulation 15);

55.2.4. the accused officer must respond to the notice in writing (Regulation 16);

55.2.5. formal interviews can then be conducted (Regulation 17);

55.2.6. the IO will ultimately produce an investigation report (Regulation 18).

55.3. After the investigation has been completed, the AA must consider the IO's report and conduct a further assessment of conduct to determine whether the accused officer has a case to answer for misconduct or gross misconduct or neither (Regulation 19 [1184]).

55.4. If the Regulation 19 assessment of conduct identifies potential misconduct the matter will be referred to a misconduct meeting. If the Regulation 19 assessment of conduct identifies potential gross misconduct the matter will be referred to a misconduct hearing [1145].

55.5. In either case, the accused officer will be served with a Regulation 21 Notice. That is a notice which lays the charges or sets out the allegations of misconduct that are to be pursued towards a formal misconduct meeting or hearing. At that stage, the officer is also served with the IO's report and supporting documents identified during the investigation. The officer is then required to enter a formal response (defence) to the allegations (Regulation 22).

55.6. At both misconduct meetings (determined by a senior officer) and misconduct hearings (which are determined by a panel of three chaired by a legally qualified chair), the disciplinary sanctions available are management advice, written warning or final written warning (see Regulation 35 [1214]). Only proven gross misconduct at a misconduct hearing can result in dismissal.

55.7. Officers found guilty of misconduct or gross misconduct and subjected to a consequent disciplinary sanction can appeal both finding and sanction to the Police Appeals Tribunal (PAT).

56. As part of the fact-finding exercise DCI Flindle considered it necessary to determine the legitimacy of the information that had apparently been disclosed during the earlier tribunal process, to ascertain who and why information was disclosed to counsel and in order to do that he recorded initial actions. These were to check Mr Winters' disciplinary history, to speak to or interview FOA, to speak to DCC Hopkins to establish the source of his information and to review that information and consider briefing the appropriate authority.

57. On 30 July 2015 DCI Flindle recorded receiving an email from Supt Spragg which recorded that Sgt Sanderson had received a call from a woman alleging assault by Scott Winters and stating that she was prepared to give a witness statement. DCI Flindle ascertained that since that contact had occurred after the hearing at the employment tribunal it could not have been the source of the information apparently given to Mr Flood QC.

58. On the same day DCI Flindle met DCC Hopkins who informed him that he had contacted Mr Winters on the telephone after the employment tribunal case was settled and arranged a meeting. The purpose of the meeting had been to discuss how they could "move on", by which we understand how Mr Winters' relationship with the police force could move on since he was still then a serving officer. In the course of that conversation, as recorded in DCI Flindle's casebook (154), Mr Winters' allegations against the claimants were raised and DCC Hopkins told Mr Winters that the information had not been disclosed by Ms Shuttleworth as part of the employment tribunal process.

59. There is no record by DCI Flindle to corroborate Mr Winters' assertion that he had been reassured that DCC Hopkins had told him no further action would be taken against him in regard to the allegation of assault.

60. Also on the same day DCI Flindle had a conversation with Supt Spragg to update her following his conversation with DCC Hopkins. She appears to have suggested to DCI Flindle that he speak to DCS Hull since he may have had some dealings with regard to this matter. As DCS Hull confirmed, that was because he had been the senior officer in one of the relevant boroughs (i.e. where Mr Winters had been posted) at an earlier point in time.

61. Again on 30 July 2015 DCI Flindle recorded a conversation that he had with DCS Hull. DCS Hull explained that whilst he was stationed at Wigan Mr Winters wished to transfer boroughs. As a result Supt Steve Nibloe queried whether this was

inappropriate due to a previous issue with an officer serving in his borough. Although redacted, the casebook entry appears to refer to FOA and records that she had spoken with a senior officer and stated "she had been pushed up against the wall x SW". DCI Flindle recorded that he considered that was likely to be a complaint by FOA against Scott Winters. He also recorded that DCS Hull could not recall the surname of the officer who complained. At all events, the transfer requested by Mr Winters was not authorised.

62. DCI Flindle records a direction, by which we understand a direction given by DCS Hull, that the fact-finding process was only into the allegation made by Mr Winters; that FOA was to be interviewed; a chronology was to be produced and that Mr Winters was not to be interviewed. The information was then to be reviewed and a decision was to be made by the AA.

63. On 5 August 2015 DCI Flindle emailed Ms Shackleton, the force solicitor who was dealing with the intimated claim of defamation made by Mr Winters, asking for assistance in terms of the instructions given to Mr Flood, advice on obtaining transcripts of the employment tribunal, cooperation from Mr Flood and a copy of Mr Winters' letter and a copy of a letter that he believed Mr Flood had sent to Mr Winters.

64. In early August officers in PSB were attempting to inform Mr Winters of the progress of the enquiry and on 7 August 2015 Mr Glover an investigating officer forwarded an email from DCI Flindle to Mr Winters (206E-206F) which informed Mr Winters that he was carrying out the fact-finding process. Mr Winters replied immediately, copying in Supt Spragg, saying that he was unhappy that DCI Flindle had been given the task, stating that he had no confidence that he would be able to look at it objectively.

65. On 13 August 2015 Supt Spragg responded to Mr Winters copying in DCS Hull (206G). She noted Mr Winters' concerns about DCI Flindle, explained the rationale for the matter being assigned to him and said that she would discuss with DCS Hull his concern about DCS Flindle's objectivity.

66. On 17 August 2015 Mr Winters wrote again to Supt Spragg and DCS Hull on the same topic (206M) expressing the opinion that DCC Hopkins had been lied to in an attempt to justify the information provided to counsel.

67. On 17 August 2015 FOA was interviewed by PSB officers at Bolton. The transcript of the interview (2060-206(26)) reveals information that:

    67.1. FOA was a currently a sergeant at Bolton.

    67.2. She was based at Leigh shortly after she joined the force in 1996.

    67.3. Although Mr Winters was then only a police constable he had reprimanded her about the state of her shoes.

    67.4. She went to work at Tyldesley for a few months and that she had been told that Mr Winters was passing information that she had been sleeping with

somebody and when she confronted him about this: "At that point he stood up and grabbed me by the throat and pushed me against the cabinets and said 'You tell anybody, Lammy or anybody and I will break your fucking legs.'

67.5. She described that she was a complete wreck. She was only 22 at the time and "brand-new out of polystyrene".

67.6. She reported that on another occasion at Tyldesley, "He pushed me off the computer and had me by the throat again and said 'It's my fucking computer, I will break your legs if you touch it'. I started screaming and the front desk girl, [name redacted], came running in and said 'Get off her'. I just remember her saying 'Just get off her'."

67.7. At a later occasion Mr Winters had alleged that another officer (not FOA) had threatened him on parade as a result of which FOA was asked to see her Superintendent;

67.8. The Superintendent said to her that he knew what was going on, FOA was in tears and the Superintendent said, "you are the eighth policewoman I have in my office in tears as a result of this individual and I won't have it, it's bullying."

67.9. FOA made a written report on the instruction of the Superintendent and on the following day she was sent home when she handed in her report because the officer to whom she gave it said that he did not want her to see what was going to happen because (by implication) Mr Winters was going to have to see the Superintendent and then empty his locker.

67.10. Following that she heard Mr Winters was moved to Bolton.

67.11. FOA also reported that about 6 to 12 months before this interview (i.e. in about 2014) when Mr Nibloe was her Superintendent she was told that Mr Winters had put in to transfer to that borough having by then become an Inspector himself and she explained she did not want anything to do with him.

67.12. The Superintendent had said he had concerns about Mr Winters coming because they would not be on equal footing, he asked FOA what happened with her initial complaint and she said she was never told.

67.13. The Superintendent "did some digging" and reported back to her his understanding that Mr Winters had received an ACC's warning.

68. In her formal witness statement (271-277), which was prepared from the information she provided in interview, FOA repeated the allegations and identified Supt Howells as the person to whom she had spoken after the second alleged assault by Mr Winters.

69. On 2 September 2015 Mr Winters wrote to DCS Hull (215) complaining that no investigation had been undertaken and that DCI Flindle's rationale for his actions were "fundamentally flawed". He invited DCS Hull to arrange for an independent force to formally investigate the matter on the basis that the senior leadership team

of PSB was too close to the officers concerned; that other offices within GMP were likely to be influenced and independence was needed for those suspected and himself.

70. On 3 September 2015 DCI Flindle met DCS Hull who instructed him to suspend the fact-finding and report on it to date so that he could take it to ACC Shewan for a decision.

71. On 4 September 2015 DCS Hull responded to Mr Winters (213-214). DCS Hull acknowledged that the request for independence was a fair point, "You say you feel independence is necessary both for those who may be subject of any such investigation and also for yourself. I think these are very valid points."

72. In consequence of DCS Hull's instruction, DCI Flindle compiled a fact-finding report (218-228) dated 9 September 2015. He set out the chronology of what had occurred and what steps he had taken and identified what further enquiries were required. He set out the outcomes of the fact-finding, summarising the information provided by FOA. He recorded that:

    72.1. FOA did not know either of the claimants and had had no contact from PSB prior to her telephone call to Sgt Sanderson;

    72.2. FOA had said she was not the source of the information provided to Mr Flood;

    72.3. FOA said she had submitted a report concerning the assaults and bullying but was not interviewed and was not informed of the outcome of her complaints. She considered that that matter was unresolved;

    72.4. enquiries had not revealed the report FOA said she had made;

    72.5. other enquiries had confirmed Mr Winters' account that no incident had taken place at Bolton but "corroborated a very similar set of circumstances played out at Wigan";

    72.6. enquiries may support Mr Winters' stance that he was never informed that such an allegation had been made or investigated;

    72.7. the information raised wider concerns how that matter had been potentially dealt with at the time.

73. In his conclusions DCI Flindle considered the fact find process in relation to Mr Winters' allegation remained incomplete and that the assessment might prudently be delayed until the AA had an account from Mr Flood. As to the allegations made by FOA, DCI Flindle records that she understood that her account was taken in order to investigate the concerns raised by Mr Winters but that she required further contact and discussion on how historic issues might now be addressed.

74. DCI Flindle wrote:

> "It would appear from the fact-finding to date that FOA's 'complaint' has either been ignored or dealt with as part of what would appear to be a course of lower level inappropriate behaviour. There is no evidence that consideration has been given to the potential criminal offences committed should the allegations have been proven. In addition a report from Wigan's Chief Superintendent Hodson to PSB's Chief Superintendent Provost indicates some concerns in the assessment of severity and the proposed outcome of the investigation.…
>
> Whilst it is essential that these additional issues should not detract from a fair and robust examination of the issues raised by Inspector Winters the information now known cannot simply be dismissed."

75. DCI Flindle's evidence was that he did not send this report to Mr Shewan ahead of the meeting that he attended on 10 September 2015 with DCS Hull and Mr Shewan but that he handed the report to Mr Shewan at the outset of the meeting and, after a brief introduction by DCS Hull, began to talk through the report.

76. Despite factual disputes about other aspects of the meeting it appears to be common ground that Ms Shuttleworth had been present with Mr Shewan before DCS Hull and DCI Flindle arrived and may have remained with Mr Shewan after the meeting was concluded. No evidence was given as to the extent of her participation in the meeting except that Mr Shewan recalled that she may have taken some notes. No notes from Ms Shuttleworth were produced.

77. Mr Shewan accepted in evidence that he did not read the report before the meeting ended and indeed that he never read the report. He accepted that he stopped DCI Flindle from giving his oral report before it was concluded.

78. DCI Flindle made a brief note of the meeting in his daybook (231) which he amplified in his oral evidence and shows that he recorded the following:

> "SW matter - AA concerned that GMP will be challenged x SW (ET2) as whilst looking into his complaint we have found evidence [illegible] GM against him. Concern re FF and decision to interview witness (indecipherable). Assure him relevant to aims of FF and she came forward therefore [symbol] can't unknow what we know. No decision recorded."

79. It is common ground that SW is a reference to Mr Winters, GM to gross misconduct and FF to fact findng.

80. It is necessary for the tribunal to make a judgment about the credibility of a number of the respondent's witnesses. The first of these is Mr Shewan. He accepted in evidence that it was his decision to cut short Mr Flindle's exposition of the fact-finding.

81. In relation to that it was alleged in paragraph 14 of the amended grounds of complaint (35) that during this meeting, "ACC Shewan put his hands to his ears,

pretending not to hear said he did not want to hear anything about the assault by Mr Winters."

82. In his witness statement (paragraphs 21-24) Mr Shewan said that he did do this because he was concerned at what DCI Flindle was telling him. He explained that because a complaint had been made by Mr Winters it could be perceived that rather than carry out a fact-finding into that complaint DCI Flindle had sought to carry out fact-finding into the allegation of assault by FOA. He described himself as in "complete disbelief" at what he was hearing. He said "I felt as though Inspector Winters may seek to argue his concerns (by implication, concerns as to the lack of objectivity) had been realised due to the manner in which the fact-find had been carried out. He then said, "I admit that, for a split second, I put my hands up to my ears. However this was to express my disbelief at what I was hearing. It was a momentary gesture and I immediately took my hands away."

83. In his witness statement DCS Hull said that he attempted to explain to Mr Shewan, who had quickly expressed the view that the process had been flawed, the rationale for and the significance and relevance of the information provided by FOA. He said that Mr Shewan refused to hear any more and repeatedly said "I don't want to hear this", "I just don't want to hear it". He described Mr Shewan putting his hands to his ears, which he acknowledged was a momentary gesture, as a gesture of covering them so as not to hear any more. He said the message was clear and that Mr Shewan did not wish to listen to anything further the officers had to tell him about the fact-finding process.

84. Mr Beever cross-examined Mr Shewan on this part of his evidence. Mr Shewan said, "I have a recollection of putting my head in my hands in disbelief at what I was hearing. I'll be honest with you. I put my hands to my head, whether to my temples or ears, it was in disbelief." At this, it was put to him that he could not describe precisely what he had done. Mr Shewan said that he put his hands to his head and that DCS Hull's interpretation was not correct.

85. Mr Beever then questioned Mr Shewan on the contents of paragraph 24 of his witness statement which we have quoted above. In a series of answers to the same question Mr Shewan replied "I put my head in my hands. I put my hands to my head. It was in disbelief. That was what it says in my statement." It was put to him by Mr Beever that the gesture of putting his hands to his ears, from which he would appear to be resiling, indicated that he did not wish to listen to what the officers were telling him. Mr Shewan replied "I can't allow you to ask question about it being a symbolic gesture." He said he could not believe the propriety of what had been done, that he could not believe that PSB had done what he was being told.

86. Mr Shewan gave evidence that he had not read the amended grounds of complaint when he completed his witness statement but that he was given the gist of it. He was asked to explain the variance between his written evidence and his oral evidence. He said that he had given the explanation of putting his head in his hands to solicitors acting for the respondent. He accepted that paragraph 24 provides an account of putting his hands to his ears as a momentary gesture and

he accepted that he did not correct that before adopting his witness statement as his evidence before the tribunal.

87. Mr Beever also cross-examined Mr Shewan on the contents of paragraph 37 of his witness statement in which he denied that at the point when he took the decision to refer the matter to the IPCC neither DCI Flindle nor DCS Hull had presented him with any evidence that the allegation of assault against Mr Winters was "of substance". He said that at that meeting, "I was not presented with any evidence to show that an assault had occurred. I accept that I was told that [FOA] had given a statement in which she alleged that she had been assaulted by Inspector Winters" but maintained that the detail provided did not match the detail which had been put to Mr Winters at the ET.

88. Under cross examination Mr Shewan confirmed he did not read the evidence on the ground that it was tainted by the way in which it had been obtained.

89. Mr Shewan attempted to explain away a significant variance between his written and oral evidence. He suggested that there was no difference in substance between the two accounts. We could not accept that assertion. He then said for the first time in tribunal that he had told the solicitors acting for the respondent what he had in fact done but they had wrongly recorded it. We consider that to be equally improbable. He then accepted that he had signed his witness statement containing an incorrect account which, by inference, he must have read before signing.

90. For a police officer of his standing to give evidence to that effect is of significant concern. The evidence of any witness who gave evidence to that effect would be seriously undermined.

91. Beyond that, the inherently contradictory nature of the position that Mr Shewan adopted, that he had not read nor was aware of the evidence contained in FOA's statement or interview but that it was not "of substance" was also of concern. He attempted to explain that what he meant by that was that the evidence lacked substance because it was "tainted" by the way in which it was obtained. We considered that explanation was wholly implausible.

92. Mr Shewan's evidence about how he had acted in that meeting was unreliable, in the tribunal's judgment. His attempt to explain away the physical gesture was unconvincing. We consider that it was at least in part because he realised that his reluctance to listen to any explanation given by the senior officers of what they had discovered would, if it were communicated to Mr Winters, provide fuel for him to make a yet further complaint against the respondent. It would expose the respondent to the risk of criticism for not having properly addressed what might well be a legitimate complaint by a newly appointed constable who was female that she had been assaulted by a more experienced male colleague and bullied in the way she described in her interview.

93. Mr Shewan did not seem to grasp the significance of establishing the truth about the reliability of the disclosure about which Supt Higham had made in the process of responding to the assertion by Mr Winters that the allegation was false and

defamatory. Alternatively, if we are wrong in that conclusion, he did grasp it and his attempt to curtail what was being revealed to him raises a serious concern about the objectivity of an experienced officer who was then holding the rank of Assistant Chief Constable.

94. The extent to which those findings about Mr Shewan's credibility may be of significance in regard to the inferences which the tribunal is asked to draw we set out below.

95. On 14 September 2015 DCI Flindle sent a memorandum to Mr Shewan (241-245) together with a handover package containing the documents that had been collated thus far.

96. Mr Shewan instructed DCS Hull and DCI Flindle to prepare an IPCC referral. That document (253-265) was prepared and dated 24 October 2015. It identified the referral as a voluntary referral, the officers concerned as the claimants and Mr Winters. The three issues that were being referred were set out:

> "1. Allegations made by Inspector Winters that PSB officers, namely DCI Jane Little and/or DI Laura Escott disclosed information to GMP counsel that was "*untrue, never happened, was never reported and was not investigated*". The nature of the information was that Inspector Winters whilst on duty had assaulted a female police officer.
>
> 2. Allegations made by a serving police officer, PS [FOA] that in 1998 she was assaulted by Inspector Winters on two separate occasions, the second of which was witnessed by a counter clerk and although she reported it to senior officers at the time, the matter does not appear to have been investigated.
>
> 3. Review of the 'fact find 'process undertaken by GMP's PSB into the allegations made by Inspector Winters. This is based on a previous indication by Inspector Winters that he has no confidence in GMP to investigate his concerns. A view that is now likely to be reinforced by the outcome of the 'fact find' that has identified allegations of potential misconduct in relation to him."

97. Attached to that referral were three documents: the PSB investigation file and policy logs, DCI Flindle's report to Mr Shewan of 9 September 2015 and his handover report of 14 September 2015.

98. On 25 November 2015 DCI Flindle sent an email to the IPCC (266) identifying the documents that accompanied the referral. In addition to the referral itself DCI Flindle attached the following documents:

98.1. 733 report re [FOA]. This was a report (267-270) prepared by Mr Cropper who assisted DCI Flindle in the investigation.

98.2. Entry in L division discipline book (178). This was a note by D/Supt Fernside that ACC George had admonished Mr Winters on 23 March 1999.

98.3. Emails and reports concerning “complaints” against PC Winters in 1998 (131D-131I). This included a report dated 29 March 1999 from Supt Howells to D/Supt Hodson concerning Mr Winters. The report identified FOA by name as a person who made allegations of bullying against Mr Winters which had been corroborated to Supt Howells by a number of police officers. These had a come to light as part of an investigation into allegations made by Mr Winters against another officer and Mr Winters seeking information for the progress of those complaints. It also referred to a move of Mr Winters from Leigh to Wigan and a record as a result of an internal investigation on 2 April 1999 it had apparently been found Mr Winters was responsible for perpetrating rumours within his shift which caused distress to fellow officers - the rumours being that he had suggested in crude terms that two married officers were having an affair and sexual intercourse at work and that two other female officers were engaged in a lesbian relationship.

98.4. MG 15- interview with [FOA] (interview audio interview), a transcript (284-321) of the interview conducted with FOA after she approached PSB.

98.5. MG 11- [FOA], a copy of the witness statement of FOA prepared after she was interviewed (271-277).

98.6. An email from Chief Superintendent Julie Hodson to DCS Arthur Provoost re PC Winters “compliant” outcome in 1998. This was an email (131A) in which Ms Hodson referred to a prolonged period of time of bullying of other officers by Mr Winters and appears to be asking a fellow officer based at police headquarters to reconsider a decision not to proceed against Mr Winters by way of disciplinary proceedings. The identity of the victim is not clear from that document. The word compliant is an apparent misspelling of complaint.

98.7. Report by Chief Superintendent Hodson in respect of PC Winters’ transfer. This memorandum (131B-C) confirmed that Mr Winters was based at Leigh/Tyldesley until 10 April 1998 when he was moved to Wigan.

98.8. Sgt Sanderson (PSB) day book entry re-contact from [FOA]. That entry (132) demonstrated, we infer, the report by FOA to Sgt Sanderson on 3 March 2015.

98.9. IO Handover Report (includes fact find activity and rationale). That comprises DCI Flindle’s report of 9 September 2015 (218-228) which we have described above.

98.10. IO report to AA raising concerns re potential conflict of interest (279-283). This was DCI Flindle’s handover report to Mr Shewan prepared after the meeting on 10 September 2015.

98.11. IPCC referral. This is the IPCC’s pro forma document completed by the referring force dated 24 October 2015 (253-265) referred to above.

99. These documents then show the material that was before the IPCC after the matter had been referred.

Structure of the PSB

100. It is appropriate to identify the relevant personnel within this department before continuing the chronological account of the facts.

101. The PSB senior leadership team, for the purposes of this case, comprise the relevant chief officer, the chief superintendent who was in charge and the superintendent in charge of complaints. That person was one of the two superintendents who reported to him or her. The other superintendent dealt with counter corruption and undercover matters.

102. Although the function of AA was normally held by a Deputy Chief Constable, prior to Mr Pilling becoming Deputy Chief Constable on 1 January 2016 the previous CC and Mr Hopkins, as former DCC, had delegated that authority to officers holding the rank of ACC. Mr Shewan had been in that role twice, in 2009 for about 2 years, when ACC Dawn Copley had taken over for a period, and then again from about 2014/2015. At the time when DCC Pilling was appointed Deputy Chief Constable it had been decided that the AA function would revert to the Deputy Chief Constable and did so with effect from that time.

103. DCS Hull had become head of PSB in October 2014. He was succeeded by DCS Anderson who started in PSB at the end of February 2016, there being a 3 to 4 week transition period with DCS Hull.

104. Supt Spragg had started in PSB in October 2014 as superintendent in charge of the complaints work. In February 2016 that responsibility was transferred to Supt Egerton although Supt Spragg remained in the Department leading on reform work until January 2017. Supt Egerton confirmed that after attending a one-week course (because he had not worked in PSB before) he started his role in PSB at the beginning of March 2016.

Chronology continued

105. On 15 January 2016 the IPCC wrote to Mr Shewan (335) informing him that it had decided to conduct an independent investigation.

106. On 18 January 2016 the IPCC wrote to Supt Spragg and informed her that it was content that the allegation by FOA that she been assaulted could be “returned to the force”. In other words, the investigation of that was a matter for the respondent without further recourse to the IPCC.

107. On 19 January 2016 DCI Flindle wrote to DCS Hull (336C) describing that as an odd decision since it was potentially the most serious allegation because it comprised a potential criminal offence.

108. On 20 January 2016 Supt Spragg asked the IPCC to give clarity (336H). She asked for confirmation that the IPCC were not suggesting a local investigation of allegation 2 and for confirmation of the IPCC's view in respect of allegation 3 (the manner of the fact-finding).

109. On 28 January 2016 the IPCC approved terms of reference for the investigation into the allegation made by Mr Winters. (337-338). There was further correspondence concerning what information would be provided by the respondent to the IPCC (e.g. communications with Mr Flood).

110. Supt Spragg had a conversation on 29 January 2016 with one of the investigators for the IPCC and she reported his explanation to her of the rationale and scope of the IPCC investigation. She passed this on to DCC Pilling and DCS Hull in an email (340C).

110.1. As to [allegation 3] she explained that the IPCC considered that the method of fact find was not something that warranted investigation at all and that it was accepted that the fact find had to take place to establish what the force was dealing with. She said that that matter was now closed.

110.2. As to the allegation by FOA [allegation 2] the IPCC has said that it was not something that they would take on. They described it as an 18-year-old allegation which appears to have been dealt with however badly at the time and, as a common assault, would be out of time. This refers to it being an offence triable only summarily in respect of which proceedings must be started before the magistrates court within six months of the date of the alleged offence.

110.3. As to [allegation 1], the complaint by Mr Winters Supt Spragg wrote: "The disclosure at ET they have agreed a narrow focus around the issue - largely: how was the disclosure made, is there anything to indicate this was a dishonest disclosure, is there any view on the appropriateness of the disclosure."

111. DCC Pilling wrote to the IPCC on 2 February 2016 (341). He stated that he was keen for the IPCC to have full access to the information but it might be necessary to have dialogue regarding waiving legal privilege. As to the allegation returned to the force by the IPCC (the allegation against Mr Winters) he said it was his intention to investigate that matter within GMP albeit the time which had elapsed and the nature of the crime alleged would make it a difficult process.

112. On 23 February 2016 the IPCC commissioner Jan Williams wrote to DCC Pilling again (367-368) speaking about the documentation that was needed including the instructions given to Mr Flood at the employment tribunal and the need for there to be a waiver of privilege if the IPCC were to speak to Mr Flood about how he obtained the information. The commission went on to give a rationale for returning the assault allegation to the respondent. Saying "conflating the two could give rise a complaint (sic) from Inspector Winters that the investigation into his allegations

could be compromised, as the lead investigator could face a conflict in terms of lines of enquiry."

113. DCC Pilling responded on 29 February 2016 (369) describing the decision not to investigate the alleged assault as a disappointment. In that letter he said that it put the force in a difficult position of having to delay an investigation into the allegations by FOA whilst the IPCC investigations were carried out. He went on, "Furthermore, considering the first paragraph of the terms of reference set by the IPCC, this states that the allegation relates to 'false 'allegations being made at the tribunal. It is difficult to see how the IPCC can make an assessment into the truth of the allegations, without an investigation into them first taking place."

114. In our judgment there was significant force in the position adopted by DCC Pilling at this stage. The issue of whether an officer had made a false allegation, namely one that was fabricated either by the officer or by her informant and to her knowledge, was inextricably bound up with an enquiry as to whether Mr Winters had committed the assault alleged by FOA.

115. In February 2016 Supt Higham changed role and became a senior investigating officer in the respondent's major incident team.

116. At about this time DCC Pilling was considering holding a meeting to discuss with relevant officers the matter of an anonymous and persistent online Twitter feed, entitled "Cabal of Corruption", which was abusive and critical of a number of GMP officers. The claimants were two members of the respondent who had been criticised and abused in this way. On 24 March 2016 DCC Pilling wrote separate emails to the claimants, but in the same terms, saying that he intended to hold a meeting about this but offered them the opportunity of a private meeting if they wished (401-402). Ms Higham responded saying that she would attend the meeting although it appears that she was in fact unable to attend on the day.

117. On 11 May 2016 DCC Pilling wrote again to the IPCC (425-426) on the subject of documentation from the earlier employment tribunal hearing and whether the respondent was prepared to disclose it. He wrote:

> "GMP has sought an independent view from counsel regarding the status of the documents you have requested and whether they attract legal professional privilege. Counsel's view is that some of the documents attract litigation privilege. I have also met with members of our ethics committee who helped inform my decision.
>
> Considering the advice I have received, I decline to provide the information requested were items sought are covered by privilege. The request is refused as a matter of principle, that being the maintenance of legal professional privilege, and as a matter of law, being that the commission has no statutory powers to compel any personal organisation or organisation to provide items which are subject to legal privilege."

118. DCC Pilling continued saying that the materials had been reviewed by independent Counsel and without waiving any privilege Counsel had expressed the opinion there was nothing within them which were relevant to the matters in

issue in the investigation. He went on to state that certain documents did not attract litigation privilege.

119. On 27 May 2016 Ms Farrow, the IPCC investigator, wrote to DCI Hussey who was then the point of contact for the matter within PSB (and who reported to Supt Egerton) that severity assessments had been completed in respect of the claimants (433). The severity assessments (434 and 435) are in materially similar terms.

120. The assessments stated that the officers have behaved: "in a manner which would justify the bringing of disciplinary proceedings. A regulation 16 notice is to be served on her…". They referred to the allegation made by Mr Winters of an unauthorised disclosure of false information which was not recorded anywhere amounted to defamation of his character. It was stated that the respondent's legal services confirm that that information "did not form part of official disclosure to his counsel". They alleged that the officers may have disclosed the information to counsel as each was one of only two officers present at the time. The assessment continued:

> "The severity assessment is therefore one of gross misconduct. This is on the grounds that her behaviour is in breach of the standards of professional behaviour, in particular Honesty and Integrity, Authority, Respect and Courtesy; Duties and Responsibilities, and Conduct. It is felt that the breach is sufficient as to warrant, if proven or admitted, dismissal from her role. Therefore this breach has been assessed as Gross Misconduct based on the information available at this time. The severity assessment will be constantly reviewed as further evidence emerges."

121. Those assessments were passed by Supt Egerton to DCS Anderson who on 31 May 2016 informed DCC Pilling that the severity assessment "includes a breach of standards for [H & I] so we will have no option to consider restricting and taking off operational duties." She continued, "We will also need to consider whether another role is necessary for DI Escott due to the implications on PSP. DI Escott has previously been subject to allegations on the cabal."

122. It is clear that DCS Anderson, DCI Hussey and Supt Egerton were all of the opinion of the time that restriction would need to be considered by DCC Pilling as AA. There is no indication in the contemporaneous emails that restriction from duties would automatically follow.

123. On 31 May 2016 DCI Hussey wrote to Supt Egerton and DCS Anderson having drafted applications to restrict and the regulation 16 notices. (453-461).

124. It was the practice within PSB for there to be a monthly update meeting attended by the AA and the senior leadership team within the Department. Typically this would include the most senior officers and some of those who reported to them if their attendance were necessary. At an update meeting on 5 June 2016 (462) a note was made, "Enquire about roles for Laura Escott outside of PSB (in light of Op Recital) … JE". This reflected a discussion where it was considered whether as a result of the forthcoming regulation 16 notice and restrictions DI Escott should be assigned to a role outside PSB. Later that day

DCC Pilling sent a message to DCS Anderson confirming that was his intent (466). In the event that is what occurred and Supt Egerton, who was given the task of arranging the move, effected a transfer to a public protection investigation unit role where DI Escott worked under Chief Supt Rumney who had previously been head of PSB.

125. DCS Anderson signed the applications to restrict duties on 14 June 2016. Ms Farrow of the IPCC signed regulation 16 notices for both claimants and both claimants signed the notices when they were served upon them on 15 June 2016 (478-485). On the same day Supt Egerton signed notifications of restricted duties for both claimants. (136-137). The regulation 16 notices and the notifications of restricted duties were served on the claimants that day.

126. According to DCS Anderson it was at about this time that Inspector Winters put in his notice of intent to retire from the respondent. She was aware that he intended to retire in about January/February 2017. At this point in time the retirement of an officer would effectively preclude the continuation of any disciplinary proceedings against them. However the relevant regulations were subsequently changed (or were in the process of being changed) so that if an officer were the subject of disciplinary proceedings for gross misconduct when notice of intent to retire was given they could not retire from service in the police until those proceedings had been determined.

Comparators

127. It is appropriate at this stage to set out our findings of fact in relation to comparators.

128. We have set out above the circumstances in which the comparators known as officers B, C, D and E were advanced and the way in which the parties addressed the circumstances.

129. It was in respect of the decision to restrict them from duties that the comparators relied upon the actual comparators, officers B, C, D and E. It is therefore convenient to set out the tribunal's findings of fact in relation to those comparators at this stage. It was common ground that they are all male officers.

Officer B

130. Officer B gave evidence in a murder trial in around 2008. In 2016, the convicted murderer made a complaint that officer B's evidence in his trial was false. That was not recorded as a complaint by PSB in 2016 as it was out of time for a public complaint. The murderer appealed to the IPPC who decided that the Respondent should investigate the complaint.

131. In due course, an investigation was conducted and Officer B was served with a notice that confirmed H & I was being investigated (i.e. a Reg.15 Notice). On 3 July 2016 DCI Hussey conducted a review (exhibit A to Supt Egerton's supplemental statement) in which he noted that there was an indication that Officer

B may have committed perjury and thus breached H & I and wrote: "I have considered whether an application to suspend/restrict is appropriate and having done so, I am satisfied that it would not be proportionate to do so at this stage of the investigation". He set out his rationale which included this related to appeal proceedings (presumably DCI Hussey believed that there was an appeal against conviction to the Court of Appeal Criminal Division) at which there would have been an opportunity for Officer B to be cross-examined and that there would be a transcript of the evidence and witness statement from Officer B which could be considered.

132. Officer B was not restricted. In due course, the investigation found that Officer B had no case to answer. Subsequently the complainant appealed that decision and we understand that it may be pending before the IPCC.

133. Officer B was not restricted at any stage during this investigation on the basis that there was no evidence to suggest that he had been dishonest in the murder trial in 2008. Supt Egerton in his oral evidence considered that the complainant, as a convicted murderer, might be thought to have a motive for attacking Officer B's character.

Officer C

134. Officer C was accused of operational dishonesty and served with a Reg.15 notice on 13 December 2016 by the Coronial Team within PSB. That team was part of a PSB operation that was supervised by Supt Egerton. His evidence was that he was not informed of the service of a Reg.15 notice on Officer C. There was no evidence of the circumstances surrounding the service of the original notice 9 months earlier (which might provide an explanation as to why an officer facing an H & I allegation was not restricted in accordance with what is said to have then been the policy).

135. Supt Egerton gave evidence that he learnt of this matter and as a result Officer C was restricted shortly thereafter on 21 September 2017. When the misconduct case against Officer C was not proven his restrictions were removed on 9 January 2018. Supt Egerton gave evidence that after he learnt of this he had received an explanation why Officer C not being restricted earlier. However, he did not provide the tribunal with any detail about the explanation other than to say that he had put in place further checks and balances for what was obviously an error.

Officer D

136. Officer D was served with a notice on 13 December 2017 as a result of a referral to the IPCC. The investigation included breach of H & I in that it was alleged that this officer had added to his pocket notebook entry after an informant had signed it. Emails attached to Supt Egerton's supplemental statement show that he was notified that notices had been served by a member of his staff on 22 January 2018. On 23 February 2018 a follow-up email enquiring of progress with regard restrictions were sent to Supt Egerton. Supt Egerton gave evidence that he attempted to contact Supt Inglis, Officer D's divisional commander in January but

was unable to do so since Supt Inglis was out of the country. Supt Egerton said that he was himself on leave when the reminder email was sent to him. On his return from leave on 5 March 2018 he spoke to Supt Inglis and informed him that the officer would be restricted.

137. No explanation was provided to show why the officer was not restricted when the regulation 16 notice was served in December 2017. Supt Egerton agreed in cross-examination that it had not been necessary to involve Supt Inglis in this process. He accepted that this matter came to his intention on 5 March 2018 because of the reliance by the claimants upon officer D as a comparator. It was put to him that had it not been raised by the claimants it was quite likely that it would not have come to his attention until later. Supt Egerton described that as a reasonable assumption thereby accepting the proposition that on the balance of probabilities this male officer either would not have been restricted at all or not restricted until a later point in time.

Officer E

138. Officer E was accused of excessive use of force on a member of the public. It appears that the IPCC categorised this as an H & I breach because of a discrepancy between the video evidence from the officer's body camera when compared to an account he gave after the event.

139. On 9 March 2018 PC Prince wrote to Supt Egerton suggesting that the severity assessment of H & I seemed unjust on that basis. On the same day Supt Egerton wrote to the IPCC repeating that submission. On 12 March 2018 the IPCC responded to Supt Egerton saying that it had removed H & I from the severity assessment.

140. In cross-examination it was suggested to PC Thomas, the first claimant's Federation representative, that within the last 9 to 12 months prior to this hearing the IPCC had changed its practice to the effect that now it would consult with the local force by sending a proposed severity assessment and ask the force to submit any comments it wishes as to the appropriateness of the assessment. PC Thomas appeared to accept that such a change of practice had occurred.

141. Subsequently both Supt Egerton and DCS Anderson gave evidence to the same effect. Supt Egerton explained that that was in effect what had occurred in the case of officer E. It was put to him that this was not the only time that he had made such representations. Mr Beever suggested that Supt Spragg had also been the subject of an investigation and that DCS Anderson had made representations to the IPCC on her behalf. Supt Egerton agreed with that proposition.

142. DCS Anderson accepted that she had made representations on behalf of Supt Spragg. In that case the IPCC had made a severity assessment for gross misconduct in respect of Supt Spragg but it was reduced to misconduct/performance after the representations were made. DCS Anderson said that this case was one of the first after the procedure was changed to permit

consultation occurring approximately one year before our hearing. That timing was consistent with the evidence of Mr Thomas.

143. It was suggested to DCS Anderson in cross-examination that the IPCC guidance (which was not produced in tribunal) which had been in force since May 2015 allowed for representations to be made by the local force. DCS Anderson accepted that this was so but said that since it was not the practice at the time for the respondent to be consulted by the IPCC nor for the respondent to make representations. However, she acknowledged that on 27 May 2016 Ms Farrow of the IPCC had written to DCI Hussey when the severity assessments were first sent in respect of the claimants requesting their formal disciplinary records "in order to make a final informed assessment". DCS Anderson's evidence was that the force had not seen that as an invitation to make representations at that stage. Since the request itself seems to imply that the level of severity may be informed by the degree to which the officer concerned has a good or bad disciplinary record, it does at least suggest that there was some scope for dialogue between the IPCC and the respondent.

144. Although the notices of investigation set out a summary of the facts which the IPCC intended to investigate as a breach of the standards of professional conduct and referred to gross misconduct, it was only in the restriction notices that the basis of the allegation being one of gross misconduct was explained by reference to the severity assessment which had identified H & I.

145. At a point in time, which the evidence does not clearly establish, a reporter from the Manchester Evening News ("MEN") contacted the Respondent's press office asking for a comment in relation to the claimants having been served with "gross misconduct papers".

146. The evidence of Mr Worsley shows that DCS Anderson approved a press statement on 16 June 2016.

147. On 17 June 2016 Mr Ashworth in the press office wrote to DCS Anderson and DCC Pilling informing them of the enquiry and sending a copy of the statement which "was agreed with Adrian this week" and said the press office was about to release it to the MEN.

148. In their statements both DCS Anderson and DCC Pilling indicated that this was the first information they had received about this. If Mr Worsley is correct, as we think he probably is at least in this respect, in saying that the press release had been agreed the previous day, then DCS Anderson's evidence is at least incomplete. In cross-examination DCC Pilling agreed that he had approved the press release. We note that the press enquiry was, at the latest, made very soon after the notices were served and there is no explanation as to how that information could have come to the attention of the press by that point in time. The contents of the subsequent report lead strongly to an inference that Mr Winters or one of his colleagues had been provided with that information by an officer who was aware of the decision to serve Reg. 16 notices.

149. The press release stated:

> "We are aware of an independent investigation being carried out by the IPCC into a complaint has been made in relation to a previous employment tribunal.
>
> Two serving GMB officers have now been restricted from operational duties pending the investigation into allegations of gross misconduct.
>
> Given the on-going investigation it would be inappropriate for us to comment further."

150. The press release did not identify the claimants or any person involved in this case. The report in the MEN was posted on 22 June 2016 (497-498). It contains a photograph stated to be of Mr Winters. It is likely that further detail in the report was provided by him.

151. Although the claimants were not named they were described as "senior police officers". It refers to the allegation in respect of FOA in terms as well as some brief details of Mr Winters' complaint to the employment tribunal. It concludes, with reference to "an internal force probe into Inspector Winters conducted by the Professional Standards Branch (PSB) of GMP, with the DCI and Inspector playing key roles in the investigation." The report goes on to describe the officers as "both white women". The way in which the report is written implies that the officers who have been told they are under investigation for gross misconduct are therefore a female DCI and a female Inspector who hold senior posts within PSB. On any view that information cannot have come from the press release.

152. The claimants gave evidence that whilst the report alone would not have enabled a member of the public to identify them, it would have enabled other members of GMP to identify them since there were not many female officers in senior roles within that branch. Since they had both previously been named on the anonymous website Cabal of Corruption they maintained that anybody who had access to that site and read the report would be able to identify them by name as well. Although we were not provided with any evidence about the contents of that website we do not think it was disputed factually that the conclusion that they had reached was correct. We agree that this was a likely effect of the report.

153. It was suggested to DCC Pilling that the press release was one-sided. He accepted that and agreed that the respondent could have added more context. He accepted that the factual background could have been "explored further". He questioned whether this would have changed the story.

154. An officer who is served with a notification of investigation may within 10 days of service of the notice provide a written statement relating to the matter under investigation. Supt Higham chose not do so.

155. On 29 June 2016 DI Escott provided a written response (1131-1133). She denied gross misconduct or, making any disclosure and said:

> "To be clear, I did not disclose any information to the barrister regarding Scott Winters assaulting a female officer by holding her up against a wall by her throat, regardless of whether this information is true or false. I did not make any such disclosure in court and I did not instruct the barrister to do so. To the best of my recollection I was not in court whilst any such disclosure was made."

156. She referred also to the fact that DI Sanderson had details of the alleged assault allegation made by FOA against Mr Winters and that PSB and the respondent's command team had information that FOA had alleged such an assault. This, she said, showed that defamation could not be made out on the basis that the allegation against Mr Winters was not untrue. DI Escott concluded by saying that being subject to these allegations and restricted and moved unnecessarily was damaging to her reputation.

Fourth disclosure

157. On 4th July 2016 DI Escott wrote to DCC Pilling, the officer with overall responsibility for PSB. In that email she set out, inter alia, the following:

157.1. that a female officer had made an allegation against Mr Winters that he had assaulted her;

157.2. that the allegation was known by the Force, including officers at the level of ACC;

157.3. that despite having knowledge of the allegations, Mr Winters had not been properly investigated either for criminal or gross misconduct allegations; and

157.4. that ACC Shewan had authorised her restrictions and investigation on the basis of allegations of dishonesty when he knew the truth of the disclosure of information.

158. DI Escott's case is that it is this email (518-520) which was the protected disclosure made by her. It is not disputed that this email comprised a protected disclosure. Having set out something of the history she made the following points:

> "I did not disclose any information to anyone during the ET proceedings regarding an allegation that Scott Winters had assaulted a female officer by holding her up against a wall by her throat. Indeed I was not even aware of this allegation at the time. I have never worked with him or had any previous experience of him prior to the investigation which resulted in the ET, so I knew nothing anecdotal of his history and could only comment in relation to his officially recorded complaint history."

159. DI Escott queried how herself or Supt Higham could be under investigation in relation to H & I before or instead of an investigation as to whether Mr Winters assaulted FOA. She queried why the matter had been referred to the IPCC when it would not meet the criteria for mandatory referral. She asked why she and Supt Higham could be under investigation by the IPCC when the respondent had known,

"as high up as ACC level, that there is evidence that Scott Winters did assault a female officer and therefore regardless of whether or not we made any disclosures our Honesty & Integrity is not an issue?" In relation to restrictions she asked:

> "… how can the same ACC who has full knowledge of the case, authorise my restrictions on the basis of my being under suspicion of being Dishonest, when he has the evidence that I have not been dishonest because he is aware that a female has said she is the victim …?".

160. DI Escott asked the same rhetorical question in relation to being moved out of PSB. She said, "it appears to be unprecedented and a cynic (or realist) might suggest that I had to be seen to be moved. (I certainly was because the Cabal of Corruption had a lot more vile to spew about it)."

161. She asked DCC Pilling to take what action he saw fit to ensure a fair and equitable process.

162. On 6 July 2016 DCC Pilling replied saying that he had, "fully considered and understand all of the issues you raise here"; that he understood that she was extremely aggrieved but since it was an independent investigation he could not comment in any detail. He said that no one was placed on restricted duties unless it was necessary and he promised to keep that under review.

163. It is clear from her email that DI Escott believed that ACC Shewan was the person who had made the decision to restrict her from duties. That misconception is understandable in that Mr Shewan had been AA prior to DCC Pilling joining the respondent.

164. It was DCC Pilling's evidence that the reason for the restriction from duties was because of his "blanket policy" that this was done whenever an H & I allegation was made. In his reply to DI Escott although he stated that he had fully considered the issues raised by the officer, he did not explain the reason for restriction from duties other than to maintain that it was necessary. In cross-examination he explained that the respondent's policy of keeping restrictions under review, in effect at the monthly update meeting, in reality meant that restrictions would be maintained until the IPCC had removed H & I from the severity assessment or that it had otherwise been reviewed.

165. During July there was further correspondence between the respondent and the IPCC who wished to interview the claimants concerning the assertion of legal professional privilege. This resulted in a letter from DCC Pilling to the IPCC on 22 July 2016 (535) setting out that the Chief Constable had declined to waive privilege in relation to the interviews which the IPCC proposed to conduct with the claimants.

166. The letter said that the respondent had sought further legal advice but that privilege would not be waived "for the reasons previously explained." We infer that by that respondent meant the reasons given in the earlier letter to the IPCC referred to above. The letter identified the matters that were said to be protected from disclosure or discussion.

167. Equivalent letters were sent to the claimants on the same day via their Police Federation representatives (537-542) so that they were aware of the extent to which the respondent maintained they could address matters in interview. The letter did not contain an instruction or order not to provide information in the interview. In material part it stated:

> "I should like to make you aware that the Chief Constable has asserted legal privilege over certain material that has been requested by the IPCC…
>
> I consider that is important that you and your client are aware of the Chief Constable's position because it is likely that your client will be asked questions by the IPCC which relate to matters that are covered by legal privilege. For the sake of clarity, your client is not in a position to waive privilege or to choose to answer questions about the matters which are protected by privilege: it may only legitimately be waived with the permission of the Chief Constable."

168. The letter went on to identify the matters that were said to be covered by privilege. It acknowledged that the claimants might be caused some difficulty in the interviews because of this. It suggested it would be in their interest to seek independent legal advice as to how to determine what to say or what not to say. It advised asking the IPCC for an outline of the questions so that appropriate guidance could be sought beforehand. It informed the claimants of the respondent's reasons for maintaining privilege. For any further questions or clarifications the claimants were referred to DCS Anderson.

169. At the end of July 2016, DCI Pervaiz took over as the point of contact for the purposes of the IPCC investigation from DCI Hussey.

170. On 9 August 2016 Sgt Wood wrote to DCS Anderson and Supt Egerton (549) asking whether there were still sufficient grounds to impose the restrictions on DI Escott and asked again for a copy of the severity assessment to enable her to prepare for interview. On 11 August DCI Pervaiz replied saying that he would brief Supt Egerton to conduct the review when Ms Farrow of the IPCC returned from leave. On 15 August 2016 DCI Pervaiz responded further attaching a copy of the severity assessment.

171. On 20 September 2016 Supt Higham was interviewed by Ms Farrow and another officer of the IPCC. The interview was recorded and transcribed. It took place in two parts from 1100 to 1207 (706-738) and from 1236 to 1304 (739-756). There was no suggestion that Supt Higham had infringed the privilege asserted by the respondent. However she revealed in the interview that she had learned of the allegation of assault by FOA in December 2013 or January 2014. (716) She described the circumstances in which she had discovered it. She went on to express shock that Mr Winters would have said that it was false and that it never happened and there was no such allegation. She said, "I do believe it happened. I believe that there is evidence to suggest it did happen and there was such an allegation and he must have known that." (717)

172. On 23 September 2016 DI Escott was interviewed as well. Since she had provided a response to the Reg. 16 notice that was served upon her. In the interview DI Escott maintained emphatically that she had not known of the allegation of assault upon FOA prior to Mr Winters employment tribunal hearing. It was therefore apparent to the IPCC from where the disclosure of information about which Mr Winters had complained had emanated.

173. On 7 October 2016 FOA provided a statement to the IPCC (599-600). She explained briefly that she was assaulted by Mr Winters in 1996. She stated that she had reported it to Supt Howells at Bolton shortly afterwards and that Mr Winters was transferred the next day. She stated that she had worked at Bolton Police Station for about a year in 2008 when Mr Winters was also working there before he moved to another role. She then mentioned how she was informed in around August 2014 from Supt Nibloe that Mr Winters wish to be transferred back to Bolton. The superintendent had said to her that he was not comfortable with them working together. FOA said that she could be civil to Mr Winters but she didn't "want anything to do with him". She said that Supt Nibloe was concerned because Mr Winters would be going back as an Inspector while she was only a Sergeant. She said that she had never heard what had occurred in relation to her initial complaint regarding Mr Winters. She said Supt Nibloe later informed her that Mr Winters had received an ACC's warning. She then explained how she had seen the article in the Manchester Evening News in March 2015 which had led her to contact PSB and which resulted in her being interviewed and producing the statement.

174. On 8 October 2016 Lance Thomas, Supt Higham's Federation representative wrote to DCC Pilling asking him to re-visit the restrictions in the light of the interview given by Supt Higham to the IPCC (601).

175. On 10 October 2016 DCI Pervaiz wrote to the IPCC asking for an update on the investigation and for timescales to be provided.

176. On 13 October 2016 Ms Farrow wrote to Mr Winters (609) indicating that the Commissioner had determined that the allegation that he had made of "improper disclosure of force information by GMP PSB during Employment Tribunal" could not be determined by the IPCC because of the decision of the respondent not to waive LPP. For that reason Commissioner had determined that the matter should be referred back to the respondent on the ground that the AA would not be constrained by LPP. She stated that all the evidence gathered in the course of the investigation would be made available to the respondent.

177. That decision by the IPCC led to a meeting being arranged on 19 October 2016 which was attended by Ms Farrow, CS Anderson and DCI Pervaiz. CS Anderson's daybook (615) confirms her evidence that the purpose of the meeting was for Ms Farrow to provide all relevant documentation upon the decision to hand over the case back to GMP.

178. DCI Pervaiz accepted in oral evidence that he had received files of documents from Ms Farrow which included printed copies of the IPCC interviews of the

claimants but then waited for electronic copy so he could forward them to the Federation representatives. In his witness statement, DCI Pervaiz said the first time he had "the opportunity to review the material relevant to the investigation was around the beginning of November 2016, when the IPCC handed over all the relevant documentation." This discrepancy was one of a number of issues raised about the credibility of DCI Pervaiz.

179. It was not until 14 November 2016 that DCI Pervaiz undertook a revised severity assessment in respect of the claimants (637-650). It is repetitive of the background. At paragraph 37 DCI Pervaiz states the view that there were no breaches of standards of the professional behavioural code of ethics by either claimant in respect of the allegation that the information disclosed was "untrue, never happened, was never reported and was not investigated". He accepted that from the testimony of FOA and Supt Howells that there was an indication that "the incident occurred, it was reported, recorded and reviewed by IID" (the previous emanation of PSB). This, he said, lent weight to the assertion that the officer(s) who disclosed information had an honestly held view that Mr Winters had assaulted FOA in the way she described. He went on to add: "albeit the information was not contained within the bundle"). DCI Pervaiz said in oral evidence by that he meant the bundle prepared for Mr Winter's employment tribunal.

180. He therefore concluded there was no indication of a breach of H & I. He went on to say that on the second point, that of "unauthorised disclosure":

> "the information presented indicates the disclosure provided was not part of the official disclosure from Legal Services. Laura SHUTTLEWORTH did not instruct DF in relation to this element. Based on the information presented to me there is an indication the [sic] JL and or LE may have made inappropriate, unauthorised disclosure to DF."

181. DCI Pervaiz then stated that the officers might have breached the standards of Professional Behaviour and principles of the Code of Ethics in relation to Authority, respect and courtesy, Duties and responsibilities and Conduct, "in a manner that (if proved) would justify disciplinary proceedings at the level of Misconduct.

182. At paragraph 44 of the assessment DCI Pervaiz said:

> "The unauthorised disclosure of information in the ET proceedings attracted media attention, and is likely to have had a significant impact on the public's confidence in GMP's reputation and the reputation of its officers and staff. The case was settled with SW receiving a substantial payment for damages from the public purse."

183. DCI Pervaiz concluded that the harm test was met, that the assessment and terms of reference should not be disclosed to the claimant's for the reason: "Necessary for the purpose of the prevention or detection of misconduct by other police officers or police staff members or their apprehension for such matters." He went on to conclude that Reg. 15 notices should be served although restrictions were to be lifted.

184. It appears that the claimants' restrictions from duty were lifted at this point although the tribunal was given no specific date. Supt Higham returned to duties. DI Escott did not do so.

185. DCI Pervaiz drafted revised severity assessments for both claimants. They were in similar terms to the earlier severity assessments of the IPCC save for removal of the reference to gross misconduct, H & I and potential dismissal and substituted the possibility of disciplinary proceedings at the level of misconduct.

186. DCI Pervaiz in oral evidence maintained he did this on the basis of the information from the IPCC. He agreed this was the same information as that which went to the IPCC except for the statement of Supt Howells which the IPCC had obtained and the claimants' taped interviews.

187. The claimants' case was that he did not come to an independent view at this stage but merely adopted and amended the initial severity assessment.

188. It appeared to the tribunal that the appropriate factual basis at this stage was that Supt Higham, a serving police officer, had information that suggested that Mr Winters might have assaulted FOA, in other words that he had committed a criminal offence. She was attending on leading counsel who was conducting the defence of the respondent into an allegation of discrimination made by Mr Winters, as we understand it, in respect of some aspect of the way in which PSB had investigated whether Mr Winters had assaulted another person. Counsel intended to cross-examine Mr Winters on his disciplinary history. The answer that Mr Winters might have given to a question founded upon the information provided by Supt Higham could have been of significance in respect of Mr Winter's credibility. It was not suggested by DCI Pervaiz in his assessment that either of the claimants had insisted that this information be used by Mr Flood. Subject to any positive instruction to the contrary by his instructing solicitors it was material which if, in his judgment, he thought appropriate Mr Flood as counsel with conduct of the case for the respondent could properly have used.

189. In our judgment, no reasonable officer in DCI Pervaiz's position could have come to the view that the disclosure the information was unauthorised simply by virtue of the fact it was not part of what he described as "the official disclosure from Legal Services". Nor could he have concluded that Mr Flood was not instructed in relation to "this element". It appears to have been common ground throughout that Ms Shuttleworth or another force solicitor was present in conference with Mr Flood. Even if the information was not originally in Counsel's brief once it had been communicated to him Counsel was entitled to exercise his professional judgment unless he received specific instructions to the contrary from his instructing solicitor.

190. The fact that subsequently the point attracted media attention or that the claim of Mr Winters was settled could not on any reasonable analysis be relevant to the question of whether the disclosure was unauthorised.

191. DCI Pervaiz could give no satisfactory explanation for his decision to continue maintaining that this allegation amounted to any misconduct or for reaching a

conclusion that the harm test was met. He gave no evidence of his rationale at all in relation to this aspect in his witness statement. In cross-examination he was simply unable to identify the potential misconduct that remained to be investigated against the claimants.

192. At this point the outstanding investigation into the misconduct charge that remained as a result of DCI Pervaiz's severity assessment was to be conducted by PSB.

193. According to DCC Pilling's witness statement consideration was given to the possibility of there being a partial waiver of legal privilege once the investigation had been returned from IPCC in order to allow the claimants in interview to discuss what had occurred at the Winters ET and thus enable PSB to conclude an investigation. As a result of that the Chief Constable agreed to a partial waiver of privilege and it was notified to DI Escott on 15 December 2016 by Supt Egerton (665). It was probably notified to Supt Higham at about the same time.

194. Shortly thereafter, as set out below, amended regulation 15 notices were served on both claimants (852/855). They alleged misconduct only in relation to the disclosure in February of that year of information about Mr Winters to Mr Flood QC. The notices do not contain any rationale for suggesting that the disclosure of information was unauthorised save to say that was what Mr Winters had alleged.

195. On 19 December 2016 (670) DCI Pervaiz emailed the IPCC asking for the record of taped interviews with the claimants in order to enable him to "progress this matter" and saying that the [police] federation had requested them if the officer's were to provide any further account. The email clearly suggests DCI Pervaiz was maintaining he did not already have the interviews despite the earlier evidence to the contrary.

196. On 19 December 2016 DCI Pervaiz sent DI Graham-Cumming the severity assessments the severity assessments and the terms of reference for his enquiry (687). He also forwarded a copy of the legal privilege partial waiver note. Despite the severity assessment only identifying misconduct paragraph 10 of the terms of reference appeared to leave a recommendation of the being a case to answer for gross misconduct as a possibility.

197. On 21 December 2016 DCI Pervaiz wrote to PC Thomas (701), Supt Higham's Federation representative, informing him of the parameters of the partial waiver of legal privilege by the Chief Constable. The extent of the waiver was in respect of:

> "material/information… directly relevant to:
>
> (a) Whether either of two GMP PSB officers provided information about an alleged assault by Inspector Winters to GMP Counsel, Mr Flood.
>
> (b) What was said to/provided to Counsel, Mr Flood, about the assault allegation.

(c) What instructions Mr Flood was given about how information about the alleged assault was to be use during the ET proceedings."

The letter also informed the claimants that DI John Graham-Cumming was to be the IO.

198. On 22 December 2016 DCI Pervaiz forwarded to DI Graham-Cumming amended transcripts of Supt Higham's interview of 20 September 2016 and that of DI Escott on 23 September 2016.

199. On 22 December 2016 DI Graham-Cumming served the amended regulation 15 notice on DI Escott according to his case notes (693).

200. On the same day DCI Pervaiz emailed DI Graham-Cumming forwarding transcripts of the claimants' interviews.

201. On 23 December 2016 DI Graham-Cumming forwarded a copy of Superintendent Higham's interview to PC Thomas.

202. 28 December 2016 DI Graham-Cumming served the amended regulation 15 notice on Supt Higham.

203. On 11 January 2017 (694) DI Graham-Cumming recorded in his casebook that he had made contact with David Flood QC who was seeking legal advice himself.

204. On 25 January 2017 DI Graham Cumming recorded in his casebook (696-698) his intentions in respect of the interviews of the claimants and the way in which that would be done to avoid undue stress/distress. He also recorded that he intended to use a method of recording the interview that would not result in it becoming widely available to other GMP staff. Supt Higham was to be interviewed 1st on 30 January 2017 and DI Escott the following day.

205. On the same day DI Graham-Cumming recorded that he had received a phone call from Mr Flood QC to say that he had met solicitors the previous day and they would be in correspondence with him imminently. Further correspondence was to be with Mr Flood's solicitors.

206. On 30 January 2017 Supt Higham was interviewed by DIA Graham-Cumming and Detective Constable Weir (904-). The record of interview having been redacted for the purpose of these proceedings we infer that Supt Higham confirmed to the investigators that she had made the disclosure of information to Mr Flood which led him to ask the question concerned and that she identified the source of her information in similar terms to the way in which she described it to Ms Farrow of the IPCC.

207. On the same day and after interviewing Supt Higham DI Graham-Cumming sent an email to DI Escott (938).

"Following mind you this morning with DCI Higham, I felt that it was appropriate me to us DCI Pervaiz to conduct a review of his severity assessment in his capacity as Appropriate Authority. Specifically in light of what DCI Higham has told me, I have asked him to consider your status in the investigation.

As a result, I can confirm that DCI Pervaiz has now agree that there is no longer need to interview you nor is there a requirement for you to remain under investigation. No further action we taken against you in respect of the complaint made by Insp Winters.

If you are still available tomorrow, I would be more than happy to come and discuss this at Progress House with you and if you are able to provide an account to corroborate what DCI Higham has told me it would be helpful."

208. In response DI Escott asked that she be interviewed the following day as had previously been planned. She Escott prepared a statement in advance of the interview (945-948) rehearsing her complaints about the conduct of Mr Winters, the nature and extent of the investigation made in response to his complaint and the treatment of herself and Supt Higham.

209. The interview with DI Escott took place on 31 January 2017 with DIA Graham-Cumming and DC Weir (949-973).

210. On 2 February 2017 DI Graham-Cumming completed an investigation report (982-991) concluding that neither officer had any case to answer. Albeit the conclusions are partially redacted they include the following:

"The standards of Professional Behaviour under investigation were:

Authority, Respect and Courtesy

There is no evidence to suggest that either officer has abused their power or authority through their actions. The allegation was that they had made this disclosure deliberately to undermine Inspector Winters character.

Duties and Responsibilities

There is no evidence to suggest that either officer was not diligent in the exercise of their duties or responsibilities. Both were called upon as witnesses to assist in the defence of a civil case against greater Manchester police and both would appear to have done so… [text redacted].

Discreditable Conduct

"I do not believe that either officers' actions discredit the police service or undermine public confidence. The officers were required as witnesses on behalf of the Chief Constable and performed the duty asked of them. There would have been an expectation from both the public and their colleagues for them to represent GMP to the best of their ability … [text redacted].

> Following the interview of DCI Higham, the Appropriate Authority deemed that DI Escott has no case to answer.
>
> It is my opinion that DCI Higham also has no case to answer."

211. On the same day DI Graham-Cumming sent an email to Supt Higham (992) informing her of his recommendation and on 2 February 2017 (993) sent a similar email to DI Escott.

212. On 10 March 2017 DCI Pervaiz wrote to DI Escott (1037) responding to an allegation she had raised to the effect that the decision to move her from her post and restrict her duties was unnecessary, unprecedented and highly embarrassing. To this DCI Pervaiz responded,

> "The reasons for the restrictions to your duties and for the decision to move you were explained to you at the time. You were served with a Notice of Restriction of Duties which provided you with reasoning. You are treated no differently to other officers have been in the same, or a similar, situation in the past."

213. However, under cross-examination, DCI Pervaiz stated that the last sentence of that reply was based on his own experience and not on anything somebody had told him. He, we record, played no part in that original decision.

214. On 10 February 2017 the claimant entered into early conciliation with ACAS. The certificate was issued on 24 March 2017 and on 22 April 2017 this claim is presented to the tribunal.

215. At 5:30 pm on 25 April 2017 Mark Gregory, a freelance journalist at the BBC sent an email to the respondent's press office with the subject: Interview Request - BBC File on 4" (1075-1076). He informed the respondent that a BBC File on 4 programme on the subject of police accountability was being made and that it was intended to be broadcasted on 16 May 2017. The general topic of the programme was police accountability. He indicated that the programme would look at changes to the "police service introduced in the last few years, including strengthening of the IPCC, the restriction of officers' ability to retire or resign whilst under investigation and the increased openness of police disciplinary hearings."

216. Mr Gregory also said that the programme would consider "the stories of several people who have pursued complaints against the police" and he identified the case of Mr Winters as being one of those. He invited the respondent's comment on the following:

> "You will probably be aware that Mr Winters believes there is an element of racial discrimination in the way that he was investigated, and that he regards himself as blowing the whistle on practices within GMP which he believes breached the criminal law. He claims that GMP behaved improperly towards him, and that his case shows up significant weaknesses in the system, particularly in the PSB.

After the conclusion of his ET he met with then DCC Ian Hopkins to discuss a number of matters which troubled him about the handling of his case. Mr Winters was particularly concerned that allegation about an assault he supposedly committed some 18 years previously was raised during the ET without any supporting evidence. He insists that the incident did not take place and points out that GMP has no records of any complaint being made. When asked by Mr Winters why his legal team was given no notice that the matter would be raised Mr Hopkins replied that he been told the complaint had only been made in the week or so before the ET began. Mr Winters finds this escalation hard to believe, and regards himself as being the victim of an attempt to provide the course of justice.

The IPCC began an investigation into the Winters case, were told by GMP that the force could not release key documents the investigation because they were subject to legal privilege. The IPCC has therefore been forced to hand the case back to GMP to perform its own investigation, and Mr Winters are still waiting for any update on how this is progressing.

Mr Winters claims that the failure to provide information to the IPCC or updates to him raises questions over the force's commitment to openness and transparency when dealing with complaints."

217. Mr Gregory asked for responses to the following specific questions:

- What investigation has the force undertaken to the allegations of misconduct raised by Mr Winters?
- Have any officers been disciplined as a result?
- What stages the GMP investigation into this matter now at, when will it conclude and when an update be provided to Mr Winters?
- Are the officers at the centre of Mr Winters' complaint still serving?
- Why was it decided that full disclosure of relevant documents to the IPCC should not be provided on the basis that the information was legally privileged, given the same information already been publicly aired during Mr Winters' Employment Tribunal?

He offered the respondent an opportunity to respond by way of a pre-recorded interview which would have to be done by 4 May 2017 and gave that same deadline if the respondent preferred to respond via written comment.

218. About an hour later a press officer referred this request to Mr Worsley. The following morning, 26 April 2017, Mr Worsley referred the matter to DCS Anderson and DCI Packer. Mr Worsley asked for a meeting to discuss the allegations outlined in the BBC request and a plan of action before he made Mr Pilling aware of it. Mr Worsley responded to Mr Gregory at about the same time informing him that he was planning to sit down with relevant officers on the following day and discuss a response.

219. CS Anderson responded to Mr Worsley (1080) saying, "This is a really complex case and elements of it are still ongoing in terms of a potential ET with Laura Escott

and Jane Higham so we will be restricted in what we can tell them. The DCC has a lot of knowledge about the case."

220. Mr Worsley contacted DCC Pilling on the morning of 27 April 2017 asking for an opportunity to discuss the matter with him. DCI Pilling responded offering to discuss it with Mr Worsley on the morning of 2 May 2017.

221. At 3:25 pm on 27 April 2017 the producer of the proposed programme, Sally Chesworth emailed Mr Worsley with the subject line: "Interview Request - BBC File on 4 - note to officers". She thanked Mr Worsley for taking the request forward for the BBC and asked him to copy her in as he updated Mr Gregory. She then wrote:

> "Through you, we would like to offer the two officers who have been investigated in relation to the IPCC referral over Scott Winters's tribunal the opportunity to comment in the programme too.
>
> I understand that a deputy chief inspector and an inspector were moved from frontline roles and informed of enquiries into aspects of their involvement in Mr Winters case when they worked in the Professional Standards Department.
>
> I understand there investigated over claims that false information about an historic allegation of assault, for which no evidence was produced, was disclosed during the tribunal hearing. We will not be naming these officers in our programme.
>
> I'd be grateful if you could pass this on please Adrian. Should they wish to comment we would need to hear from them by Wednesday of next week please."

222. In his witness statement Mr Worsley said that he did not see that email at the time it came in. He had previously had professional dealings with Ms Chesworth on other matters.

223. The members of GMP's press office keep an electronic log of communications and actions. Although some entries were redacted, the respondent produced Mr Worsley's log covering the period 26 April 2017 to 3 May 2017 (1085-1090).

224. Mr Worsley's entry for 2 May 2017 at 1.46 pm contains the following,

> "I attended a meeting with DCC Pilling and Annette Anderson. It was agreed that an interview would not be appropriate in this case [text redacted]
>
> Anette added that Jane Little and Laura Escott have now lodged their own ETs.
>
> We worked through the query [text redacted) I have spoken to the reporter, Mark Gregory … and asked he extended the deadline."

225. DCC Pilling's daybook entry for the same date contains information to the similar effect (1084). There is no record of the possibility of the claimants contributing to the BBC programme having been discussed in either version of the notes. DCC Pilling told the tribunal that had the question of notifying the claimants

of the BBC programme been raised in that meeting he would have expected it to have been recorded in the notes yet it was not. As a result of this meeting Mr Worsley produced a first draft of a press statement.

> "Deputy Chief Constable Ian Pilling said: "Mr Winters raised concerns regarding a matter he was asked about while giving evidence at the Employment Tribunal. Mr Winters' concerns were recorded and referred to the Independent Police Complaints Commission.
>
> As a result, two GMP officers were placed under investigation for gross misconduct and placed on restricted duties.
>
> As part of this process the decision on whether to provide certain key documents to the IPCC was subject to independent legal advice and consultation by GMP's own ethics committee.
>
> Following careful consideration, and taking national guidelines into account, it was decided it wasn't possible to provide these documents to the IPCC.
>
> The IPCC later referred the enquiry back to GMP for local investigation. Following a thorough investigation by GMP's Professional Standards Branch it was established there was no case to answer for the two officers and they were restored to full duties.
>
> As Employment Tribunals relating to the two officers are now underway it would be inappropriate for us to comment further at this stage."

226. Mr Worsley sent that draft to CS Anderson. He obtained Mr Gregory's agreement for an extension of the deadline for the response. He also received and forwarded to CS Anderson a copy of the IPCC's press statement to be provided to the BBC.

227. Mr Worsley met DCC Pilling and CS Anderson again on 3 May 2017. At 3.07 pm Mr Worsley recorded in his log that DCC Pilling had approved the text of a revised written response which he then shared with the IPCC and sent to the reporter (1087):

> "Deputy Chief Constable Ian Pilling said: "Mr Winters raised concerns regarding a matter he was asked about while giving evidence at the Employment Tribunal. Mr Winters' concerns were recorded and referred to the Independent Police Complaints Commission.
>
> As a result, two GMP officers were placed under investigation for gross misconduct and placed on restricted duties.
>
> As part of this process the IPCC asked GMP to provide documents, some of which attracted legal privilege. Following careful consideration, which included seeking independent legal advice and consultation with members of GMP's ethics committee, the request for disclosure of legally privileged material was refused.

> The IPCC later referred the enquiry back to GMP for local investigation. Following a thorough investigation by GMP's professional standards branch was established there was no case to answer for the two officers and they were restored to full duties."

228. At 3.45 pm on the same day Mr Worsley recorded that he had just sent to Mr Pilling a supplementary question from the BBC producer Sally Chesworth. He appears to have pasted the communication from Ms Chesworth into his log (as he had done with Mr Gregory's initial) request. The original email form of this communication, as we assume it to be, was not included in the documents put before us. We are unable to verify when it was sent by Ms Chesworth. Having regard to the terms in which it was sent it appears likely that this was a subsequent communication from Ms Chesworth, that is to say one that was sent after her communication of 27 April 2017. In this second communication she wrote:

> "I understand from Mark Gregory that you're putting together response was to carry on the programme. Thanks for organising that.
>
> There is a point raised by Scott Winters they want to inform you of in case you wish to comment specifically on it. He claims that he brought his Employment Tribunal because he felt he had been disproportionately investigated in relation to other GMP officers. He says he knows of more serious allegations faced by white officers, some more senior, which were not investigated or were dealt with more swiftly and in a more favourable way than the claims against him.
>
> Are you able to send your full response later today please, Adrian? Give me a call on the mobile number below if you want to discuss."

229. Mr Worsley recorded shortly afterwards that he had told the producer that the respondent's "original statement stands".

230. It was common ground that none of these communications from the BBC or the subject matter that was intended to be covered in the programme or the fact that a programme was in prospect were notified to the claimants.

231. In his written statement Mr Worsley provided an account in relation to the receipt of the email from Ms Chesworth on 27 April 2017. He said:

> "However, I did not see the email come in. … There was no further request or follow-up call from either Sally Chesworth or Mark Gregory and so I didn't realise I had missed this request."

232. Mr Worsley said in evidence that from the nature of the original enquiry he believed Mr Winters was going to play a part in the broadcast and that was his "professional assumption". He told the tribunal that he would have 1 to 2 major media cases on his desk in a week. He also said that he could have seen the email but did not recall seeing it.

233. DCC Pilling and CS Anderson both give evidence to the effect that they were not aware of the offer by the producer of the programme for the claimants to have

the opportunity to comment in the programme. None of the documents provided positive support for a finding of fact that either of those officers were made aware of the email by Mr Worsley if indeed he read it.

234. It seemed to us, at first sight, implausible that an experienced press officer, handling a matter of this nature who receives an email from a previous professional contact, and in which the subject line of the email makes it clear that it is an enquiry on the same topic as the recent request from Mr Gregory, would overlook such an email especially when, at the time it was received, he had yet to speak to DCC Pilling in order to prepare the GMP response to the enquiry.

235. Although this was a subject on which we sought further written submissions from the parties, we came to the conclusion on balance that Mr Worsley's evidence on the point was not undermined by any other evidence such that we could conclude that he had in fact seen the email in question. We could not come to the conclusion that either DCC Pilling or CS Anderson were aware of the request. Were it otherwise that would have been overwhelming evidence that Mr Worsley had referred it to them. Not without some hesitation we concluded that it was oversight on Mr Worsley's part.

236. On 16 May 2017 the programme was broadcast. DI Escott only learnt about this because her father had listened to it and realised it related to matters that would be relevant to her. She listened to it on BBC iPlayer.

237. On 19 May 2017 DI Escott sent an email to DCI Pervaiz complaining that she had not been notified that the programme was to be aired and also about the conduct of Mr Winters and the police. That email was copied to DCC Pilling. He informed DCS Anderson that somebody needed to listen to the programme and as a result a transcript was obtained (1100-1103).

238. On 22 May 2017 DCI Pervaiz responded to DI Escott (1104) stating that having listened to the programme there would be no action taken against DC Bailey or Mr Winters in respect of their part in the broadcast. He continued,

> "Finally, you have asked why you were not told of the Radio 4 programme by GMP from a welfare perspective. As you will be aware, the focus of the programme was police accountability generally. It touched upon the IPCC and the relationship of that organisation with the police service; and reported on the experiences of some who have made complaints against the police, one of whom was Mr Winters. In those circumstances, it was not considered necessary to notify yourself or any other person about the possibility of the broadcast. Notification to officers in circumstances such as this is often a difficult balance to strike and I am sorry that the lack of notification in your case has caused you upset and concern."

239. DI Escott had also complained to the BBC about the broadcast. Ms Chesworth responded to the complaint on 23 May 2017 (1106) saying, that in compiling that part of the programme they had sight of a number of documents and correspondence which corroborated Mr Winters' account of events as stated on the programme, that it had invited a representative from the respondent to take

part in the programme and that the respondent's response to that invitation was reported on air. Ms Chesworth said that at no point prior to the broadcast had the respondent informed them that it had information confirming that an allegation of assault had been made and continued,

> "As well as asking GMP to respond to Mr Winters' claims, we also asked via the press team if the two officers who were investigated wished to comment in the programme. We did not receive a reply to this request."

240. On 24 May 2017 DI Escott wrote again to DCI Pervaiz (1108) making further complaints. She referred to his earlier reply that it was "not necessary to notify" them of the programme and the last part of Ms Chesworth's email quoted in the previous paragraph, and suggested that GMP had actively failed to discuss the BBC contact with them and had directly prevented them from commenting or contributing. She asked who had decided not to inform herself and Supt Higham about the BBC's request for comments.

241. On 5 June 2017 DCI Pervaiz contacted Mr Worsley, forwarding him a chain of emails and asking to attend a meeting.

242. On 8 June 17 Mr Worsley appears to have forwarded the initial email from Ms Chesworth to DCI Pervaiz (1111).

243. On 20 June 2017 DCI Pervaiz wrote several emails to the claimants saying that he had reviewed the circumstances about communications between the respondent's corporate communications department and the BBC and said, in the email he sent to Supt Higham (1112-3):

> "After considering this matter, it is recognised that the communication of the 27 April 2017 from SC was not acted upon by the corporate communications department, this appears to be an oversight. The PSB was never informed of such a request, had we been provided with this information we would have informed both yourself and DI Laura Escott. Consequently you have be [sic] denied the opportunity to make comment on the programme, I am sorry if the lack of notification in your case has caused you upset and concern."

244. Both DCC Pilling and DCS Anderson gave evidence to the effect that they were unaware of the BBC's offer of an opportunity for the claimants to contribute to the programme until that matter was raised by DI Escott in her complaint.

245. In the months that followed DI Escott continued to make complaints. For the purposes of determining the issues in the case it is not necessary to set them all out. However, in respect of a complaint against DC Bailey and the respondent's press office Mr Thornton, a complaints manager in PSB, wrote to her on 22 November 2017 (1125(30)) stating: "Adrian Worsley in Corporate Communications has accepted an oversight and apologised for not informing you about the radio programme. He has been given words of advice."

246. The tribunal noted that that information was not included in Mr Worsley's witness statement. Despite the terms in which the letter is written it seems likely that that is a reference to Mr Worsley's assertion that he did not see Ms Chesworth's email.

Submissions

247. Both counsel made detailed submissions in writing. Because of the factual complexity of the case and because the inferences from primary facts and the conclusions we reached are highly fact sensitive we do not attempt to summarise them or set them out here. The extent to which we accepted or rejected the submissions we trust is apparent from the detailed conclusions set out below.

Relevant Law

Detriment by reason of having made a protected disclosure

248. The statutory framework is found in the Employment Rights Act 1996.

248.1. Section 43B defines a qualifying disclosure;

248.2. Section 43C by which a qualifying disclosure to the worker's employer is protected;

248.3. Section 43KA places the chief officer of police force and a member of their police force in the positions of "employer" and "employee" for the purpose of the other relevant provisions;

248.4. Section 48 (1) gives the tribunal jurisdiction to determine a complaint by an employee that he has been subjected to a detriment;

248.5. Section 48 (2) provides that "on a complaint under subsection (1)… it is for the employer to show the ground on which any act, or deliberate failure to act, was done.";

248.6. Section 48 (3) provides for the time in which proceedings must be presented for the tribunal to have jurisdiction; and

248.7. Section 49 sets out the tribunal's powers in respect of remedy.

249. In the case of **Blackbay Ventures Ltd v Gahir** [2014] ICR 747 the Employment Appeal Tribunal gave guidance on the approach to be taken by the tribunal in determining claims of this type. In paragraph 84 of the judgment reference was made to the speech of Lord Hoffmann in **Chief Constable of the West Yorkshire Police v Khan** [2001] ICR 1065 quoting in turn Brightman LJ in **Ministry of Defence v Jeremiah** [1980] ICR 13, 31 "a detriment exists if a reasonable worker would or might take the view that the [treatment] is was in all the circumstances to his detriment." In paragraph 85 of the judgment the opinion of Lord Hope in **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337

was quoted which also referred to Brightman LJ's formulation, Lord Hope adding, "An unjustified sense of grievance cannot amount to 'detriment'".

250. In paragraph 98 of **Blackbay** the guidance for the tribunal is given in 8 paragraphs.

251. As to causation in whistleblowing detriment cases the test in section 47B is whether the treatment was "done on the ground that" the worker has made the protected disclosure. Mr Hobbs reminded us that the Court of Appeal in **Fecitt v NHS Manchester** [2011] EWCA Civ 1190 had identified that there would be a breach of the requirement not be subjected to detriment if the disclosure "materially influences (in the sense of being more than a trivial influence)" the treatment. Albeit that this was strictly not part of the reason for the determination of that appeal it has been consistently applied over a number of years and Mr Hobbs did not suggest that it was not good law to equate the approach to be taken in both discrimination cases and cases of whistleblowing detriment.

Sex discrimination

252. The statutory framework is found in the Equality Act 2010.

252.1. Section 13 defines direct discrimination;

252.2. Section 23 provides for comparison by reference to circumstances;

252.3. Section 42 provides that the holding of the office of constable is to be treated as employment by the chief officer;

252.4. Section 109 provides for the liability of employers and principals;

252.5. Section 120 give this tribunal jurisdiction to determine the complaint;

252.6. Section 123 provides for the time limits for bringing a complaint, conduct extending over a period and extensions of time;

252.7. Section 124 sets out the tribunal's powers in respect of remedy; and

252.8. Section 136 provides for the burden of proof.

253. In respect of the burden of proof the guidance given by the Court of Appeal in **Igen Ltd v Wong** [2005] IRLR 258 in respect of the statutory provisions replaced by the Equality Act 2010 is still applicable. The court held:

> "The guidance issued by the EAT in *Barton v Investec Henderson Crosthwaite Securities Ltd* in respect of Sex Discrimination Act cases, which has been applied in relation to race and disability discrimination, would be approved in amended form, as set out below.

(1) Pursuant to s.63A of the SDA, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s.41 or s.42 of the SDA is to be treated as having been committed against the claimant. These are referred to below as 'such facts'.

(2) If the claimant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in'.

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word 'could' in s.63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s.74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within s.74(2) of the SDA.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s.56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive.

> (12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.
>
> (13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice."

254. In **Madarassy v Nomura International plc** [2007] IRLR 246 the Court of Appeal explained what was required in order for the burden of proof to shift and affirmed the previous guidelines.

> "The burden of proof does not shift to the employer simply on the claimant establishing a difference in status (eg sex) and a difference in treatment. Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination. "Could conclude" in s.63A(2) must mean that "a reasonable tribunal could properly conclude" from all the evidence before it. This would include evidence adduced by the claimant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory "absence of an adequate explanation" at this stage, the tribunal needs to consider all the evidence relevant to the discrimination complaint, such as evidence as to whether the act complained of occurred at all, evidence as to the actual comparators relied on by the claimant to prove less favourable treatment, evidence as to whether the comparisons being made by the claimant were of like with like as required by s.5(3), and available evidence of the reasons for the differential treatment. The correct legal position was made plain by the guidance in *Igen v Wong*. The detailed guidance in that case does not need to be amended."

255. Beyond those cases the claimants relied on two further decisions of the Employment Appeal Tribunal: **Birmingham City Council & Semlali v Millwood** UKEAT/0564/11/DM and **Solicitors Regulation Authority v Mitchell** UKEAT/0497/12/MC.

256. In the first of those cases, the tribunal had found that a black employee was treated disadvantageously when compared to an Asian employee in the same material circumstances. The ET had accepted that that did not without more justify shifting the burden of proof but held that there was more which it did not identify. However the ET had also found that where a number of explanations were offered for the difference in treatment all of which were not believed that could be taken into account in determining whether the burden of proof shifted. Mr Beever, who was counsel for the respondent in that case, accepted that where an employer gave an explanation for the treatment alleged which a tribunal later found was a lie

that might justify a reversal of the burden. The EAT agreed. Langstaff P, continued in paragraphs 26 and 27 of the judgment:

> "What is more problematic is the situation where there is an explanation that is not necessarily found expressly to be a lie but which is rejected as opposed to being one that is simply not regarded as sufficiently adequate. Realistically, it seems to us that, in any case in which an employer justifies treatment that has a differential effect as between a person of one race and a person or persons of another by putting forward a number of inconsistent explanations which are disbelieved (as opposed to not being fully accepted), there is sufficient to justify a shift of the burden of proof. Exactly that evidential position would have arisen in the days in which **King v Great Britain-China Centre** [1992] ICR 516 was the leading authority in relation to the approach a Tribunal should take to claims of discrimination. Although a Tribunal must by statute ignore whether there is any adequate explanation in stage one of its logical analysis of the facts, that does not mean, in our view, to say that it can and should ignore an explanation that is frankly inadequate and in particular one that is disbelieved.
>
> … To prefer one conclusion rather than another is not, as it seems to us, the same as rejecting a reason put as being simply wrong. In essence, the tribunal in the present case appeared not believe at least to the explanations that were being advanced with, and there were, we accept from what Mr Swanson has said, some three inconsistent explanations put forward for the difference in treatment that constituted the alleged discriminatory conduct."

257. In **Mitchell**, the more recent case, another composition of the EAT had reached a similar conclusion where the alleged discriminator had given a number of explanations for the treatment. The ET had described that evidence as "unsatisfactory" and in another respect said that she did not "provide any credible explanation". She was also said not to have given a "full and frank account of the reasons for her action" and that her evidence "did not sit well with her witness statement or the basis upon which the case had been presented" up to that point. The ET considered that her oral evidence showed there were other less justifiable motives for her actions such that it considered that it "could not place reliance in her assertion that the reason for the treatment was in no sense whatsoever gender." See paragraphs 24 and 25.

258. In considering the applicable law the EAT quoted a number of passages from the judgement of Elias J in the **Law Society v Bahl** [2003] IRLR 640 and derived from them two propositions that it expressed thus:

> "(i) In appropriate circumstances the "something more" can be an explanation proffered by the Respondent for the less favourable treatment that is rejected by the Employment Tribunal
>
> (ii) If the Respondent puts forward a false reason for the treatment, but the Employment Tribunal is able on the facts to find another, non-discriminatory reason, it cannot make a finding of discrimination."

259. The EAT quoted the passages set out above from the case of Millwood and described it as helpful guidance "on the importance to be attached the rejection of an explanation by the Respondent by the Employment Tribunal and the need to show some flexibility and following the guidance in **Madarassy**".

Legal Professional Privilege

260. We need to add a self-direction upon the effect of asserting LPP to the matters to which we drew attention at the beginning of these Reasons.

261. We had in mind in reaching our conclusions that we need to consider LPP in the context of a case where there is a burden of proof upon a party who invokes the privilege such that, for example, the tribunal does not have the opportunity to read documents or parts of documents then the tribunal may not have the advantage of seeing explanations for treatment. The consequence of that may be that the evidence which could support a non-discriminatory explanation is simply not given. With this in mind we have again been careful in reaching our conclusions to distinguish, where appropriate, in considering the allegations of sex discrimination, between explanations which may be rejected as being false from those which are "inadequate" or simply absent.

262. Into the former category of "false" would fall a reason which the tribunal rejects as simply being untrue or not a genuine explanation. But if the facts, affected by the assertion of privilege, do not permit the tribunal to consider an alternative explanation then the party asserting the privilege has no legitimate ground for complaint. We cannot draw an adverse inference against the party because they have asserted the privilege but neither can we infer that there is a non-discriminatory reason arising from the material we have not seen. This "gloss" upon the legal position arrived at post **Bahl, Millwood** and **Mitchell** arises entirely from the consequences of privilege being asserted in this case. In short, we can only reach proper inferences and conclusions from the facts as we are able to find them to be.

Conclusions

263. We address first the complaint in respect of protected disclosure detriments, including detriments, causation and jurisdiction. We then express our conclusions in respect of the allegations of sex discrimination. We finally deal with remedy.

Protected Disclosures

Did the claimants made any qualifying disclosures that are protected?

264. Supt Higham's case is that she made a disclosure of information to Mr Flood QC on 9 February 2015. We have already drawn the inference that such a disclosure of information was made in our findings of fact.

265. We have little difficulty in concluding that the information disclosed tended to show the commission of a criminal offence by Mr Winters upon FOA. It was not

contended that such a disclosure was not believed by Supt Higham to be made in the public interest.

266. We reject the submission by Mr Hobbs that because of the nature of the question by Mr Flood to Mr Winters in cross examination it necessarily shows that Supt Higham was only able to inform Mr Flood that an assault may have been committed.

267. We need also to address one specific argument raised by Mr Hobbs based upon s 43B(4) Employment Rights Act 1996 1996.

268. The starting point is that under section 43D a qualifying disclosure made in the course of obtaining legal advice is protected. Mr Hobbs relied upon the case of **Balabel v Air India** [1988] 1 Ch 317 as to the scope of the privilege. Information provided by the client or, as here, in effect by an employee of the client to a legal adviser is clearly covered.

269. However Mr Hobbs went further, and in our judgment too far, in trying to argue that the protection afforded by the legislation was lost in the circumstances set out in section 43B(4). The subsection provides, in material part:

> "A disclosure of information in respect of which a claim to legal professional privilege … could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information has been disclosed in the course of obtaining legal advice."

270. Mr Hobbs sought to argue that the protection was lost by Supt Higham when Mr Flood QC asked the question of Mr Winters in tribunal. As he put it, "privilege trumps protection".

271. We reject that argument for two reasons. In our judgment the obvious and natural meaning of the subsection does not bear the effect for which Mr Hobbs contends. The subsection is designed to prevent those to whom privileged information is communicated from maintaining a complaint of protected disclosure detriment themselves. So, for example, if another witness hearing the disclosure by Supt Higham went into the tribunal hearing and repeated that information and as a result was subjected to detriment they could not bring a complaint. The information in respect of which privilege could be maintained had been communicated to that witness and should not have been repeated by them. Supt Higham was not in that position. When she disclosed the information to Mr Flood QC she was not breaching legal professional privilege. That information became privileged at the moment she made the disclosure. It was not she in the circumstances who is the "person" in the words "if it is made by a *person* to whom the information has been disclosed in the course of obtaining legal advice." The ordinary meaning of those words would render Mr Flood QC the "person" not Supt Higham.

272. The second reason for rejecting the argument is that it undermines the protection properly to be afforded to persons who are making a disclosure

information in the context of seeking legal advice. If the subsection has the meaning contended for by Mr Hobbs an employee who discloses information in the course of seeking legal advice is protected at that moment but the moment they then disclose information again they lose it notwithstanding that as the client they, and not the legal adviser, can waive the privilege. Although a literal meaning of the words "could be maintained in legal proceedings" might appear to suggest that this construction is open, in our judgment it cannot be what Parliament intended. It leads to the absurd consequence that if a client deliberately waived the privilege and made the disclosure for example first to their solicitor and then to their employer and were subjected to a detriment because of that second disclosure they would not be protected.

273. The claimants next relied upon disclosures allegedly made by them to Ms Catherine Shackleton, the force solicitor on 2 and 8 June 2015 respectively. The tribunal simply did not have any evidence about those alleged disclosures and no material from which we could draw any inference about them.

274. DI Escott relied upon her email to DCC Pilling on 4 July 2016 as a protected disclosure. It was not in dispute that in part of that email she repeated the information that we have found was communicated to Mr Flood QC namely that Mr Winters had assaulted FOA.

275. Mr Hobbs submitted that even a positive assertion that an allegation sought to be made is not necessary centre show that a criminal offence has been committed. Even if we could accept that somewhat ambitious submission it does not answer the point that the test is whether "in the reasonable belief" of the person making the disclosure it tends to show the commission of a criminal offence. Mr Hobbs accepted that if we determined that point against the respondent the disclosure was protected, and so we find it was.

276. Since a claimant can only rely upon a protected disclosure made by her it follows necessarily that DI Escott can only rely upon detriments that occurred to her after 4 July 2016.

Detriments

277. We next consider the detriments and identify them as they appeared in the list of issues.

a. The respondent ignoring the findings of C/Supt Hull.

b. ACC Shewan making a voluntary referral to the IPCC, knowing at the material time there was no merit to any allegations.

278. We take these together. The reference to CS Hull encompasses the fact-finding undertaken by DCI Flindle. The allegations concern the attempt of those officers to present their findings to ACC Shewan on 10 September 2015 which we have addressed at length in our findings of fact. His evidence was particularly unsatisfactory for the reasons we have described. We have no hesitation in

concluding that he effectively ignored the findings and that he made a decision to refer the case to the IPCC without having allowed them to conclude their presentation or read the written report. In our judgment he made that decision on the day of the meeting because by 14 September 2015 DCI Flindle sent him the handover package of documents.

279. Referring Mr Winters' complaint against the claimants to the IPCC was a detriment. As Mr Beever submitted it is a detriment to do so if you have not reviewed the information or have turned a blind eye to the facts. It is detrimental because, as Mr Pilling conceded, it exposes the subjects of Mr Winters' complaint to greater public scrutiny. It fanned the flames of widespread social media corruption "chatter". It added significant delay the conclusion of the investigation.

280. These detriments to Supt Higham are established.

c. The respondent's failure to provide all necessary information to the IPCC that showed that the alleged disclosed information was not false, which resulted in the IPCC serving Regulation 16 Notices on the claimants.

281. In our judgment this allegation is not made out on its facts. All the material that was in the hands of PSB was forwarded to the IPCC. See paragraph 98 above.

d. Issuing an order to the claimants that prevented them from effectively defending themselves or providing a full account during the IPCC investigation.

282. The decision to assert legal professional privilege was taken on 11 May 2016. At that stage only Supt Higham had made a protected disclosure. The respondent accepted in argument that the decision presented an obstacle to the claimant in giving a full account to the IPCC. It was suggested that although it was accepted that they could not provide a definitive account it did not cause any detriment in reality.

283. In our judgment the submission is unsustainable. If the decision caused a disadvantage, which was accepted, it amounts to a detriment. Moreover, the decision to waive privilege prolonged the ultimate determination of the investigation which was eventually to exonerate the claimants. It was the invocation of the privilege that cause the IPCC to decide to return the matter to the respondent for investigation. It was plainly detrimental to Supt Higham

f. Removing the claimants from their postings;

284. Although at the time of the protected disclosure Supt Higham was an officer in PSB in February 2016 she changed role and became a senior investigating officer in the major investigations team of the respondent. She was not removed from that posting during the investigation by the IPCC or thereafter. Although DI Escott was removed from her post within PSB in June 2016 she had not at that stage made a protected disclosure. Whilst the removal from post was a detriment it cannot be linked to a subsequent protected disclosure.

e. Placing the claimants on restrictive duties;

285. This occurred on 15 June 2016 when, as a result of severity assessments which it had carried out the IPCC signed regulation 16 notices for both claimants alleging gross misconduct. The restrictions remained in place until the gross misconduct element was deleted on 15 November 2016.

286. This occurred prior to the protected disclosure by DI Escott. So far as Supt Higham was concerned the respondent's case was that an allegation concerning Honesty and Integrity which might result in a finding of gross misconduct almost always results in the officer being removed from the evidence chain. That is done in order to avoid the possibility of any investigations in which they are concerned at the time being compromised.

287. However, we are satisfied that the restriction from duties was detrimental to Supt Higham. We accept her evidence that her colleagues in the major incident team would be aware of the restriction and she would legitimately feel it was to her disadvantage.

g. Refusing or in the alternative failing to review the restrictive duties;

288. Applications for the restrictions to be reviewed were made on 3 occasions. On behalf of DI Escott Sgt Wood her Police Federation representative made written applications on 29 June 2016 (510) and 9 August 2016 (549). On behalf of Supt Higham an application was made by her representative on 8 October 2016 (601).

289. The second application on behalf of DI Escott was made to CS Anderson and Supt Egerton after she had made her protected disclosure to DCC Pilling.

290. The application on behalf Supt Higham was made after the IPCC had interviewed her and specifically address the fact that the IPCC were aware at that stage that the dishonesty element investigation was no longer valid.

291. Maintaining those restrictions at 9 August 2016 and 8 October 2016 amounted to a detriment in each case.

h. Prolonging the investigation against them, knowing the allegations to be without substance.

292. This allegation concerned the acts or omissions of the respondent after the IPCC had remitted the investigation back to the respondent in October 2016.

293. In cross-examination Supt Higham agreed that she had no complaint about the time taken for the subsequent process to be completed. In the circumstances we cannot find that she considered the process at that point to be a detriment to her.

294. In her evidence DI Escott described this under 4 headings which are set out in Mr Beever's written submissions. The first two of these, referral to the IPCC and not waiving privilege occurred prior to her disclosure. The third, that during the IPCC's investigation the GMP could have halted it, is not made out on the facts.

There was no evidential basis for finding that the GMP could have prevented the IPCC for continuing its investigation.

295. The fourth, that even after the return of the investigation to the respondent at which point a determination could have been made of no further action the matter was further prolonged for 4 months by the actions of DCI Pervaiz was, we find, a detriment. By then the respondent was aware that Supt Higham had provided the information to Mr Flood QC and that DI Escott had not.

i. Causing damage to the claimants' personal and professional reputations.

296. In closing submissions, although he sought to develop this, by reference to other detriments Mr Beever accepted that it was a matter of consequence of other detriments rather than a cause of detriment in itself. In our judgment this was a concession properly made and we do not consider it appropriate to treat it as separately occasioning detriment.

j. Denying the claimants the opportunity of putting their side of the story across by deliberately failing to inform the claimants that the BBC had made a direct request for their comments on Mr Winters' allegations.

k. DCI Pervaiz's failure to notify the claimants of the BBC`s request even after the claimants had asked to be notified of the broadcast.

297. There was no factual dispute that the claimants were not notified of the BBC approach to the respondent prior to the broadcast. Whether that was deliberate or inadvertent any argument that it was not a detriment to them in these respects is unsustainable.

l. The biased manner in which the Respondent reported the matter to the press i.e. simply confirming that two PSB officers had been under investigation for gross misconduct but not disclosing that Mr Winters had been accused of and investigated for the assault.

298. This allegation concerns first a press statement to the Manchester Evening News (497) on 17 June 2016. This was prior to the disclosure by DI Escott.

299. In respect of Supt Higham it is correct that although it referred to the allegations of gross misconduct that the IPCC were considering it did not also referr to the fact that the IPCC were also considering the allegation that Mr Winters had assaulted FOA, albeit that information, from the perspective of Mr Winters, was included in the article. On balance we consider it is detrimental at least in the sense that it exposed the allegation against her to wider public scrutiny.

300. The allegation also encompasses the statement forwarded to the BBC in respect of the File on 4 request.

301. In evidence DCC Pilling conceded that the change from the draft to the final version of the statement, which therefore omitted the reference to the claims having been brought by

these claimants, rendered the statement less balanced than it would otherwise have been. The obvious conclusion is that it was detrimental to both claimants.

Causation

Whether the respondent has any liability in respect of actions/decision taken by the IPCC.

302. This issue was not pursued by the claimants.

In respect of the allegations of determent found proven, whether the reason for the act/omission was because the claimants had made a protected disclosure. Has the respondent shown grounds on which the acts or deliberate failures to act alleged as detriments were not materially influenced by the protected disclosures made by the claimant?

303. We consider these issues together and by reference to each detriment that the claimants have proven.

a. The respondent ignoring the findings of C/Supt Hull.

b. ACC Shewan making a voluntary referral to the IPCC, knowing at the material time there was no merit to any allegations.

304. We have found these were detriments to Supt Higham.

305. We conclude that a direct causative line can be properly drawn from the disclosure by Supt Higham, via Mr Winters' complaint, FOA approaching PSB to make a statement when she learnt of the outcome of Mr Winters' tribunal case, to the PSB investigation to the detrimental treatment by ACC Shewan.

306. For the reasons that we have set out at length in our findings of fact we consider that the explanations for the treatment by ACC Shewan fail by no narrow margin to demonstrate that the protected disclosure had no or only a trivial effect upon the treatment. His evidence about the reasons for his actions was not credible.

d. Issuing an order to the claimants that prevented them from effectively defending themselves or providing a full account during the IPCC investigation.

307. This was detrimental treatment to Supt Higham. It is the disclosure and its circumstances in respect of which privilege was invoked. A link is plainly established.

308. Mr Hobbs submits that the tribunal cannot draw an adverse inference because of the assertion of LPP. Thus far we agree with him. But he also submits that the respondent need not and cannot explain the legal advice it received. The second element of that submission is unfounded. The respondent was not obliged to maintain its invocation of privilege. It chose to do so. But the legal obligation on the respondent to prove that the treatment found to be detrimental was not in any material sense on the ground of the disclosure was an obstacle which it might have to overcome. In our judgment it cannot legitimately complain if by maintaining the

privilege it cannot advance an explanation. In our judgment this is distinct from drawing adverse inference simply by reason of the assertion of privilege.

e. Placing the claimants on restrictive duties;

309. This was detrimental to Supt Higham. However, in this instance we are not satisfied that the initial imposition was treatment on the grounds of the disclosure. There was, in our judgment, a supervening event that was not a decision of the respondent. The referral to the IPCC, for which the respondent was responsible, led to the IPCC's severity assessment and Regulation 16 notice alleging gross misconduct. In our judgment at the point in time of the imposition of the restricted duties it was possible that gross misconduct might have been found. Albeit with the benefit of hindsight we know that that neither did occur nor was ever likely to do so, the reason for restricting her duties was not because of the disclosure but because of the consequent allegation of gross misconduct made by the IPCC and not the respondent.

g. Refusing or in the alternative failing to review the restrictive duties;

310. We have found that maintaining those restrictions as at 9 August 2016 in respect of DI Escott and as at 8 October 2016 in respect of Supt Higham amounted to detriments.

311. After DI Escott had made her disclosure on 9 August 2016 and until the IPCC returned the investigation to the respondent on 18 October 2016 she was in the same position as we have found Supt Higham was when the restrictions were imposed. For Supt Higham she remained in the position that we have previously described until the return of the investigation.

h. Prolonging the investigation against them, knowing the allegations to be without substance.

312. This allegation concerned the actions or omissions of the respondent after the IPCC had remitted the investigation back to the respondent in October 2016.

313. For DI Escott the fact that the investigation was prolonged for 4 months by the actions of DCI Pervaiz was a detriment.

314. DCI Pervaiz only became part of the investigation at this stage. Although we will return to consider his conduct of the matter when we consider sex discrimination and later allegations the evidence does not establish that on the balance of properties he was aware of DI Escott's protected disclosure to DCC Pilling.

j. Denying the claimants the opportunity of putting their side of the story across by deliberately failing to inform the claimants that the BBC had made a direct request for their comments on Mr Winters' allegations.

k. DCI Pervaiz's failure to notify the claimants of the BBC`s request even after the claimants had asked to be notified of the broadcast.

315. In our judgment these allegations and the manner in which they were dealt with can be linked directly back to the protected disclosures by both claimants. The first disclosure which led to the referral of the investigation to the IPCC, the correspondence between DCC Pilling and the IPCC about privilege, the second disclosure on the same topic and that the request by the BBC made it specifically clear that Mr Winters' complaint was a specific topic to be covered in the programme are all matters which establish that link.

316. We then have to consider whether on the balance of probabilities the respondent can prove that the treatment was not on the grounds of the disclosures.

317. In respect of the first allegation we have set out at length in our findings of fact our reasons for concluding that the failure to give the claimants the opportunity to contribute to the programme was oversight.

318. In respect of the second allegation we treat this as simply one of failure to notify the claimants of the programme. The claimant's case was that they were entirely unaware the programme until after it was transmitted. Hence the expression "even after the claimants had asked to be notified" in the allegation is plainly erroneous and we disregard it.

319. When the claimants did enquire after the event why they had not been notified, DCI Pervaiz wrote to them that it was "not considered necessary to inform you". That statement clearly suggests there had been a discussion resulting in a decision. Mr Beever suggested that on the balance of probabilities that did not occur. It certainly does not fit with DCC Pilling's evidence that he did not consider that the claimants were discussed in his meetings with Mr Worsley and CS Anderson.

320. The claimant submits that either DCI Pervaiz provided a glib and inaccurate answer or some other discussion took place of which the tribunal has not been informed.

321. In our judgment that submission is powerful and we accept it. The consequence is that the respondent has not provided any proper explanation for the decision at all. For that reason we uphold the claimants' case in respect of this allegation.

l. The biased manner in which the Respondent reported the matter to the press i.e. simply confirming that two PSB officers had been under investigation for gross misconduct but not disclosing that Mr Winters had been accused of and investigated for the assault.

322. We have upheld the allegation of detriment in respect of Supt Higham in respect of the press statement to the Manchester Evening News.

323. The allegation in respect of the File on 4 press statement we have found was detrimental to both claimants.

324. DCC Pilling accepted that the latter statement was not balanced. In our judgment the same criticism can properly be made of the earlier statement also.

325. Mr Worsley gave no explanation at all why the draft statement was changed. In evidence both DCC Pilling and CS Anderson drew back from their initial explanations that they thought the programme was a general programme of accountability to an acceptance that Mr Winters' case was likely to feature prominently. However no proper explanation could be given for the change in tone between the first draft which referred to these claimants' claims to the tribunal and the second draft which it was accepted was less balanced and gave, as Mr Beever submitted, a strong impression that the respondent was trying to protect the claimants rather than that the claimants wanted to tell the truth.

326. For these reasons we concluded on the balance of probabilities the respondent has not proved that the detrimental treatment was not on the grounds of each claimant's protected disclosure.

Jurisdiction

Have the claimants' complaints been brought in time? Specifically:

> Is there a continuing course of conduct?
>
> What was the date of the last alleged detriment?
>
> Have the claimants brought their complaints within 3 months of the last detriment complained of?

327. For the reasons we have given above we consider that the allegations that we have upheld in respect of earlier periods which would otherwise be out of time are linked to allegations in respect of which we have jurisdiction namely those that occurred on or after 15 December 2016. An event that occurred on that day would be encompassed within the extension afforded by early conciliation and proceedings were issued on 24 April 2017.

328. So, by section 48(3)(a) of the Employment Rights Act 1996 the question we have to answer is whether the earlier acts of failures are "part of a series of similar acts of failures" of which the last of those which occurred within the limitation period.

329. In reaching the conclusion that we have jurisdiction we bear in mind the following points. We have already considered in deciding causation which of the detriments can properly be linked back to the disclosures. The evidence supports the conclusion that the same small group of people within the senior leadership of PSB and officers at chief officer level and those who report to them directly are the persons responsible for the treatment. The nature of the detriments alleged are all similar in nature. They either concern the investigation of the allegations by Mr Winters', treatment because those allegations have been made or responses when Mr Winters' complaints were raised in a public forum.

330. In our judgment all these factors are relevant in deciding that this was a series of similar acts and failures and that we have jurisdiction.

Sex discrimination

331. We reach the following conclusions on the allegations. Unless it is necessary to do so we do not repeat or expand upon the reasoning that we have set about above. But here we also set out whether we consider it to be less favourable treatment than a male comparator or hypothetical comparator.

a. Being voluntarily referred to the Independent Police Complaints Commission ("IPCC") by the respondent when the respondent had full knowledge at all material times there was no merit to Insp Winter's allegation that the information alleged to have been disclosed by the claimants was not true.

332. Whilst we accept that this was detriment, we do not consider that a male officer in materially similar circumstances would be treated differently. The reaction of ACC Shewan was, on the evidence, a reaction to the knowledge that the PSB had commenced an investigation into the very subject matter about which Mr Winters had complained. Notwithstanding that we think there is considerable merit in the criticism that the claimant make of the way in which ACC Shewan responded to what he was being told the manner in which he responded supports a conclusion that it was a "knee jerk" reaction. But, despite that, there was no evidence from which we can infer that the gender of those about whom Mr Winters was complaining impinged upon the reaction and the decision made by Mr Shewan.

b. Failing to provide all the necessary information to the IPCC that showed that the alleged information that was disclosed was not false, resulting in the claimants being served Regulation 16 Notices and being [sic] and facing gross misconduct proceedings.

333. For the reasons that we have set out above we do not accept that this allegation was made out on its facts.

d. Placing the claimants on restrictive duties.

e. Keeping the claimants on restrictive duties for 8 months.

334. We consider that this treatment was detrimental to both claimants. The main focus of the claimants' case on less favourable treatment was the keeping of them on restrictive duties. Mr Beever addressed these matters in paragraphs 54 to 63 of his written submissions.

335. DCC Pilling described the decision to restrict duties as a "blanket" decision. It is submitted that this connotes a failure to consider the circumstances individually.

336. Supt Egerton stated that the restrictions could not be lifted until the IPCC changed its position. CS Anderson equally explain the restrictions on the basis of the IPCC's assessment.

337. It is in the context of this claim that the named comparators are relevant. In particular officers B, C, D and E are relevant. The treatment of these officers, whose circumstances all arose after DCC Pilling took office and when a "policy" was said to be in place, demonstrates that a blanket decision to restrict when Honesty and Integrity were the subject of investigation did not occur.

338. Looking at the circumstances of those offices in the round Mr Beever submitted that the evidence fundamentally failed to explain the decision-making around each comparator at the time when they were served with regulation 16 notices. In particular in respect of officer B it was considered unnecessary to restrict him because the claim against him was seen as weak. In the case of the claimants, the evidence that they had somehow made a false allegation against Mr Winters was weak and could be demonstrated to be weak at the time when FOA gave a statement to PSB prior to the referral to the IPCC.

339. Beyond that, the claimants suggest that the evidence fails to corroborate the existence or application of a policy. DCI Flindle and DCI Pervaiz both accepted that restrictions were imposed on a case-by-case basis. If it had been a "policy" that DCC Pilling had brought with him when he took up office it was not written down, communicated to staff in PSB nor Police Federation representatives. Decisions in respect of restrictions begin at Inspector level. There was no evidence that any such policy was cascaded to them. Moreover DCC Pilling's "stance", as he described it, was not one he could recall actioning or communicating. The stance or policy was not mentioned in the respondent's response.

340. At all times there appeared to be a recognition that not all honesty and integrity allegations would be likely to lead to a restriction of duties. The example was given where the home of a suspect was searched by officers and subsequently allegation was made the money had been taken. In those circumstances it was recognised that this would be unlikely to generate restricted duties.

341. We were invited to reject the explanation that there was a policy.

342. We consider that the evidence of a policy as the reason for restriction in this case was weak. Combined with the evidence in respect of male officers B, C, D and E we conclude that the claimants have established that they were treated less favourably than male officers would have been in materially comparable circumstances.

343. In our judgment it follows that if imposing restrictions is held to be an act of discrimination than maintaining them must also be so considered, absent any different and persuasive explanation from the respondent.

c. Removing the claimants from their respective roles within the Professional Standards Branch ("PSB") and the Major Incident Team ("MIT").

344. Again, for the reasons that we have set out above we do not accept that this allegation of detriment was made out on its facts in respect of Supt Higham. We accept that it was a detriment to DI Escott.

345. The suggestion for DI Escott's removal from PSB was made by DCC Pilling. CS Anderson's evidence was that there were no non-operational roles within PSB. Supt Spragg give evidence that there was a change programme within PSB to which some officers were assigned temporarily.

346. Beyond that CS Anderson's evidence was inconsistent with that Supt Egerton who suggested that the move would enable a male officer with whom DI Escott had previously worked to take care of her welfare.

347. In our judgment, the decision to remove DI Escott was linked closely to the decision to restrict duties. In the absence of a satisfactory explanation we conclude that the claimant can rely upon her treatment as being less favourable than officers B, C, D and E both in respect of restriction of duties and removal from role and that we can and should reach the same conclusion that this was an act of sex discrimination.

f. Subjecting the claimants to gross misconduct and misconduct charges.

348. In final submissions Mr Beever pursued this in respect of misconduct charges only. It thus becomes the equivalent of the "prolonging the investigation" detriment that we have considered above

349. On 19 October 2016 the IPCC handed the investigation back to the respondent at a meeting attended by CS Anderson and DCI Pervaiz.

350. At this point both the allegations against the claimants and the allegation that Mr Winters had assaulted FOA were once again within the respondent's remit.

351. The meeting identified that a new severity assessment in respect of the complaint against the claimants was required. DCI Pervaiz was required to undertake that. Supt Egerton was not present at the meeting but he was tasked with dealing with the allegation against Mr Winters.

352. The claimants did not rely upon Mr Winters as a direct comparator but relied upon the whole process of what in fact happened to them and to him.

353. In respect of the claimants a severity assessment, submitted by Mr Beever to be perverse, was undertaken. No severity assessment was undertaken in respect of the allegation against Mr Winters.

354. Having identified in his severity assessment that there was no case for an allegation of gross misconduct DCI Pervaiz sought to amend the IPCC assessment only to remove the allegation of honesty and integrity. He suggested that there was an indicator of misconduct by the claimants (in fact Supt Higham) in providing information to Mr Flood QC without authority or instruction so to do.

355. However, when challenged to identify any indicator of misconduct once the allegation of dishonesty had disappeared DCI Pervaiz was wholly unable to do so. Neither were Insp Graham-Cummings nor CS Anderson able to identify any indicator of misconduct at that point.

356. As Mr Beever submitted, the assessment made no reference to any documents except for inspector Howell's statement notwithstanding that DCI Pervaiz insisted that is assessment included the IPCC documentation that had been handed over. He insisted that he had access to the ROTIs although the surrounding evidence suggests that he did not. Mr Beever submitted that the way in which DCI Pervaiz give evidence appear to suggest he was providing what he regarded as the "correct" answer rather than one that was true. We accept that submission.

357. We accept the submission that there was no rational basis for the misconduct of any misconduct allegation against the claimants in respect of their communications with Mr Flood QC. Supt Higham had provided information to counsel in conference which was potentially relevant at least to an issue of credibility. It was the council to decide whether to use that information in cross examination of Mr Winters and in what manner.

358. In the circumstances we wholly reject the evidence of DCI Pervaiz insofar as he sought to explain why the misconduct proceedings were continued. Insofar as he maintained there was an indicator of misconduct the explanation was untrue.

359. By contrast the position with Mr Winters can be summarised as follows. There was no severity assessment. Supt Egerton focused on the criminal nature of the allegation (i.e. common assault which was an old allegation and could not be prosecuted as a summary only offence), that the CPS advised him that there was insufficient evidence to support an allegation of perverting the course of justice. There was no reason given by Supt Egerton for not considering whether Mr Winters should be charged with some form of misconduct. He had very much in mind the fact that Mr Winters was about to retire.

360. In our judgment the circumstances in relation to this allegation are ones that we should consider having regard to the reasoning in **Mitchell.** DCI Pervaiz's explanation for the misconduct proceedings we have rejected on the basis that it was untrue. No alternative explanation has been advanced and we could not discern on the facts any alternative ourselves, even if we were required to do so.

361. Approaching the matter in that way we conclude that the allegation of sex determination in this regard must be upheld.

g. Denying the claimants the opportunity of putting their side of the story across by deliberately failing to inform the claimants that the BBC had made a direct request for their comments on Mr. Winters' allegations.

h. DCI Pervaiz's failure to notify the claimants of the BBC`s request even after the claimants had asked to be notified of the broadcast.

i. The biased manner in which the respondent reported the matter to the press i.e. simply confirming that two PSB officers had been under investigation for gross misconduct but not disclosing that Mr Winters had been accused of and investigated for the assault.

362. As we have done earlier we consider that the respondent has made out a non-discriminatory explanation in respect of the failures to notify the claimants of the opportunity to take part in the BBC programme.

363. By similar reasoning to that set out above we reject the explanation given by DCI Pervaiz to the claimants that it was "not necessary to notify" them of the programme and that the respondent was invited to give a pre-prepared interview or a written response.

364. The additional allegation concerns the way in which the press release was drafted. Both DCC Pilling and CS Anderson expressed in evidence the wish that the reference to the claimants' claim to the employment tribunal had not been deleted.

365. DCC Pilling could not explain it. He accepted that it did not "look good". He accepted that it made the statement appear one-sided and that it did not lend any support to the proposition that the claimants had made allegations against Mr Winters which had also been referred to the IPCC.

366. CS Anderson give evidence to the broadly similar effect and Mr Worsley had no recollection.

367. We again consider whether the authorities permit us to reach the conclusion which the claimants urge. In our judgment they do. There is apparent differential of treatment of female claimants as against Mr Winters whose position we can consider as part of the evidence.

368. We have already found that there has been sex discrimination in this process by reference to actual comparators. We have rejected as untrue in a different respect the evidence of DCI Pervaiz. The respondent has not provided any further or proper explanation for failing to notify the claimants of the programme or the amendment to the press release.

369. Taking those matters in the round we think that they are sufficient to allow us to draw the conclusion that in respect of these allegations the burden of proof passes and the respondents have failed to provide a non-discriminatory explanation. We recognise that this is to an extent a hybrid position between the typical **Madarassy** approach and that in **Mitchell** but we cannot identify a valid reason not to adopt it.

Jurisdiction

370. We recognise that the statutory test in respect of claims of discrimination is of "conduct extending over a period". It is thus expressed in similar but not identical language to that of detriments by reason of protected disclosures. We do not consider that the differences in language are material.

371. There are clearly allegations of discrimination which we have found made out which are within time. We consider that for similar reasoning to that set out above

they can properly be described and should be described as a whole as conduct extending over a period.

372. We therefore conclude that we have jurisdiction in relation to the complaints of discrimination.

373. For those reasons we uphold the allegations of sex discrimination

Remedy

374. During submissions both counsel invited us to consider remedy should we conclude in the claimants' favour. Mr Beever directed our attention to the paragraphs in the witness statements of his clients which touched upon their claims for compensation for injury to feelings and invited us to consider them. We have done so.

375. Although the allegations of detriment by reason protected disclosure and those of sex discrimination which we have held do not mirror one another precisely in our judgment it would be artificial to try and make separate awards for compensation as between each head of claim.

376. We have reminded ourselves of the applicable Presidential Guidance and the **Vento** bands or ranges of awards.

377. We have considered each claimant and her circumstances separately. We have arrived at significantly different awards. The reason for that is entirely because we are seeking to assess the degree in each case to which feelings have been injured. It is the effect of the discrimination which attracts compensation. The nature and extent of discriminatory or detrimental treatment itself is not in this case a relevant factor

<u>Supt Higham</u>

378. Supt Higham, commenced her service with the respondent in 1997. She described the investigation for gross misconduct as a tremendous blow. Being placed under restriction she considered to be extremely embarrassing. Upon hearing of the referral to the IPCC she said that she was alarmed but believed that stage be some kind of paper exercise. She said, and we accept, that news of that type would spread quickly within the police force. It was not in dispute that she had been mentioned adversely on the Cabal of Corruption website.

379. After she spoke to DCC Pilling on 23 June 2015 she was so upset that she took time off work. She described the events which follows as "bizarre" and that she started to question her relationship with the organisation and whether she could never trust those in authority. She demonstrated resilience by returning to work by the time of the IPCC interview. In March 2017 she wrote to CS Anderson expressing her frustration at her treatment and questioned the motives of those involved.

380. She described the MEN article as front page news which was widely publicised on social media. She considered that Mr Shewan was responsible for the whole matter. She perceived his actions as vindictive, highly damaging to her (and DI Escott's) well-being.

381. She maintained that she was conscious of the added pressures of working the police as a woman but had always previously remain positive about equality. As a result of these matters she said that she no longer believed that.

382. After the BBC programme of which she became aware whilst on holiday she said that their identity become known on social media and that there had been accusations of corruption.

383. She stated that several hundreds if not thousands of fellow officers would have read social media postings which had referred to her as a corrupt officer and that this was damaging to her personal and professional reputation. She described it as a major cause embarrassment to her and her family.

384. She again spoke of being a mature woman who is in a position to stand up to unfair treatment and challenge it.

385. It is important in our judgment to avoid inflating compensation for the effects of treatment which are outwith the control of the respondent. We have in mind particularly the social media comments. However, there is an element of the respondent as statutory tortfeasor having to take the claimant as they find her. If, as a result of events which we have found to be part and parcel of discriminatory treatment, reporting in the press of those matters has compounded the effect upon feelings then that is a matter which the tribunal can and should take into account.

386. However, we have in mind what Supt Higham speaks of herself as being a mature woman. She has continued to serve in the respondent's force and has been promoted. We consider that hers is a case which lies within the middle band of appropriate awards and, doing the best we can we fix compensation for injury to feelings in the sum of £12,500.

<u>DI Escott</u>

387. DI Escott commenced her service in 1991. At the time of her witness statement she had been an Inspector for over 16 years.

388. She described that when she was first informed of the referral to the IPCC she was annoyed but just trying to get on with the job. It was only when she was called in to see Supt Egerton to be served with a restriction notice and to be removed from PSB that she became shocked and concerned. She described her friends and colleagues as being shocked by the events and that it was very embarrassing and upsetting.

389. She emailed DCC Pilling on 4 July 2016 believing that he would take action to put things right. She thought that she was being used as "collateral damage" whilst

Mr Winters was given enough rope to hang himself. When she realised this was not the case she considered that PSB and the respondent's command were prepared to "hang me and Jane out to dry". She expressed the view that as females they were easier to manage than Mr Winters and were expendable.

390. She was interviewed by the IPCC on 23 September 2016 and expressed the view that she had been made a scapegoat and collateral damage.

391. In December 2016, incensed by what she perceived as the respondent's failure to deal properly with Mr Winters, she emailed saying that she was not prepared to be complicit and that if the respondent failed to take action she would consider taking it herself as a serving officer. By 6 December 2016 she emailed her welfare officer DCI Packer because she was finding it difficult to cope and this had resulted in her having difficulty sleeping. Rather than take sick leave she reduced her hours.

392. After the restrictions were lifted she did not feel able to return to her role in PSB being deeply upset by her treatment. She was signed off work on 11 January 2017 with work-related stress.

393. In the weeks that followed she continued to ask for explanations for the differential treatment. She was informed that CS Anderson had emailed Sgt Wood, her Federation representative and had been given the message that any further questions would not be answered.

394. In May 2017 she learnt of the BBC broadcast from her elderly father. When she listened to it shortly afterwards she perceived that Mr Winters and PC Bailey who took part in the programme were insinuating that she and Supt Higham were racist, dishonest and corrupt. Although they were not named in the programme they had been identified on social media.

395. She said that she was hugely distressed by the programme. She described the damage to her professional and personal reputation as immense and emotional and physical effects on her well-being as significant.

396. She believed that the respondent's actions were because she was "only" a female and that the respondent would rather do the wrong things and victimise her rather than risk comeback from Mr Winters or PC Bailey.

397. She too expressed the view that she had been "hung out to dry". She described herself as distraught after listening to the broadcast. She it was who complained to the BBC and then discovered that the BBC had invited representations from her of which she had not been informed.

398. She described at length the subsequent communications with the respondent. She reiterated that the restriction in duties and being moved in role was damaging further to their reputations. She said that she had been disrespected and ignored and her return to PSB made untenable.

399. She described in paragraph 110 j. Of her statement the respondent as treating her so badly that she was "reduced to having to go off sick after 26 years unblemished service which I find embarrassing and degrading; finding myself having to seek the services my GP and counsellors to deal with the psychological effects of my treatment; having to claim statutory sick pay from the DWP when I worked all my life; it is unlikely I will return to PSB so I have to find/undertake a new role to the one I had chosen and explain my situation in whatever role I next undertake."

400. She described the behaviour of the respondent as totally shattering her faith in the organisation and as being unsure as to how it left her. She said that the last 20 months before her witness statement had been extremely difficult. She said that the thought, as a single mother of two school-age children, of losing her job and pension and potentially her home were very worrying. The removal from role she described as isolating. Having been moved from her role those around her considered her to be "under a cloud". The failure to address her concerns she described as frustrating, demoralising upsetting and she found it difficult to cope with.

401. She said she was treated as "irrelevant and insignificant". All this had caused difficulty with sleeping. The previous 20 months had been deeply unhappy, stressful and worrying and that there was no sign of it abating. She said that if it were not for the financial implications she would not return to work.

402. She said "I do not know how I'll continue the rest of my service, I feel as if this matter has broken me,… I will now find it difficult to trust anyone… I will regrettably actively seek a "boring" non-contentious less gratifying role to see out my time in GMP."

403. Again, we caution ourselves only to make an award in respect of injury to feelings attributable to the allegations of detriment that we have upheld. Nevertheless it is clear that the discrimination has had a significant effect on DI Escott's state of mind. Whilst this is not and is not intended to be an award of compensation for personal injury we can and do take into account in reaching an award for injury to feelings that this claimant had a period of time off work.

404. We consider that a particular feature is the fact that the effect on DI Escott has continued and will likely continue into the future.

405. In our judgment award in this case lies well into the upper **Vento** band. The award for injury to feelings for DI Escott we make is one of £30,000.

Interest

406. We have not had any representations the parties in respect of interest on those awards. Whilst we see no reason in principle why interest should not be awarded. We think it appropriate to give them the opportunity to make representations as to the principle, rate and period if they wish to do so.

407. We recognise the significant delay in reaching a concluded judgment. It is appropriate that the tribunal should apologise to the parties for that without reservation.

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Employment Judge Tom Ryan

Date 31 May 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

31 May 2019

FOR THE TRIBUNAL OFFICE